

Judicial Transparency Checklist

Key Transparency Issues and Indicators to Promote
Judicial Independence and Accountability Reforms



By Keith Henderson, Violaine Autheman, Sandra Elena,
Luis Ramirez-Daza and Carlos Hinojosa

Judicial Transparency Checklist
IFES Rule of Law Tool #2.1

CONTENTS

Judicial Council	p.3
Judicial Career	p.5
Guarantee for Judges	p.6
Budgetary and Administrative Control	p.8
Judicial Ethics and Corruption	p.9
Access to Justice and Legal Information	p.11
Monitoring and Performance Evaluation	p.12
Freedom from Interference	p.12
Other Legal Profession, Civil Society and the Judiciary	p.13

For further information, please contact Violaine Autheman or Sandra Elena at IFES, by e-mail at yautheman@ifes.org or selena@ifes.org or by phone at (202) 885-2407.

IFES Judicial Transparency Checklist

IFES and USAID recently released a publication titled *Guidance for Promoting Judicial Independence and Impartiality (Guide)*. The *Guide* also highlights transparency reforms, which are among the most important components of judicial independence reform. Transparency reforms, if collectively and strategically undertaken, cut across many legal barriers. Increased transparency promotes public participation, open government, access to information, efficiency, higher quality decision-making, and accountability. Further, transparency reforms reduce the opportunity for corruption.

“The importance of transparency to judicial independence is highlighted in nearly every approach outlined in the guide. Sub-section D describes additional ways in which transparency can be increased. The courts’ organization and procedures, if transparent, can make interference in court operations more difficult. Good records management is essential, as is a mechanism to ensure that assignment of cases is party-neutral. Publishing judicial decisions can help to deter rulings based on considerations other than law and facts. Oral, adversarial, and public proceedings have increased transparency in criminal proceedings in many countries. Court monitoring by NGOs, academics, and the media can expose and deter abuses. Annual disclosure of judges’ assets and income can provide an impediment to bribery.”

Guidance for Promoting Judicial Independence and Impartiality, November 2001, USAID Technical Publication Series

The following checklist is intended to provide multiple constituencies, such as judges, reformers, civil society, researchers and donors, with many of the key indicators needed to assess, report and monitor the level of transparency of judiciaries and judicial processes, to develop concrete action plans, recommendations and programs and to develop strategies for coalition building around priority reforms. The Judicial Transparency Checklist contains many of the indicators developed for the Model State of the Judiciary Report, both of which incorporate international norms, lessons learned and emerging best practices.

JUDICIAL COUNCIL

I. Independent Judicial Council

- Is there a Judicial Council?
- If no, would the creation of a Judicial Council help strengthen judicial independence?
- If yes, has the Judicial Council helped strengthen judicial independence?
- Was the judicial council created by the Constitution? By law?
- Is the Judicial Council independent?

- Are there guarantees – constitutional, legal or other – of the independence of the Council?
- Does it have budgetary independence? Administrative independence?
- Is the internal management of the Council controlled by the Council itself?
- Are its decisions and resolutions public?
- Is it considered effective?
- Is it considered transparent?
- Is it controlled by the judiciary? The executive? Others?

II. Judicial Council's role

- Is it involved in the judicial selection process? In the judicial promotion process? At what level?
- If it is involved in the judicial selection process, does it have its own criteria?
- If it is involved in the judicial promotion process, does it have its own criteria?
- Is it involved in the budgetary decisions of the judiciary?
- Is it involved in the evaluation, training and discipline of judges?
- Is it involved in the administration of the court system?
- Is it involved in the administration of the judicial budget?
- Is it involved in the drafting and enforcement of judicial ethics?
- Does the Council have control over the Supreme Court [high-level judges]?
- Are Council decisions legally binding? Purely advisory?

