IFES Rule of Law Conference Paper Series

Regional Best Practices:

A Model Framework for a State of the Judiciary Report for the Americas

Prepared for the Third Conference on Justice and Development in Latin America and the Caribbean, Inter-American Development Bank, Ecuador, July 2003

July 2003

Keith Henderson
Violaine Autheman

Contributors

Alvaro Herrero
Sandra Elena
Carlos Hinojosa
Luis Ramirez Daza
Procop Buruiana

REGIONAL BEST PRACTICES:

A Model Framework for a State of the Judiciary Report for the Americas

Prepared for the Third Conference on Justice and Development in Latin America and the Caribbean, Inter-American Development Bank, Ecuador, July 2003

July 2003

Keith Henderson
Violaine Autheman

Contributors
Alvaro Herrero
Sandra Elena
Carlos Hinojosa
Luis Ramirez Daza
Procop Buruiana

This is an IFES publication produced with generous support from the Inter-American Development Bank.

REGIONAL BEST PRACTICES
A MODEL FRAMEWORK FOR A STATE OF THE JUDICIARY REPORT FOR THE AMERICAS

TABLE OF CONTENTS

1 Introduction: Judicial Reform and Efforts to Strengthen Judicial Independence and Accountability in the Americas **1**

1.1 Political, Cultural, Legal and Socioeconomic Context for the Americas
1.2 Rationale for a Strategic Judicial Reform Agenda, a Judicial Access to Information Policy and a Monitoring and Reporting Mechanism
1.3 General Lessons Learned from Legal and Judicial Reform in the Americas

2 Transparent and Accountable Judiciaries: A Model Reporting and Monitoring Framework and Increased Access to Quality Information **9**

2.1 A Model State of the Judiciary Report: A Monitoring and Reporting Tool
2.1.1 IFES Judicial Integrity Principles
2.1.2 International and Regional Judicial Independence and Accountability Obligations
2.1.3 Reporting on the State of the Judiciary and Monitoring Compliance and Progress

2.2 Rationale for a State of the Judiciary Report: Increased Access to Information
2.2.1 Need to Increase Access to Judicial Information and the Quality of Information
2.2.2 Need to Share Information among Institutions, with the Public and Across Countries and Regions
2.2.3 Need for an Adequate Judicial Information Policy

2.3 Participatory and Comprehensive Monitoring and Reporting
2.3.1 Support for Reform
2.3.2 Broad Participation of the Judges, Legal Profession and Civil Society
2.3.3 Comprehensive Framework Including the Broader Context

2.4 High-Priority Principles Emphasized in the State of the Judiciary Report
2.4.1 Fighting Systemic Judicial Corruption
2.4.2 The Role of Judicial Councils
2.4.3 Other Issues Linked to Judicial Corruption and Judicial Councils
2.4.3.1 Transparent and Objective Selection Process
2.4.3.2 Legal and Judicial Education and Continuing Training
2.4.3.3 Transparent and Objective Disciplinary Process
2.4.3.4 Codes of Ethics and Conflict of Interest Rules
2.4.3.5 Asset and Income Disclosure Rules

3 A Strategic Agenda for the Next Generation of Reforms in Latin America and the Caribbean **31**

4 Annexes and Selected Rule of Law Tools Designed to Promote Targeted Reforms **32**

1 Introduction: Judicial Reform and Efforts to Strengthen Judicial Independence and Accountability in the Americas

Creating an independent accountable judiciary and public trust are now seen as core elements of the rule of law. After over a decade of legal and judicial reform, questions to be asked include (i) what lessons have been learned, (ii) what the best practices are and (iii) what kinds of reform programs should be emphasized in the next reform phase. Now that there is consensus that an independent accountable judiciary is a key to sustainable economic, political and legal reform, how do judiciaries and reformers obtain more resources and political support to broaden and deepen the reform package for the next generation of reforms?

This paper advances an information strategy that is designed to simultaneously promote key elements of an effective justice system: **fairness and impartiality, soundness of decisions, accessibility, efficiency, independence and credibility.** It is based on the historical truism that information is power and that it, coupled with a rule of law culture, has been the key liberating, stabilizing and driving reform force in developing sustainable democracy. Perhaps more importantly, it is the best strategy to simultaneously attack issues related to judicial transparency and accountability, including structural and political issues related to judicial independence, judicial corruption and the enforcement of judgments.

Accordingly, primary emphasis is placed on the structural issues and processes that enhance both transparency and accountability, as well as participatory, information-oriented, mutually-supportive programs and strategies designed to promote public trust in the judiciary. This "public trust" approach has been an underemphasized element of virtually all judicial reform programs and it is the essential element to developing a rule of law culture and voluntary compliance with the law. In short, fundamental reforms of a political nature, such as those related to the independence and accountability of the judiciary, need to be broadly supported, linked and co-led by key stakeholders in the process, including all branches of government, the legal and judicial profession and the public at large.

1.1 Political, Cultural, Legal and Socioeconomic Context for the Americas

Background. The Americas are composed of countries which have diverse historical, political, social, cultural and economic backgrounds. We can distinguish several categories of countries within the region based on their level of political stability, economic and social development, institutional and democratic framework, corruption and respect for the rule of law. Historically, the Americas are also characterized by two divergent legal influences. While most Latin American countries have adopted civil law systems which reflect the legal and judicial frameworks of continental Europe, particularly Spain, many Caribbean countries have common law systems that generally reflect many of the common law traditions of Great Britain. These historical differences, although becoming less significant, also reflect diverging conceptions of the role of the judiciary and its current place within society.

Socioeconomic contemporary and historical context.[1] Despite the historical differences and practices among some of the legal systems, there are some common socioeconomic threads within the Americas. In general, the socioeconomic situation is problematic in many countries, including recent increases in inflation after eight years of steady decline, a declining per capita income and rising homicide rates. Indeed, recent reports reflect that roughly 44% of Latin Americans now appear to live in poverty, up from 40% in 1999, while 20% suffer extreme poverty. Disparities among the richest and the poorest people in each country appear to have increased to new levels, raising great concern about the fairness and ethic of the economic models implemented in the region.

---

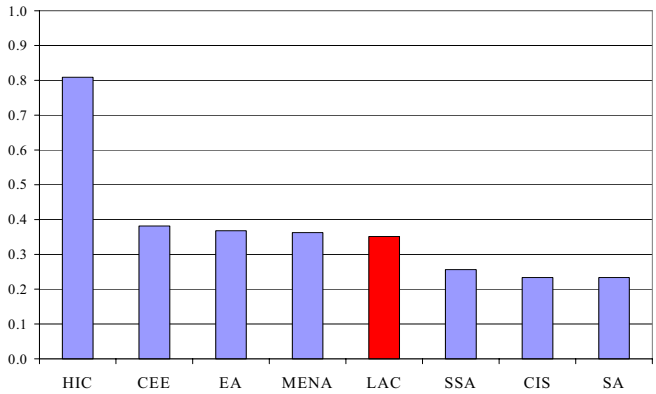
* With contributions from Álvaro Herrero, Sandra Elena, Carlos Hinojosa, Luis Ramírez-Daza y Procop Buruiana

1 See, USAID website at: http://www.usaid.gov/policy/budget/cbj2004/latin_america_caribbean/

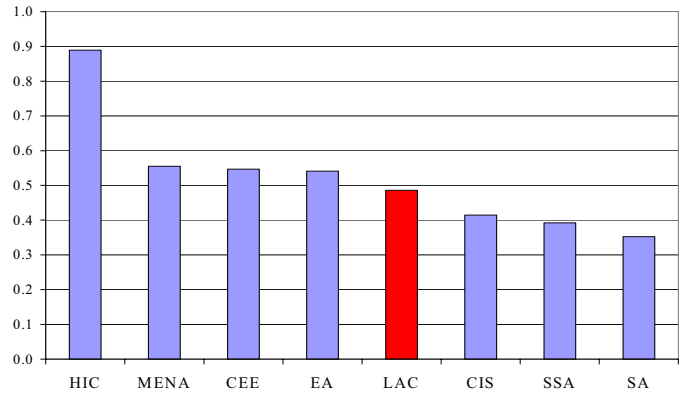
Moreover, unemployment has risen to more than 9% in many countries, which is higher than the 1980s level. In many countries, increased crime and violence is consistently ranked as citizens' primary concern with unemployment. These woes have brought discontent and political turbulence, raising questions about the health of democracy in the region, investment priorities, social sector policies and the benefits of a decade of liberal reforms. Perhaps most importantly, polls across the region reflect widespread and growing public distrust of government institutions, including the institution charged with rendering justice – the judiciary.

In comparison to other regions, past and recent rule of law and anti-corruption perception surveys of businesses, government officials and the public, indicate that the Americas are perceived as almost as low as Sub-Saharan Africa and well below those of the OECD developed countries. While one can debate whether these consistent, broadly-held perceptions are accurate, the need to improve the public's perception and understanding of the reform process is clear, since the goal of developing a rule of law society requires participatory governance and broad voluntary compliance with the law.

Corruption Index – Comparing World Regions (Absence of Corruption)[2]



Rule of Law Index – Comparing World Regions (Respect for the Rule of Law)[3]



2 Source: Kaufmann, Kray and Zoido-Lobatón (2001)
The indicator has been normalized from 0 to 1 with higher scores indicating lower levels of corruption. HIC = High Income Countries; CEE = Central and Eastern Europe; EA = East Asia; MENA = Middle East and North Africa; LAC = Latin America and Caribbean; SSA = Sub-Saharan Africa; CIS = Former Soviet Republics; SA = South Asia.

3 Source: Kaufmann, Kray and Zoido-Lobatón (2001)
The indicator has been normalized from 0 to 1 with higher scores indicating greater degrees of respect for the rule of law.

This bleak picture does not accurately place these regional contextual issues into comparative historical context; nor does it necessarily portend a dark regional snapshot of the future. Indeed, during the 1980s, as a transition region the Americas led the globe in terms of progress made in promoting democratic governance and the rule of law. Virtually all of the countries in the Americas, save one, now have democratic constitutions and elected governments and many now have stronger, more independent judiciaries. However, while a number of judicial reforms have been undertaken, most strategies and programs have been too narrow or mechanistic in scope and their actual implementation has been quite problematic. Thus, achievement on this front has been only partially successful and the public has not perceived concrete results from these reforms.

Another area in which progress has been made across the Americas is trade. The democratic leaders of the Hemisphere have unanimously agreed to work toward the 2005 culmination of the Free Trade Area of the Americas (FTAA), and historic trade pacts, such as NAFTA and Mercosur, are now in place. Economic regionalization and globalization trends and compliance with the World Trading Organization and new bi-lateral free trade treaties are also placing new demands on judiciaries throughout the region.

Judicial reform achievements. According to recent IFES expert surveys in nine countries, several of the judicial reform areas where some success has been achieved relate to making the Judiciary more independent from the Executive.[4] This has sometimes been achieved, at least in part, through several reforms, including the creation of Judicial Councils, improving case management through automation, increasing judicial resources through constitutional amendments and improving human rights through reformed criminal codes.

However, these reforms have achieved mixed results and most were not integrated into larger political and legal reform strategies. One example relates to constitutional reforms that led to judiciaries being guaranteed a minimum amount of the State budget. But the real question that many are not asking is: how are these additional resources being utilized to promote high priority reforms? Many analysts believe these new resources amount to little more than throwing good money after bad in some countries, because they have not been used to de-corrupt a systemically corrupt institution. In these cases, providing additional resources without addressing this fundamental institutional problem has probably only served to strengthen the hands of non-reformers and to promote the further politicization and corruption of the judiciary.

In any case, whatever reforms have occurred or successes have been achieved, we do know they have not been appreciated by the public. This is probably because the public has not seen any concrete results and because they do not understand or appreciate the reforms because they were not included in the reform process by either policymakers or the judiciary itself.

Judicial Corruption. Unlike a decade ago, there is now a formal political commitment to fight official corruption. The need to move on this front was no doubt sparked by annual perception surveys of the public, businesses and government officials that indicate governmental corruption is extremely high in many countries throughout the region, and by various corruption scandals involving high level public officials.[5] This political development has also promoted a regional trend towards more open governance and broader public access to information. However, passing and implementing access to information and open government laws and policies is proving to be highly problematic and without safeguards may even be dangerous in some countries. For example, Mexico has recently passed an access to information law but implementing it fairly and effectively remains a daunting challenge.[6] Issues related to the

4 IFES/USAID, Guidance for Promoting Judicial Independence and Impartiality, USAID Technical Publication, 2001 http://www.ifes.org/rule_of_law/judicial_independance.pdf

5 See, *inter alia*, the Transparency International Corruption Perception Index 2002, available at http://www.transparency.org/cpi/2002/cpi2002.en.html

6 See, *inter alia*, *A Proposed Anti-Corruption Strategy for Mexico: Passage and Implementation of an Access to Information Law*, presentation by Professor Keith Henderson, First Anti-Corruption Conference, the Mexican Embassy, 1999.

7 The Inter-American Convention against Corruption is available on the website of the OAS, at http://www.oas.org/juridico/english/Treaties/b-58.html

privacy of information and the personal security of public officials also loom large.

The countries of the region have proclaimed their commitment to good governance and this fight through the Inter-American Democratic Charter and the Inter-American Convention against Corruption of the Organization of American States (OAS).[7] While these developments are certainly a step in the right direction, implementing them is a serious challenge.

One of the largest inherent flaws of the Inter-American Convention against Corruption is that it does not squarely and comprehensively address the cross-cutting issue of judicial corruption. This is clearly either a huge oversight or a behind-the-scenes attempt to thwart meaningful reform, because it leaves the door open for so-inclined countries and judges to take the position that the judiciary is not bound by the same laws as everyone else under the Convention. Judges and the legal community, policymakers, reformers, donors, civil society and the business community alike, all need to collectively move to fill this reform gap very quickly. Clarifying the language of the Convention through policy positions taken by the OAS and the judiciaries throughout the region should be the order of the day.

While there is a clear consensus that not addressing judicial corruption is a recipe for reform failure, recent research from both the IMF and the World Bank indicates that economic growth rates in the Americas could possibly be improved by as much as 15% if the judiciary's performance were improved. Even though this percentage is equal to the variances usually assigned to improved literacy rates or fiscal policy, relatively little attention has been given to this subject. With the advent of globalization, the economic cost to the region of not addressing judicial corruption is growing with each passing day.

Human rights. In the human rights area, considerable progress has been made through criminal procedure code reform, the ratification of human rights conventions, the political acknowledgement of entities and individuals responsible for past human rights violations, the imprisonment of human rights violation perpetrators and the establishment of viable regional juridical human rights institutions. Free and fair elections, the passage of new democratic constitutions, reform of the military and the creation of human rights ombudsmen and public defender offices are also notable achievements in some countries. However, some of these countries have been more successful than others in terms of implementing reforms. Country and regional human rights reports indicate that serious human rights problems remain throughout the Americas, including egregious detention conditions, police violence, mandatory death penalty, restrictions on the freedom of expression and association and the lack of respect for labor rights and fair trial standards. One critical area that deserves high priority attention in many countries relates to the need to reform certain media and defamation laws that serve to inhibit the independence of the media and investigative journalism and sometimes also promote media and public self-censorship.

Civil society. Perhaps one of the greatest strengths – and weaknesses – in many countries is the capacity of civil society to engage in and promote the reform process. The strength of civil society organizations in the Americas is variable. As a general rule, as in other regions, the countries that have made the most economic and political progress are those that have nurtured civil society, reform networks and a rule of law culture. One of the key measurements of civil society's overall trust and participation may be evidenced by the number and quality of formal and informal NGO networks in each country and the degree to which government information is accessible to them. Another measurement of the public's trust for the judiciary is evidenced through public polls and surveys and the degree to which the public uses the judiciary to enforce contracts and human rights.

