IFES State of the Judiciary Report Series

STATE OF THE JUDICIARY REPORT:

Honduras 2003

April 2004

Edmundo Orellana

Editors

FOPRIDEH

IFES

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This State of the Judiciary Report for Honduras was written by Edmundo Orellana, J.D., an eminent Honduran lawyer specializing in judicial reform and author of numerous articles and books on this topic in his country and abroad. Dr. Orellana has drafted a number of documents that have now become laws on themes ranging from the "Status of the Career of Public Prosecutors" to the "Judicial Code of Ethics" and the "Public Prosecution Code of Ethics". He has served in numerous public offices, including General Director for Administrative Reform of the Ministry of Planning, Coordination and Budget, Judge of the Administrative Chamber of the Court of Appeals, Attorney General, and Ambassador to the United Nations.

This State of the Judiciary Report for Honduras was supervised and edited by FOPRIDEH, a Honduran non-governmental organization dedicated to sustainable development, the formulation of sound public policies and the strengthening of democratic processes and institutions in Honduras. FOPRIDEH is a federation of non-governmental organizations that brings together over 70 affiliated organizations and various commissions and alliances with State institutions. We are especially thankful for the collaboration of coordinators Wilfredo Méndez and Ana Pineda in this project.

This State of the Judiciary Report for Honduras was edited by Keith Henderson, IFES Senior Rule of Law Advisor, and Violaine Autheman and Sandra Elena, IFES Rule of Law Advisors, who are the authors of the Executive Summary and Chapter 1 of this Report. They are also responsible for the analytical conclusions in the tables that evaluate the level of compliance with the Judicial Integrity Principles which are included in the Executive Summary and in Annex 4.

STATE OF THE JUDICIARY REPORT
HONDURAS, 2003

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EXECUTIVE SUMMARY AND ANALYTICAL EVALUATION, STATE OF THE JUDICIARY REPORT, HONDURAS, 2003

The 2003 State of the Judiciary Report on Honduras (the 2003 Report) represents a "first" for the country in several important respects.

First, while judicial reform has been on the Honduran agenda for over two decades, the 2003 Report is unprecedented in that it is the only report that is designed specifically to systematically capture Honduras' compliance with high priority judicial integrity principles. These principles are rooted in the international obligations and the Constitution of Honduras as well as accepted regional and international norms and best practices.

Second, the 2003 Report provides reformers and donors many reasons for optimism. To a large degree, it builds upon the collective thinking of all three branches of government and civil society. It also helps establish priority issues and reforms and clearly portrays the on-going struggle between the judiciary, the other two branches of government as well as the political party network. It also reveals that the judiciary has its own internal hierarchical battles to overcome if it is to succeed in becoming an independent, reliable democratic institution.

Third, the 2003 Report documents that the Honduran judiciary recently exercised its constitutional role to interpret the constitution when it refused to cede this role to the parliament. Indeed, this was a courageous decision indicating that the judiciary is finding its constitutional voice. Moreover, it is an important jurisprudential and political signal to other judiciaries in the region and around the world.

Overall, our analysis of the ten Judicial Integrity Principles (JIP) analyzed in this Report leads IFES to conclude that the Honduran judiciary remains quite weak but that some recent progress and political breakthroughs have been achieved. However, it is clear that further progress is going to require considerably more support from all the stakeholders in the justice system, including judges, the legal profession, businesses, civil society and the public at large. Likewise, donors and the Honduran government both need to be solid partners in the judicial independence reform process. As the Report makes clear, the most important reform relates to the need to provide the public and key stakeholders with the necessary information and insights to understand the real barriers to implementing judicial reform and enforcing the laws within the evolving Honduran political and socioeconomic context.

As the USAID/IFES publication *Guidance for Promoting Judicial Independence and Impartiality* highlights, one of the best ways to achieve judicial independence is to promote more civil society participation and transparency within the judicial appointment, promotion, discipline, budgeting, and enforcement process. A complementary and necessary reform path is to provide judges with the information, tools and public support they need to do their job and earn the respect and trust of the public. IFES applauds FOPRIDEH and the cooperative support of the President of the Supreme Court that made this kind of report possible. We hope that it is just the first of a long line of annual State of the Judiciary Reports that will enable the legal profession, reformers and the public to monitor and support key justice sector reforms in the years ahead.

Honduras State of the Judiciary: Analytical Evaluation of the Level of Compliance with the Judicial Integrity Principles (JIP)

JIP	SCOPE OF THE JIP (NAME OF THE PRINCIPLE)	COMPLIANCE[1]
1	Guarantee of the right to a fair trial	
	Guarantee of equality under the law	
	Guarantee of access to justice	
2	Institutional independence of the judiciary	
	Personal/decisional independence of judges	
5	Adequate training and continuing legal education	
7	Fair and effective enforcement of court judgments	
9	Adequate qualification	
	Objective and transparent selection and appointment process	↑
13	Conflict of interest rules	
14	Income and asset disclosure	
15	Rules of judicial ethics	
17	Judicial access to legal and judicial information	
18	Public access to legal and judicial information	

1 The level of compliance with each Judicial Integrity Principle (JIP) or each subcategory of a JIP is coded as follows: white corresponds to "satisfactory"; gray to "partially satisfactory"; and black to "unsatisfactory". There is an additional nuance in the assessment of the level of compliance as arrows pointed upwards or downwards indicate, respectively, improvement or regression within one category.

CHAPTER 1

STATE OF THE JUDICIARY REPORT, A TOOL FOR MONITORING AND REPORTING ON PRIORITY JUDICIAL INTEGRITY REFORMS

I. Judicial Integrity Consensus Principles and Best Practices

Both the IFES Judicial Integrity Principles and the IFES Model State of the Judiciary Report were prepared over the course of a two-year timeframe during which IFES organized country and regional workshops and conferences in virtually all regions of the world. It was first presented formally during a Workshop on Judicial Integrity at the 11th Transparency International Global Conference held in Seoul, South Korea, May 25-28, 2003. Panelists and participants at various workshops and conferences, including judges, international and national human rights monitoring groups, donors and the business community, all strongly endorsed the need for a systematic monitoring and reporting framework as an effective tool to promote judicial integrity, priority transparency and accountability reforms, and more public confidence in the judiciary.[2]

IFES Rule of Law Tools: Judicial Integrity Principles, JIP

JIP.1 Guarantee of judicial independence, the right to a fair trial, equality under the law and access to justice
JIP.2 Institutional and personal/decisional independence of judges
JIP.3 Clear and effective jurisdiction of ordinary courts and judicial review powers
JIP.4 Adequate judicial resources and salaries
JIP.5 Adequate training and continuing legal education
JIP.6 Security of tenure
JIP.7 Fair and effective enforcement of judgments
JIP.8 Judicial freedom of expression and association
JIP.9 Adequate qualification and objective and transparent selection and appointment process
JIP.10 Objective and transparent processes of the judicial career (promotion and transfer processes)
JIP.11 Objective, transparent, fair and effective disciplinary process
JIP.12 Limited judicial immunity from civil and criminal suit
JIP.13 Conflict of interest rules
JIP.14 Income and asset disclosure
JIP.15 High standards of judicial conduct and rules of judicial ethics
JIP.16 Objective and transparent court administration and judicial processes
JIP.17 Judicial access to legal and judicial information
JIP.18 Public access to legal and judicial information

The JIP represent high priority consensus principles and emerging best practices found in virtually all global and regional governmental and non-governmental instruments and key international case law related to the independence and impartiality of the judiciary. They attempt to capture the current state-of-the-art meaning of the term "judicial independence", since this fundamental principle is found in virtually all democratic constitutions and many international treaties, guidelines and documents. The JIP also attempt to incorporate and build upon the principles and information contained in important monitoring tools and reports, such as the American Bar Association's Judicial Reform Index; the Open Society Institute Judicial Independence Accession

2 These panelists and participants included judges; parliamentarians; representatives of civil society organizations, such as human rights groups and the media; representatives of international organizations, such as the World Bank, the Inter-American Development Bank and the Council of Europe; bilateral donors; legal scholars; lawyers.

Reports; the International Commission of Jurists Reports; the US State Department's Annual Human Rights Reports, the United Nations, OAS and Council of Europe Human Rights and Anticorruption instruments; and the work of Amnesty International and Human Rights Watch.

More than anything else, however, the JIP global framework is geared toward prioritizing judicial reforms and democratizing judiciaries. Global lessons learned tell us that this is one of the key challenges confronting most established and emerging democratic countries over the next several decades and that this is the best way to establish broad-based support for more independent, accountable judiciaries worldwide. The JIP are intended as a global analytical tool designed to annually assess technical and actual compliance with core, judicial integrity standards and to promote a regional and global strategic judicial reform agenda on a country-by-country basis.

The JIP promotes best practices, lessons learned and comparative, systematic research by focusing on and emphasizing a reform agenda aimed at fostering an enabling environment and legal culture necessary for the Rule of Law to take root. For purposes of this paper, "judicial integrity" covers a wide range of independence and accountability issues related to both the institution of the judiciary and judges as individual decision-makers. IFES believes using the term "judicial integrity" to capture the contemporary, full meaning of judicial independence, and then developing a strategic framework around that evolving definition, will help promote the concrete implementation of a fundamental constitutional principle. We believe it will also serve to emphasize how important it is to carefully balance independence and accountability issues and to simultaneously promote prioritized, inextricably linked reforms that also need to be undertaken.

II. IFES Rule of Law Toolkit

The JIP represent the core framework principles that should be included in any country State of the Judiciary Report. The JIP and this annotated outline for a State of the Judiciary Report are components of the IFES Rule of Law Toolkit, which has been designed to provide civil society, reformers and other stakeholders with standardized and flexible tools to promote and undertake reform. While well-conceived regional and global indexes and reports provide necessary guidance and support to those using them, the key to their proper interpretation is that they take into account the country context within which they are developed.

The guidance provided by the IFES tools is considered to be a work in progress, and the tools are designed to integrate and promote evolving regional and international consensus principles. IFES has now formed a small, informal advisory group, the IFES Judicial Integrity Working Group, to refine these tools and their methodology. Distinguished members of the working group include Judge Sandra Oxner of Canada, Judge Clifford Wallace of the United States, Chief Justice Hilario Davide, Jr. of the Philippines and Judge Luis Fernando Solano, President of the Constitutional Chamber of the Supreme Court of Costa Rica.

III. A Model State of the Judiciary Report: Multiple Purposes; Multiple Constituencies

After IFES reviewed a number of judicial reports from around the world, including those promulgated by various judiciaries or human rights groups, the need to design a standardized, structured framework for an annual report assessing the state of the judiciary became very clear. IFES found no model State of the Judiciary Report in any country in the world, including the United States. It also found minimal lessons learned, best practices or comparative information or research, including underdeveloped and non-prioritized judicial and legal reform measurements of progress, such as those under consideration by the new Millennium Challenge Account in the United States.

IFES believes the JIP may be used by civil society organizations and judges to prepare an annual State of the Judiciary Report that could serve to promote high-priority reforms and as a baseline monitoring, reporting and implementation tool for establishing the enabling legal environment to globalize the Rule of Law. These country-specific reports should be written in a participatory process, including the input of civil society organizations, judges and legal practitioners. A country's annual report should be as "national" a product as possible, in order to be useful to the local judiciary and local civil society groups. It should also be understandable and accessible to all local stakeholders and include both a technical and applied analysis of the law and practice. At a minimum, IFES hopes the analysis and framework offered here will spark more debate and attention to what has been the most neglected and probably least appreciated institution in the democratizing world.