III. Judicial Council's membership

- Are members representative of the various political and societal forces?
- Is there a dominant group of members? Is the total number of members and the number of members of each category sufficient to guarantee their independence?
- Are Council members appointed by their peers? By the executive? By the legislative branch? By the judiciary?
- Is this power clearly defined by law?
- Is the process to select members clearly defined?
- Are there clear selection criteria for Judicial Council members?
- Is civil society, particularly lawyers and law professors, participating in the council?
- Are lower-level judges included? High-level judges? Prosecutors? Members of the executive? Members of the legislative?
- Would a broader membership help strengthen the independence of the Judicial Council? Help strengthen judicial independence?

JUDICIAL CAREER

IV. Impartial judicial selection process

- Is the judicial selection process clearly defined by law?
- Are there clear judicial selection criteria?
- Is the judicial selection process politicized?
- Is it controlled by the executive?
- Is it controlled by the judicial hierarchy?
- Is it designed to ensure the responsiveness of the judiciary to those either formally or informally responsible for the appointment?
- Is it designed on the merits, for example an exam or the academic evaluation of candidates?
- Is the process open or reserved for those judges into the “career system”?
- Are the vacancies advertised?
- Are the candidates’ names and backgrounds publicized?
- Are the selection process and criteria publicized?
- Are the responsibilities for the process divided into two bodies, one that nominates and a second that selects and appoints?
- Is diversity taken account in judicial selection?

V. Impartial judicial promotion process

- Is the judicial promotion process clearly defined by law?
- Are there clear judicial promotion criteria?
- Is the judicial promotion process politicized?
- Is it controlled by the executive? By the judicial hierarchy? By an independent entity, such as a judicial council? By the legislative branch?
- Is it designed to ensure the responsiveness of the judiciary to those either formally or informally responsible for the promotion?
- Is the process open or reserved for those judges into the “career system”?
- Is there a fair evaluation process?
- Is the judiciary itself (high-level judges) in charge of the evaluations? If not, is an independent body, such as a Judicial Council, in charge of the evaluations?
- Is the evaluation done based on objective criteria?
- Are the indicators used to evaluate only quantitative?
- Is there some room for discretion in the evaluation process?
- Are promotions used to reward/punish judges considered as “too independent”?
- Are the judges to be evaluated involved in their own evaluations?
- Do judges have the possibility to appeal the results?
- Are there cases of bad evaluations leading to the removal of a judge?
- Do the judges have the right to refuse a promotion?

VI. Impartial judicial disciplinary process

- Is there a fair disciplinary process?
- Is the judicial disciplinary process clearly defined by law?
- Is the disciplinary process controlled by the judiciary? By an independent body? By a political body?
- Are punishable conducts clearly defined?
- Are there objective criteria to identify punishable conducts?
- Are these conducts established by law or resolution of the judiciary?
- Are the sanctions clearly defined?
- Are these sanctions established by law or resolution of the judiciary?
- Is the disciplinary mechanism the same for judges at all levels?
- Is the process open to the public?
- Are the responsibilities for the process divided into two bodies, one that accuses and a second that judges and imposes sanctions?
- Are this/these bodies within the judiciary or in other branches of government?
- Have there been many cases of accusations within the last year/last 5 years?
- Have there been many cases of disciplinary sanctions in the last year/last 5 years?
- Have there been many cases of removal pursuant to a disciplinary process in the last year/5years?
- Are most disciplinary cases brought against lower-level judges?
- Are most disciplinary cases brought against high-level judges?
- Has any member of the Supreme Court been removed through a disciplinary process?
- Can the disciplinary process be used to punish judges considered as “too independent”?
- If yes, by whom? By the judiciary itself? By the executive? Or by the legislative branch?

GUARANTEES FOR JUDGES

VII. Security of tenure

- Is tenure granted for life or, at least, for a long period of time?
- Is tenure long enough to reduce the vulnerability of the judges?
- Does tenure coincide with the presidential term?
- Does tenure coincide with the term of the appointing authority?
- Are the grounds for removal of a judge clearly and precisely determined?
- Is the removal of judges decided by an independent institution?
- Are the promotion and disciplinary processes based on objective criteria?

IFES Rule of Law Toolkit: Checklists

- Are the responsibilities for the process divided between two bodies, one that evaluates performance and a second that makes the final decisions regarding promotion or discipline?