On this front, while some countries in the region have vigorous NGO networks, NGOs are still quite weak in many and are not generally sought-out as government partners in the reform process. Civil society's access to information is also extremely problematic in virtually every country. In addition, many NGOs still do not have the adequate expertise or capacity for designing, promoting and monitoring the implementation of complex,

crosscutting reforms.[8] Polls and research also indicate that the courts are not seen as accessible, reliable or fair institutions by NGOs or the public. This perception is particularly true for small and medium enterprises, minorities and others operating outside the status quo.

Public disillusionment. Support for democracy is waning in the Americas and popular disillusionment is growing with governments where poverty, corruption, crime and violence remain the norm rather than the exception.[9] These factors and others perpetuate an image of the judiciary as an institution not to be trusted. Indeed, throughout the region on average only 25% of the population has confidence in the judiciary. Public trust in the judiciary is now at its lowest level in over five years and even ranks below several other public institutions including the police and the armed forces in some countries.[10] Clearly, support for democracy and the rule of law in the Americas needs immediate attention and should be among the highest reform priorities. An independent, efficient, and transparent judiciary that is supported by the public and an independent media are essential to achieving these societal objectives.[11]

1.2 Rationale for a Strategic Judicial Reform Agenda, a Judicial Access to Information Policy and a Monitoring and Reporting Mechanism

In the 1990s, Latin America became involved in broad economic reforms which were grounded in the so-called "Washington Consensus" principles. These included reforms related to fiscal discipline, a redirection of public expenditure, taxes, interest rate liberalization, trade liberalization, privatization and deregulation. Unfortunately, other key cross-cutting reforms, such as those related to institutional and judicial independence and accountability and participatory reform processes geared towards building consensus, were not emphasized as key elements of the Washington Consensus package.[12]

While a few countries tried to undertake some of the latter reforms on their own, this broader, more holistic approach was often overtaken or overshadowed by the Washington consensus priorities and they still lacked broad-based political and public support. In addition, very often the strategy for implementing these reforms was also fatally flawed, in that it was too technical, piecemeal and not integrated with a political reform strategy. Consequently, many well intended judicial and legal, economic and political reforms have not taken root or been implemented in practice and many countries have made little headway in addressing judicial corruption or developing a rule of law culture.

---

8 The Justice Studies Center of the Americas (JSCA or CEJA) has made a noteworthy effort to build a vigorous network of NGOs working on justice reform issues throughout the Americas. The primary achievement of this effort has been the creation and coordination of the Network of the Justice Civil Society Organizations of the Americas. See, http://www.cejamericas.org/newsite/redosc.html

9 Satisfaction with democracy decreased from 41% in 1997 to 32% in 2002. See, Latinobarometro, available at http://www.latinobarometro.org/. In many countries, these percentages steadily decreased during the 1980s and 1990s, particularly with respect to the public's trust in the justice system.

10 See, Latinobarometro, available at http://www.latinobarometro.org/

11 The implementation of true democracies in countries with strong disparities is a great challenge, which requires a "renovated enthusiasm for legality" as highlighted by Alberto Binder. He also argues that the judicial system is where the fight for legality will be conducted. See, BINDER, Alberto, *La Lucha por la Legalidad [The Fight for Legality]*, Fichas, INECIP (available electronically at http://www.inecip.org/ediciones_instituto/catalog_ediciones.htm

12 In the late 1990s, a second wave of literature argued in favor of a second generation of reforms, including institutional and judicial reforms, regulatory frameworks and accountability, as a necessary complement of the principles and reforms advocated in the Washington Consensus. See, *inter alia*, BURKI, Shahid Javed and Guillermo Perry, *The Long March* and *Beyond the Washington Consensus: Institutions Matter*; GRAHAM, Carol and Moises Naim, *The Political Economy of Institutional Reform in Latin America*, in Birdsall, Graham and Sabot (eds), Beyond Tradeoffs: Market Reforms and Equitable Growth in Latin America, Inter-American Development Bank and Brookings Institution Press: Washington, DC; NAIM, Moises, *Fads and Fashion in Economic Reforms: Washington Consensus or Washington Confusion?*, working draft of paper prepared for the IMF Conference on Second Generation Reforms, Washington, DC, 1999 http://www.imf.org/external/pubs/ft/seminar/1999/reforms/naim.htm; and NAIM, Moises, *America's Road to Market: From Macroeconomic Shocks to Institutional Therapy*, ICEG, 1994.

It is now generally agreed that the sustainability and success of economic and political reforms will not be achieved without more attention being given to targeted judicial reform, such as judicial corruption and judicial enforcement. More emphasis should thus be placed on creating the institutional and legal infrastructure as well as the political will and public support necessary to sustain broader reforms.

Over the past ten to fifteen years, judicial reforms in the Americas have focused primarily on institutional strengthening, criminal justice reform and human rights.[13] While these reforms were no doubt needed, they have had mixed impact and success. We have now learned that such reforms should now be viewed as only part of a holistic reform package. The new challenge is to integrate these reforms with related reforms and to promote their implementation by increasing pubic support for them.

Lessons Learned. Indeed, three of the most important lessons learned from judicial reform efforts in the Americas have been:

(i) Passing laws and codes is relatively easy, but implementing them is another story;
(ii) Many judicial and enforcement institutions lack the technical expertise, capacity or credibility to effectively and fairly enforce and implement the laws; and
(iii) Implementing and enforcing laws and policies requires broad public buy-in.[14]

Now that we know that enhancing transparency and public support will help promote the implementation of reforms, more effective and efficient enforcement and more voluntary compliance, more emphasis needs to be placed on transparency reforms across the judicial spectrum. Making more information publicly accessible is now seen as the best way to promote concrete reforms and to address corruption.

Public Trust. IFES believes that past experience leads us to one overarching conclusion – the need to enhance public trust in the justice system. This paper advances a strategy that embraces transparency and accountability reforms designed to simultaneously promote judicial independence and a rule of law culture by making quality information accessible to both the judiciary and the public. This strategy is advanced through a systematized, strategic monitoring and reporting framework designed to quantify reform progress through a transparent, accountable process.

Such a process will enable judiciaries to make the case for more resources and public support for reform. This will also link up legal and judicial reforms with broader political and economic reforms and assist countries in making the case for compliance with the international and regional obligations under treaties such as the OAS Anti-Corruption Convention and the Inter-American Human Rights Convention. In turn, it will enable the judiciary, the legal profession and civil society to monitor and report on reform progress through coalition building and a participatory strategic process.

Our working hypothesis is that in many countries the judiciary is perceived as too insular and that basic information related to its operations and decision-making process is not publicly accessible. Other perceived problems in a number of countries relate to inadequate judicial resources, non-transparent judicial selection processes, the lack of judicial access to legal information, judicial corruption, high costs of accessing the legal system – particularly for small and medium enterprises – political party interference and the ineffective enforcement of judgments.

The main objective of this paper is to capture lessons learned and outline a strategy designed to enhance public trust through programs that simultaneously address judicial independence and judicial accountability. This paper provides the intellectual, legal and political framework for this strategy through a model **State of the Judiciary Report**. Such a report would focus on assessing compliance with a set of core principles, derived from existing

13 See, BIEBESHEIMER, Christina and J. Mark Payne, *IDB Experience in Justice Reform, Lessons Learned and Elements for Policy Formulation*, Sustainable Development Department, Technical Papers Series, 2001 and USAID, *Achievements in Building and Maintaining the Rule of Law, MSI's Studies in LAC, E&E, AFR and ANE*, USAID Occasional Papers Series, 2002

14 See, HAMMERGREN, Linn, *Fifteen Years of Judicial Reform in Latin America: Where We Are and Why We Haven't Made More Progress,* 1998

and emerging international and regional judicial independence and accountability standards. The net impact of such a program would increase the transparency of the judiciary and the quality of available information, help prioritize the reform agenda and build broader support and demand for reform. In support of this objective, the paper analyzes lessons learned and best practices in the Americas and stresses the importance of coalition and consensus building as a precondition for the success of the reform.

The **State of the Judiciary Report for the Americas** will serve multiple purposes and stakeholders, including:

- **(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 prioritised justice reforms based on global, regional and country best practices;
- **(iv)** Presenting prioritised 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; and
- **(ix)** 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, and IDB, and free trade and anti-corruption conventions and protocols.

1.3 General Lessons Learned from Legal and Judicial Reform in the Americas

Sharing experiences across borders and across regions may help countries better design reform programs and avoid replicating mistakes. For example, a number of common lessons from legal and judicial reform can be drawn from the experiences of the Americas and of Eastern Europe and the Former Soviet Union. Learning from these failures or successes may help prevent embarking on reform programs which are doomed from the outset and point us towards model programs and best practices.

In developing this paper, IFES used a multi-faceted methodology aimed at identifying lessons learned from the past two decades of judicial reform, both globally and within the Americas. We undertook an analytical survey of academic, applied and comparative research from all regions, with a particular focus on experiences from the Americas and Eastern Europe. These research findings and our own analysis of donor-sponsored programs in the Americas were then discussed in various meetings among ourselves and with experts and judges from the Americas and Europe. Finally, we gathered data and drew conclusions from our own programming experience, including our most recent work related to judicial independence, the enforcement of court decisions and access to justice.[15]

15 A comprehensive selected bibliography is included in Annex 3. It contains references to many of the articles and books, which form the core of the IFES research. The Judicial Reform Truisms are drawn from the findings presented in many of these articles, including HAMMERGREN, Linn, *Fifteen Years of Judicial Reform in Latin America: Where We Are and Why We Haven't Made More Progress,* 1998; WALLACE, Judge J. Clifford, *Resolving Judicial Corruption While Preserving Independence, Comparative Perspectives*, 28 Cal. W. J. Nt'l L. J. 341 (1998); and DIETRICH, Mark K., *Legal and Judicial Reform in Central Europe and the Former Soviet Union: Voices from Five Countries*, The World Bank, 2000.

IFES Rule of Law Tool – Judicial Reform Programming Working Assumptions

We have learned many lessons from reforms attempted in the Americas and globally over the last decades and now accept the following statements as legal and judicial reform truisms:

(i) Political will, broad support and adequate targeted funding for judiciaries are essential to the sustainability and effective implementation of legal and judicial reform efforts;

(ii) The reform process should be open, transparent, participatory and inclusive of broader contextual issues;

(iii) Broad based coalition building within governmental structures, political parties and civil society in support of reforms will promote their sustainability, more voluntary compliance and effective enforcement and a rule of law culture;

(iv) Legal and judicial reform requires building sustainable institutions, especially an independent judiciary and an independent media, that will serve as the basis for the rule of law and a functioning legal, economic and political system;

(v) Judicial independence and accountability issues are not mutually exclusive and are both equally important to address;

(vi) There is a direct correlation between economic growth, social development, political stability, corruption and the rule of law;

(vii) Promoting judicial efficiency without addressing judicial corruption, independence and accountability issues has little impact on the quality of and access to justice;

(viii) It is not sufficient to draft and adopt new laws; these laws must be effectively implemented and enforced and the participatory process by which they are drafted is important as well;

(ix) The fair and effective enforcement of judgments is an integral component of the right to access to justice and to a fair trial within a reasonable time;

(x) The improvement of access to justice for all is key to building respect for the legal and judicial system and to promoting political stability, social development, economic growth and a rule of law culture;

(xi) Legal reform presupposes reforming legal education – judges need additional targeted training that addresses on-going reform efforts as well as increased access to quality information;

(xii) Proper anticorruption mechanisms must be built, including the ability to discipline corrupt judges without interference from executive power;

(xiii) Public access to judicial information and judicial access to information is key to reform;

(xiv) Strategic monitoring and reporting mechanisms are needed to promote, implement and build up the demand for reforms, as well as to promote transparency and accountability;

(xv) Judicial reforms are inherently political in nature and therefore require broad political support; and

(xvi) Providing more resources to unreformed institutions or toward mechanistic, piece-meal reforms that do not address and link up access, efficiency and structural independence issues is often a waste of time and money and may be counterproductive.

It is now timely to move beyond these working assumptions towards programs that promote best practices and strategies designed to implement prioritized reforms. It is particularly timely and important to enhance international cooperation at the trade and national security levels and to promote the implementation of existing country, regional and international norms and obligations, such as those related to corruption and human rights.

2 Transparent and Accountable Judiciaries: A Model Reporting and Monitoring Framework and Increased Access to Quality Information

> Lesson Learned #1: Increasing access to quality information for both the judiciary and the public will create a more open justice system, increase public trust in the judiciary and advance judicial independence, transparency and accountability and a rule of law culture.

Based on the principle that access to more, higher-quality information will empower reformers and the public with the democratic ammunition and participatory process essential to promote key institutional and cultural reforms, including a more independent and accountable judiciary, IFES has made an institutional investment in developing comparative and country-specific empirical and qualitative information for regional and domestic policy-making and reform programs. The information steppingstone for this undertaking was initially provided in a path breaking IFES/USAID publication entitled *Guidance for Promoting Judicial Independence and Impartiality* [the *Guide*].[16] The *Guide* has since been presented in a number of regional conferences and strategic workshops and has been complemented by additional research and analysis in related areas of the rule of law, such as open government, the enforcement of judgments and access to the legal and judicial system.[17]

To date, IFES has organized four regional conferences where the research findings of the *Guide* have been presented. IFES capitalized on these events by using them as opportunities to test the *Guide*'s findings and receive input from judges, lawyers, policymakers and non-governmental organizations on high priority reform issues and strategies common to many countries. As a result of this process, IFES has been able to work in close coordination with local stakeholders to disseminate valuable lessons learned and best practices. IFES' judicial independence conferences have also served to build bridges and establish regional fora and networks within the regions. As a result of the regional conferences, there is now a set of judicial independence declarations such as the Honduras Agreement and the Cairo Declaration.[18] These instruments not only serve to guide judicial independence reform strategies in their respective regions but also provide monitoring and reporting tools to assess the pace of reforms and promote their implementation within a concrete strategic framework and timetable.

2.1 A Model State of the Judiciary Report: A Monitoring and Reporting Tool[19]

> Lesson Learned #2: There is a lack of effective and systematized monitoring mechanisms which would disseminate quality information on the judiciary and on compliance with key judicial independence/integrity standards and principles.

16 IFES/USAID, Guidance for Promoting Judicial Independence and Impartiality, USAID Technical Publication, 2001 http://www.ifes.org/rule_of_law/judicial_independance.pdf

17 See, HENDERSON, Keith, *A Background Paper on Open Government Laws and Policies in Central America*, prepared for the OAS, 2000; HENDERSON, Keith and Alvaro Herrero, *El Costo de la Resolución de Conflictos en la Pequeña Empresa: El Caso del Perú [The Cost of Resolving Conflicts for Small Businesses: The Case of Peru]*, IFES/IDB (2003); HENDERSON, Keith, Peter Khan and Others, *Barriers to the Enforcement of Court Judgments and the Rule of Law*, IFES (2003).

18 The Honduras Agreement and the Cairo Declaration are available as Annexes to this article. These two documents, as well as the Malawi Communiqué, are available electronically on the IFES website, at http://www.ifes.org/rule_of_law.JI_Conferences/main.html

19 The Model Framework for a State of the Judiciary Report and the IFES Judicial Integrity Principles [JIP] were originally prepared for discussion during the Transparency International Global Conference and Workshop on Judicial Integrity in Seoul, South Korea, May 25-28, 2003.

2.1.1 IFES Judicial Integrity Principles

IFES has identified 18 Judicial Integrity Principles [JIP] as core components of its model reporting and monitoring framework. The JIP are intended to serve as guideposts for the drafting of annual State of the Judiciary Reports which would monitor and report on compliance with key principles of judicial independence, judicial accountability, judicial transparency, judicial ethics and enforcement of judgments and assist in building support for high-priority judicial reforms.