IFES Rule of Law Tool:
Multiple Uses of the Annual State of the Judiciary Report

(i) Making judicial integrity and justice sector reforms, particularly those related to human rights higher-priority reform issues across regions;

(ii) Developing broad-based coalitions and judicial reform strategies around a common justice reform agenda within countries and across regions;

(iii) Developing strategic concrete action plans designed to implement prioritized justice reforms based on global, regional and country best practices;

(iv) Presenting prioritized recommendations for the development of strategies and policies and for a legal and judicial reform agenda;

(v) Providing the public, the media and the broader indigenous and international legal communities with the essential information they need to promote justice reforms and develop public trust in the Rule of Law;

(vi) Reporting on justice reform progress or regression through uniform but flexible indicators and monitoring standards that could be used to justify more resources domestically and increased donor and technical assistance;

(vii) Promoting higher quality empirical research, monitoring and reporting as well as coordinated, strategic action among reformers and international organizations and donors and more peer pressure among all actors in the reform process;

(viii) Enhancing the importance of the judiciary and the status of judges;

(ix) Increasing the quality of information on the judiciary and key judicial integrity principles and access to that information;

(x) Increasing the public understanding of and respect for the judiciary;

(xi) Providing judges, the legal community, reformers and civil society with the tools and information necessary to advocate for reform and funding domestically and internationally; and

(xii) Qualifying for donor assistance through the new Millennium Challenge Account and meeting terms of conditionality through the international financial institutions and development banks, such as the IMF, World Bank, IDB, ADB and EBRD, and free trade and anti-corruption conventions and protocols.

IV. Judicial Independence Intergovernmental Pact

In April 2002, IFES co-organized, along with the Supreme Court of Justice of Honduras and with the support of USAID, a Regional Conference to Promote Judicial Independence and Impartiality in Tegucigalpa, Honduras. The Conference brought together judges, civil society representatives and the donor community from Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua as well as legal and judicial reform specialists from Latin America and the United States. The positive agreement reached by the three branches to support the strengthening of judicial independence and the Rule of Law has the potential to counterbalance the negative image and inefficiency of the judiciary perceived by the Honduran population and the global community.

Highlights of the 2002 *Honduras Judicial Independence Agreement*

For the first time in Honduran history, an agreement to promote the independence of the judiciary was signed by all three branches of government. The *Honduras Agreement* calls for support in the following priority areas:

- Adequate resources and independent judicial budget;
- Transparent and objective judicial evaluation process;
- Transparent judicial selection and appointment process;
- Intergovernmental cooperation in support of judicial independence and
- Implementation of a comprehensive judicial independence strategy.

V. Methodology

The IFES Model State of the Judiciary Framework is built around the need to implement and link up key reforms embedded in the JIP. The State of the Judiciary Report is developed through a multifaceted methodology that incorporates an array of information resources, including users of the legal system, necessary to assess the level of JIP compliance. The JIP and their accompanying Indicators serve as the guideposts with which to regularly measure implementation progress or regression. In partnership with FOPRIDEH, a well-respected Honduran non-governmental organization, IFES identified an eminent Honduran jurist to author the Honduran State of the Judiciary Report. His work was supported through FOPRIDEH and IFES's Rule of Law Division in Washington.[3]

While all the JIP are important and their relevance in the country context varies, IFES's working assumption for the State of the Judiciary Report is that certain mutually supportive principles are essential to establishing the legal enabling environment necessary to build an independent, accountable judiciary and a Rule of Law culture. We also believe that for purposes of capturing global issues, lessons learned, and model programs across borders, it is also important for all country reports to uniformly cover a specific set of principles. We also knew that preparing the first reports was going to take more time and resources than we had the capacity to support.

While one could debate exactly which principles should be part of any global project, research and experience pointed us to the following seven principles: **JIP.1 (judicial independence guarantees); JIP.2 (institutional and personal independence); JIP.9 (selection); JIP.13 (conflict of interests); JIP.14 (asset disclosure); JIP.17 (judicial access to information); and JIP.18 (public access to information)**. IFES requested that country authors cover at least these seven issues. However, they were

3 IFES is currently finalizing guidelines for the development of State of the Judiciary Reports in a standardized Handbook for use by any country or groups of reformers, jurists or civil society activists.

encouraged to place as much emphasis on these issues as they deemed appropriate and to include additional principles if the country context and need demanded it. In this case, the Honduran author believed the following three JIP were also worthy of analysis: **JIP.5 (training); JIP.7 (enforcement) and JIP.15 (ethics).**

Assessment of the level of compliance with each JIP is guided by an examination of relevant laws and practices identified through a survey of legislation and jurisprudence and interviews of key stakeholders in the justice sector. There are three degrees of compliance:

- Formal compliance (laws and decrees);
- Compliance in practice (effective implementation of laws and decrees as well as of constitutional and conventional principles); and
- Quality and integrity of the compliance in practice (fair implementation for all).

The Report outlines, in the country context, the legal and institutional framework within which the judiciary operates. The Indicators[4] serve as guideposts for the analysis of the level of compliance with each JIP. This analytical process guides IFES, in close consultation with the Report's author, to make an overall judgment as to whether there is a "satisfactory", "partially satisfactory" or "unsatisfactory" JIP compliance, with the possible nuance of "improving" or "regressing", and to present prioritized reform recommendations.

4 The Indicators for a State of the Judiciary Report are available at IFES upon request.

CHAPTER 2

GENERAL COMMENTS AND CONTEXT FOR THE STATE OF THE JUDICIARY REPORT, HONDURAS, 2003

I. General Comments

Under the Honduran Constitution, the judiciary is the branch of government entrusted with the power to try and to judge, a right that is held by and for the people.

The constitutional principles and rules that govern the administration of justice include the following:

- Gratuity;
- Independence;
- Subordination to the Constitution and the law;
- Right to appeal;
- Prohibition for a single judge or justice to hear the same case in two separate instances;
- Inescapable duty to judge;
- Organization of the judiciary into Courts of Justices of the Peace, Trial Courts, Appeals Courts, and the Supreme Court of Justice;
- Administrative and financial autonomy of the judiciary; and
- Judicial career.

In recent decades, the judiciary has been subject to a thorough review that is still ongoing. However, changes have been limited to amendments of certain articles of the Constitution that govern the judiciary. The failure to enact supporting legislation to implement these constitutional reforms has interrupted the reorganization of the judiciary.

The judiciary continues to be governed by legislation that was passed in 1906, as is the case with the Law on Court Organization and Judicial Powers (hereinafter, referred to as "LOAT," acronym for *Ley de Organización y Atribuciones de los Tribunales*). This legislation is widely seen as obsolete and a barrier to the exercise of appropriate judicial functions.

The judiciary has received critical support from the following agencies: the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD), the United States Agency for International Development (USAID), the Inter-American Development Bank (IDB), the World Bank (IBRD), the United Nations Development Program (UNDP), and the Spanish International Cooperation Agency (AECI).

Initially, the Judicial Reform Commission, created in 1985, supervised the implementation of programs undertaken with the support of the international community. The Commission, made up of representatives of justice-related institutions, launched initiatives that led to the creation of the following agencies: the Judicial School, the Public Prosecution, the Public Defenders, and the Judicial Inspection Office. It was also the engine behind several efforts, including the administrative reform of the judiciary; the overhaul of its systems for accounting, auditing, purchases and procurements; and the introduction of management procedures for budget implementation.

II. Socioeconomic, Political and Human Rights Context

A. Socioeconomic Context

Honduras has a territory of 112,492 km. Its population is 6,694,800 (3,140,900 in urban areas; 3,553,900, rural) with a working population of 2,351,100. The illiteracy rate reaches 19.1% of the population. The official language is Spanish. The national capital region includes the cities of Tegucigalpa and Comayagüela.

According to the UNDP, close to 66% of Honduran households live in poverty, 49% in extreme poverty. This situation is mainly the result of poor economic growth, low per capita income, and unequal distribution of income. Other contributing factors include a low level of school attendance, low worker productivity, demographic pressure and its effect on natural resources, low levels of political and social participation by the poor, the deterioration of cultural values, and the weaknesses of local governments. The Human Development Index ranks Honduras 116 out of 173 countries, and assigns it a score of 0.638 for 2002, a drop from the score in 2000 of 0.651. The level of social spending as a proportion of all central government expenditures rose from 29.8% in 1998 to 40.2% in 2001, and the percentage of GDP dedicated to social spending rose from 3.5% in 1998 to 5.5% in 2001. Per capita income in Honduras is $ 2,453.

The country has been struggling with severe economic difficulties since 2003, when three consecutive attempts at fiscal adjustment were approved. Prices on consumer goods and inputs for business and industry have risen disproportionately; whereas salaries, on the other hand, have been frozen.

B. Political Context

In the political arena, the country was ruled by the military from 1963 until 1982. The two formally constitutional governments that were in place during that period were rigidly controlled by the military. In 1982, constitutional government returned and since that year, six general elections have been held. In the general elections, the President of the Republic, legislators, and local government representatives are simultaneously elected to four-year terms.

The socioeconomic outlook and the recent return to constitutional rule indicate that Honduras is a country that is in the process of strengthening its republican and democratic institutions. The judiciary has seen significant changes since 1982, alternating between periods in which its subordination to the party in government is evident and those in which the population has sensed its independence.

C. Human Rights Context

Regarding human rights, and especially the right to physical integrity, article 68 of the Constitution states that "everyone is entitled to have his or her physical, psychological, and moral integrity respected." This means that torture, cruel, inhumane, and degrading punishment and treatment are prohibited. The same article states that the "person deprived of liberty shall be treated with the respect that is due to the inherent dignity of the human being."

The violation of these constitutional principles may be counteracted through means of a writ of *habeas corpus* or request to produce the person filed before:

- A trial court judge when the violation was committed by a low-ranking authority, a municipality, or a local official;
- A Court of Appeals when it is committed by a trial court judge, or an administrative, political, military, department-level, or section-level official; or

- The Supreme Court of Justice when the violation is committed by the President of the Republic, ministers, Courts of Appeals, the High Court of Accounts, or in general, any official with general authority in the nation.[5]

Habeas corpus may also be used against the acts of private citizens,[6] when they detain a person against his or her will or undertake any action to the detriment of the physical, psychological, or moral integrity of another.

The Law on Penal Institutions sets forth all the principles contained in the Constitution and approved by the United Nations. Nevertheless, the reality in practice is quite different. A truly alarming number of prisoners have not been convicted but are held in penal institutions, despite the new system of criminal procedure, and the extent is such that the International Commission of Jurists emphasized the point in its report *Justice Administration, the Independence of the Judicial Branch, and the Legal Profession,* drafted in September 2003.

Another serious problem, stemming from the amendment of Article 332 of the Penal Code, known as the "Anti-Gang Law" [*Ley Antimaras*], has sent to prisons a considerable number of youths who, according to the police, belong to gangs. The overcrowding caused by massive round-ups and detentions of gang members has converted the jails into time-bombs, the first of which already exploded in the facility known as *El Porvenir,* where inmates were massacred, with involvement from other inmates and police responsible for guarding the facility.