VIII. Limited judicial immunity

- Are the judges exempted from criminal/civil responsibility?
- Is this right granted by the constitution, law or judicial resolution?
- Is the immunity absolute?
- Is the immunity limited to certain behaviors or acts?
- Is the immunity granted only for acts committed in the exercise of his/her functions or also for other acts?
- Can the immunity be waived?
- Are there cases in which the judge has absolute immunity?
- Is it possible to legally deprive a judge of his/her immunity?
- If yes, is there a clearly defined procedure to waive immunity?
- Are the cases in which immunity may be waived clearly defined and justified?
- While a judge is in function, are legal actions against him suspended? Or, are accusations simply dismissed?
- Can judges be held civilly liable? Can they directly be sued for compensation or must victims sue the State first?

IX. Adequate salaries, benefits and pensions

- Are the judicial salaries, benefits and pensions adequate to attract and retain qualified candidates?
- Do judges have access to sufficient legal material?
- Do judges have adequate physical working conditions?
- Are groups from outside the judiciary providing funds to judges?
- Is this permitted by law?
- Is the information regarding the salaries, benefits and pensions of judges available to the public?
- Are the judges provided with in-kind benefits? (For example: money, office space, discounts on education for their children, housing)?
- Is the percentage of the national budget allocated to the judiciary low or high (compared to international standards)?
- Is this percentage set by the constitution/law?
- Is the percentage of the judicial budget allocated to judges' salaries low or high (compared to international standards)?

BUDGETARY AND ADMINISTRATIVE CONTROL

X. Effective control over the judicial budget

- Is the budget designed by the judiciary?
- Is the judiciary responsible for the administration of its budget? If not, is it the responsibility of an independent body, such as a Judicial Council? Of an administrative agency of the executive? Of the Ministry of Justice?
- Is the allocation of the budget for each level –district, appeals, supreme court– done by the judiciary? The legislative branch? An administrative agency of the executive? The Ministry of Justice?
- Are there clearly defined criteria for budgetary allocation?
- Are the funds redistributed every year?
- Is there an open discussion within the judiciary about how the budget is going to be allocated?
- Are there clearly defined rules governing the administration of the judicial budget?
- Are there mechanisms to control expenses?
- Are judges trained to manage the judicial budget?
- Is there a mechanism which can be used to punish judges considered as “too independent” by cutting their budget?
- Does the executive branch send to the judiciary the amount allocated by Congress?
- If not, are there mechanisms that the judiciary can use to force the executive to release the entire allocated amount?

XI. Transparent case assignment process

- Is there a transparent case assignment process?
- Is there a clearly defined method of case assignment?
- Are cases assigned based on caseload (backlog)?
- Are cases assigned based on the seniority/experience of judges?
- Can the assignment process be manipulated by groups outside the judiciary, such as political parties or corporations?
- Can a judge refuse to hear a case?
- If yes, are the cases in which a judge can refuse to hear a case clearly defined?

JUDICIAL ETHICS AND CORRUPTION

XII. Effective judicial Code of Ethics

- Is there a written Code of Ethics for judges?
- If no, are ethics rules for judges provided in another document such as the law organizing the judiciary, the constitution or another code of professional conduct?
- Is the judicial Code of Ethics established by law?
- Are there clear and effective mechanisms for the enforcement of ethical rules?
- Is the Code enforced in practice?
- Was it drafted by the judiciary? Or by an independent body, such as the Judicial Council?
- Was the drafting process participatory?
- Is it inspired by an internationally recognized model (for example, the European Judges Charter or the Bangalore principles)?
- Is it adapted to the legal framework?
- Is there a specific body responsible for the interpretation of the Code? Is this body independent?
- Are the interpretations of the Code recorded?
- Are the contents of the Code well-known and interpreted by judges?
- Is there mandatory ethics training for judges?
- Is the Code clear enough to avoid misunderstandings as to the ethical obligations?
- Can the Code be used to punish judges considered as “too independent”?
- Is the Code applicable to other judicial actors? To lawyers? Prosecutors? Law clerks?