In designing the JIP, IFES relied on a number of international and regional governmental and non-governmental conventions, standards, guidelines and case law addressing judicial integrity, to identify consensus principles and trends.[20] IFES also examined a number of relevant documents and studies, including the work of the Open Society Institute to monitor judicial independence, judicial capacity and anti-corruption policy in European Union accession countries and the Millennium Challenge Account. The JIP represent high-priority consensus principles or emerging best practices found in virtually all global and regional governmental and non-governmental instruments related to the independence and impartiality of the judiciary.

IFES Rule of Law Tool – Judicial Integrity Principles

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 are aimed at fostering an enabling environment and legal culture necessary for the rule of law to take root, with specific emphasis on judicial integrity. IFES has also designed a number of indicators to assess compliance under each of these principles. These indicators are intended to constitute an evolving checklist to gather quantitative and qualitative data in relation to the JIP.

20 These documents are referenced in Annex I. An IFES Occasional Paper analyzing these conventions, standards and guidelines, as well as relevant case law of international and regional courts and commissions, is available at IFES upon request.

2.1.2 International and Regional Judicial Independence and Accountability Obligations

International and regional human rights treaties recognize the right to a fair trial by an independent tribunal in the determination of rights and obligations in civil, commercial and administrative matters and in the determination of criminal charges. These treaties provide explicitly for some minimum fair trial standards, such as judicial independence, reasonable length of proceedings and public hearing, but fail to define them or identify their components. Consequently, the definition, criteria and components of these rights have been laid out in international and regional expert guidelines from organizations such as the United Nations or the International Judges' Association and in the case law of international and regional courts and commissions.[21] Expert guidelines, such as the UN Basic Principles on the Independence of the Judiciary, are not legally binding but represent high-level consensus and the moral commitment of their signatories. States and judges in particular may decide to voluntarily comply with the provisions of these guidelines.

Signatory States are under an obligation to give full effect domestically to the provisions contained in human rights treaties and to any other binding obligation to which they have adhered. The growing body of case law of human rights courts and commissions regarding the right to a fair trial and judicial independence identifies a number of key elements and principles applicable in member States. The first wave of international and regional human rights court case law attempted primarily to flesh out the elements and criteria of the minimum fair trial standards explicitly mentioned in human rights treaties, such as judicial independence or due process. Other issues have also been considered as implicitly covered by the right to a fair trial, such as access to court and the enforcement of judgments. These issues have been developed in a second wave of jurisprudence of human rights courts which aims not only at defining the key components of the rights guaranteed under the human rights treaties but also at identifying the implicit rights necessary to give full effect to the guarantees of the conventions. This case law creates important legal precedent for member States which face the risk of being censured by these courts if they fail to comply with emerging standards of judicial independence, accountability and integrity.

The European Court of Human Rights ["the European Court"] has been traditionally more active than the Inter-American Court of Human Rights ["the Inter-American Court"] in defining the limits and contents of the right to a fair trial and judicial independence and has interpreted treaty provisions extensively, in part because of the nature of the violations that were submitted to these courts as the European Court dealt primarily with strong stable democracies of Western Europe where sophisticated issues and human rights violations occurred more frequently than the egregious violations of the right to life, the right to liberty and the prohibition of torture which were rampant in Latin America well into the 1990s. Therefore, European case law related to judicial independence is more comprehensive both in terms of volume and in terms of breadth of topics addressed. For example, it covers multiple issues affecting both criminal and civil or commercial trials and has interpreted judicial independence to cover issues ranging from institutional independence to access to justice.[22]

---

20 The UN Human Rights Committee, the Inter-American Human Rights Commission and Court, the European Human Rights Court and the African Human Rights Commission have had to interpret, respectively, article 14(1) of the International Covenant on Civil and Political Rights, articles 8(1) and 27(2) of the American Convention on Human Rights, article 6(1) of the European Convention on Human Rights and articles 7(1) and 26 of the African Charter of Human Rights.

21 The ECHR case law addresses judicial independence in connection with a number of issues ranging from **institutional independence** and **access to justice** to the use of **military/special courts** and the **enforcement of court decisions**. See, *inter alia*, *Beaumartin v. France*, judgment of 11/24/1994, ECHR Series A no.296-B (institutional independence from the Executive); *The Sunday Times v. the United Kingdom*, judgment of 04/26/1979, ECHR Series A no.30 (independence with regard to the media); *Fayed v. the United Kingdom*, judgment of 09/21/1994, ECHR Series A no.294-B (access to court and ousting of the jurisdiction of ordinary courts by the State); *Incal v. Turkey*, judgment of 06/09/1998, ECHR Reports 1998-IV (lack of independence of National Security Courts); *Hornsby v. Greece*, judgment of 03/19/1994, ECHR Reports 1997-II (fair and effective enforcement of court decisions).

The issues raised under the right to judicial independence in Latin America have covered a much more limited range of topics and in the past, the Inter-American Court has often referred to the European cases as precedent and justification for its rulings.[23] Generally speaking, the European Court case law may have a significant impact on the interpretation of the right to a fair trial by the Inter-American Court as well as under other international and regional human rights instruments. Based upon jurisprudential trends in the European Court, IFES believes that the next phase of jurisprudence in the Americas will focus on more sophisticated issues under the right to a fair trial, access to justice and judicial guarantees, including the right to the fair and effective enforcement of judgments.[24]

Additionally, a number of international and regional treaties and agreements implicitly require States to guarantee judicial independence, integrity and accountability. For example, some of the requirements of the Inter-American Convention against Corruption are clearly applicable to judges, at least in spirit, and mandate that all high level government officials comply with specific anti-corruption and disclosure standards, laws and regulations. Similarly, free trade agreements should include conditional language requiring member States to guarantee and promote in practice judicial independence, integrity and accountability. Free trade agreements are built and enforced on the assumption that the legal system is fair and predictable, as well as side agreements, such as those related to labor standards, the environment and human rights.

2.1.3 Reporting on the State of the Judiciary and Monitoring Compliance and Progress

> Lesson Learned #3: One of the best ways to promote the implementation of reforms, including those that relate to transparency and accountability in the judiciary, is to increase the access to quality information on the state of the judiciary through participatory monitoring and reporting mechanisms.

A well-designed monitoring framework is essential. Previously mentioned declarations, such as the Cairo Declaration, have identified consensus principles, prioritized reforms and built consensus and commitment to a standardized monitoring and reporting framework. The model framework for an annual **State of the Judiciary Report** has been designed by IFES as a flexible monitoring and reporting tool to be used by civil society, governments, judges and other stakeholders. Its main focus is to enlist public support for judicial reform through the collection and dissemination of concrete information related to the status of the judiciary as a democratic institution and the actual administration of justice.

---

23 The Inter-American Court of Human Rights focuses on a narrower set of issues in connection with article 8(1) and judicial independence. The key issue analyzed by the court relates to **ousting the jurisdiction of the ordinary courts and the use of military courts and/or "faceless" judges** to try civilians for crimes of terrorism and treason and the independence of such bodies. See, *inter alia*, *Loayza Tamayo v. Peru*, judgment of 09/17/1997, concurring opinion, Series C no.33 (lack of independence of military tribunals used to try civilians); *Castillo Petruzzi v. Peru*, judgment of 05/30/1999, IACHR Series C no.52 (ousting of the jurisdiction of ordinary courts and use of military courts to try civilians; lack of independence of military courts); *Cantoral Benavides v. Peru*, judgment of 08/18/2000, IACHR Series C no.69 (lack of independence of faceless judges); *Ivcher Bronstein v. Peru*, judgment of 09/24/1999, IACHR, Series C no.24 (lack of independence of temporary judges); *Constitutional Court Case*, judgment of 01/31/2001, IACHR, Series C no.71 (removal of Constitutional Court judges in violation of the requirements of judicial independence); *Bámaca Velásquez v. Guatemala*, judgment of 11/25/2000, IACHR Series C no.70 (access to court).
The Inter-American Commission and Court of Human Rights have cited the jurisprudence of the European Court in the past within the reasoning of their own decisions. See, *inter alia*, *Genie Lacayo v. Nicaragua*, Judgment of 01/29/1997, IACHR, Series C no. 30 and *Loayza Tamayo v. Peru*, Judgment of 09/17/1997, IACHR, Series C no. 33.

24 Recent cases of the Inter-American Court of Human Rights have addressed issues of **access to court** and the **enforcement of court decisions**. See, inter alia, *Cantos v. Argentina*, judgment of 11/28/2002, IACHR, Series C no.97 (exorbitant mandatory legal fees in violation of the right to access to court); *Cinco Pensionistas v. Peru*, judgment of 02/28/2003, IACHR, Series C No.98 (fair and effective enforcement of court decisions).

The IFES monitoring and reporting framework is based on a multifaceted methodology that relies on a variety of formal and informal sources to gather the information necessary to assess the state of the judiciary in a given country. The information is collected based on a set of indicators developed under each JIP.[25] The proposed model framework for a **State of the Judiciary Report** covers the following clusters:

- **(i)** Country legal, political and socioeconomic background, scope and methodology of the **State of the Judiciary Report**;
- **(ii)** Relevant international, regional and country-specific legal and institutional framework;
- **(iii)** Assessment of compliance with the IFES JIP or a set thereof identified through a flexible prioritization process that takes into account technical and political factors as well as the economic feasibility and sustainability of reforms;
- **(iv)** Overview of key relevant developments and characterized violations and abuses, with a special focus on key cases affecting judicial independence; and
- **(v)** Most important problems, priority reforms and suggested remedies and recommendations. The **State of the Judiciary Report** could serve to promote high-priority reforms and as a base-line monitoring, reporting and implementation tool for establishing the enabling legal environment to globalise the rule of law.

The final annual **State of the Judiciary Report** should be as "national" a product as possible and it should be presented in a format that is clear to the average citizen. At the same time, the reports issued by different countries should be comparable in terms of the scope of the analysis and the quality of the data collected so that cross-country comparative analysis on a core set of common problems confronting virtually all judiciaries can be performed. To meet these two goals, IFES suggests the joint preparation of an annual **State of the Judiciary Report** by judges and civil society and that international or regional entities, like the OAS affiliated Justice Studies Centre of the Americas and international NGOs like IFES, be called upon to oversee the quality, comparative analysis and integrity of both the report and the reporting process. The exercise of some quality control and uniformity by an independent external entity will also provide a regional and global perspective and instill competition among countries.

First, in terms of collecting the information and analyzing it within the model framework of the **State of the Judiciary Report**, the participation and expertise of local partners will be essential. The reporting and monitoring process should be as inclusive and participatory as feasible in the country context. Ideally, the report should be a combined effort of civil society and the judiciary broadly defined, with input from other stakeholders as well. The participatory process should include, to the extent possible, reformers, judges, judges' and bar associations, the judicial council, NGOs involved in legal and judicial reform and others.

The collection of information, from a variety of means, will focus on, *inter alia*, (i) the main processes and institutions, (ii) the sources and form of interference in the justice system, (iii) the transparency and objectivity of existing mechanisms, (iv) the obstacles to judicial independence and to the effective enforcement of judgments, and (v) the role and involvement of civil society. The information collected will be analyzed and presented within a standardized but country-specific framework. Targeted recommendations based on the analysis of the information collected will then be developed with a view towards identifying consensus and high-priority reforms and recommendations.

The final **State of the Judiciary Report** should be disseminated to the public at large, as well as to targeted stakeholders, such as the business and human rights communities, bar associations, judges, reformers and policy-makers. The publication and distribution of the report will increase the quality and quantity of concrete information on the judiciary and will thereby increase the transparency and accountability of the judiciary as well as the demand for reform.

25 The JIP and the corresponding indicators are components of the IFES Rule of Law Toolkit. An overview of the Toolkit is attached in Annex II.

2.2 Rationale for a State of the Judiciary Report: Increased Access to Information

2.2.1 Need to Increase Access to Judicial Information and the Quality of Information

> Lesson Learned #4: Having a clear picture of the country-specific needs and problems is necessary to design successful reform programs. Similarly, conventional wisdom is not always supported by empirical data and there are important limits on the transferability of experiences.

In the past two decades, some projects have been implemented without a clear picture of the state of the judiciary or through the often blurry eyes of conventional wisdom and foreign expertise. In these cases, reform programs were often designed on perceptions and common beliefs of failures in the systems, which sometimes have not been completely accurate or have been proven wrong. With the advent of more empirical and social research, we have since learned that conventional wisdom and perceptions can be misleading and may lead to reform programs that have little or no positive impact on the independence or accountability of the judiciary.[26] Indeed, most have had little or no positive impact on the degree to which the public trust the judiciary.[27]

We have learned other lessons as well. Reforms manufactured from the outside without any local input and participation are recipes for failure. While exchanging lessons learned and best practices across borders and regions may be extremely useful in designing reform programs, there is no absolute transferability of model programs across borders because country context differs significantly. For example, the results of research carried out by the US Institute of Civil Justice show that some case management approaches recommended by judicial reformers and US experts appear to have had minimal impact on judicial independence or accountability.[28] Recent IFES surveys of judges and legal experts in the Americas also confirm this widespread perception. These findings raise serious questions as to whether past investments made in this area should be the primary focus of judicial reform programs in the future.

Assessments. Tailoring foreign experiences and conventional wisdom to the actual country context requires in-depth assessments of the legal and judicial context as well as of the broader political, cultural and socioeconomic context. The first stage of any judicial reform project should be targeted empirical and qualitative user-oriented research undertaken through a participatory, strategic methodology. This technical assessment should include an analysis of the broader political and socioeconomic environment in which the reform will be implemented.

Uniform data, such as judicial statistics, is necessary to identify needs and problems, to assess the impact of reforms and to provide the public with basic information on the judiciary and the rule of law. The availability of reliable data will also increase the transparency of the judiciary and thereby make it more accountable to the public. The Justice Studies Center of the Americas (JSCA) has been working towards uniformity and standardization in the development of core judicial statistics throughout the region. Towards this end, it has developed a handbook providing methodological tools and guidance for judicial data development.

In many countries, however, judiciaries often lack the capacity to collect and generate standardized and reliable data. Through viable judicial statistics and public affairs offices and the development of more comprehensive

26 See, HAMMERGREN, Linn, *Use of Empirical Research in Refocusing Judicial Reforms: Lessons from Five Countries*, The World Bank (2003)

27 Evidence of the absence of impact on public trust in the judiciary is exemplified by the continued low scores of the judiciary on public opinion polls surveying public trust in institutions. See, text accompanying FN 9 infra.

28 HENSLER, Deborah, *The Contribution of Judicial Reform to the Rule of Law*, CIDE-The World Bank (2001)

assessment and program design methodologies and technical tools, the capacity of the judiciaries in the Americas to develop, present and disseminate judicial information to the public, policymakers and donors would be enhanced.[29]

Monitoring. More research is also necessary to monitor and assess the impact, success, failure and sustainability of reforms and their effective implementation. The lack of an impact assessment, standardized monitoring and reporting following the initial passage of reforms, makes it virtually impossible to draw lessons from the reform process or to know whether the reforms have really taken root. Clear strategies for short, medium and long term evaluation and impact assessment should be core components of any reform program.

2.2.2 Need to Share Information among Institutions, with the Public and Across Countries and Regions

Lesson Learned #5: Sharing information among institutions and donors and across countries and regions will help stakeholders to identify best practices, share experiences and design more effective policies and reform programs. It will also contribute to increased information for members of the judiciary and legal profession and for the public.

Once standardized, reliable data is developed on the state of the judiciary, including progress on and the impact of past judicial reforms, it is important that this information be made widely available. The exchange of information among institutions of the justice sector, with key stakeholders and reformers, with donors and with the public, will increase transparency and provide a clearer picture as to the priority needs, problems, achievements and failures of the judiciary. Promoting a higher degree of coordination would greatly enhance reform efforts, as it would assist donors and reformers in identifying loopholes and needs and in maximizing resources, time and capacity. Widely available information will also enhance the public's appreciation for some of the judicial reforms that have occurred or are underway, since part of what is needed is to make the public more aware of the role, responsibilities and problems of the judiciary and more supportive of judicial reforms.