With the exception of the National Penitentiary, the other prison facilities do not separate detainees held in preventive detention from convicted prisoners. Thus, the two groups are in constant contact.

The rehabilitation of convicted inmates is an obligation of the Government. Yet, there is no policy in this area within the Department of Safety, which is the department responsible for the country's jails. Not one penal facility under its supervision has rehabilitation programs for convicts. Furthermore, the convicts themselves do not have any responsibilities, such as forced labor, which is an additional punishment required for certain crimes. Thus, sloth is the common denominator that reigns in the country's prisons, and there is no guarantee whatsoever that when an inmate is released the individual will be re-integrated into society in a productive or beneficial manner.

III. Institutional and Legal Context

Under the Constitution, Honduras is a sovereign State governed by the Rule of Law, established as a free, democratic, and independent republic, for the purpose of securing for its citizens the benefits of justice, freedom, culture, and economic and social welfare.[7] The Government, which is republican, democratic, and representative, operates through the Legislative, Executive, and Judicial branches.[8]

The Constitution states that the power to administer justice flows from the citizens, and is carried out free of cost on behalf of the State by independent justices and judges, who are guided solely by the dictates of the Constitution and laws of the land.[9] Their function is to judge and to enforce judgments, by applying the laws to concrete cases.[10]

5 Law of *Amparo* Relief, articles 5, 6, and 7.
6 Law of *Amparo* Relief, article 20.
7 Constitution of Honduras, article 1.
8 *Idem*, article 4.
9 *Idem,* article 303.
10 *Idem*, article 304.

Notwithstanding these constitutional precepts, the belief is widespread that the Judiciary has failed to meet its responsibilities under the Constitution. In the past, the justices of the Supreme Court were selected directly by the political parties, who assigned them their positions based on election results. Normally, the allotment was concentrated in the two major parties, the Liberal and National, so that when there were nine justices, five were from the winning party and four from the party of the runner-up. Today, there are 15 seats on the bench, and in spite of the constitutional reform, which was meant to remove the parties from the selection, eights seats correspond to the governing party (the National Party) and seven to the major opposition party (the Liberal Party).

The National Forum for Convergence (FONAC, which was created to integrate civic norms into public management) highlighted the necessity of engineering a thorough reform of the judiciary, precisely because of the poor administration of the Supreme Court of Justice in the period from 1998 to 2002. A blue ribbon commission was formed to analyze the problem and to propose the most feasible solution. The result was the proposal to change the procedure for selecting the justices, which was enacted through the constitutional reform of Decree No.262-2000, which took effect in April 2001.

Most laws regulating the judiciary date back to 1906. The Law on Court Organization and Judicial Powers (LOAT), the Code of Common Procedure, and other laws were enacted that year. The Judicial Career Law was issued in 1980, during the so-called Government of the Armed Forces (a *de facto* Government), but it was implemented eight years after its enactment; that is, long after the return of constitutional government (1982). It has yet, however, to be fully implemented.

CHAPTER 3

LEVEL OF COMPLIANCE WITH THE JUDICIAL INTEGRITY PRINCIPLES

The Center for the Independence of Judges and Justices of the International Commission of Jurists presented the report *Justice Administration, the Independence of the Judicial Branch, and the Legal Profession,* drafted in September 2003. Those interviewed include Bar Association members, judges, and officials of the National Commission for Human Rights. In this document, the Commission emphasized that:

> "*For the individuals who were interviewed by the Mission, discussions of whether the Judicial branch of Honduras suffers from critical problems of corruption were out of bounds…*"
>
> Along these lines, *"the case of former President Callejas is notorious; he was accused of misappropriation of public monies and abuse of authority. Without waiting for the National Congress to issue a statement on whether or not grounds existed for filing a complaint against him (Article 205 of the Constitution), or for the Supreme Court to act as it is supposed to and appoint a Justice to initiate an investigation, Mr. Callejas waived his immunity, which he enjoyed as a former President, and appeared before a judge that he himself had selected. The judge dismissed the charge against him without entering into the details of the case. The case reached the Supreme Court, which ruled in April 2003 to acquit the former President. In the decision, the eight votes for the majority were cast by judges sympathetic to the political party that had carried Callejas into power, and the seven dissenting votes were cast by judges from the major opposition party… [T]his experience is an example of how cases are decided, when the implicated parties are politically significant or in the foreground of the political landscape."*[11]

In its section on Impunity, the same report indicates the following:

> "*[W]hen Honduras returned to democracy, after the obscurantism and authoritarianism of the military government during the 1970s and 1980s, 27 officers from the Armed Forces, which then included the Police, were prosecuted for extremely serious crimes involving human rights violations. But none of them was detained or held prisoner, let alone convicted; the trials concluded with acquittals.*"[12]

Regarding corruption within the Judiciary, the Commission concluded:

> *"Little has been done from within the judiciary to fight corruption. If we examine recent years we will see that some 30 judges have been tried on charges related to acts of corruption; of these, two have been held in prison for some period of time and dismissed from their jobs, another two were dismissed and are now fugitives from justice, and the rest have had the charges against them dismissed.*"[13]

The conclusions of the Commission are consistent with the popular perception of the judiciary; corruption cases, violations of human rights from the 1980s, and most recently, the so-called "*bankrupters*" have planted the idea in the citizenry that criminal justice is indulgent with the powerful and intolerant with the poor.

The other courts are not as severely distrusted by the citizenry, although they are widely perceived as inefficient. In those courts, delays are overwhelming and the Supreme Court is drafting legislative proposals for the purpose of ensuring a more expeditious handling of non-criminal cases.

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11 Center for the Independence of Judges and Justices of the International Commission of Jurists, *Justice Administration, the Independence of the Judicial Branch, and the Legal Profession,* September 2003, p.25.

13 *Idem,* p.26.

14 *Idem*, p.25.

In the area of recruitment, selection, and appointment of personnel, irregularities are publicly aired by Supreme Court Justices themselves, who have indicated that the delegation of this authority to the President of the Court was not consistent with the Law on the Judicial Career. The popular sentiment that has grown is that appointments do not strictly follow criteria of personal and professional merit.

Judicial independence has also been harshly criticized because one justice stepped down, stating that she was resigning because the judiciary was not independent. The National Congress accepted her resignation, and in her place appointed an individual from the same political party as the resigning justice.

Since the new Supreme Court of Justice was installed, its important decisions have always been notorious for having been adopted with the majority of the eight justices from the governing (National) party over the dissenting votes of the seven justices from the major opposition (Liberal) party.[14] This situation has generated the idea that the decisions of the highest Honduran Court of Justice are influenced by partisan politics.

Despite the reiterated claims of the President of the Supreme Court of Justice that decisions are being made to modernize the judiciary and to eradicate the influence of the political parties, the belief is widespread that legal uncertainty is the most salient trait of the judiciary.

Of course, it is not too late to change the image of the judiciary, since the current Supreme Court still has five years left in its term of service. During this time, many positive things can be done to improve the judiciary as a branch of government and as a public service. The current justices are young, experienced people, who are highly capable with good intentions and outstanding personal and professional records. A mid-course correction would be sufficient for the citizenry and history to judge them as those who set a milestone in the evolution of Honduran society, converting the judiciary into a secure harbor of justice and legal stability.

This first State of the Judiciary Report centers on an assessment of the level of compliance with ten JIP, seven of which were selected by IFES as core principles for the establishment of the legal environment necessary to build an independent, accountable judiciary and a Rule of Law culture: **JIP.1 (judicial independence guarantees); JIP.2 (institutional and personal independence); JIP.9 (selection); JIP.13 (conflict of interests); JIP.14 (asset disclosure); JIP.17 (judicial access to information); and JIP.18 (public access to information)**. The remaining three were identified as particularly worthy of analysis in the Honduran context: **JIP.5 (training); JIP.7 (enforcement); and JIP.15 (ethics)**. They are divided into four sections designed to present the analysis thematically.

The first section studies the degree of effectiveness of the JIP as they guarantee the independence of the judiciary as an institution. The second section analyzes the level of compliance with the JIP guaranteeing the independence of judges. The third section provides insight into the respect for JIP guaranteeing the fairness of judicial proceedings and the fundamental rights of litigants. The fourth and last section studies the level of compliance with the JIP guaranteeing expression and information rights.

14 The last important decision, issued on 11 March 2004, decreed the suspension of elections for the Board of Directors of the single Bar Association in the country. The vote on the decision was eight in favor, all cast by justices from the National Party, and seven against, all from justices of the Liberal Party.

SECTION 1

LEVEL OF COMPLIANCE WITH THE JUDICIAL INTEGRITY PRINCIPLES GUARANTEEING THE INDEPENDENCE OF THE JUDICIARY AS AN INSTITUTION

This Section studies the independence of the judiciary as an institution. Throughout its history, the independence of the Honduran judiciary has been threatened by both the Executive and the Legislative branches. Judges have been selected based on their political affiliation given that the two main political parties imposed candidates chosen for their political beliefs. Due to this situation, there is a general agreement that the judiciary has failed to comply with its constitutional mandate in a satisfactory manner.

This Section centers on the analysis of an important subcategory of Judicial Integrity Principle 2 – the institutional independence of judges.

JIP.2 Institutional Independence of Judges

Partially satisfactory: According to the Constitution and laws, the judiciary enjoys institutional independence. In practice, however, this independence is threatened by legislative attempts to interfere through removing constitutional review powers from the judiciary and threats of dismissals of judges.

The Constitution defines the institutional independence of the judiciary in its establishment of the branches of government as "complementary and independent, without subordination."[15] Moreover, it also recognizes the judiciary as "enjoying complete administrative and financial autonomy."[16]

By virtue of this principle, no branch of government may interfere in the functions of another branch. Just the same, this does not preclude a conflict arising from a competing purview between two branches. Accordingly, the Constitution forestalls such a conflict by investing the Constitutional Chamber with the authority to decide such a conflict.[17]

In 2003, a conflict arose between the legislature and the judiciary because Congress claimed for itself the authority to interpret the Constitution, and it passed a constitutional reform along these lines. The judiciary decreed in a decision issued by the Constitutional Chamber that this reform was unconstitutional, on the grounds that the final interpreter of the Constitution is the Supreme Court of Justice.

Despite pressure from the National Congress, which included threats to dismiss them, the justices stood by their finding, and Congress, which the Constitution requires to publish court decisions that declare laws unconstitutional, attempted to question this decision. Indeed, it declared that the decision infringed upon its authority and therefore declined to publish the judgment. Nevertheless, these kinds of court decisions, according to the Constitution itself, are intended for "immediate execution and for general purposes," so their effect does not depend on their publication, the only effect of which is to inform the public at large of the decision.

15 Constitution of Honduras, article 4.
16 *Idem*, article 318.
17 *Idem*, article 316.

SECTION 2

LEVEL OF COMPLIANCE WITH THE JUDICIAL INTEGRITY PRINCIPLES GUARANTEEING THE INDEPENDENCE OF THE JUDGES

This Section studies the independence of judges as individual members of the judiciary. While there are many rules regulating the status of judges, this Section takes into account those essential to the fair and effective administration of justice. This analysis leads us to conclude that the level of compliance with the core principles guaranteeing the independence of judges is limited. Generally speaking, several laws guarantee the independence of judges, such as the law on the judicial career, the law on conflicts of interest, the requirements of income and asset disclosure and ethics rules, but there are significant implementation deficiencies, primarily due to the politicization of most processes. Despite progress in some of these areas, there is still a long way to go to improve existing institutions so that judges may be fully insulated from external influences.