XIII. Asset/income disclosure

- Are there rules requiring judges to disclose their assets?
- Are disclosure obligations made by Constitution, law or judiciary decision?
- Do disclosure obligations apply to high-level judges? To lower-level judges? To other judicial officers?
- Do judges have to report family members' assets?
- Do judges have to disclose salaries? Property? Stocks and bonds? Other incomes?
- Is the information about the assets of judges accessible?
- Are disclosure obligations narrowly or broadly conceived?
- Is there a public office in charge of receiving and filing the information?
- Is the information accessible to the public? Or only to certain categories of people?
- Are there sanctions for those who do not comply with disclosure requirements?
- Are judges obligated to disclose their assets periodically? When taking office? When leaving office?

- Is there any process for illegal enrichment based on this information?
- If it is finished, are there disciplinary consequences? Are there criminal sanctions?
- Are judges favorable to asset disclosure obligations?
- Has this system been criticized?

XIV. Adequate anticorruption measures

- Is corruption defined as a criminal offense?
- Have international/regional conventions criminalizing corruption been ratified? Have they been implemented under domestic law?
- Are anticorruption laws applicable to judges?
- Are there court decisions making anticorruption laws applicable to judges?
- Do anticorruption laws punish all aspects of corrupt behavior?
- Are they effectively applied in practice?
- Are there adequate, proportional and dissuasive criminal sanctions for corruption? Are there civil sanctions?
- Are corruption proceedings against judges open to the public?

XV. Effective punitive measures against corrupt judges

- Have there been many criminal or disciplinary actions taken against corrupt lower-level judges in the last year/last 5 years? Against corrupt high-level judges?
- Have many lower-level judges been accused of corruption? High-level judges?
- Have many lower-level judges been found guilty of corruption? High-level judges?
- Have many lower-level judges been removed for corruption? High-level judges?

XVI. Clear and enforced conflict of interest rules

- Are judges allowed to become members of political parties?
- If yes, are there any conditions on their membership?
- Are judges allowed to run for office? Are there any conditions?
- Are there differences between elected terms at the national, regional or local level?
- If judges are allowed to hold a political or administrative office in the executive branch, are there any conditions?
- Are judges prominently involved in political activity, either directly (members of political parties, candidates for office) or indirectly (fundraising activities, support for political candidates)?
- Are they allowed to get involved in financial activities?

IFES Rule of Law Toolkit: Checklists

- Can judges be part of a corporation? Are they allowed to be shareholders? Directors? CEOs? Trustees?
- Are they allowed to practice privately as attorneys?
- Are they allowed to have prosecutorial and investigative functions?

ACCESS TO JUSTICE AND LEGAL INFORMATION

XVII. Access of the public to domestic/international court information and decisions

- Are court decisions written?
- Are they recorded?
- Is the judge required to write the rationale for his decision?
- Are all court decisions published? Lower court decisions? Appellate court decisions? Supreme Court decisions? Special court decisions, such as labor tribunals or tax courts?
- Are court decisions available to the public?
- Are court decisions indexed?
- Is the judge's name published with his decision?
- Are court records available to the public?
- Are there special procedures for the public to consult court information?
- Is court information available on the Internet? Are court decisions available on the Internet?
- Are the people informed about how to consult court decisions?

XVIII. Access of the legal profession to domestic/international court information and decisions

- Are court decisions written?
- Are they recorded?
- Is the judge required to write the rationale for his decision?
- Are all court decisions published? Lower court decisions? Appellate court decisions? Supreme Court decisions? Special court decisions, such as labor tribunals or tax courts?
- Are court decisions available to lawyers and other legal experts?
- Are they indexed?
- Is the judge's name published with his decision?
- Are court records available to the lawyers and other legal experts?
- Are there special databases for lawyers to consult court decisions and update them?
- Are these databases available on the Internet?

XIX. Rationale for written decisions

- Is the judge required to write the rationale for his decision?
- Is there room for discretion in the rationales?
- Does the rationale of a court decision have to be based on the law?
- Are the rationales published?
- If no, are they available to the parties?
- If yes, are they available to the public?