An ideal level of donor and inter-institutional coordination is the preparation of collaborative long-term justice sector strategies that link up short, medium and long term activities of each donor, relevant government institutions and key elements of civil society in a country. The creation of an entity responsible for coordination within the justice sector that is linked to an inter-governmental mechanism responsible for broader governmental and donor coordination has proven to be an efficient and effective reform model and a good investment for reformers and donors.[30]

One of the most noteworthy achievements of the criminal justice reform process in El Salvador might have been the creation of a coordinating commission for the criminal justice sector (Commission) as a forum for cooperation among the various actors of the criminal justice sector. Originally created under an USAID program to manage donor assistance to the reform process, the Commission has been institutionalized and has become an important component of the justice sector. The Commission is assisted by the technical unit (UTE) which is set to disappear, or at least to be formally absorbed by the Commission. While it is unclear which role the UTE will play in the future, it seems to be shifting to a more discrete role of technical support and has been transferring knowledge and capacity to the various institutions involved in the Commission. Some have argued that this could be the end of the Commission, but this restructuring effort could also mean that the UTE and the Commission have been successful in achieving one of their main objectives, namely building the

29 See, the JSCA website for more information on their work, including development of a sourcebook for statistical data collection, http://wwwcejamericas.org/.

30 See, *inter alia*, POPKIN, Maggi, *Efforts to Enhance Judicial Independence in Latin America:A Comparative Perspective*, in Guidance for Promoting Judicial Independence and Impartiality, IFES/USAID, 2001 http://www.ifes.org/rule_of_law/judicial_independance.pdf

managerial capacity of the institutions, thereby justifying a change in the role of the UTE and its absorption by the Commission.[31]

Additionally, information can be exchanged sub-regionally and across regions, with a view to promoting knowledge and best practices, avoiding duplication of efforts and replication of mistakes. The exchange of information on the state of judiciaries and on reform processes and programs will enable researchers, reformers and donors to develop comparative analytical information that highlights best practices and lessons learned and to monitor progress on key judicial reforms.

2.2.3 Need for an Adequate Judicial Information Policy

Improving the transparency of judiciaries in the Americas requires greater access to more quality information for both the members of the judiciary and legal profession and for the public in general. Widespread access to legal and judicial information is called for under IFES Judicial Integrity Principle #17 – "judicial access to legal and judicial information" and #18 – "public access to legal and judicial information". Increasing access to information, as well as improving the quality of available information, require a proper judicial information policy which clearly sets out which information must be made available as well as the details regarding availability and procedures to access information.

By access to legal and judicial information, it should be understood that information is available to members of the judiciary, the legal profession and the general public. First, under JIP #17, members of the judiciary and of the legal profession must have adequate access to the legal information necessary to perform their duties. If laws and regulations or recent legislation are not available to judges, they cannot be expected to base their rulings on the letter of the law. If recent domestic and regional case law is not available to judges, they cannot be expected to learn from others or appreciate important legal precedents or best practices?

Second, under JIP #18, there must be broad public access to judicial information, including court decisions, rules and procedures, legal aid mechanisms and income and asset disclosure requirements. Without this information, the public will have little appreciation for the decision-making process and will not be able to monitor it.

An access to information policy framework should include a Public Access to Information Law and a Judicial Policy to support it. Toward this end, the judiciary should be expressly covered under the information disclosure and transparency requirements of any access to information law or policy that exists. If any existing access to information law or policy does not clearly cover the judiciary, this issue should be clarified either by law or policy. The key point here is that the judiciary must be seen as transparent and accessible to the public and it must not set itself up as above access to information laws that the other branches of government must follow. If such a law or policy does not yet exist, the judiciary itself should exhibit leadership and adopt a clear and comprehensive access to information policy. Having an access to information law or policy in place, and the resources and will to implement it, may be one of the most important reforms for reformers and donors to support. Without such a law or policy, it will be very difficult if not impossible to develop public trust in the judiciary.

While a limited amount of information may be restricted because of personal, business secret or national security concerns, non-availability of information should be the exception, not the rule. Certainly, all stakeholders in the justice system including the public should have access to complete and accurate information related to the kinds of information noted below.

31 For more information, see, http://www.ute.gob.sv/

IFES Rule of Law Tool – Elements of an Access to Information Act or Policy for the Judiciary

(i) Laws and regulations in force and proposed;
(ii) Court rules and procedures;
(iii) Court fees;
(iv) Availability of and procedures to obtain legal aid;
(v) Published court decisions and decisions, judgments or rulings of any other judicial or quasi-judicial authority;
(vi) Judicial career processes and vacancies within the judiciary;
(vii) Complaint mechanisms;
(viii) Information request procedures;
(ix) Judicial budgetary process and allocation of resources; and
(x) Ethics rules, conflict of interest and income and asset disclosure laws.

2.3 Participatory and Comprehensive Monitoring and Reporting

2.3.1 Support for Reform

Lesson Learned #6: The lack of broad-based support and of an understanding of how to effectively implement these reforms has been highlighted as a key shortcoming.

In many Latin American countries, reforms have led to the passage of hundreds of laws, regulations and procedures. Yet, many of these laws remain unimplemented due to a number of causes, including: (i) inefficient coordination; (ii) lack of a broad high-level judicial reform strategy; (iii) lack of resources; (iv) human capacity constraints; (v) lack of public support; (vi) insufficient commitment of political/judicial will; and (vii) corruption.

2.3.2 Broad Participation of the Judges, Legal Profession and Civil Society

Lesson Learned #7: Broad civil society and stakeholder participation in the design, implementation, monitoring and evaluation of reform processes will contribute to a more transparent, accountable judiciary, improve public perception and enhance sustainability.

Over the last two decades, external donors and high-level judges have often been key initiators of judicial reform efforts in the Americas. Multilateral development banks, bilateral cooperation agencies and private donors have provided a significant amount of support and impulse to the reform process, working in partnership on the implementation of reform components with selected civil society groups or the governments. However, judges and donors have not promoted broad civil society, stakeholder and public participation in the judicial reform process. Consequently, only a few groups of civil society have been periodically involved in the design and implementation of reform programs, while key stakeholders, such as judges, prosecutors, public defenders, court employees, ministers of justice, lawyers and others, have often been kept on the sidelines.

The participation of civil society in judicial reform, to the degree civil society has been involved at all, has been primarily through NGOs. While many of these groups are important actors and advocates of change, experience has shown that they sometimes do not constitute a representative and organized social constituency and they often lack the political, human, financial and technical capacity to fully support and promote judicial reform processes.

Increased involvement of citizens, NGOs and stakeholders in the design and implementation of reform

programs would promote transparency and public accountability by facilitating exchanges and information-sharing between the courts and its users. The public's perception of the accessibility and fairness of the judiciary, particularly the important constitutional role it plays or should play in protecting its rights, should improve through such a process. At the same time, judges and judicial officials should likewise develop a better understanding of how to more effectively and efficiently fulfill their role as high-level public servants and guardians of the rule of law.

Civil society should also be involved in monitoring and reporting on both the reform process and the overall state of the judiciary. Such involvement will also serve to increase information related to the operations and decisions of the judiciary and the judicial reform process. The civil society groups involved should represent a broad cross-section of society and include a wide range of groups, including traditional NGOs specializing in legal and judicial issues, judges' associations, bar associations, reform-minded politicians, high-level and low-level judges, private sector representatives, consumer groups, unions and advocacy groups.

The role of civil society, judges and judges' associations in the judicial reform process and in monitoring and reporting on the state of the judiciary, including their participation in the drafting of the annual **State of the Judiciary Report**, is crucial. Without their participation, such a report is not likely to be understandable to those outside the legal profession and it will not be contextually or politically well grounded.

2.3.3 Comprehensive Framework Including the Broader Context

Lesson Learned #8: The sustainability and success of judicial reform requires the inscription of reform efforts within the broader political, cultural and socioeconomic context and reform agenda.

Many legal and judicial reform programs have been designed and implemented throughout the Americas for the past two decades. Despite this investment, many Latin American judiciaries remain weak and politicized institutions that are inaccessible to most of the public. While some reform progress has been made on several narrowly focused fronts, these reforms are not perceived as having had significant impact on either the overall quality of justice rendered or on increasing public trust in the rule of law. Unfortunately, many reforms were often singularly focused and ignored structural flaws within the judicial system and the broader political, cultural and socioeconomic forces at play.

The broader context for legal and judicial reform and its political dimensions must be taken into account in order to succeed and adapted to society's needs. The legal and judicial system does not operate in a vacuum; rather, it is greatly influenced by the broader political, cultural and socioeconomic context.

Costa Rica provides a good example of how the political and cultural context may affect the outcome and impact of reform. Unlike many Latin American countries, Costa Rica has experienced a relatively successful judicial reform process. Many analysts believe that this is based in part on the fact that Costa Rica has approached the process from a multifaceted reform highway. This includes reformers promoting multiple but inter-related reforms, including separation of powers principles, free and fair elections, economic growth, an independent media and an engaged civil society, or what some refer to as individualism. All of these reform lanes eventually converge onto one super-highway that can sustain and link up the broader democratic goals of the overall reform process.

We have also learned that reforming the judicial system is inherently political. This political dimension of legal and judicial reform must be fully understood by donors and foreign experts in order to avoid unrealistic goals and unimplemented reforms. Deep political will to undertake reform, by high-level officials and the stakeholders themselves, rather than ephemeral governmental commitments voiced to donors in exchange for funds, is critical to sustainable reform.

Indeed, donors and reformers have often overlooked the need or chosen not to try to build broad political consensus in support of reforms. Sometimes they have also initiated so-called judicial reforms merely as a crusade against the political system or the powers that be. Since either executive or judicial hierarchy interference appear to be the greatest obstacles to judicial independence, as illustrated in expert surveys from around the world, reforms that do not focus on building the political will for reform will almost certainly fail against such powerful forces.

At the same time, we now know that more emphasis should be placed on institutions and processes related to the enforcement and implementation of reforms, such as the independence and accountability of prosecutors, execution clerks or bailiffs and the police. Political will has been disregarded in many of the reform processes in the Americas, yet it is a *sine qua non* condition of implementation.

2.4 High-Priority Principles Emphasized in the State of the Judiciary Report

In order to illustrate and emphasize several high-priority principles in the **State of the Judiciary Report** related to increasing access to quality information, we focus on two institutional issues affecting many of the judicial systems in the Americas:

(i) Systemic judicial corruption; and

(ii) The powers and actual functions of the judicial council, the key institution often entrusted with overseeing judicial processes and promoting judicial integrity, in most civil code countries. (Most other JIP principles presented later in this section could be analyzed and addressed through these two institutional prisms.)

2.4.1 Fighting Systemic Judicial Corruption

> Lesson Learned #9: Fighting systemic corruption within the judiciary is necessary to protect judicial independence and accountability and increase public respect and support for the judiciary.

IFES' analysis of data presented in the *Guide* shows that among the nine Latin American countries surveyed almost all ranked the judicial hierarchy as the main source of interference with judicial independence, with corruption ranked as a close second. Corruption ranks as the primary source of interference in global results based on the twenty-three countries surveyed.[32]

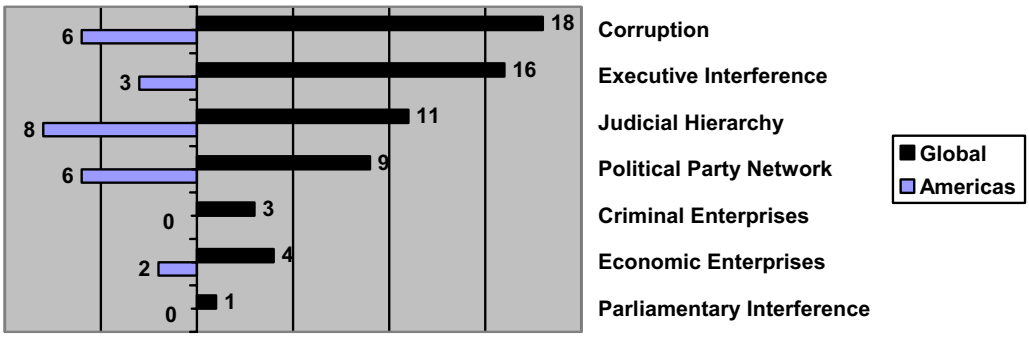
Similar results were obtained from a survey conducted for the IFES/USAID Judicial Independence Conference in Honduras in April 2002 (Honduras Conference) which included members of the judiciaries of five Central American countries, with corruption ranked as the main source of interference and the judicial hierarchy a close second. It should be noted that not all countries in the Americas suffer from systemic judicial corruption. In those countries where only petty or sporadic corruption exists, there is greater potential for a more efficient, depoliticized judicial council hierarchy.[33] A more efficient and impartial judicial council would improve the independence and accountability of the judiciary, which is the ostensible reason councils were initially created in most countries.

32 These findings are based upon IFES' own analysis of all the research collected in the *Guide* and do not represent in any way the opinions of USAID.

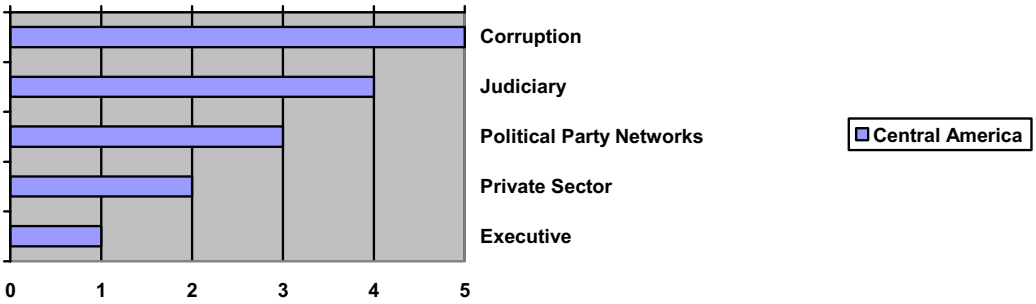
33 Petty corruption is often distinguished from grand corruption. The former is usually equated with the payment of small facilitation fees to court officials to speed up the decision-making process. This form of corruption, while serious if it goes unchecked, usually exists in countries where judges and court officials are very poorly paid. Grand corruption is usually equated with high-level economic or political bribery where the outcome of the decision-making process is usually affected.

Global expert survey results show an important difference between Latin America and other regions where executive interference tends to be ranked as the first obstacle or is second only to corruption. The perceived interference of the judicial hierarchy appears to be more of a problem in Latin America than in other regions. This contrast does not necessarily mean there is not interference from the executive or from political forces in Latin America. It could be explained by a more indirect control of the executive over the judiciary, especially in countries where the judicial hierarchy is clearly politicized or has been captured by the executive power.

Main Sources of Interference with Judicial Independence in Nine Latin American Countries (IFES Analysis of the *Guide* – Summer 2000)[34]



Main Sources of Interference with Judicial Independence in Five Central American Countries (IFES Analysis, Honduras Conference – April 2002)[35]



To address corruption of the judiciary, mechanisms are needed to detect and punish corruption. In many countries, institutions such as judicial councils or ombudsmen have been granted the authority and powers to investigate and sanction judges for alleged corruption – at least in disciplinary proceedings. Other forms of accountability can also be managed through the higher courts or through an ordinary criminal action. However, if there is no internal judicial accountability, there is greater need and political pressure for the executive or legislature to intervene. In addition, civil society can play an important role in monitoring the integrity of judges. For example, in Sweden and Finland, the Ombudsman office has the power to investigate and prosecute judges for alleged corruption.

34 The chart shows IFES' analysis of strategic survey answers from carefully selected judicial reform experts from each country.