The activities of the agencies of the judiciary are governed by the Constitution, the Law on Court Organization and Judicial Powers, the Law on the Judicial Career, procedural legislation in force, and other laws regulating the actions of judges and justices. These laws cover matters ranging from the recruitment and hiring of judges and administrative staff to matters strictly concerning the trying of cases.

This Section centers on the analysis of these closely related Judicial Integrity Principles:

- JIP.2 Personal, Decisional Independence of Judges (subcategory)
- JIP.5 Adequate Training and Legal Education of Judges
- JIP.9 Adequate Qualifications and Objective and Transparent Selection and Appointment Process
- JIP.13 Conflict of Interests Rules
- JIP.14 Income and Asset Disclosure
- JIP.15 Rules of Judicial Ethics (subcategory)

JIP.2 Personal, Decisional Independence of Judges

Unsatisfactory: While the independence of judges is guaranteed under the law, the Law on the Judicial Career is not implemented in practice. Judges are not recruited or selected as provided under the law, promotions are not awarded based on merit, and there is no security of tenure, because the President of the Supreme Court may remove judges at her discretion.

The judges' independence is understood to exclude any interference in the exercise of their function to judge and to enforce judgments. In its performance of this function, the court must define the relationship between the facts and the laws, supported solely by the facts propounded and duly admitted into evidence, the analysis by the parties of their respective positions, and the court's individual thinking. Nothing else must enter into this finely calibrated function.

To safeguard judicial independence, the Constitution holds that "the authority to deliver justice flows from the citizenry and is administered, free of cost, in the name of the Government, by independent justices and judges, subordinate only to the Constitution and the law."[18]

The Law on Court Organization and Judicial Powers (LOAT), consistent with this constitutional provision, sets forth that:

- "[T]he authority to judge and to enforce judgments corresponds exclusively to the Courts and High Courts of Justice" (article 1); and
- "Judicial authority over the performance of its responsibilities is independent of any other authority. All judicial acts undertaken under the sway of intimidation or force shall be null and void. The Courts and High Courts that may have acquiesced to intimidation or force, as soon as they are liberated from it shall declare null and void everything so done, and at the same time endeavor to bring prosecution against the culprits." (article 11)

In addition, article 1 of the Law on the Judicial Career sets forth among its purposes: "That the justice administration system constitutes an absolute guarantee of impartiality, efficiency, and good service…"

All judicial independence guarantees under the law are contingent upon the judges' awareness that their appointments to the bench are the consequence of a process of recruitment and selection whereby personal and professional merits have prevailed. Furthermore, the court must be convinced that it enjoys stability in its position that allows it to decide matters without fear of eventual reprisal. Whoever is chosen on the basis of ties of friendship or kinship, or of political, religious or other affiliation, has no further commitment than loyalty to the conditions that determined his or her appointment. Under such conditions, justice is subordinated to those other interests.

In practice, judicial independence is not guaranteed because the Law on the Judicial Career is not duly enforced. Judges are neither recruited nor selected in all cases as indicated by the law. They are not promoted on the basis of merit of their service, and job stability is not guaranteed, because they may be removed at any time by the President of the Court, to whom the Supreme Court has delegated the authority to appoint and remove personnel. This state of affairs is highlighted in a report of the International Commission of Jurists, which remarked:

18 *Idem*, article 303.

> "*Beyond the question of the legality of such a delegation [of powers], which is disputed by many Honduran jurists, it is asserted that the current situation is not appropriate, given that it may come to create doubt about the true motives for some appointments and dismissals.*"

This is seconded by the critiques made by some Supreme Court Justices against this delegation of power. So long as suspicion exists amidst the general population, planted by the comments of these justices and studies such as the one cited above, that personnel are not appointed on the basis of their personal and professional merits, society will hardly believe that the independence of a judge or justice can be an effective principle in the system of justice.

JIP.5 Adequate Training and Continuing Legal Education

Partially satisfactory: While there have been significant training efforts through the Judicial School, much remains to be done, especially as relates to civil law and candidates to judgeship. The high turnover among judges does not allow an evaluation of training efforts.

In 1980, the Law on the Judicial Career created the Judicial School to "provide specialized training to public officers and employees."[19] However, the School did not begin operating until 1987. That year ushered in an aggressive and intensive training program with support from the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD), headquartered in San José, Costa Rica, and support from the US Agency for International Development (USAID). Subsequently, USAID and the Government of Spain became the main contributors to the programs carried out at the Judicial School.

The instructors are justices and judges themselves, with international experts lecturing as well, their participation financed through international cooperation. There are no codified rules providing selection criteria for the national instructors, so this task is exercised at the discretion of the Director of the Judicial School or of higher authorities.

The Judicial School trains all personnel in the judiciary, including judges from the appeals and trial courts and justices of the peace, as well as administrative staff.

The criminal courts until now have been the priority of the training policy, because they are the main recipients of international aid. The other courts are only marginally considered, which has negatively affected the quality of the performance of judges in civil, administrative, labor, landlord-tenant, etc. matters. But for all courts, greater importance is given to training in the merely procedural aspects, without a balance being struck between these and substantive issues of law. Thus, judges are better trained in handling their caseloads than in the legal reasoning employed to reach a finding consistent with the law in each of their trials.

Moreover, training programs are oriented toward officials and employees already involved in court work. Recently, programs have begun for persons aspiring to become judges, but exclusively in criminal matters.

It is difficult to assess properly the results of the Judicial School. The high turnover in the profession of justices and judges does not lend itself to an appropriate evaluation. Similarly, there is a general perception that the judges are not duly prepared to exercise their responsibilities, possibly because they do not receive training prior to performing their work, because in the exercise of their professions they are trained only in procedural matters, or because resources are channeled to courses directed at staff in criminal courts.

19 Law on the Judicial Career, Chapter VIII.

JIP.9 Adequate Qualifications and Objective and Transparent Selection Process

I. Judicial Qualifications

Partially satisfactory: Despite provisions in the Law on the Judicial Career, there are no mechanisms to evaluate the performance of judges and justices. The results of the Judicial School and the benefits of its courses are not evaluated either.

The qualifications of judges are determined by their knowledge of the law and the criteria with which they apply it. For would-be candidates to the bench, these qualifications should be reinforced by the Judicial School. Nevertheless, as indicated above, the School does not offer programs geared to qualifications, with the exception of judges who hear criminal cases.

Even though the Law on the Judicial Career provides for operational methods by which to evaluate the performance of judges and justices, none exist. Thus, nobody can gauge the results of the Judicial School, nor how useful its efforts are to those who take its courses; since there are no records of evaluation, the highest authorities lack elements with which to determine the competence of their judges and justices. This is a question that cannot be compensated by the review of court decisions, whether through regular appeals, writs to overturn decisions of lower courts, or the writs of *amparo* (which seek stays, injunctive relief, or the nullification of decisions of other courts or executive agencies). Indeed, these reviews are not intended to evaluate the performance of a lower court.

II. Judicial Selection and Appointment Process

Unsatisfactory (improving): While there have been improvements in judicial selection processes, the reform of the process of selection of Supreme Court justices has not yielded the expected results because of political party intervention. Public discontent was also triggered by the lack of transparency and accountability of the Nominating Board which did not provide any information to either the National Congress or the public.

There are two specific procedures through which an individual may join the judiciary, depending on the level of appointment. One is set forth in the Constitution; the other is provided under the Law on the Judicial Career. The Constitution regulates the procedure for the selection and appointment of Justices of the Supreme Court. The Judicial Career Law governs the procedure for the recruitment, selection, and appointment of judges to the appeals and trial courts, of justices of the peace, and of administrative staff.

Supreme Court Justices were previously selected directly by the National Congress. Since 2001, when the Constitution was amended, they are selected, as provided for under a special law, by a Nominating Board whose membership is provided in the Constitution.[20]

20 Constitution of Honduras, article 311.

Membership of the Nominating Board

- A representative of the Supreme Court of Justice, elected by a vote of two-thirds of the justices;
- A representative from the Bar Association, selected by its Assembly;
- The National Commissioner for Human Rights;
- A representative of the Honduran Council for Private Enterprise (COHEP), selected by its Assembly;
- A representative of university law professors, whose nomination is proposed through the National Autonomous University of Honduras (UNAH);
- A representative chosen by organizations of civil society; and
- A representative of the Trade Union Confederations.

This Nominating Board selects Supreme Court Justices from among candidates who meet the requirements set forth in the Constitution.[21]

Requirement for Supreme Court Membership

- Honduran by birth;
- Citizen fully enjoying and exercising his or her rights;
- Attorney in good standing with the Bar;
- At least 35 years of age; and,
- At least five years of experience on the bench of a court or 10 years practicing law.

The Board sends to the National Congress a list of at least three candidates for each position open on the bench, from which Congress selects fifteen justices by a vote of a qualified majority of two-thirds of all its members.[22]

The new procedure for selecting Supreme Court Justices did not produce the results that the citizenry had expected, because it was structured according to the political affiliations of the candidates, all of whom were members of one of the two traditional political parties in the country (Liberal and National). There was general dissatisfaction because the Nominating Board was neither transparent nor accountable. It never reported to Congress or to the public the criteria used to qualify each of the candidates, nor did it report the procedure used to apply criteria, if any existed. The conduct of the Board was questioned even by the politicians, who traditionally favor these types of suspect behavior, but who claimed they would no longer be able to repeat the experiment in the selection of other authorities (as in the case of subsequent appointments to the High Court of Accounts; i.e., the Audit Board), because it was shown that civil society had failed to handle properly the process for selection of Supreme Court Justices.

21 *Idem*, article 309.
22 *Idem*, article 311.

In order to become a judge on the appeals or trial court, or a justice of the peace, the candidate must follow the same procedure set forth under the Law on the Judicial Career, which establishes open access to a career on the bench, thereby allowing any practicing attorney to aspire to these judgeships.

The Law on the Judicial Career requires that any candidate to a position on the staff of the judiciary meet the following requirements:[23]

- Be a Honduran citizen;
- Be at least 18 years of age to become an administrative employee or court assistant; 21 or 25 years of age to become a court official;
- Have the moral and intellectual qualifications to discharge one's duty; and
- Meet the requirements set forth in the Classification Manual for that particular position;
- Be able to demonstrate aptitude, by undergoing tests, examinations, or competitive selection processes, as the case may be;
- Have obtained the corresponding approval; and
- Have satisfactorily completed the probation employment period.

To serve on the **Court of Appeals**, which is the court of second instance, the LOAT requires that the candidate meet the following conditions:

- A citizen in full exercise of his or her rights;
- At least 25 years of age; and
- Hold a law degree.[24]

To be a **trial court judge**, the only requirement is of age: at least 21.[25]
To be a **justice of the peace**, the only requirements are:

- A citizen in full exercise of one's rights;
- At last 21 years of age;
- Know how to read and write; and
- Resident in the municipal jurisdiction of the court.[26]

Nevertheless, a program began several years ago aimed at ensuring only professional attorneys would be appointed as justices of the peace, of whom now almost 70% have experience as professional attorneys.

