Independence, Transparency and Accountability in the Judiciary of Ethiopia

Prepared by the National Judicial Institute
For the Canadian International Development Agency

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INTRODUCTION

The Federal Democratic Republic of Ethiopia (Ethiopia) has been engaged in court reform activities for more than a decade, designed to make Ethiopian courts more independent, accessible, effective, efficient, transparent, and accountable. Ethiopia’s 2005/06-2009/10 Plan for Accelerated and Sustained Development to End Poverty (PASDEP) has set out the establishment of a system of transparency and accountability in conducting judicial business as one of the sub-outcomes of judicial reform in the country. Undertaking a national study on judicial independence and accountability is one indicator towards achieving this sub-outcome.

The Ethiopian Federal Supreme Court has been given the mandate by the National Justice Steering Committee to commission this study and the Canadian International Development Agency (CIDA) has agreed to provide (1) an assessment of the independence, transparency and accountability of the Ethiopian judiciary; (2) an action plan to respond to the issues raised; and (3) an approach to the performance evaluation of judges.

The National Judicial Institute of Canada was commissioned to undertake the project in the spring of 2008. This report reviews the best current understanding of the concepts of judicial independence, transparency and accountability, and it summarizes international standards and practices with respect to these principles. The report then assesses the progress of Ethiopia towards judicial reform.

The study opens with the patently ludicrous assertion that “The Federal Democratic Republic of Ethiopia (Ethiopia) has been engaged in court reform activities for more than a decade, designed to make Ethiopian courts more independent, accessible, effective, efficient, transparent, and accountable.” The Ethiopian Federal Supreme Court has been given the mandate by the National Justice Steering Committee to commission this study and the Canadian International Development Agency (CIDA) has agreed to provide (1) an assessment of the independence, transparency and accountability of the Ethiopian judiciary.

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1 The National Judicial Institute (NJI) is an independent institution building better justice through leadership in the education of judges in Canada and elsewhere in the world. The NJI is dedicated to the development and delivery of educational programs for all federal, provincial and territorial judges in Canada. The Institute’s programs stimulate continuing professional and personal growth and reflect on cultural, racial and linguistic diversity, as well as the changing demands on the judiciary in a rapidly-evolving society. The programs focus on the three major components of judicial education: substantive law, judicial skills and social context training.
judiciary; (2) an action plan to respond to the issues raised; and (3) an approach to the performance evaluation of judges.

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1. METHODOLOGY

This study is in the nature of an inquiry, not a quantitative scientific survey. Its analysis and conclusions are based on:

- Research of international instruments and current literature on judicial independence, transparency and accountability, and on measuring progress in judicial reform; 2
- Review of relevant practices in nine selected countries;
- Review of the Ethiopian Constitution, laws, regulations, judicial statistics and documentation provided by the Ethiopian authorities and courts;
- Review of various reports relevant to the judiciary in Ethiopia; and
- Results of formal individual and group interviews with 87 people conducted in April and May 2008 in Addis Ababa, and in the regions of Amhara, Benishangul-Gumuz, Harari, Oromia, Tigray and the Southern Nations, Nationalities and People’s Region (SNNPR). 3 Interviewees included: five federal and state government officials; two members of the legislature sitting on Judicial Administrative Councils (JACs); 50 Court Presidents and judges in federal and regional Supreme Courts, High/Zonal Courts, and First Instance/Woreda Courts 4; eight judicial trainees; six court staff, including registrars and judgment enforcement staff; three prosecutors; eight lawyers, legal consultants and law teachers; and five non-governmental organization (NGO) representatives.

2 See Bibliography at p. 200

3 More than half of these interviews were conducted in partnership with the American Bar Association (ABA). The ABA was conducting, at the request of Ethiopian authorities, a similar assessment (Judicial Index Review) at the same time, and a decision was made at the outset to partner as much as possible on the ground.