35 The chart shows IFES' analysis of civil society representatives, judges and executive and legislative branch officials who attended the IFES regional judicial independence conference in Honduras in April 2002 and responded to a strategic survey during this conference.

When corruption is systemic throughout society, addressing high-level corruption within the power structures of all branches of government and the private sector is often the only real solution to building more accountable, independent institutions and laying the foundation for a rule of law society.[36]

A cautionary note on a related front: A disguised attempt to address judicial corruption may actually weaken the rule of law and damage the Court's credibility even further if the government moves to politicize the judiciary under the banner of reform. Many believe this happened in Guatemala when the government dissolved the judiciary under the pretense of alleged corruption in 1993, and, in Argentina in the early 1990s, when the Government "packed" the Court by increasing the number of judges on the Court. A number of highly questionable political appointments of judges with very high political but very low legal credentials were also made during this timeframe. As a matter of record, many judicial inquiries related to privatization transactions, questionable financial operations and high-level corruption effectively came to a halt through a series of highly questionable Supreme Court rulings in Argentina. More recently, the newly elected government of Argentina has stated its intention to restore the independence of the Supreme Court. The Executive issued a decree limiting the powers of the Executive in relation to Supreme Court appointments and, at the same time, recognized the important role of civil society participation and public hearings in the appointment process.[37]

2.4.2 The Role of Judicial Councils

Lesson Learned #10: While judicial councils have been created with a view to insulating the judiciary and judicial career processes from external political pressure, they do not guarantee these problems will be resolved and in some countries interference has become even more diffuse and pernicious.

In many countries, concerns about the independence of the judiciary and judicial administration have led to the creation of Judicial Councils which often vary in scope and composition from country to country. The first Council was created in France in the 1800s but it has undergone numerous reforms since that time. Additional reforms, focused on how to make the French Council and Judiciary more independent and accountable, are still being hotly debated today. The majority of civil code countries in Western Europe, as well as those in Latin America, Africa, Asia and the Middle-East, have subsequently adopted various Council models. The *Guide* notes that:

> "Although protection of judicial independence is a common goal for most judicial councils, the specific problems councils are designed to address are often quite different. In many countries, the problem is executive, legislative, or political party domination of the judiciary. In others, the Supreme Court is perceived to have excessive control over lower court judges. Some countries are primarily concerned with the amount of time judges spend on administrative matters and want to improve the effectiveness and efficiency of the courts by transferring the managerial function to another body."

Two of the main objectives of many Judicial Councils are (i) balancing judicial independence and accountability and (ii) insulating the judiciary and the processes of the judicial career from external forces. This is particularly important during the judicial selection and appointment process. In order to achieve these objectives, there is a growing consensus that judicial councils should be composed in the majority of members of the judiciary,

36 See, WALLACE, Judge J. Clifford, *Resolving Judicial Corruption While Preserving Independence, Comparative Perspectives*, 28 Cal. W. J. Nt'l L. J. 341 (1998).

37 See, Poder Ciudadano, *Primer Informe de Diagnóstico sobre la Independencia Judicial [First Diagnostic Report on Judicial Independence]*, http://www.poderciudadano.org/relaciones/210_justici.doc

although the models that appear the most successful are those with broad representation from all branches of government as well as civil society and those that include broad powers sufficient to promote both judicial independence and accountability.

IFES Rule of Law Tool
Membership of Judicial Councils in Selected Latin American Countries (2002)

	Representative of the Executive	Representative of the Legislature	Representative of the Judiciary	Representative of Civil Society
Argentina	■	■	■	■
Bolivia			■	
Chile	**No Judicial Council**			
Costa Rica			■	■
Dom. Rep.	■	■	■	
El Salvador				■
Guatemala			■	
Honduras			■	
Panama			■	■
Paraguay	■	■	■	■

As mentioned, specific functions and responsibilities have been delegated to Councils, especially in the appointment and disciplinary processes, but their powers vary from country to country in terms of both scope and effects. In many Latin American countries, the Council participates in the selection process of Supreme Court and lower courts by reviewing the merits of candidates and proposing candidates to the appointing authority. In other countries the Council has no appointment authority, particularly at the lower court levels. While the composition and structure of a Council is supposed to promote more checks and balances within the judiciary and among the various branches of government, in practice the institutional structure and composition of the Council is often skewed or political flawed. In this situation, the creation of such a Council does not achieve the desired results and may just perpetuate the status quo. Indeed, some analysts believe such Councils are fatally flawed by design. In any event, Councils in Latin America are still a relatively young democratic institution and, like other institutions, need to undergo constant reform as required by changing political and socio-economic circumstances. Civil society has a key role to play in this process.

IFES 2002 Central American Survey. In a survey of five Central American countries conducted in April 2002, there were striking differences between the expected role and the actual role of Councils in promoting and strengthening judicial independence. On the one hand, in those Central American countries where Councils exist, a majority of the respondents noted that the Council had had a negative impact on the promotion of judicial independence. On the other hand, in countries where Councils do not exist, an overwhelming majority of respondents (over 80%) noted that creating a Council could have a positive impact on judicial independence.[38] While these evaluations appear to be at odds, they generally support the important proposition that Councils, if structured properly and depoliticized in practice, have the institutional potential to promote judicial independence. Exactly how this can best be done in a given country will depend largely on the political context in which the legal system operates.

38 Data collected at the Honduras Conference, April 2002. Among the Central American countries surveyed, only El Salvador and Guatemala reported the existence of a Judicial Council.

Differences in the quality of members and the responsibilities of the Councils have a significant impact on the effectiveness of the Councils in promoting judicial independence. Other factors to consider in assessing successes and drawbacks are the political consensus on legal and judicial reform in general and the role of Councils in the reform process, the technical and resource capacity to implement reforms and of local NGOs to monitor and publicly report on reform progress.

Peru – Transparent Appointment, Re-Appointment and Promotion Procedures. The President of the Peruvian Judicial Council recently requested IFES' technical assistance to support the development of transparent, objective and unified criteria related to the selection, appointment and promotion of judges and public prosecutors. IFES developed the assistance around a participatory methodology that would facilitate Council consensus on this issue. The methodology consisted mainly of confidential structured interviews and general discussion sessions with each council member, followed by workshops with all council members and all technical, administrative, managerial and advisory personnel. The criteria that emerged have now been incorporated into unified, transparent appointment and promotional procedures that give the public a much clearer picture of how the Council operates and makes significant decisions. It is important to note that this consensus-building process was developed and undertaken in close consultation with related technical assistance offered by the World Bank.

Argentina – Civil Society Monitoring and Reporting Methodology. Civil society monitoring and reporting on the activities of the judicial council is an excellent tool to improve the quality and transparency of Councils. *Poder Ciudadano*, an Argentine NGO and chapter of Transparency International, has been involved in monitoring the Council since 1999. The program, called Civic Monitoring of the Judicial Council, appears to have achieved some progress in improving the transparency and openness of the Council and in increasing public access to judicial information and processes. Specific achievements include civil society participation in the drafting of the judicial council law and in its internal regulations; periodic reporting of the Council's activities; and concrete changes in the internal mechanisms of the institution to make the Council's decision-making processes more open to the public. *Poder Ciudadano* has also contributed to the launching of similar programs in Bolivia and Peru.[39]

2.4.3 Other Issues Linked to Judicial Corruption and Judicial Councils

Many of the issues raised in this section relate to judicial corruption and to problems inherent to the composition and operation of Councils. While the degree to which judicial corruption and problems within the Councils affect judicial independence and accountability vary greatly from country to country throughout the Americas, these issues should be closely examined before undertaking significant legal and judicial reform.

2.4.3.1 Transparent and Objective Selection Process

Under IFES Judicial Integrity Principle #9, judges should have adequate qualification and should be selected and appointed through an objective and transparent process. Indeed, all international and regional human rights conventions require competent, independent and impartial judges. There is a clear international consensus that judges should be selected according to a transparent merit-based process which relies on a clearly set combination of objective and subjective qualification criteria.

38 PEREZ TORT, Maria Julia, *Iniciativa de la Sociedad Civil para la Transparencia del Consejo de la Magistratura – Programa Ciudadanos por la Justicia (Argentina) [Initiative of Civil Society for Transparency in the Judicial Council – Citizens for Justice Program (Argentina)]*, 2002 http://www.dplf.org/frameset_pub_eng.htm

IFES Rule of Law Tool – Entity Responsible for the Selection and Appointment to the Supreme Court and to Lower Courts (Summer 2000, in the *Guide*)

Country	Nominations for Supreme Court Justices	Appointment of Supreme Court Justices	Nominations for lower court judges	Appointment lower court judges
Argentina	Executive	Senate	Judicial Council (public competition)	Executive
Bolivia	Judicial Council	Congress	Judicial Council	Supreme Court for Superior District Courts; Superior District Courts for lower court judges
Chile	Supreme Court	Minister of Justice, with Senate ratification	Judicial hierarchy (through the Judicial Academy)	Ministry of Justice
Costa Rica	N/A	Legislature	Judicial Council	Supreme Court
Dominican Republic	Judicial Council (based on proposals by anyone)	Judicial Council	N/A	Supreme Court
El Salvador	Judicial Council	Legislature	Judicial Council	Supreme Court
Guatemala	Postulation commissions	Legislature	Judicial Council	Supreme Court
Honduras	N/A	Legislature	N/A	Supreme Court
Panama	President	Legislature	N/A	Judicial Hierarchy
Paraguay	Judicial Council	Senate	Judicial Council	Supreme Court

Hungary – Checks and Balances in Judicial Selection. The structure, powers and operations of the Council and the procedures for appointments and promotions should be properly insulated from political considerations. A good example of a country model in another region that achieves these objectives is that of Hungary. The selection and appointment process of judicial candidates in Hungary incorporates a number of institutional and political checks and balances. Candidates are selected by the Presidents of the Supreme, Appeals and Regional Courts based on an interview and on non-binding opinions by the relevant Judicial Council. Then, these Court Presidents send their selection to the National Judicial Council which forwards its nomination to the President. Consequently, judges are initially appointed by the President for a probationary term of three years, after which the President may reappoint them for an "indefinite term".

In Hungary, the President of the Supreme Court is nominated by the State President and appointed by the Parliament, while deputy presidents are nominated by the President of the Supreme Court and appointed by the State President. Presidents and deputy presidents of the regional courts are appointed by the National Council of Justice. Regional Court Presidents appoint the Presidents and deputy presidents of district courts, as well as all judges within the regional and local court structure. Certain judicial bodies are entitled to express opinions on appointments but these opinions are non-binding. Court Presidents and the National Judicial Council enjoy a high degree of discretion under this system.[40]

Transparent and objective processes which include broad participation from civil society and the legal community play an important role in guaranteeing the selection of competent judges and in strengthening judicial independence. Participatory processes should include well-defined roles for the judicial hierarchy, the

40 See, *Judicial Independence in Hungary*, in Monitoring the EU Accession Process: Judicial Independence, Open Society Institute (2001) http://www.eumap.org/reports/content/20/348/html

Council and civil society, including judges' associations and bar associations. Broad civil society participation in the selection and appointment of judges will provide essential public oversight and exchanges between the judiciary and the public and help insulate judicial processes from external interference and direct and indirect political and career pressures.

Dominican Republic – Creative Media Models. A model from the Dominican Republic illustrates the important role of civil society oversight and transparency in the appointments and selection process. Until 1997, judicial appointments to the Supreme Court and lower courts in the Dominican Republic were openly political. Then, a political crisis led to a constitutional reform which gave the National Judicial Council appointment authority for all judges of the Supreme Court. It also gave the Supreme Court appointment authority for all judges of the lower courts. However, the reform also gave any person the power to propose candidates for the Supreme Court and mandated public nomination hearings. A broad coalition of civil society groups saw this as an opportunity for the public to participate in the process through candidate interviews that were aired on television. For the first time in the country's history, the public could actually see and comment upon who was being proposed to sit in judgment upon them before they were given that important power. Obviously this process discouraged unqualified candidates or those who may have had something to hide from undergoing such public scrutiny. After these reforms were passed, the newly appointed Supreme Court judges then developed a transparent process to re-evaluate the qualifications of lower court judges through a competitive public process. A number of incumbent judges were ultimately dismissed.[41]

Guatemala – Creative Civil Society Coalition-Building and Strategies. Another good model for promoting more transparency and civil society participation in the appointments and selection process comes from Guatemala. In 1999 a network of four NGOs formed the *Movimiento pro Justicia*, which appears to have had significant impact in terms of promoting the participation and inclusion of civil society in the selection of judges, including Supreme Court, appellate court and Constitutional Court judges. This grassroots movement developed a strategic public outreach plan that promoted both social participation and more transparent, higher-quality political and legal dialogue designed to open up the appointment and selection process to public debate and scrutiny. This movement has since been expanded to other high-priority issues of concern to the public, such as those related to human rights and electoral justice.[42]

2.4.3.2 Legal and Judicial Education and Continuing Training

The lack of sufficient and adequate legal and judicial education and continuing training has been an obstacle to the effective implementation of reforms and to the promotion of the competence of, the independence of and societal respect for the judiciary. Programmatic experience and numerous judicial surveys all point to the need for more strategic, adequately-funded, targeted professional training programs for both judicial staff and judges. One of the other greatest needs is to ensure that judges and judicial personnel have ready access to both the law itself and quality information and clear policy guidance related to how to implement it fairly and effectively.

Educating an independent and accountable judge should begin long before this person is appointed to a judgeship. Law school basic legal education should already present some of the same issues that are at the core of judicial continuing training, such as ethics, conflicts of interests and access to legal and judicial information. Many of these topics should form the core of the education of any legal professional.

---

41 See, IFES/USAID, Guidance for Promoting Judicial Independence and Impartiality, USAID Technical Publication, 2001 http://www.www.ifes.org/rule_of_law/judicial_independance.pdf

42 See, POPKIN, Maggi, *Efforts to Enhance Judicial Independence in Latin America: A Comparative Perspective*, in Guidance for Promoting Judicial Independence and Impartiality, IFES/USAID, 2001 http://www.www.ifes.org/rule_of_law/judicial_independance.pdf

Mexico – Judicial Training and Evaluation. In 1995, an important amendment in the Federal Constitution of Mexico created the Council of the Federal Judiciary to administer all federal courts. This new independent body subsequently formed the Federal Judicial Institute to regulate and monitor the formation, training and continuing education of federal judges and candidates for judgeships. It also regulates and monitors the development and strengthening of the federal judiciary. The reform of 1995 also created the Judicial Inspectorate, an independent institution whose role is to monitor and control judicial performance and behavior. It accomplishes this objective primarily through ordinary and extraordinary visits to the federal courts. Some believe that this reform represents an important step towards the promotion of more transparency and accountability within the Mexican Judiciary.[43]

Education, continuing training and periodic evaluations should all be elements taken into account in decisions to promote or transfer judges. The judicial promotion process, not unlike the selection and disciplinary processes, should be transparent, objective and participatory, as suggested under IFES Judicial Integrity Principle #10.

2.4.3.3 Transparent and Objective Disciplinary Process

Under IFES Judicial Integrity Principle # 11, the judicial disciplinary process must be objective, transparent, fair and effective. In order to guarantee a high degree of integrity and impartiality, the objectivity and transparency of judicial career processes must necessarily extend to the disciplinary process. Judges should be disciplined according to transparent, merit-based processes which rely on clear objective and subjective criteria. At the same time, it is also important that disciplinary actions be clearly defined and fairly implemented respectful of the due process rights of judges.

Transparent and objective processes that include broad participation from civil society and the legal community play an important role in guaranteeing that judges are sanctioned appropriately. Participatory disciplinary processes should therefore include well defined roles for the judicial hierarchy, the judicial council, judges' associations and bar associations.