According to the Law on the Judicial Career, the Office of the Director of Personnel Management, which answers directly to the Supreme Court, must notify the public, through press announcements, that competitive selection for a job in the courts is being held.[27] After holding tests, which may consist of examinations or

23 Law on the Judicial Career, article 23.
24 LOAT, article 52.
25 LOAT, article 39.
26 LOAT, article 18.
27 Law on the Judicial Career, articles 26, 27 and 28.

competitive review of professional and other types of background, the Selection Commission, which answers to the Director of Personnel Management, will choose eligible candidates who score a minimum of 70 percent, and rank them in descending order of qualification.

When a vacancy opens, the Office of the Director of Personnel Management will send to the Supreme Court the names of three candidates chosen by the Selection Commission for appointment to the type of position in question. Priority in the submission of candidates will be made according to the following order:

- Candidates entitled to promotion from the same class and from the same agency or jurisdiction;
- Candidates entitled to promotion from the same class but from another agency or jurisdiction;
- Persons registered from the corresponding class of aspirants for the level of the vacancy;
- Others who were ranked by high scores; and
- Candidates for entry into court service.[28]

Once appointed, the employee or officer must complete a probation period of no longer than 60 working days, counted as of the date of entry, in order to become a "regular employee" and enter the professional judicial career.[29]

The procedure for the recruitment, selection, and appointment of justices and judges was seriously questioned by the justices of the Supreme Court of Justice, and has now been thoroughly changed. First, the President of the Supreme Court has been delegated responsibility for the appointment, promotion, transfer, and removal of all personnel in the judiciary; this delegation has been criticized on the grounds that it is not allowed by the provisions of the Law on the Judicial Career, because it fails to follow procedures and favors loyalists to the governing party. This complaint was made by Madame Justice Blanco Valladares, who resigned her post, arguing that the judiciary was not independent and that political favoritism was swaying judicial appointments. Furthermore, a complaint was recently aired in the press by Supreme Court Justice Marco Tulio Barahona,[30] who asserted that the justices of the Court had demanded that the President of the Court "enforce the Law on the Judicial Career."

There does not appear to be any short-term solution to the crisis that has arisen in the Judicial Branch over its alleged lack of independence, which was seen in the politicized appointments made by the Court Presidency. The President of the Court has responded to the criticism leveled by her fellow justices by stating that they are unfounded, that the Law on the Judicial Career was being enforced,[31] by which, as far as she is concerned, there is nothing else to discuss.

Regardless of who may be right, the judiciary is in the midst of a severe crisis that does not stem from problems with resources, which has been the traditional justification, but rather from the values of the justices themselves. Historically, the Law on the Judicial Career has not been respected. However, all Hondurans had expected that with the justices and judges selected through the new procedure, attitudes would inevitably change. The general view is that the selection process failed to work, and that the judiciary continues as it always has; only now it is more suspect than ever.

28 *Idem*, article 29.
29 *Idem*, article 32.
30 *Diario La Tribunal* of March 6, 2004.
31 *Ibid,* published interview.

JIP.13 Conflict of Interest Rules

Satisfactory: There are clearly defined rules regulating conflicts of interest which apply not only to judges, but also to their families. These rules are usually respected, and in case of violation sanction mechanisms are enforced.

The rules governing conflicts of interests are clearly defined under the LOAT, the Law on the Judicial Career, and the Code of Ethics for Court Officials and Employees. Conflict of interest rules apply to the conduct of the families of judges, in addition to that of the judges themselves. These rules seek to ensure that justices and judges concentrate their time and thought exclusively on the performance of their duties.

The Constitution provides that "judges and justices will perform services exclusively for the Judicial Branch."[32] Consequently, they are forbidden to exercise any another public function, except teaching.[33] In the private sphere, they are forbidden to litigate in any form whatsoever;[34] whether as notaries public, in business, as priests of any religion, or as directors of or counsel to corporate enterprises.[35]

The Constitution, furthermore, prohibits judges and justices from "participating, for any reason, in partisan political activities of any sort, except in casting their personal votes."[36] Accordingly, the Law on the Judicial Career declares that the positions of judges and justices are incompatible with the performance of any elected post or political representation.[37] Under the LOAT provisions, it is forbidden for justices or judges to "attend meetings, demonstrations, or other public events of a political nature, although regular citizens may well be allowed to attend."[38] Furthermore, they are prohibited from "expressing to the Executive Branch, public officials, or public agencies, either congratulations or criticism for their acts."[39]

Accordingly, court officials may not participate in any way or under any circumstance in political activities. Yet, it has always been assumed that they may be members of political parties. In fact, it is well recognized that almost all the justices and judges are non-active members of the Liberal and National parties, the dominant political parties. This situation plays out visibly in the elections of the Board of Directors of the single national Bar Association, where two factions historically contest the elections, one allied to the Liberal Party, the other to the National Party, and among them are the party-affiliated members, including justices and judges. On the other hand, should a judge or justice intend to engage in a political activity that is not within these particular parameters, the individual will of necessity have to resign from his or her post.

In connection with organized activities of employees, judges and justices may join together and exercise the right of association enshrined in the Constitution. However, the Constitution also mandates that they are not entitled or allowed to form a union, nor to call or participate in strikes.[40]

Conflicts of interests can also arise in court proceedings, when the court finds itself in a situation that undercuts the appearance of impartiality toward the parties in relation to the object of the trial. The assumptions that a judge may make and that are considered to be conflicts of interest are regulated under the LOAT. When the judge or justice is found to be in any such situation, the party that fears the court is not acting impartially because of a conflict of

32 Constitution of Honduras, article 319.
33 *Idem*, article 258.
34 *Idem*, article 319.
35 Law on the Judicial Career, article 50.
36 Constitution of Honduras, article 319.
37 Law on the Judicial Career, article 50.
38 LOAT, article 1, number 6.
39 *Idem*, article 1, number 4.
40 Constitution of Honduras, article 319.

interest can then move for the recusal of the judge from hearing the case. Similarly, if judges or justices understand that the case contains reasons for their own recusal, then they can recuse themselves and abstain from hearing a matter.[41]

The law also prohibits judges from acquiring any kind of ownership for themselves or for others, of any thing or right that is litigated in cases that they hear.[42]

The rules regulating conflicts of interest are respected, and when they are violated, the enforcement mechanisms designed to punish infractions are employed. The sanctions on violations, provided in the regulations for the judiciary, range from fines to suspension from service and dismissal.

41 LOAT, articles 186 through 193.
42 *Idem*, article 112.

JIP.14 Income and Asset Disclosure

Partially satisfactory: There are many rules requiring the sworn disclosure of income and assets and the investigation of employees and judges for illicit enrichment. In practice, however, these investigations are not adequately undertaken and only a handful of judges have been tried under this charge, with none sentenced.

Pursuant to the Constitution, all public officials must disclose their income and assets prior to assuming their positions, as a measure to ensure public ethics. The Organic Law of the High Court of Accounts has elaborated on this rule and made this an annual obligation, which means that public officials must declare their assets and liabilities and report their income in a sworn statement updated on a yearly basis.

In addition, for tax purposes, officials must present an annual Individual Income Tax Statement to the Executive Office of the Director for Internal Revenue, no later than March each year, for purposes of making income tax payments.

The Law on the Prevention of Money Laundering sanctions anyone who acquires, either directly or through a fictitious party, property under any kind of arrangement in assets, products, or securities "the origin of which lacks legal economic cause or justification." The Law specifically calls for a one-third increase in sanctions imposed when the offender is a public official.[43]

The Constitution holds that officials are presumed to have committed illicit enrichment "when the increase in the capital belonging to officials or public employees, from the time they begin service until the time they cease to perform their duties, is noticeably higher than that which could have been obtained through salaries and wages legally earned or through increases in capital or rents for any other legal cause. Likewise, there is a presumption of illicit enrichment when the public servant fails to authorize the investigation of the bank deposits or businesses they hold in the country or abroad."[44]

It is the responsibility of the High Court of Accounts, through the annual Sworn Declaration of Assets, to ascertain whether the official has perpetrated the crime of illicit enrichment.

Notwithstanding the presumption of illicit enrichment in the Constitution not even a dozen persons have been prosecuted for this crime, and no one has ever been imprisoned as a result. Nevertheless, it is widely believed that corruption has existed and continues to exist among public officials in general, and judges and justices in particular. Thus, this rule has had very little effect, and the actions of the auditing agencies have been practically worthless in this area.

Sanctions for Illicit Enrichment

- Three to five years of prison, when the amount of illicit enrichment does not exceed one million Honduran lempiras;
- Five to fifteen years when the amount of illicit enrichment does exceed this quantity; and
- A fine that may run as high as the amount involved in the illicit enrichment.[45]

43 Law on the Prevention of Money Laundering, article 7.
44 Constitution of Honduras, article 233.
45 Organic Law on the High Court of Accounts, article 63.

JIP.15 Rules of Judicial Ethics

Unsatisfactory: There is a judicial Code of Ethics which outlines the duties of judges in the exercise of their function and regulates their conduct with parties and their representatives. In practice, however, judges disregard most of these rules, making the implementation of the Code largely illusory.

The Code of Ethics for Court Officers and Employees[46] sets forth rules regulating the ethical conduct of judges and justices. It requires them to perform duties in their posts with regard to their conduct with parties and their representatives, lower courts, and their connection to society at large.

Violations of these rules are investigated by the Office of the Court Inspector, an office that answers to the President of the Supreme Court. Through this office, the Supreme Court exercises the responsibility for court monitoring, as per the provisions of the Law on the Judicial Career whose purpose is to "ensure that justice is administered quickly and effectively and the conduct of officials and employees be examined to monitor the proper performance of their duties."[47]

The rules in the Code of Ethics are exclusively ethical in nature in that they are geared toward preserving the good image of the courts by imposing rules of conduct for judges and justices, both in court and in their private lives. In practice, however, there is no actual compliance with the Code of Ethics. The Supreme Court of Justice has not demonstrated a willingness to comply with the provisions of the Code of Ethics in their entirety. Generally speaking, there have been no cases in which a judge or justice has been sanctioned for violating a provision of this Code.

For example, it is prohibited to make public or private comments on the cases before them [article 1(a)]; however, it is common for judges and justices, including those of the Supreme Court of Justice, to agree to interviews with journalists during which they express their opinions on the cases before them. They are also prohibited from being associated with a law firm [article 1(g)]; however, many judges in various courts have not closed their law firms, arguing that they were under the control of associates or their children. Similarly, judges do not comply with the prohibition to meet with one of the parties in a private audience [article 2(a)] or to gather in places which sole purpose is the sale of alcohol or games of chance [article 8(b)].

46 Adopted by the Supreme Court of Justice in 1993.
47 Law on the Judicial Career, article 73.

SECTION 3

LEVEL OF COMPLIANCE WITH THE JUDICIAL INTEGRITY PRINCIPLES GUARANTEEING THE FAIRNESS OF JUDICIAL PROCEEDINGS AND THE FUNDAMENTAL RIGHTS ON LITIGANTS

The right to a fair trial, the aim of true justice, requires not only the independence of the judge but also respect for the fundamental rights of litigants, such as the rights to equality under the law, due process and the fair and effective enforcement of judgments. The analysis presented in this Section shows that the level of compliance with the principles related to the fundamental rights of litigants is only partially satisfactory.