4 Sharia and Social Courts were not part of the purview of this study, although they are referenced in the report. Court Presidents and judges interviewed were selected from a list proposed by the Federal Supreme Court. The rest of the interviewees were selected by the project team with a view to providing balance, representativeness, perspective, and as comprehensive information as could be gathered in five weeks of field interviews.
involved in justice issues. The indicators set out on page 14 of this report were used as the basis for the interviews.

- A questionnaire was also completed by 12 of the 14 judges of the Harari region.
- No survey of public perceptions and attitudes toward the judiciary was conducted. However, perceptions of the courts were discussed with all those we met, either formally or informally in Ethiopia, including those working in the justice system. Their views and those of the general public to whom we spoke are reflected in the report.

Beyond the inherent complexity of measuring progress toward judicial reform, the NJI project team faced several challenges in conducting this assessment: short time frames, which limited the research, the number of regions visited and interviews conducted; understanding the intricacies of what is a highly decentralized, fairly complex legal and judicial system with significant regional differences; and selecting an appropriate baseline against which to measure progress.

This assessment report reflects our best understanding of the overall situation of the courts, based on interviews as well as our own observations. We are aware that it does not fully account for the diversity of situations of individual courts across Ethiopia.

Selecting a proper baseline against which to measure progress raised some issues. Most of the people we met pointed out that the judiciary is now considerably more independent, more transparent and more accountable than it was prior to 1991 under either the monarchy or the Military Regime. There is no question that this is so. But does it remain the proper yardstick for measuring progress toward judicial reform in 2008? We do not think so. On the other hand, assessing the situation of the courts in Ethiopia, a developing democracy and a developing country, against the standards of the judicial systems of the most developed western democracies, does not seem fair, either. Although Ethiopia’s stated goal is to jump start to the best international practices, it cannot be expected to attain in a few years what western democracies have taken centuries to achieve. International practices from well regarded judicial systems have been used in this assessment, not as fail or pass scores for Ethiopia, but as useful benchmarks to measure progress achieved and best practices to emulate.

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5 A full list of the courts, institutions and bodies consulted is found in Appendix B, p. 205

6 The survey was conducted with the full support of the Presidents of the Supreme, High and First Instance Courts, who did not participate in the survey. The aggregated results were, however, shared with them. See Appendix C: Harari Courts Survey Questionnaire p.206.
The excellent study on the Comprehensive Justice System Reform Program (hereinafter referred to as the Baseline Study), conducted in 2003 at the request of the Ethiopian authorities by a group of international and Ethiopian experts under the leadership of the Centre for International Legal Cooperation (CILC), provides the first comprehensive and detailed assessment of the situation of the judiciary, and it was considered in developing the current Justice System Reform Program (JSRP). For these reasons, we have used it extensively in measuring progress. On the other hand, the Baseline Study is less than five years old, and we recognize that many indicators of progress, such as public perception, can only change over a much longer period of time.

This report is divided into three parts. Part I reviews the best current understanding of the principles of judicial independence, accountability and transparency, and the relationship between the three principles. It is followed by a discussion of factors that are generally accepted in the international community as best facilitating the development of an independent, transparent and accountable judiciary. The report then looks at how these indicators are applied in nine different jurisdictions of civil law and common law traditions, with well-regarded justice systems: Chile, Canada (in the federal judiciary, with some examples from the court system of the Province of Ontario), France, India, New Zealand, the Netherlands, South Africa, Sweden and the United States (with reference to the Federal Courts and the court system of the State of California).

Part II of the report reviews the historical context of Ethiopia’s judiciary, its legal culture and judicial institutions; and Part III assesses the independence, transparency, and accountability of Ethiopian courts using the indicators set out in Part I. A series of recommendations then follows.

This report has been reviewed and endorsed by Ethiopia’s National Justice Steering Committee. An action plan to respond to issues raised by the assessment and an approach to judicial performance evaluation will follow.