USA – Judicial Councils and Discipline. According to the Constitution of the United States, a federal judge may be impeached only by the US House of the Representatives for "treason, bribery or other crimes and misdemeanors." This is the sole and seldom used method of removal of federal judges. However, there is a more effective disciplinary mechanism for less serious misconduct, which has both formal and informal features. In 1939, the United States Congress created the Judicial Councils of the Circuits, decentralized administrative structures that exist in the 11 circuits throughout the country and in the District of Columbia circuit. A Judicial Council consists of an equal number of trial and appellate judges and is chaired by the relevant circuit chief judge. Initially, Judicial Councils also had the power to formally investigate judges. However, because Judicial Councils rarely disciplined judges, Congress revised the system of judicial accountability. Under the new system, the circuit chief judges now have the power to screen frivolous or irrelevant complaints and take informal action. If the complaint is not frivolous, the chief judge appoints a committee of circuit and district judges to investigate and report to the Circuit Council.

Under the US Judicial Code of Conduct[44], judicial misconduct is found where a judge "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the court, or that such a judge or magistrate is unable to discharge all the duties of office by reason of mental or physical disability." If the Judicial

43 See, FIX-FIERRO, Hector, *Judicial Reform and the Supreme Court of Mexico: the Trajectory of Three Years*. United States-Mexico Law Journal (United States), 6 U.S.-Mex. L.J. 1 (1998); and information on the website of the Council of the Federal Judiciary at http://www.cjf.gob.mx/organizacion/antecedentes.asp and http://www.cjf.gob.mx/visita/

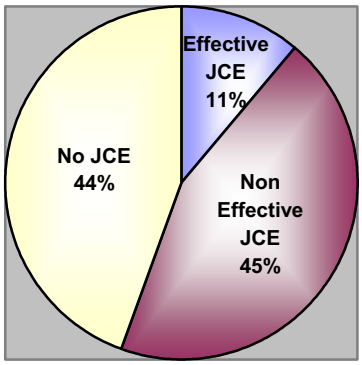
44 The US Judicial Code of Ethics is available on the Internet at http://wwwiit.edu/departments/csep/PublicWWW/codes/coe/judicial-coc.html

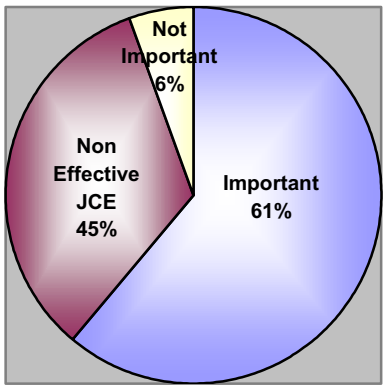
Council finds that the judge's misconduct rises to the level of an impeachable offense, it may submit the factual report to the Congress, which has the power of impeachment.[45]

2.4.3.4 Codes of Ethics and Conflict of Interest Rules

> Lesson Learned #11: Judges must not only be independent, they must also be accountable and meet high standards of professional conduct and ethics.

Existence and Effectiveness of the Judicial Code of Ethics (left) and Importance of a Judicial Code of Ethics in the Promotion of Judicial Independence (right) in Five Central American Countries (IFES Analysis, Honduras Conference – April 2002)





Under IFES Judicial Integrity Principle # 15, judges must be held to high standards of professional conduct and clear rules of judicial ethics must be adopted, implemented and enforced. While many transition and developing countries have adopted codes of ethics as part of a judicial reform process, these codes remain largely ineffective because they are not enforced or because the sanctions are too weak.

Codes of ethics can also play an important dual role in determining what constitutes acceptable and unacceptable conduct and in improving public perception of the judiciary.[46] However, these codes can only impact behavior and public opinion when the judges and the public have open access to information concerning the ethical regime and the disciplinary process. Ethical rules and personal restrictions on conduct and activities acceptable for ordinary citizens are necessary to protect judicial independence and impartiality and should be embraced and voluntarily accepted by judges. They should also be designed to include effective conflict of interest rules which warrant restrictions on the activities undertaken and the interests retained by judges and members of their immediate families.

2.4.3.5 Asset and Income Disclosure Rules

Asset and income disclosure for judges is increasingly recognized as an important component of an adequate ethical and anticorruption judicial framework. IFES Judicial Integrity Principle # 14 incorporates this principle.

---

45 See, WALLACE, Judge J. Clifford, *Resolving Judicial Corruption While Preserving Independence; Comparative Perspectives*, 28 Cal. W. J. Nt'l L. J. 341 (1998)

46 IFES/USAID, Guidance for Promoting Judicial Independence and Impartiality, USAID Technical Publication, 2001 http://www.ifes.org_rule_of_law/judicial_independance.pdf : "Many countries have adopted codes of ethics as part of a judicial reform process. Codes of ethics are valuable to the extent that they stimulate discussion and understanding among judges, as well as the general public, on what constitutes acceptable and unacceptable conduct. They may also inspire public confidence that concrete

In the fight against corruption, financial transparency is particularly important. This obligation was initially directed primarily to elected officials, such as legislators, and to appointed officials, as well as high-level officials in the executive branch. More recently, the disclosure of assets and income sources of judges has become an issue in many countries around the world.

IFES Rule of Law Tool – Asset and Income Disclosure Laws and Policies for Judicial Officials

There are several key issues and emerging best practices related to the adoption and implementation of income and assets disclosure laws and policies:

(i) Assets to be disclosed: for thorough compliance with the principle, the disclosure of assets should be broad, including any real property, intangible, rights, non-material assets, all kinds of income, participation in corporations or other kind of business and any other type of property that may have an economic value.

(ii) Persons who must disclose: judges should disclose not only their own property but also that of their spouses and minor children.

(iii) Identification of the property: all the property and income disclosed must be presented in a format which clearly shows how they can be identified.

(iv) Time of disclosure: the disclosure should be done before assuming the office, when finishing the term and annually, while in the position.

(v) Accessibility of the information: the basic information should be easily accessible and the person requesting the information should not generally be investigated for requesting it.

(vi) Collecting entity: the entity collecting the disclosure of assets should have a clear procedure for collecting, systematizing and disclosing the information and this entity should have a determined degree of autonomy and not be completely dependent only on the judges who are obligated to disclose their assets.

(vii) Sanctions for non compliance: a clear system of sanctions should be established for those judicial officers who do not present the information in a timely manner.

(viii) Sanctions for illegal enrichment: judicial councils or designated judicial officers should implement a systematic follow up of the information related to judges' income and assets, and report those cases suspicious of illegal enrichment to relevant officials in the criminal justice system.

(ix) Privacy and security concerns.

The Inter-American Convention against Corruption mandates income and asset disclosure. The Convention is explicitly binding on high-level officials in all three branches of government in the Americas. Under the follow-up mechanism to the Convention, signatory States are legally obligated to report on all measures taken to comply with the mandatory disclosure of income and assets for public officials, including judges. However, country reports show a very low level of compliance.[47]

Argentina – Judicial Asset and Income Disclosure. Even though Argentina has a Public Ethics law[48] that requires all high-level public officials to disclose assets, official filings clearly show that the judiciary is not in compliance. The leadership of the Argentine judiciary declared that this law was not applicable to the judiciary.[49] Consequently, judges only have to disclose their income and assets to the Supreme Court which has complete discretion as to whether to make this information available to the public or press. The spirit and the letter of the law, as well as the public and judicial interest in promoting trust in the judiciary, clearly point to the need for full judicial disclosure, regardless of the separation of powers position taken by the Argentine judiciary. Whether

47 For more information on the follow-up mechanism to the Inter-American Convention against Corruption, see the website of the Organization of American States, http://www.oas.org. Country reports are available on this website.

48 Argentina, Law 25-188

49 Under political pressure from the newly elected President, the Chief Justice of the Argentine Supreme Court recently announced his resignation. It remains to be seen whether the new Chief Justice and the judiciary at large will fulfill their responsibility to disclose their income and assets to the public as the Convention requires.

the obligation is promulgated by law or by rules of the court itself, treaty obligations under the Inter-American Convention against Corruption mandate that judges disclose their income and assets to the public.

The table below is based on the replies countries made to the questionnaire provided by the Inter-American Convention against Corruption follow-up Committee and on IFES' own independent research. There appear to be some common issues and trends in the Americas:

- **(i)** Most countries reported the existence of a law imposing mandatory disclosure of assets for public officials;
- **(ii)** The inclusion of judges in these laws is still being debated in some countries;
- **(iii)** Public access to information on disclosed incomes and assets is problematic in most countries;
- **(iv)** In those countries where public access to this information is restricted (the majority of them), it is difficult to assess whether the law is being effectively enforced;
- **(v)** There is increasing interest in improving the reporting systems throughout the Americas; and
- **(vi)** Many of the laws examined appear to be very unclear with respect to several of their provisions, such as exactly which kinds of incomes and assets should be disclosed, how to access the information and whether sanctions are sufficient or enforced.

IFES Rule of Law Tool – Public Financial and Asset Disclosure Laws in Selected Latin American Countries ("Yes" answers are highlighted in dark and "No" answers in light) [50]

	Existing law?	Are judges bound?	Who must disclose?	What should be disclosed?	Sanctions for non compliance?	Accessible information?	Enforcement of the law in practice?
Argentina	YES	YES	Judges, spouse, minor children, public officials	Assets, income	YES	NO	NO (enforced for public officials but not for judges)
Bolivia	YES	YES	Public servants, judges	Assets, income	YES	YES (but poor quality)	NO
Brazil	YES	YES	Judges, dependents, public officials	Assets	YES	NO	NO
Canada	YES	YES	Public officials, spouses, dependents	Assets, investments, past and present debts, outside activities, gifts, benefits	YES	YES (Public Registry)	YES
Colombia	YES	YES	Public officials	Assets, income, accounts, other benefits	NO	NO	NO
Dominican Republic	YES	YES	Elected officials, judges, Attorney General and staff	Assets, income, liabilities	YES	NO	NO
Ecuador	YES	YES	Public officials, elected officials judges, law enforcement officials	Assets, income, other benefits	YES	NO	NO
Jamaica	YES	YES	Public officials above a certain salary	Income, assets, benefits, gifts	UNCLEAR	NO	NO
Mexico	YES	YES	Elected officials, judges, spouses, concubines, minor children	Assets, income, liabilities, investments, bank accounts	YES	NO (explicit consent from the official is required)	NO
Nicaragua	YES	YES	Public officials, spouses, children	Assets, income, other benefits	YES	NO	NO
Panama	YES	YES	Supreme Court justices, judges, Attorney General	Assets, income, bank accounts, shares, goods	YES	NO	NO
Paraguay	YES	YES	Public officials, government staff	Assets, income	YES	NO	NO
Peru	YES	YES	Elected officials, judges, members of the Const. Tribunal, Judicial Council, Electoral Council	Assets, income, bank accounts, savings, investments, other benefits	YES	NO (information accessible for public officials but not for judges)	NO (enforced for public officials but not for judges)
Uruguay	YES	YES	Public officials, spouses, children	Assets, income, other benefits	YES	NO	NO (enforced for public officials but not for judges)
USA	YES	YES	All federal public officials from the three branches of government	Assets, income, investments, interests, gifts	YES	YES (but poor quality)	YES

50 This table is a work in process that IFES is currently refining. For example, IFES is undertaking research and analysis to complement the 5th column "sanctions for non compliance" with information on the sufficiency of sanctions, which requires an analysis of the laws and some degree of subjective interpretation.

3 A Strategic Agenda for the Next Generation of Reforms in Latin America and the Caribbean

Proposed strategy. The next generation of reforms should follow a holistic, short-term and long-term judicial reform strategy focusing on programs that promote transparency designed to enhance public trust in the judiciary and the implementation and enforcement of the law. Achieving these objectives will require empowering reformers and the public with the information needed to monitor and report on the implementation of high-priority crosscutting reforms. Strategies and programs designed to promote access to information and transparency will simultaneously foster more public trust, more judicial independence and more accountability. The collection, analysis and dissemination of strategic information can be accomplished best through a participatory, coalition-building, methodological monitoring and reporting framework that incorporates best practices, constitutional and international obligations and high ethical judicial norms.

Towards that end, IFES has developed and proposes a global framework that can be prioritized on a country-by-country basis. This framework targets laws and policies geared towards simultaneously promoting transparency, accountability and informed public debate. It serves as the centerpiece of IFES' Rule of Law Toolkit.

Proposed priority reforms. Emerging challenges for the next generation of judicial reforms designed to promote public trust in the judiciary include:

- **(i)** Clarifying and implementing international and regional obligations;
- **(ii)** Systematizing a monitoring and reporting process related to progress on implementing key judicial reforms;
- **(iii)** Enhancing the openness and transparency of judicial processes, including those related to judicial councils, to improve both access to justice and the efficiency, fairness and integrity of the judicial system;
- **(iv)** Promoting public participation in transparent judicial nomination, selection, appointment, promotion and disciplinary processes;
- **(v)** Building public trust through the adoption and implementation of an access to judicial information act or judicial policy;
- **(vi)** Promoting and strategically balancing judicial independence and judicial accountability within an institutional framework grounded in the principle of checks and balances;
- **(vii)** Supporting participatory, consensus-building and transparent processes that promote political will and commitment, particularly from the perspective of the users of the systems and reformers within judges' and legal associations;
- **(viii)** Clarifying the role of the judge, the relevant entities and the parties in the judicial decision-making and enforcement process;
- **(ix)** Improving the capacity of judiciaries to generate and collect data and to present uniform standardized statistics and analytical information easily accessible to and understandable by the public; and
- **(x)** Reforming the composition, functions and role of Judicial Councils to enhance the transparency, accountability, institutional oversight and quality of the overall judicial system.

Key recommendation – A State of the Judiciary Report for the Americas. In order to increase access to quality information concerning the judiciary, IFES proposes a regional monitoring and reporting framework initiative for the Americas. This initiative would result in the production of country State of the Judiciary reports on an annual basis. They should include comparative data and analyses on a range of common high-priority issues that promote the actual implementation of targeted reforms and public trust.

The short-term and medium-term strategy for implementing the State of the Judiciary Report would incorporate the following overarching goals:

(i) Promoting a reform prioritization process and standardized indicators for monitoring the implementation of high-priority judicial reforms;

(ii) Promoting a participatory monitoring and reporting process that includes a broad range of stakeholders, such as judges' and bar associations, representatives from the legislative and executive branches, business associations, advocacy groups and the public; and

(iii) Developing a State of the Judiciary Report designed for wide public review and debate.

Monitoring mechanisms in the Americas. The monitoring and reporting system could be achieved through one or more mechanisms, including:

(i) Developing a Judicial Independence Protocol for the Americas – similar to the existing Beijing Principles for Asia or the Beirut Declaration for the Arab world[51] – which would enshrine regional judicial independence principles, prioritize issues, and incorporate a systemized reporting framework to effectively monitor reform progress;

(ii) Making judicial independence a focal point under either the Inter-American human rights framework or the Inter-American Anticorruption framework (notably by suggesting the official adoption of a standardized Inter-American Commission monitoring framework that incorporates the key principles included in the **State of the Judiciary Report** framework proposed by IFES); and

(iii) Monitoring and reporting regularly to the public on compliance with judicial independence standards.

Between now and the time an official monitoring and reporting framework is adopted, IFES strongly recommends that States and courts throughout the Americas adopt a voluntary monitoring and reporting framework. Donors and agencies like the Inter-American Development Bank, the World Bank and the United States Agency for International Development, alongside civil society groups such as Transparency International and human rights and business groups, could encourage, participate and support this process. The strategic framework to accomplish this important task now exists. We need only muster the will to implement it.

4 Annexes and Selected Rule of Law Tools Designed to Promote Targeted Reforms

For any additional information, please contact Violaine Autheman or Sandra Elena at IFES, by e-mail at vautheman@ifes.org or selena@ifes.org or by phone at (202) 828 8507.