Significant improvements have been made in reducing the length of criminal proceedings. Similar reforms are greatly needed in civil and administrative areas of law. While equality under the law is guaranteed by the Constitution and laws, it is not fully respected in practice, as evidenced by the general perception that the courts are biased in favor of the powerful. Access to justice is also guaranteed under the law, but it is limited in practice due to the excessive costs of legal representation. The enforcement of court judgments is also affected by a number of problems linked to the lack of adequate authority of the courts to compel enforcement.

This Section centers on the analysis of these closely-related Judicial Integrity Principles:

- JIP.1 Guarantee of Trial within a Reasonable Time (subcategory)
- JIP.1 Guarantee of Equality under the Law (subcategory)
- JIP.1 Guarantee of Access to Justice (subcategory)
- JIP.7 Fair and Effective Enforcement of Judgments

JIP.1 Guarantee of Judicial Independence, the Right to a Fair Trial, Equality under the Law and Access to Justice

I. Right to a Fair Trial: Trial within a Reasonable Time

Unsatisfactory: Apart from criminal trials, which do not exceed six months since their reform, all other judicial proceedings are delayed far beyond a reasonable time. This situation exists despite the power of judges, in some proceedings, to determine the pace.

The course of a trial does not follow an overall schedule that binds the parties and the court. Nevertheless, every task performed by the parties or the court should meet a specific deadline.

Adherence to these deadlines varies according to the trial itself. If the parties are the ones to determine the pace of the trial, as in civil matters, the court's field of action is limited beyond certain official procedures. On the other hand, in other types of proceedings such as administrative hearings, the deadlines that the proceedings must meet are under the strict control of the court, which may open and close sessions without the parties making such a request. Thus, if procedural law is strictly applied in these cases, the proceedings are completed within a reasonable period of time.

Criminal proceedings are accusatory, oral, and public, and have existed as such for only two years. In a criminal trial, a judge must affirm the legality of the indictment filed by the public prosecution, the court issues the finding of guilty or not-guilty, and another judge is responsible for imposing sentence. Assessments of this process have been quite positive because, contrary to what used to occur under the previous system when criminal trials lasted for years, under the current system trials do not last more than six months from the time the prosecution registers a case until the court pronounces the final sentence.

In other areas of court jurisdiction, the time required for proceedings shows wide variations. In civil trials, where parties set the pace, a case may drag on for years. But in labor courts, where the court itself determines the pace of proceedings, trials last over a year because the courts fail to follow the provisions of the procedural code. Courts seem to prefer that parties determine the pace of the proceedings, and they refrain from exercising their authority to hasten procedural actions.

In the area of constitutional matters, the Constitutional Chamber was only recently established. Its purview is to hear allegations of unconstitutionality, *amparo* motions (seeking stays, injunctions or nullifications), and writs of *habeas corpus*. Previously, these filings were under the jurisdiction of the Supreme Court, whose decisions were typically protracted in these and other small, yet numerically significant, matters, given its responsibility to hear appeals to overturn, stay, or review lower court decisions. Now, there has been greater and improved attention toward these types of filings, which is evident in the quality of the decisions. Nevertheless, the sheer number of filings lodged makes it impossible for the Constitutional Panel to litigate these constitutional cases within legally pre-established timeframes.

With the exception of criminal courts, Honduran courts fail to complete trials within a reasonable time, even though some of them have the authority under law to determine the pace of the proceedings that in other courts is determined by the parties.

Along these lines, it is helpful to highlight the findings of the International Commission of Jurists in its September 2003 report *Justice Administration, the Independence of the Judicial Branch, and the Legal Profession:*

> *"The mission was able to establish that the problems in Honduras do not arise from the lack of or defects in a legal framework, so much as from the interpretation made of the rules and how they are practiced."*

Regarding court delays, especially in criminal cases, the report indicates that significant progress has been made, owing largely to the issuance of a new Code of Criminal Procedure, which contains measures that replace the use of preventive detention. Nevertheless, the report acknowledges that the number of prisoners who have not been convicted is high, which has serious consequences within the prison system. According to the Commission:

> *"The high number of prisoners without convictions results in serious consequences in the treatment of detainees."*

Annex 2 presents an estimate of delays that hamstring the criminal courts.

II. Equality under the Law

> **Partially satisfactory:** The Constitution and the laws guarantee equality under the law, which translates into the principle of impartiality. In practice, however, judges are perceived as lacking impartiality when one of the parties is powerful.

Article 60 of the Constitution states that all men are created equal in their rights, thereby prohibits class privileges and establishes equality before the law for all Hondurans. Pursuant to this principle, the Constitution indicates, "all discrimination shall be punished, when it is on the basis of gender, race, class, or any other impairment of human dignity."[48] Thus, whosoever, whether in a private or public activity, establishes differences among people who reside within the borders of Honduras, pursuant to criteria that impairs human dignity, commits a crime punishable under the Penal Code.

When this principle is applied to the role of the court, it translates into the **principle of impartiality**, which is expressed by the following formulation: "[I]t is the duty of officials to handle equal cases in an equal way; and by the same token, different cases differently." The judge, then, must handle the cases and decide objectively. The procedural law of Honduras offers sufficient guarantees so that persons who avail themselves of the services of justice shall trust with confidence that the judges are guided by the principle of impartiality.
Under this principle, parties have the right to review and courts have the right to issue for the parties' review all documents presented in a trial, all procedural measures or actions that are taken and the decrees, orders, and judgments that are issued by the court. When anything is held in secret in a criminal matter, it is not held from the parties, who at all times have access to the details of proceedings.

The effect of the principle of equality, under any form, is a guarantee. Nevertheless, its effectiveness depends on the control exerted over the courts in order to ensure respect for this principle. The defect in this control has provided grounds for the perception that the courts do not operate impartially, when one of the parties in a trial is a politician or an important businessperson.

This perception has grown stronger, particularly in connection with cases filed by the public prosecution against members of the military over violations of human rights concerning allegations dating back to the 1980s, cases of corruption, cases against politicians of the two dominant parties (Liberal and National Parties), and, more recently, cases of major financial fraud committed by bankers and shareholders in the stock market, to the detriment of thousands of depositors and investors. Not one of the accused in these cases has faced conviction in a final judgment, despite the convincing nature of the evidence. In fact, the majority of them have been absolved of responsibility for alleged crimes. In the most recent case of the "*bankrupters*," as the accused in the financial fraud cases have come to be known, citizen protest has taken many forms, because the measures imposed by the courts on these defendants in lieu of preventive detention are seen as evidence of impunity once again, when misdemeanor defendants appearing before these same courts are subject to orders of preventive detention.

42 Constitution of Honduras, article 60, second paragraph.

The **principle of proportionality** is set forth in article 2-D of the Penal Code, as follows: "[P]unitive sanctions and security measures will only be imposed when they are necessary and then, to a degree commensurate with the gravity of the offense."This provision broadly favors those who, by virtue of their poverty and ignorance, commit acts severely sanctioned by this law. Nevertheless, the courts have yet to resort to the relief allowed by this provision for which there exists a very strong basis and have always referred to the harm resulting from the infraction.

III. Access to Justice

Partially satisfactory: Access to justice is largely recognized. However, it is not fully a reality because free access to justice exists only in criminal cases. The Defense of the Poor, provided for under the Constitution, is not functioning. Therefore, those without the money to pay the fees of a legal professional cannot bring an action or defend themselves before a court, except a criminal court.

Article 82 of the Constitution guarantees access to justice, as follows:

> *"[T]he inhabitants of the Republic have free access to the courts to execute their actions in the form indicated by the law."*

In this regard, Article 83 of the Constitution requires the Government to "*…name attorneys for the defense of the poor and to protect the persons and interests of minors of age and those without capacity. They shall receive legal assistance from persons who will represent them in the courts in defense of their individual liberty and other rights.*"

The guarantee of access to justice is thus broadly acknowledged. Nevertheless, this safeguard has not been fully put into effect and is possible only in criminal matters, because the purview of criminal cases belongs to the public prosecution, so all persons who are victims of crimes may lodge complaints before it. If the prosecutor decides to proceed, then he is responsible for the procedural requirements. In addition, there is an agency that answers to the Supreme Court known as the public defender, which handles the cases of accused who request its representation in their defense. The problem with this office is that it attends to all who request its assistance without regard to the economic status of the person making the request. Accordingly, the capacity of the agency to respond to those who actually need its services because of their impoverished condition is diminished.

The law, in addition, provides that the public prosecution must represent minors of age, the disabled, and women in matters regarding children and domestic violence.

The Division for the Defense of the Poor of the Public Prosecution Ministry has not yet begun to operate, despite the constitutional requirement. Thus, those who do not have resources to pay the fees for a legal professional cannot take action in areas other than criminal courts, nor can they defend themselves free of charge against the complaints filed against them before the courts.

There are some services that operate free of charge to address legal needs of the poor. Law schools, in particular that of the National Autonomous University of Honduras, have created so-called "Legal Consultation Offices", under the direction of qualified professionals. The Legal Consultation Offices are staffed by law school students who provide legal services prior to receiving their law degrees. These offices attend, in particular, to poor persons who are involved in court litigation of every sort.

Procedural law establishes an institution known as the "Defense of the Poor." It operates by appointing an attorney to defend, free of charge, anyone before the court who has been granted recognition of the status *in forma pauperis*, which can be obtained at any stage of a trial. Nevertheless, this mechanism is almost never employed.

The Justices of the Peace handle the courts that are at the bottom of the judicial pyramid. Their courts are the only ones that are truly accessible to the entire population, since they are situated throughout the country, including rural areas. These courts provide a venue for the rural population to submit their disputes for settlement. Nevertheless, these courts do not have jurisdiction to hear all matters. Indeed, in civil matters, they only hear matters of a value not exceeding 10,000 lempiras (about USD 550) and, in criminal matters, minor misdemeanors.

The Law on Police and Social Order establishes the creation of the Municipal Department of Justice, the principal function of which is to hear complaints of violations of this same law, presented by local residents.[49] This newly created forum called "municipal justice" is used to settle disputes between neighbors.

In 2000, the Law for Mediation and Arbitration was passed, allowing all those having outstanding disputes, not settled by courts, to resort to mediation or arbitration. Any matter can be submitted to mediation if it is open to negotiation or dismissal, or expressly listed in this law.

Matters that do not qualify for arbitration include:

- Criminal cases;
- Alimony payments;
- Matters concerning a person's civil status (with the exception of questions of estate that have already been ruled on and decided in a final judgment);
- Matters in which the public prosecution is legally mandated to intercede on behalf and in defense of those who are unable to act for themselves (because they lack the capacity to act or they lack legal representation); and
- In general, all disputes subject to negotiation.

The new law is designed to provide private parties who have disputes with an alternative means to resolve them and thereby enjoy easy and expedited access to justice.

Access is free of charge in cases involving criminal matters, minors, and domestic violence against women, whereby the public prosecution is responsible for representation in all phases and at all levels of a process, and in courts of Justices of the Peace and Municipal Departments of Justice. In all other courts and processes (civil, landlord-tenant, labor, administrative disputes, etc.), access to justice is not free because a legal professional, whose fees are established according to the Judicial Fee Schedule approved by the Bar Association of Honduras, must be employed.