MONITORING AND PERFORMANCE EVALUATION

XX. Civil society/judicial watchdog groups

- Have civil society organizations – such as the media, human rights groups, women organizations, labor unions, business groups or any judicial or legal association – been active in promoting judicial independence?
- Are civil society organizations monitoring the Judiciary?
- Are civil society organizations doing research on the Judiciary?
- Are the conclusions and results of these projects available?
- Are civil society organizations privately funded? Publicly funded?
- Is the media involved in the judicial process?
- Have the media accused judges of corruption?
- Have the media and other civil society organizations accused many lower-level judges of corruption in the last year/last 5 years? High-level judges?
- Were these accusations brought to the justice system?
- Was any judge dismissed based on the accusations of the media or civil society organizations?

FREEDOM FROM INTERFERENCE

XXI. Freedom from external interference

- Are judges pressured to rule in a specific way by groups such as political parties, corporations, unions, the media and other civil society organizations?
- Are the executive or/and the legislative branch interfering with judges' decisions?
- Is there a specific legal framework to protect judges from external interference?
- Is the border between public monitoring and external interference clearly defined?
- Is there any formal or informal mechanism to punish judges considered “too independent”?
- Is it legally permitted for judges to receive any kind of payment or benefit from external groups?

IFES Rule of Law Toolkit: Checklists

- Is it customarily permitted for judges to receive any kind of payment or benefit from external groups?
- Do judges effectively accept illegal payments?
- Are judges frequently influenced by their public image?
- Are there any group –media, civil society – specialized in monitoring of external interference?
- If yes, is there information available to the public?
- Do they act to improve their public image rather than based on their own beliefs?

XXII. Freedom from internal interference

- Is there a hierarchical structure within the judiciary?
- Do higher court judges have a strong influence on lower court judges?
- Is it permitted by law?
- Is there any formal or informal mechanism to punish judges considered as “too independent”?
- Are there mechanisms for judges to report internal interference?
- Are the judges’ selection and promotion processes controlled exclusively by higher court judges?
- Does interference affect case management? Judicial decisions?
- Have many cases of internal interference been recorded in the last year/last five years?
- Is the budget administration controlled exclusively by higher court judges?

OTHER LEGAL PROFESSION, CIVIL SOCIETY AND THE JUDICIARY

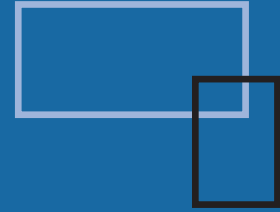
XXIII. Public perception of the judiciary as independent?

- Is there any survey about the public perception of the justice system?
- Are these surveys periodically performed?
- Are they performed by the judiciary itself? By civil society? By an independent entity?
- Is the judiciary considered independent by the public?
- If not, who is considered to exercise more control over the judiciary? The executive branch? The legislative branch? Important corporations? The media? Others?
- Is the public perception of judges the same for lower-level judges and high-level judges?
- Is the public perception of judges related to the perception of other groups, such as politicians or the media?

- Is the public perception of judges related to the perception of civil society groups, such as human rights groups or women's rights groups?
- Do judges have a high social status?
- Is the independence of the judiciary an important concern for the general public?
- Is the efficiency of the judiciary an important concern for the general public?
- Are judges' salaries an important concern for the general public?

XXIV. Viable independent judges' association

- Is there a judges' association?
- Is it mandatory for judges to join the judges' association?
- Is it an open organization? Is it controlled by a group of judges?
- Are there important benefits for judges who become members?
- Does it lobby for the judiciary? For any category or level of judges?
- Is the association closely related to other branches of the State?
- Does it have any program or activity related to judicial independence?
- In practice, has the judges' association been active in promoting judicial independence?
- Does it have any program in which the citizens can participate?
- Does it produce any public document related to the state of the judiciary?
- Has it a well-known and recognized public image?



IFES

1101 15th Street, NW
Third Floor
Washington, DC 20005

202.828.8507, Telephone
202.452.0804, Fax
www.ifes.org