51 For a reference to the Beijing Principles or the Beirut Declaration, see Annex I.

ANNEX I: QUITO RULES

IFES RULE OF LAW TOOL KIT
THE QUITO RULES: LESSONS LEARNED IN JUDICIAL REFORM*

Inter-American Development Bank Regional Conference

1. **POLITICS** – Judicial independence and accountability reforms are fundamentally political and crosscutting. They must therefore be politically realistic and consensus based.

2. **HOLISTIC APPROACH**: Judicial independence and accountability reform processes should be strategic, transparent and participatory. They should also be integrated into broader reform goals, policies and programs that are implementation oriented. Finally, they should emphasize the fair and effective implementation and enforcement of laws and court judgments.

3. **TOP-DOWN – BOTTOM-UP PROGRAMMING**: The sustainability and success of judicial independence and accountability reforms requires building civil society coalitions, judicial commitment and political will at the national and local levels.

4. **ACCESS TO JUSTICE**: Judicial reforms – whether focused on efficiency, the legal or cultural enabling environment, independence or accountability –are inextricably linked and should be balanced, prioritized and oriented towards ensuring that citizens representing all walks of life have fair and effective access to a legal system that will protect their contract and personal rights and resolve their disputes.

5. **RESEARCH AND RELIABLE DATA**: The success and impact of fundamental judicial reform depends in large part on the availability of qualitative research and reliable data; it should be geared towards understanding how the justice system actually works and costs in practice, particularly with respect to those who are often disenfranchised, such as small and medium businesses, women, minorities, the disabled and indigenous peoples.

6. **REGIONAL AND GLOBAL BEST PRACTICES**: After over a decade of judicial reform, it is clear that many countries are confronting similar problems with regard to implementing judicial reforms. There is therefore a clear need to share experiences, both within the Americas and with other regions, in order to identify model programs, best practices and lessons learned.

7. **JUDICIAL CORRUPTION**: Judicial corruption is perceived by many key stakeholders as the highest barrier to judicial reform and is the main reason why they do not trust the judiciary. Addressing judicial corruption must therefore be among a country's highest priorities and it must be integrated into all key aspects of judicial and legal reform programming.

8. **TRANSPARENCY REFORMS**: Targeted reforms that promote transparency within the judicial system are of the highest priority since they simultaneously promote independence, efficiency, accountability and public trust.

9. **PUBLIC TRUST AND ACCESS TO INFORMATION**: Without public trust none of the judicial reforms that have been passed or partially implemented can be fully and fairly achieved. Adequate access to information, notably through the implementation of public and judicial access to information policies, will contribute to convincing citizens to use and trust the judicial

system to protect their rights and resolve their disputes.

10. **MONITORING AND REPORTING**: Standardized but country prioritized official and unofficial strategic monitoring and reporting mechanisms must be developed in order to actually implement high priority reforms, measure progress, promote transparency and accountability and build public trust.

* These lessons were compiled by IFES based primarily upon the presentations made at the IDB's Third Conference on Justice and Development in Latin America and the Caribbean, "Principal Trends of the Last Decade and a View to the Future", held in Quito, Ecuador on July 24-26, 2003. These lessons were also inspired by a comprehensive review of the accessible lessons learned and best practice studies as well as IFES' own experience and research on judicial reform in Latin America and the Caribbean.

ANNEX II: JUDICIAL INDEPENDENCE STANDARDS AND PRINCIPLES *

GOVERNMENTAL INSTRUMENTS

United Nations

- *Universal Declaration of Human Rights*, 12/10/1948, United Nations, GA resolution 217A (III)
- *International Covenant on Civil and Political Rights*, 12/16/1966, United Nations, GA resolution 2200A (XXI), 21 UN GAOR Supp. (No.16) at 52, UN Doc. A/6316 (1966), 999 UNTS 171, entered into force on March 23, 1976
- *UN Basic Principles on the Independence of the Judiciary*, 7th UN Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, 08/26-09/06/1985, GA resolutions 40/32 of 11/29/1985 and 40/146 of 12/13/1985, UN GAOR, 40th Session, Supp. no.53, UN Doc. A/40/53 (1985)
- *UN Basic Principles on the Role of Lawyers*, 8th UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 08/27-09/07/1990
- *UN Guidelines on the Role of Prosecutors*, 8th UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 08/27-09/07/1990

Council of Europe

- *European Convention on the Protection of Human Rights and Fundamental Freedoms*, 11/04/1950, Council of Europe, European Treaty Series no.5
- *Recommendation no.R(94)12 of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges*, 10/13/1993, 518th Meeting of the Ministers' Deputies, Council of Europe
- *European Charter on the Status of Judges*, 07/08-10/1998, Council of Europe

Organization of American States

- *American Declaration of the Rights and Duties of Man*, 1948, OAS res. XXX, Ninth International Conference of American States, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992)
- *Inter-American Convention on Human Rights*, 11/22/1969, OAS Treaty Series No.36, 1144 UNTS 123, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), entered into force on July 18, 1978

Organization of African Unity

- *African Charter on Human and People's Rights*, 06/27/1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force on October 21, 1986

NON-GOVERNMENTAL AND INTER-JUDICIAL INSTRUMENTS

Judges' Associations and Bar Associations

- *Code of Minimum Standards of Judicial Independence, "New Delhi Standards"*, New Delhi, India, 1982
- *Judges' Charter in Europe*, 03/20/1993, European Association of Judges
- *Universal Charter of the Judge*, 11/17/1999, General Council of the International Association of Judges
- *The Bangalore Principles of Judicial Conduct*, adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Roundtable Meeting of Chief Justices held at the Peace Palace, The Hague, the Netherlands, 11/25-26/2002

International Commission of Jurists

- *Draft Principles on the Independence of the Judiciary, "Syracuse Principles"*, 1981 (in collaboration with the International Association of Penal Law)

1st World Conference on the Independence of Justice

- *Montreal Universal Declaration on the Independence of Justice*, 1983

LAWASIA Human Rights Standing Committee

- *Independence of the Judiciary in the LAWASIA Region: Principles and Conclusion, "Tokyo Principles"*, Tokyo, Japan, 1982

Inter-Judicial Conferences

- *Statement of Principles of the Independence of the Judiciary in the LAWASIA Region, "Beijing Principles"*, 1995, 6th Conference of Chief Justices of Asia and the Pacific Region
- *Caracas Declaration*, 03/04-06/1998, Ibero-American Summit of Presidents of Supreme Justice Tribunals and Courts, Caracas, Venezuela
- *Recommendations of the First Arab Conference on Justice, "Beirut Declaration"*, 06/14-16/1999, Conference on "The Judiciary in the Arab Region and the Challenges of the 21st Century", Beirut, Lebanon

IFES Judicial Independence Conferences

- *Agreement of the Three Branches of Government of Honduras to Strengthen Judicial Independence and Impartiality*, 04/10/2002, Regional Conference on "Promoting Judicial Independence and Impartiality", Tegucigalpa, Honduras
- *Blantyre Rule of Law/Separation of Powers Communiqué*, 01/31/2003, IFES Rule of Law/Separation of Powers Conference, Blantyre, Malawi
- *Cairo Declaration on Judicial Independence,* 02/24/2003, The Second Arab Justice Conference "Supporting and Advancing Judicial Independence", Cairo, Egypt

* An IFES Occasional Paper analyzing these conventions, standards and guidelines, as well as relevant case law of international and regional courts and commissions is available at IFES upon request. (Committing to Change: Declarations from the IFES Judicial Independence Conferences).

ANNEX III: IFES RULE OF LAW TOOLKIT

1. IFES Report and Articles

- Judicial Independence Guide
- Enforcement of Court Judgments
- Legal Barriers to Small Business Development
- Model Framework for a State of the Judiciary Report

2. IFES Rule of Law Checklists:

- Transparency Principles
- Accountability Principles
- Enabling Environment Principles
- Key Obstacles to Judicial Independence
- Anti-Discrimination Issues
- Barriers to Enforcement
- Judicial Independence Indicators

3. IFES White Papers:

- Conflict of Interest
- Income and Assets Disclosure
- Judicial Immunity
- Judicial Councils
- Enforcement Country Papers

4. Global Bibliographies:

- Lessons Learned
- Rule of Law Programs
- Web Resources – Judicial Independence, Rule of Law, Enforcement
- Global Enforcement Bibliography
- Legal and Judicial Reform and Small Business Bibliography

5. Other Background Information on Judicial Independence/Rule of Law

- International and Regional Standards – Judicial Independence, Criminal Justice
- Case Law from International and Regional Courts – Judicial Independence, Enforcement, Criminal Justice
- Human Rights and Anticorruption Obligations

6. Judicial Independence Data:

- Comparative Data from the Judicial Independence Guide
- Survey Results

7. IFES Projects/Reports: Executive Summaries:

- Rule of Law
- Judicial Independence
- Haiti Constituency Building Project
- Global Enforcement Project
- Legal Barriers to Small Business Development: Peru Case Study
- Criminal Justice Reform Strategies
- Rule of Law Toolkit Overview

8. Matrices:

- Judicial Independence Issues
- Enforcement against the State Issues
- Enforcement of Civil and Commercial Judgments Issues
- IFES Judicial Integrity Principles

9. Conferences/Surveys:

- Strategic Survey Instruments
- Models for Judicial Independence/Rule of Law Regional Conferences
- Conference Declarations (Cairo, Honduras and Malawi)

ANNEX IV: IFES RULE OF LAW TOOL: JUDICIAL INDEPENDENCE AND ACCOUNTABILITY BIBLIOGRAPHY

Selected Bibliography for Latin America and the Caribbean (Quito, Ecuador, July 2003)

JUDICIAL INDEPENDENCE

1- CARRILLO FLOREZ, Fernando. 1998. Supreme Courts of the Americas Organization: Judicial Independence and its Relationship with the Legislative Bodies. Saint Louis University Law Journal (United States), 42 St. Louis U.L.J. 1033

2- DE LA BASTIDE, Michael. 1999. The Judiciary of the Republic of Trinidad and Tobago – Judicial Independence. Address of the Hon. Chief Justice on the occasion of the opening of the 1999-2000 Law Term: Trinidad and Tobago. Available at http://www.ttlawcourts.org/annrep/cj_address/cj_speech_99-00.pdf

3- DE LA JARA BASOMBRIO, Ernesto. 2003. Poder Político y Administración de Justicia. In Cambios en el Sistema de Justicia: Entre la Expectativa y la Incertidumbre. Instituto de Defensa Legal: Lima, Perú.

4- KNOX, Michael. 2001. Continuing Reform of the Costa Rican Judiciary. 32 California Western International Law Journal.

5- IFES/USAID. 2001. Guidance for Promoting Judicial Independence and Impartiality. USAID Technical Publication: Washington, DC. Available on the IFES website at http://www.ifes.org//rule_of_law/judicial_independence.pdf

6- INTERNATIONAL COMMISSION OF JURISTS. 1988. The Independence of Judges and Lawyers in the Commonwealth Caribbean: Report of a Seminar held in Tobago from 12 to 13 September 1988. Center for the Independence of Judges and Lawyers, International Commission of Jurists: Geneva, Switzerland. Available on the ICJ website at http://www.icj.org/publi.php3?lang=en&id_article=1556

7- OPEN SOCIETY INSTITUTE. 2000. Monitoring the EU Accession Process: Judicial Independence. EU Accession Monitoring Program. OSI: Budapest, Hungary. Available at http://www.eumap.org/

8- POPKIN, Margaret. 2002. Efforts to Enhance Judicial Independence in Latin America: a Comparative Perspective. Due Process of Law Foundation. First published in Guidance for Promoting Judicial Independence and Impartiality. USAID Technical Publication: Washington, DC. Available on the DPLF website at http://www.dplf.org/frameset_pub_span.htm

9- SALAS VILLALOBOS, Sergio. 2001. Justicia Democrática: Bases de Política Institucional para la Consolidación del Poder Judicial [Democratic Justice: Institutional Policies for the Strengthening of the Judiciary]. Instituto de Defensa Legal: Lima, Perú.

10- SCHOR, Miguel. 2003. The Rule of Law and Democratic Consolidation in Latin America. Available at http://darwing.uoregon.edu/~caguirre/schorpr.html

11- SOLANO, Luis Fernando. 2003. Judicial Independence in Latin America. Presented at the Second Arab

Justice Conference (2003): Cairo, Egypt. Available at IFES.

12- VARGAS VIANCOS, Juan Enrique. 2001. Independencia versus Control del Poder Judicial [Judicial Independence versus the Control of the Judiciary]. Presented at the International Expert Conference on Democratic Transition and Consolidation (2001): Madrid, Spain. Available on the JSCA website at http://www.cejamericas.org/documentos/ind_control.pdf

ACCESS TO JUSTICE

1- ABREGU, Martin. 2001. Barricades or Obstacles, the Challenge to Access to Justice in Comprehensive Legal and Judicial Reform. Edited by Rudolf V. Van Puymbroeck. The World Bank: Washington, DC.

2- CORREA SUTIL, Jorge. 1999. Latin America: Good News for the Underprivileged? In The Rule of Law and the Underprivileged in Latin America. Edited by Juan E. Mendez, Guillermo O'Donnell and Paulo Sérgio Pinheiro. University of Notre Dame Press: Notre Dame, IN.

3- GARRO, Alejandro M. 1999. Access to Justice for the Poor in Latin America. In The Rule of Law and the Underprivileged in Latin America. Edited by Juan E. Mendez, Guillermo O'Donnell and Paulo Sérgio Pinheiro. University of Notre Dame Press: Notre Dame, IN.

4- HENDERSON, Keith and Alvaro Herrero. 2003. The Cost of Resolving Small-Business Conflicts: The Case of Peru. IFES/Inter-American Development Bank: Washington, DC. Available at IFES.

5- LEMGRUBER, Julita. 1999. A Regional Report, Latin America: New Models of Accessible Justice and Penal Reform in Latin America. International Penal Reform Conference: Egham, UK. Available at http://www.penalreform.org/english/models_amlat.htm

6- SINGH, Wendy. 1999. A Regional Report, Latin America: New Models of Accessible Justice and Penal Reform in the Caribbean. International Penal Reform Conference: Egham, UK. Available at http://www.penalreform.org/english/models_carib.htm

JUDICIAL ACCOUNTABILITY

1- BEHN, Robert. 2001. Rethinking Democratic Accountability. Brookings Institution Press: Washington, DC.

2- PEREZ PERDOMO, Rogelio. 2001. Independence and Accountability, Issues of Power and Control in Comprehensive Legal and Judicial Development. The World Bank: Washington, DC.

3- PRZEWORSKI, Adam (Editor). 1999. Democracy, Accountability and Representation. Cambridge University Press: Cambridge, UK.

4- SADEK, María Teresa and Rosangela Batista Cavalcanti. 2000. The Public Prosecution and the Efficacy of Accountability Mechanisms. The Helen Kellogg Institute for International Studies, Notre Dame University: Notre Dame, IN.

5- SCHEDLER Andreas, Larry Diamond and Marc Plattner (Editors). 1999. The Self-Restraining State: Power and Accountability in New Democracies. Lynne Rienner Publishers: Boulder, CO.

6- SMULOVITZ, Catalina and Enrique Peruzotti. 2000. Societal and Horizontal Controls: Two Cases about Fruitful Relationship. The Helen Kellogg Institute for International Studies, University of Notre Dame: Notre Dame, IN.

7- SPIGELMAN, J. 2001. Judicial Accountability and Performance Indicators. Presented at 1701 Conference: The 300th Anniversary of the Act of Settlement: Vancouver, BC. Available at http://www.agd.nsw.gov.au/sc%5Csc.nsf/pages/spigelman_canada

8- SPOERER, Sergio. 2002. Political and Judicial Accountability Failures to the Poor in Latin America. United Nations Development Program. Occasional Paper. Background Paper for HDR.