Finally, the "Anti-Gang Law" [*Ley Antimaras*], which amended Article 332 of the Penal Code, and delineates the crime of "illicit association," should be mentioned. This amendment attempted to combat youth gangs, which have been responsible for alarming crime levels, declaring the "gang" and association therewith to be a punishable crime. Unfortunately, the law fails to define what a "gang" or a "gang member" is. Thus, in practice, the National Police are free to determine these definitions which they inevitably associate with the poorest urban neighborhoods. Under this amendment, the roles of actors in the justice system have been turned around, as the police capture people at their own discretion, and carry out raids and storm houses in the poor neighborhoods of the largest cities with license under the law because, thanks to this legislative reform, a gang

49 Law on Police and Social Order, articles 17 through 21.

is in itself an illicit association and membership in one, a crime. Thus, those who enter a gang are permanently exposed to being captured by security forces. Once police have captured purported "gang members," the prosecutor presents papers to process the case without asking the police about their actions, and the courts feel obligated, particularly under current social pressure, to impose prison sentences on the accused.

This amendment to the Penal Code concerning "illicit association" has put into doubt and undermined the principle of access to justice. It is enforced against youths whom the police presume to be guilty simply because they are young and live in poor neighborhoods, and it straightjackets the actions of prosecutors and judges. In the future, this mechanism could be applied against other types of behavior, organizations, and people.

Jurists and human rights advocates have voiced concerns over the consequences of the ineptly named "Anti-Gang Law". But the population, alarmed by the phenomenon of juvenile delinquency, has backed the amendment and the police action, and so advocates of the illicit association amendment have managed to stifle the level of opposition to this measure.

JIP.7 Fair and Effective Enforcement of Judgments

Partially satisfactory: The legal framework for the enforcement of court judgments is generally acceptable. In practice, there are some problems related to the efficiency of certain courts. Some problems result from issues which are out of the control of the courts, while others result from the lack of credibility of the courts which fail to exercise their authority when litigants do not comply with orders for the enforcement of judgments.

The enforcement of court judgments is the responsibility of the court that issues the judgment in first instance, as provided under the procedural code. In administrative matters, however, the enforcement of judgments is handled by the administrative agency that raised the original administrative charge or complaint.[50]

The enforcement of criminal judgments is the responsibility of the Enforcement Judge, to whom the trial court has sent certification of the final convictions within three working days of their issuance.[51] Nevertheless, the validity of this procedure is being tested because, as already noted, no programs exist for prisoner rehabilitation, and Enforcement Judges still have not made their authority felt in this area. Furthermore, they fail to meet their obligation to appoint guardians who would represent convicts in handling their personal property or other assets, since these convicts are subject to the additional sanction of "civil interdiction" alongside the primary sentence. It should be expected in the immediate future that once these judges have familiarized themselves with their responsibilities and received the resources needed to perform them, the enforcement of criminal judgments will be carried out in full.

On the civil side, the enforcement of judgments is performed using measures that are geared toward ensuring fulfillment of the obligation imposed on the losing party at trial. If the result is an economic sanction, assets or securities of the party in question are attached or confiscated. If the remedy is not a monetary payment, compulsory means are taken to ensure that the provisions of the judgment are met.

In labor disputes, judgments sometimes remain unenforced, particularly in cases whereby workers file actions against foreign companies, which have only a minimal level of assets in the country. Such is the case with assembly plants, which have a minimal level of investment in the country, since they hire labor only to assemble pieces that are manufactured abroad.

Concerning constitutional *amparo* filings, the enforcement of judgments presents two clearly identifiable drawbacks. One stems from the nature of the *amparo* judgment itself, which may be extensive in its reasoning but quite sparing in its provision of mandated relief, consisting only of the statement that "the *amparo* motion [or stay] is granted."This declaration affords the administrative official a broad margin for interpretation, since the decision may be enforced as he or she sees fit. Another shortcoming is a practice that administrative officials have imposed, whereby they make the enforcement of *amparo* judgments contingent on the issuance of an administrative decree or procedural writ which determines how the enforcement of the judgment will take place. The recently created Constitutional Panel could remedy these shortcomings, but it will be some time before *amparo* judgments in administrative matters are enforced without delays.

In administrative law areas, the enforcement of judgments is guaranteed by means of appropriate measures provided under the Law on Administrative Jurisdiction. The law provides for seizure of federal government assets. It also states that administrative officials reluctant to enforce judgments are punishable by law, and will be fined between one and five thousand lempiras, without prejudice to any civil liabilities for damages that interested parties may claim.[52]

50 Law on Administrative Jurisdiction, article 95.
51 Code of Criminal Procedure, article 385.
52 Law on Administrative Jurisdiction, article 101.

The enforcement of judgments is therefore adequately regulated. However, there are efficiency problems in certain courts. Except in criminal court, the main problem is that the judgment-debtor does not always voluntarily comply with the judgment, which forces judges to order measures that will force the debtor to pay a certain sum or perform a certain act.

Some problems result from issues which are out of the control of the courts. For example, in criminal cases when imprisonment is ordered, it is limited to the depriving of liberty because there is not the political will to modernize the penitentiary system, making it impossible to comply with the obligation to rehabilitate prisoners. Others result from the lack of credibility of the courts which fail to exercise authority when litigants do not comply with their orders for the enforcement of judgments. For example, businesses simply disappear (in Honduras, corporations are not controlled, meaning that they are created based on the accomplishment of a few basic requirements, but there are no means of oversight during their life, giving them the opportunity to disappear without leaving a trace), and creditors cannot collect the debt recognized in the judgments.

SECTION 4

LEVEL OF COMPLIANCE WITH THE JUDICIAL INTEGRITY PRINCIPLES GUARANTEEING EXPRESSION AND INFORMATION RIGHTS

It would not be possible to paint a complete picture of the State of the Honduran judiciary without an examination of the level of access to information available to the public and to judges. Our analysis leads us to conclude that in Honduras access to information is difficult for judges and lawyers because there are only two law libraries, which are both located in the capital. New laws and amendments are published in the official journal, but it is not widely distributed throughout the country. The publication of jurisprudence is discretionary. The situation is even worse for the public because most of the information is only in publications available through subscription.

This Section centers on the analysis of two closely-related Judicial Integrity Principles:

- JIP.17 Judicial Access to Legal and Judicial Information
- JIP.18 Public Access to Legal and Judicial Information

JIP.17 Judicial Access to Legal and Judicial Information

Unsatisfactory: Judges and lawyers receive only partial and incomplete information. There are only two law libraries, and they are located in the capital. New laws and amendments are published in the official journal, but it is not widely distributed throughout the country. The publication of jurisprudence is discretionary, which leaves judges and lawyers without comprehensive information on the opinions of the Supreme Court.

Honduran justices and judges must not only be qualified to perform their duties, but also need to remain abreast of legal developments. Accordingly, they require bibliographic resources that will keep them up to date on jurisprudence in the most advanced countries and the most authoritative opinions in their field of law.

There are two specialized law libraries to which judges may resort. One is located in the same building that headquarters most judicial offices; the other is at the law school of the National Autonomous University of Honduras. However, both have shortcomings.

First, most of the volumes in the collections relate to criminal law and procedure, which leaves other judges without a source of current materials in their respective areas. Second, these two libraries are both situated in the capital. Consequently, only judges who are in Tegucigalpa and Comayagüela, the twin national capitals, have access to this information. Judges elsewhere in the country have little opportunity to consult works other than those they may personally acquire, and these are scarce since bookstores specializing in legal publications are nonexistent, and other bookstores normally do not offer publications of this type.

The Bar Association is the only entity that has an aggressive program of continuing education for legal professionals. It holds intense daylong training sessions throughout the nation for attorneys who can take the opportunity to learn the substance of recent legislation and stay abreast of court decisions, particularly in criminal matters. It offers certificates to all professionals, including the justices and judges, who attend its courses. The law schools of the different universities do not have programs for ongoing education or professional development aimed at persons already working in the field of law.

Some judges in the larger cities have been provided computers, but most of them do not use them. None, however, have access to the Internet, which would at least provide this resource to publications in their field.

National legislative developments also pose a problem in connection with the issue of legal information and judicial records. Judges in the provinces of the Republic do not have information available on the most recent enactments of new laws or amendments to existing ones, because *Diario Oficial La Gaceta* [Official Daily Gazette], the official journal which publishes, *inter alia*, the texts of new laws, is not distributed throughout the country, and the judiciary does not send copies out to the judges. Thus, it is not unusual for judges to hand down decisions that enforce laws no longer in effect or that have since been amended. Their knowledge of the nation's laws is outdated.

Nor is there an appropriate means by which judges may stay abreast of Supreme Court decisions. The Court publishes *La Gaceta Judicial* [Court Gazette], but its content is published at the discretion of the chief of the Editing and Publication Office, who has no criteria for choosing which court decisions to publish. The materials published depend on the whim of this individual. The judges who receive the publication have extremely circumscribed information on the reasoning of the Supreme Court, because the decisions published do not include all areas of the law.

JIP.18: Public Access to Legal and Judicial Information

Unsatisfactory: Information on new laws, reforms and jurisprudence has not been systematized and remains partial and incomplete. For the public, access to this information is virtually impossible given that the few existing publications are available only by subscription.

Knowledge requires access to information. Rights, legitimate interests, and other legal norms enshrined in the law and other binding decisions must be made broadly known, so that persons with interests can claim recognition of respective rights and challenge actions that infringe on their interests. In this context, the provision of information on the organization of the State, each of its branches, and the laws and regulations in effect must be made a State priority.

In Honduras, the general public has access to laws through what is called the *Official Daily Gazette*, which is a government newspaper. By virtue of publication herein, laws and regulations take effect. Indeed, according to the Constitution, they are not in effect until such time as they are published in this newspaper.

Nevertheless, access to copies of this publication is not easy. First, the office that prints it is headquartered in the capital. Second, it is distributed only by subscription. These shortcomings are being remedied, thanks to the fact that the publication of laws is not an exclusive privilege of Government. Any person can publish current laws, but that person is liable for damages that arise from errors in publication.

Court decisions, on the other hand, are available only in the offices of the clerk of the court. Since these are public documents, any interested person can examine them. The judiciary publishes a newsletter, titled the *Judicial Gazette,* which contains judgments on appeals. The *Gazette* fails to fulfill its duty to keep the citizenry, particularly attorneys, duly informed because there are no criteria to guide which judgments will be published. The head of the office that publishes the *Gazette* decides which judgments to publish, without considering the importance or relationship that the decisions might have to points of authority in jurisprudence.

The judiciary files all final decisions from cases settled in its archives, which are located in the Supreme Court facilities in the national capital. The archives are open to the general public. Nevertheless, access is difficult because of its location and the physical limitations of space in the facilities where the archives are kept.

The judiciary has still not seen fit to create a database that would allow access to court decisions. Consequently, the public has no access to court information, other than to the physical files in each clerk's office or in the judiciary headquarters.

The Institute of Legal Research of the National Autonomous University of Honduras has published collections of Supreme Court decisions, grouped by areas of the law, which are intended to track what it defines as "legal doctrine" or "jurisprudence;" that is, what is interpreted to exist whenever principles are expressed in three consistent decisions. The Institute has also published a collection of so-called "Issued Orders" *[Autos Acordados],* which the Supreme Court has used, in practice, to instruct courts regarding the handling of proceedings.