JUDICIAL REFORM

1- BARTON, Brent, 2001. Judicial Reform in Latin America. Stanford University. Available at http://www.ruf.rice.edu/~poli/NewsandEvents/UGRC2002/barton.pdf

2- BIEBESHEIMER, Christina and Mark Payne. 2001. IDB Experience in Justice Reform. The Inter-American Development Bank: Washington, DC. Available on the IDB website at http://www.iadb.org/sds/doc/sgc-IDBExperiences-E.pdf

3- CAROTHERS, Thomas. 1999. Aiding Democracy Abroad. Carnegie Endowment for International Peace, Brookings Institution Press: Washington, DC.

4- CHODOSH, Hiram E. 2002. Reforming Judicial Reform Inspired by U.S. Models. 52 DePaul Law Review 352-381.

5- DAKOLIAS, Maria. 2003. Legal and Judicial Reform, Observations, Experiences and Approach of the Legal Vice Presidency. Prepared by the Legal Vice Presidency's Law and Justice Group. The World Bank: Washington, DC. Available on the World Bank website at http://www4.worldbank.org/legal/publications/ljrobservations-final.pdf

6- DIETRICH, Mark K. 2000. Legal and Judicial Reform in Central Europe and the Former Soviet Union: Voices from Five Countries. The World Bank: Washington, DC. Available on the World Bank website at http://www4.worldbank.org/legal/publications/LJR_ECA.pdf

7- FIELD MARTHA A. and William W. Fisher III. 2001. Legal Reform in Central America. John F. Kennedy School of Government, Harvard University. Harvard University Press: Cambridge, MA.

8- FIX-FIERRO, Hector. 1998. Judicial Reform and the Supreme Court of Mexico: the Trajectory of Three Years. United States-Mexico Law Journal (United States), 6 U.S.-Mex. L.J. 1

9- HAMMERGREN, Linn. 1998. Fifteen Years of Judicial Reform in Latin America: Where We Are and Why We Haven't Made More Progress. USAID: Washington, DC. Available at http://darkwing.uoregon.edu/~caguirre/hammergren.html

10- HAMMERGREN, Linn. 2001. Enhancing Cooperation in Judicial Reform: Lessons from Latin America. The World Bank: Washington, DC. Available on the World Bank website at http://www4.worldbank.org/legal/ljr_01/doc/Hammergren.pdf

11- HAMMERGREN, Linn. 2002. Assessments, Monitoring, Evaluation, and Research: Improving the Knowledge Base for Judicial Reform Programs. POGAR News and Activities - Rule of Law. Conference on Judicial Administration Modernization in the Arab States: Marrakech, Morocco. Available at http://www.pogar.org/activities/mconf

12- HAMMERGREN, Linn. 2003. Use of Empirical Research in Refocusing Judicial Reforms: Lessons from Five Countries. The World Bank: Washington, DC. Available on the World Bank website at http://www1.worldbank.org/publicsector/legal/UsesOfER.pdf

13- HENSLER, Deborah. 2001. The Contribution of Judicial Reform to the Rule of Law. CIDE/The World Bank: Washington, DC. Available on the World Bank website at http://www1.worldbank.org/publicsector/legal/Henslerspeech.doc

14- KNOX, Michael. 2001. Continuing Reform of the Costa Rican Judiciary. 32 California Western International Law Journal

15- NAGLE, Luz Estela. 2000. The Cinderella of Government: Judicial Reform in Latin America. 30 California Western International Law Journal

16- PRILLAMAN, William C. 2000. The Judiciary and Democratic Decay in Latin America. Praeger Publishers: Westport, CT.

17- RAWLINS, Hugh A. 1997. Constitutional Reform in Barbados: Strengthening the Judiciary. University of the West Indies, Faculty of Law: Cave Hill, Barbados.

18- ROSENN, Keith S. 1998. Judicial Reform in Brazil. NAFTA: Law & Business Review of the Americas (United States), 4 NAFTA: L. & Bus. Rev. Am. 19

19- ROWAT, Malcolm D, Waleed H. Malik and Maria Dakolias. 1995. Judicial Reform in Latin America and the Caribbean. Technical Note 280. The World Bank: Washington, DC.

20- SAEZ GARCIA, Felipe. 1999. The Nature of Judicial Reform in Latin America and Some Strategic Considerations. American University International Law Review (United States), 13 Am. U. Int'l L. Rev. 1267

21- SALAS VILLALOBOS, Luis. 2001. From Law and Development to Rule of Law: New and Old Issues in Justice Reform in Latin America. In Rule of Law in Latin America: The International Promotion of Judicial Reform. Edited by Pilar Domingo and Rachel Sieder. Institute of Latin America Studies, University of London: London, UK.

22- THE WORLD BANK LEGAL VICE PRESIDENCY. 2002. Initiatives in Legal and Judicial Reform. The World Bank: Washington, DC. Available on the World Bank website at http://www4.worldbank.org/legal/publications/initiatives-final.pdf

23- THE WORLD BANK LEGAL VICE PRESIDENCY. 2002. Argentina: Evaluación del Sector Jurídico y Judicial [Argentina: Legal and Judicial Sector Assessment]. The World Bank: Washington, DC. Available on the World Bank website at http://www4.worldbank.org/legal/leglr/index.html

24- THOME, Joseph. 1998. Searching for Democracy: The Rule of Law and the Process of Legal Reform in Latin America. University of Wisconsin Law School: Madison, WI. Available at http://www.uoregon.edu/~caguirre/thome.html

25- WILLIAM, Charles, Carl Baar and Robert Hann. 1999. Judicial reform in the Caribbean. Inter-American Development Bank: Washington, DC.

JUDICIAL COUNCILS

1- HAMMERGREN, Linn. 2002. Do Judicial Councils Further Judicial Reform? Rule of Law Series, Democracy and Rule of Law Project No.28. Carnegie Endowment for International Peace: Washington, DC.

2- IFES, 2004. Global Best Practivces: Judicial Councils - Lessons Learned from Europe and Latin America - IFES: Washington, DC. Available at IFES

3- MARTINEZ NEIRA, Nestor Humberto. 1996. Judicial Councils in Latin America Annotations on Judicial Self-Government. Inter-American Development Bank: Washington, DC.

4- PEREZ TORT, Maria Julia. 2002. Iniciativa de la Sociedad Civil para la Transparencia del Consejo de la Magistratura – Programa Ciudadanos por la Justicia (Argentina) [Initiative of Civil Society for Transparency in the Judicial Council – Citizens for Justice Program (Argentina)]. Due Process of Law Foundation: Washington, DC. Available on the DPLF website at http://www.dplf.org/frameset_pub_span.htm

5- PEREZ TORT, Maria Julia, Verónica D'Adamo and Carolina Musri. Monitoreo Cívico del Consejo de la Magistratura [Civic Monitoring of the Judicial Council]. Poder Ciudadano: Buenos Aires, Argentina. Available on the DPLF website at http://www.dplf.org/frameset_pub_span.htm

JUDICIAL SELECTION

1- SALCEDO, Carlos. 2002. La Transparencia en la Selección de los Jueces de la Suprema Corte de Justicia en la República Dominicana [Transparency in the Selection of Supreme Court Justices in the Dominican Republic]. Due Process of Law Foundation: Washington, DC. Available on the DPLF website at http://www.dplf.org/frameset_pub_span.htm

2- MULLER, Katherine. 2003. Informe de Consultoría de la Asistencia Técnica en el Tema de las Entrevistas para la Evaluación de Jueces y Fiscales [Technical Assistance Consulting Report on the Interviews for the Evaluation of Judges and Prosecutors]. IFES/USAID: Lima, Perú. Available at IFES.

JUDICIAL CORRUPTION

1- BUSCAGLIA, Edgardo and Maria Dakolias. 1999. An Analysis of the Causes of Corruption in the Judiciary. Law and Policy in International Business (United States), 30 Law & Pol'y Int'l Bus. 95

2- BUSCAGLIA, Edgardo. 2000. An Analysis of Judicial Corruption and its Causes: an Objective Governing-Based Approach. University of Virginia School of Law: Charlottesville, VA.

3- DAKOLIAS, Maria. 2000. Attacking Corruption in the Judiciary: A Critical Process in Judicial Reform. Wisconsin International Law Journal Spring 2000, 18 Wis. Int'l L.J. 353

4- HENDERSON, Keith. 1998. Corruption: What Can Be Done About It All? A Practioner's Perspective

through a Russian Lens. Demokratizatsiya. 6:4 (Fall), pp.681-691

5- HENDERSON, Keith. 1999. Glasnost II—an Unfinished Russian National Anthem with an Emerging Democratic Chorus: Russian and Global Corruption Is at a Critical Crossroads. Testimony before the Committee on International Relations, U.S. House of Representatives (7 October 1999): Washington, DC.

6- HENDERSON, Keith and Mila Georgieva. 2002. A Prevention Framework for Addressing Systemic Corruption within the Context of Donor-Supported Reform Programs in the Balkans: A Holistic, Pragmatic Approach to a Well-Known but Little Understood Phenomenon. Black Sea Legal Community: Bourgas, Bulgaria. 2002

7- HENDERSON, Keith. 2000. A Background Paper Reflecting on Ten Years of Legal Reforms in the Former Soviet Union and Central and Eastern Europe. Annual Meeting, The World Bank: Prague, Czech Republic. Available from the author.

8- OPEN SOCIETY INSTITUTE. 2002. Monitoring the EU Accession Process: Corruption and Anti-Corruption Policy. EU Accession Monitoring Program. OSI: Budapest, Hungary. Available at http://www.eumap.org/

9- WALLACE, Judge J. Clifford. 1998. Resolving Judicial Corruption while Preserving Independence, Comparative Perspectives. 28 Cal. W. J. Nt'l L. J. 341 (1998)

CIVIL SOCIETY

1- DAKOLIAS, Maria. 2001. Legal and Judicial Reform: The Role of the Civil Society in the Reform Process. In Rule of Law in Latin America: The International Promotion of Judicial Reform. Edited by Pilar Domingo and Rachel Sieder. Institute of Latin America Studies, University of London: London, UK.

2- IBARRA MORAN, Carmen. 2002. Ejercicios Ciudadanos contra la Impunidad y la Falta de Transparencia en la Administración de Justicia en Guatemala [Civic Exercises against Impunity and the Lack of Transparency in the Administration of Justice in Guatemala]. Due Process of Law Foundation: Washington, DC. Available on the DPLF website at http://www.dplf.org/frameset_pub_span.htm

3- PASARA, Luis. 2002. Cambios en el Sistema de Justicia y Sociedad Civil [Changes in the Justice System and Civil Society]. JSCA (CEJA): Santiago, Chile. Available on the JSCA website at http://www.cejamericas.org/proyectos/cambios_sistema.pdf

4- SALAS VILLALOBOS, Sergio. 2002. La Participación de la Sociedad Civil en el Diseño y el Control del Poder Judicial (Perú) [Civil Society Participation in the Design and Control of the Judicial Power (Peru)]. Due Process of Law Foundation: Washington, DC. Available on the DPLF website at http://www.dplf.org/frameset_pub_span.htm

COURT PERFORMANCE

1- BUSCAGLIA, Edgardo and Maria Dakolias. 1999. Comparative International Study of Court Performance Indicators. The World Bank: Washington, DC. Available on the World Bank website at http://www4.worldbank.org/legal/publications/CourtIndicators-72.pdf

2- BUSCAGLIA, Edgardo and Maria Dakolias. 1996. Judicial Reform in Latin American Courts: The Experience in Argentina and Ecuador. Technical Note No. 350. The World Bank: Washington, DC.

3- DAKOLIAS, Maria and Javier Said. 1999. Judicial Reform: A Process of Change through Pilot Courts. The World Bank: Washington, DC. Available on the World Bank website at http://www4.worldbank.org/legal/publications/JudicialReform-72.pdf

4- MARENSI, Inés. 2001. Un Nuevo Enfoque Pedagógico para la Capacitación Judicial en América Latina [A New Pedagogical Approach to Judicial Training in Latin America]. In: Sistemas Judiciales, Publicación Semestral del Centro de Estudios de Justicia de las Américas, CEJA Año 1 No 1. JSCA (CEJA): Santiago, Chile.

5- SAID, Javier and VARELA, David J. 2002. Colombia: Modernization of the Itagui Court System. A Management and Leadership Case Study. Legal Vice Presidency, The World Bank: Washington, DC. Available on the World Bank website at http://www4.worldbank.org/legal/publications/itagui-final.pdf

ENFORCEMENT OF COURT JUDGMENTS

1- EYZAGUIRRE, Hugo, Pierina Pollarollo and Raul Andrade. 2000. La Estructura de Incentivos y las Ineficiencias en Tres Procesos Civiles: Juicios por Títulos Ejecutivos Vencidos, Juicios por Alimentos y Ejecución Forzada de Bienes [The Structure of Incentives and the Inefficiencies in Three Civil Processes: Executive Trial, Alimony Trial and Compelled Enforcement on Movable and Immovable Property]. Instituto Apoyo: Lima, Peru. Available at IFES.

2- GARAVANO, German C. 2000. Los Usuarios del Sistema de Justicia en Argentina [The Users of the Judicial System in Argentina]. FORES: Buenos Aires, Argentina. Available at IFES.

3- HAMMERGREN, Linn, Laura Magaloni and Others. 2001. The Juicio Ejecutivo Mercantil in the Federal District Courts of Mexico: A Study of the Uses and Users of Justice and their Implications for Judicial Reform. Document of the World Bank Report 22635. CIDE: Mexico City, Mexico. Available at IFES.

4- HENDERSON, Keith, Peter Khan and Others. 2003. Barriers to the Enforcement of Court Judgments and the Rule of Law. IFES: Washington, DC. Available at IFES.

5- KENNETT, Wendy. 1999. Key Principles for a New System of Enforcement in the Civil Courts: A Peep over the Garden Wall. 18 Civil Justice Quarterly 311-342

6- KENNETT, Wendy. 2000. The Enforcement of Judgments in Europe. Oxford University Press: Oxford, UK.

7- KENNETT, Wendy. 2002. Regulation of Enforcement Agents in Europe: A Comparative Study. (Unpublished) Available at IFES.

JUDICIAL PROTECTION

1- GONZALES MORALES, Felipe. 2003. Informe Anual sobre Derechos Humanos en Chile 2003, Hechos de 2002 [Annual Report on Human Rights in Chile, 2002]. Facultad de Derecho, Universidad Diego Portales: Santiago, Chile.

2- MOTTA, Crisitina and Marcela Rodriguez. 2000. Mujer y Justicia: El Caso Argentino [Women and Justice: The Argentine Case]. Fondo de Apoyo Operativo de Género. The World Bank: Buenos Aires, Argentina.

3- RODRIGUEZ, Marcela. 2000. Empowering Women: An Assessment of Legal Aid under Ecuador's Judicial Reform Project. Legal Vice Presidency, The World Bank: Washington, DC. Available on the World Bank website at http://www4.worldbank.org/legal/publications/Empowering-Women-web.pdf

4- ZAFFARONI, Raúl Eugenio. 2002. Las Ideas Básicas en la Relación Defensa Pública-Estado de Derecho [Basic Issues in the Public Defense-Rule of Law Relationship]. In: Defensa Pública, Revista Latinoamericana de Política Criminal, Año 5 No.5.

ACCESS TO JUDICIAL INFORMATION

1- CONTESSE SINGH, Jorge. 2002. El Derecho de Acceso a la Información y el Sistema Jurídico Chileno [The Right to Access to Information and the Judicial System in Chile]. In Litigio y Políticas Públicas en Derechos Humanos. Cuadernos de Análisis Jurídico, No.14. Escuela de Derecho, Universidad Diego Portales: Santiago, Chile.

2- HENDERSON, Keith. 2000. A Background Paper on Open Government Laws and Policies in Central America. Prepared for the Organization of American States: Washington, DC. Available at IFES.

3- VAUGHN, Robert and Keith Henderson. 2003. A Model Whistleblower Law. Upcoming Publication in the George Washington University International Law Review.