CHAPTER 4

RECOMMENDATIONS

I. Recommendations for the Implementation of the Judicial Integrity Principles

A. Short-term Reforms

- Train judges in the Judicial School in matters other than criminal law;
- Redesign a transparent selection and appointment process for judges;
- Implement a transparent evaluation system for judges and judicial staff;
- Promote the Alternative Disputes Resolution (ADR) mechanisms included in the Mediation and Arbitration Law;
- Implement training programs for lawyers on the new laws passed by Congress; and
- Promote access to justice and information for the public.

B. Mid-term Reforms

- Promote the adoption by Congress of the new Judicial Council law bill;
- Promote the adoption by Congress of the new Civil Procedure Code;
- Promote the adoption by Congress of the new Organic Law of the Judiciary; and
- Redesign the property registry system.

C. Long-term Reforms

- Create a Constitutional Court separate from the Supreme Court;
- Implement a transparent selection and appointment process for judges of the Supreme Court based on the personal qualifications of candidates; and
- Help build a culture to fight undue interference from other branches of government, especially related to administrative and jurisdictional powers of the judiciary.

ANNEX 1

LIST OF ACRONYMS

AECI	: Spanish International Cooperation Agency
COHEP	: Honduran Council for Private Enterprise
FONAC	: National Forum for Convergence
FOPRIDEH	: Federation of Private Development Organizations of Honduras
IBRD	: World Bank
IDB	: Inter - American Development Bank
ILANUD	: United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders
JIP	: Judicial Integrity Principles
LOAT	: Law on Court Organization and Judicial Powers
UNAH	: National Autonomous University of Honduras
UNDP	: United Nations Development Program
USAID	: United States Agency for International Development

ANNEX 2

TABLES

TABLE 1: BREAKDOWN BY AREA OF THE HONDURAN JUDICIARY THE SUPREME COURT OF JUSTICE, APPEALS COURTS, TRIAL COURTS, AND COURTS OF JUSTICES OF THE PEACE

Supreme Court of Justice	Court of Appeals	Trial Courts	Courts of Justices of the Peace
Civil Panel	Appeals Court No. 1, Francisco Morazán	Civil Trial Court 8	Civil Justice of the Peace 30
	Appeals Court No. 2, Francisco. Morazán	Criminal Trial Court 9	Criminal Justice of the Peace 30
Criminal Panel	Appeals Court No. 3, Francisco Morazán	Family Trial Court 7	Mixed Justice of the Peace 271
	Appeals Court, Cortés	Labor Trial Court 6	
	Appeals Court, Atlántida	Juvenile Trial Court 9	
	Appeals Court, Copán	Landlord-Tenant Trial Court 2	
Labor Panel	Appeals Court, Comayagua	Administrative Trial Court 2	
	Appeals Court, Choluteca	Trial Court, Mixed Matters 36	
	Appeals Court, Santa Bárbara		
	Labor Appeals Court, Francisco Morazán		
Constitutional Panel	Labor Appeals Court, Cortés		
	Administrative Appeals Court		
TOTAL 4	**TOTAL 12**	**TOTAL 79**	**TOTAL 331**

Source: Human Development Report on Honduras, United Nations Development Program (UNDP).

TABLE 2: BUDGET ALLOCATED TO THE JUDICIARY IN 1995-2002

	General Budget of the Republic	Budget Allocated to the Judiciary for Operating Expenses	External Funds	Total Budget Allocated	Budget Allocated as a Percentage of the National Budget
1995	8,142	103,000	10,000	113,000	1.39
1996	9,720	182,854	10,339	193,193	1.99
1997	12,998	247,700	20,000	267,700	2.06
1998	15,439	297,000	30,330	327,330	2.12
1999	19,778	340.000	52,733	392,733	1.99
2000	22,574	407,000	50,700	457,700	2.03
2001	25,410	488,902	65,406	522,557	2.06
2002	27,309	494,688		494,688	1.81

Source: Human Development Report on Honduras, United Nations Development Program (UNDP).

TABLE 3: BREAKDOWN BY MEN AND WOMEN IN THE JUDICIARY OF HONDURAS

	Men	%	Women	%	Total
Supreme Court Judges	7	47	8	53	15
Court of Appeals Judges	22	61	14	39	36
Trial Court Judges	42	52.5	38	47.5	80
Justices of the Peace	246	74	85	26	331
Public Defenders	83	41.5	117	58.5	200

Source: Human Development Report on Honduras, United Nations Development Program (UNDP).

TABLE 4: DELAYS IN CRIMINAL CASES BY COURT (%)

Comayagua	48.4
Siguatepeque	32.9
La Esperanza	46.1
Juticalpa	17.8
La Paz	37.3
Marcala	20.3
Danlí/Yuscarán	25.5
Choluteca	21.3
Talanga	13.6
Nacaome	27.3
San Pedro Sula	48.0
Catacamas	43.0
Puerto Cortés	38.9
Ocotepeque	14.3
Santa Rosa de Copán	37.9
Gracias	12.5
La Entrada	39.4
Santa Bárbara	43.3
Yoro	36.0
El Progreso	18.5
Olanchito	25.5
Puerto Lempira	16.5
Roatán	13.8
La Ceiba	3.1
Trujillo	30.6
Tocoa	9.5
Tela	11.3

Source: Office of the National Superintendent of the Public Prosecution Ministry. Annual Report 2002-2003.

TABLE 5: CRIMINAL CASE DELAY BY REGIONS (%)

Region	Percentage
Center, South-East Region	22.1
North-West Region	36.2
Atlantic Coast Region	10.2

Source: Office of the National Superintendent of the Public Prosecution Ministry. Annual Report 2002-2003.

TABLE 6: GENERAL CRIMINAL CASE DELAY NATIONWIDE (%)

Courts Nationwide	23.9

Source: Office of the National Superintendent of the Public Prosecution Ministry. Annual Report 2002-2003.

TABLE 7: CRIMINAL COURT DELAY IN COMPARISON WITH OTHER JUSTICE OPERATORS NATIONWIDE (%)

Courts Nationwide	23.9
Public Prosecution Nationwide	11.8
Under Investigation (Police or Public Prosecution)	37.3

Source: Office of the National Superintendent of the Public Prosecution Ministry. Annual Report 2002-2003.

TABLE 8: CRIMINAL COURT DECISION NATIONWIDE (%)

Convictions	3.4
Acquittals	1.3
Dismissals	4.2

Source: Office of the National Superintendent of the Public Prosecution Ministry. Annual Report 2002-2003.

ANNEX 3

HONDURAS INTERNATIONAL LEGAL OBLIGATIONS

TREATIES

INTERNATIONAL LEVEL

- The Four Geneva Conventions on the law of the international community (Protection of the Condition of the Wounded and Sick in Armed Forces; (…) armed forces at sea; prisoners of war; protection of civilian persons in times of war), 1949;
- International Convention on the Elimination of all forms of Racial Discrimination, UN, 1965;
- UN International Agreement on Economic, Social, and Cultural Rights, 1966;
- UN International Agreement on Civil and Political Rights, 1966;
- First Optional Protocol of the UN International Agreement on Civil and Political Rights, 1966;
- Protocols I and II, in addition to the Geneva Conventions on the law of the international community (protection of victims of international armed conflicts, and the victims of non-international armed conflicts), 1977;
- International Convention on the Elimination of all forms of Discrimination Against Women, 1965;
- Convention on the Rights of the Child, 1989;
- International Covenant on Civil and Political Rights, adopted in 1966, 1995;
- Convention against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment, 1996;
- Optional Protocols 1 and 2 to the Convention on the Rights of the Child, 1) on the involvement of children in armed conflicts, and 2) on the sale of children, child prostitution and child pornography, 2000.

REGIONAL LEVEL (INTERAMERICAN)

- American Convention on Human Rights, OAS, 1969;
- Inter-American Convention for the Prevention, Punishment, and Eradication of Violence against Women, OAS, 1995;
- Memorandum of Understanding of the Permanent Central American Commission on the Eradication of the Production, Trafficking, Consumption and Use of Illegal Narcotics and Psychotropic Substances, 1995;
- Central American Treaty on the Recovery and Return of Vehicles Stolen, Robbed, Appropriated, or Illicitly or Improperly Retained, 1996;
- Inter-American Convention against Corruption, 1998.

OTHER INTERNATIONAL LEGAL INSTRUMENTS

- UN Minimum Standards for Treatment of Inmates, 1957 and 1977;
- UN Code of Conduct for Law Enforcement Officials, 1979;
- UN Minimum Standards for Juvenile Justice Administration, 1985;
- UN Basic Principles concerning the Independence of the Judiciary, 1985;
- UN Declaration on the Fundamental Principles of Justice for Victims of Crime and Abuse of Power, 1985;
- UN Set of Principles for the Protection of All Persons Subject to Any Form of Detention or Prison, 1985;
- UN Basic Principles on the Role of Attorneys, 1990;
- UN Basic Principles on the Role of Prosecutors, 1990;
- UN Basic Principles on the Use of Force and of Firearms by Law Enforcement Officials, 1990;
- UN Basic Principles concerning the Treatment of Inmates, 1990;
- UN Minimum Standards for non-Freedom Depriving Measures, 1990.

ANNEX 4

ANALYTICAL EVALUATION OF THE LEVEL OF COMPLIANCE WITH THE JUDICIAL INTEGRITY PRINCIPLES (JIP) IN HONDURAS

JIP	SCOPE OF THE JIP (NAME OF THE PRINCIPLE)	COMPLIANCE[53]
1	Guarantee of judicial independence	
	Guarantee of the right to a fair trial	
	Guarantee of equality under the law	
	Guarantee of access to justice	
2	Institutional independence of the judiciary	
	Personal/decisional independence of judges	
3	Clear and effective jurisdiction of ordinary courts	
	Clear and effective judicial review powers	
4	Adequate judicial resources and salaries	
5	Adequate training and continuing legal education	
6	Security of tenure	
7	Fair and effective enforcement of court judgments	
8	Judicial freedom of expression and association	
9	Adequate qualification	
	Objective and transparent selection and appointment process	↑
10	Objective and transparent judicial career processes	
11	Objective, transparent, fair and effective disciplinary process	
12	Limited immunity from civil and criminal suit	
13	Conflict of interest rules	
14	Income and asset disclosure	
15	High standards of judicial conduct	
	Rules of judicial ethics	
16	Objective and transparent court administration	
	Objective and transparent judicial processes	
17	Judicial access to legal and judicial information	
18	Public access to legal and judicial information	

53 The level of compliance with each Judicial Integrity Principle (JIP) or each subcategory of a JIP is coded as follows: light gray corresponds to "satisfactory"; dark gray to "partially satisfactory"; black to "unsatisfactory"; and white to "not analyzed". There is an additional nuance in the assessment of the level of compliance as arrows pointed upwards or downwards indicate, respectively, improvement or regression within one category.

ANNEX 5

SOPURCES

NATIONAL LEGISLATION IN FORCE

ANNUAL REPORT 2002-2003 OF THE OFFICE OF THE NATIONAL SUPERINTENDENT OF THE PUBLIC PROSECUTION MINISTRY

REPORT OF THE INTERNATIONAL COMMISSION OF JURISTS: "HONDURAS: JUSTICE ADMINISTRATION, THE INDEPENDENCE OF THE JUDICIAL BRANCH, AND THE LEGAL PROFESSION"

VARIOUS INTERVIEWS CARRIED OUT BY CID-GALLUP AND OTHER PRIVATE FIRMS

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