2. ASSESSMENT TEAM

The assessment work was led by Mme. Andrée Delagrave, lawyer and consultant, with the assistance of Mr. Justice Marc Rosenberg of the Ontario Court of Appeal, Mr. George M. Thomson, Senior Director of the National Judicial Institute’s International Cooperation Group, and Ms Lisa Joly, researcher at the NJI, also contributed significantly to the report. The research on the historical context of the Ethiopian judiciary

7 The National Steering Committee endorsed the draft report in September 2008 with comments which have been incorporated into this second version of the document.
was conducted by Assistant Professor Getachew Assefa of the Law Faculty of Addis Ababa University.
3. ACKNOWLEDGEMENTS

The National Judicial Institute would like to thank all those who participated in interviews in Ethiopia. Their time and assistance is gratefully acknowledged. On behalf of the NJI, we would also like to thank the many contributors from the various benchmarked countries who generously shared information about international practices supporting judicial independence, transparency and accountability. Finally, the NJI would like to express its appreciation to its colleagues in the American Bar Association for their invaluable help in preparing the field mission, conducting the interviews and identifying sources.
1. DEFINITIONS AND INDICATORS

“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.” (Universal Declaration of Human Rights, Article 10, 1948)

“In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” (International Covenant on Civil and Political Rights, Article 14 (1), 1966)

The understanding and application of the principles of judicial independence, accountability and transparency continue to evolve. Because local contextual factors arise in diverse settings, with a range of histories and challenges, it is not possible to generalize as to how a given judicial system should operate. There is, however, increasing agreement among nations, even nations with quite different judicial histories and legal systems, on benchmarking principles and indicators of independence, accountability and transparency.

The provisions quoted above from UN instruments are two of the first major attempts to suggest, at an international level, the building blocks for achieving a judicial system that reflects the principles of independence. These instruments marked the beginning of an expanded dialogue in the past decades on the three concepts to which we refer in this assessment, and which have been influenced today by many perspectives. The production of international legal and human rights principles, guidelines and recommendations by numerous international sources, including governments, international commissions, judicial councils, legal associations, international non-governmental organizations, the UN and others, including individual experts, has aimed to address the criteria relating to the individual and institutional independence, transparency and accountability of judges and the judiciary. We will refer to several of these throughout this report.

This part of the report provides basic definitions for each of the concepts of judicial independence, accountability and transparency. Each definition engages the core values relating to each of these concepts, extracted from international instruments and current dialogue. A chart of indicators draws from key instruments and prior work in this field.
These indicators suggest the specific criteria required for achieving each of the three fundamental objectives with respect to the judiciary.

The United Nations Special Rapporteur of the Commission on Human Rights on the Independence of Judges and Lawyers, among many others, has emphasized the need to implement these principles.\(^8\) While there is substantial consensus at the level of principles and criteria, there is less practical guidance to date in international instruments on what constitutes best practice.\(^9\) Accordingly, for the purpose of benchmarking, we provide examples from a selection of countries of what has been done to implement the principles and to meet the identified criteria.

### 1.1 DEFINING INDEPENDENCE, TRANSPARENCY AND ACCOUNTABILITY

The principles of judicial independence, transparency and accountability are conceptually interrelated in numerous ways and have been defined by the international community with a considerable degree of consistency. That said, the scope of each varies somewhat within formal international instruments and literature, depending on the specific context under consideration. The purpose of this overview is to distil the salient points in relation to current international benchmarks.

#### 1.1.1 Judicial Independence

The United Nations Basic Principles on the Independence of the Judiciary (Article 2) state that, “The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.”

The independence of the judiciary includes both institutional and decisional independence. In the first instance, the institution of the judiciary is free, in its overall functioning, from undue interference from any source. This independence is supported

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\(^8\) See e.g. E/CN.4/2003/65.

\(^9\) The Bangalore Principles of Judicial Conduct were developed and adopted in 2002 by the Judicial Group on Strengthening Judicial Integrity, comprised of senior judges from African and Asian common law nations. The Group, in conjunction with the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, “recognized the need for a code against which the conduct of judicial officers may be measured.” The UN has incorporated this instrument into recommendations and resolutions on the subject of corruption, and numerous countries have relied on the Principles to guide them in developing or revising their judicial codes of conduct. They provide only that, “By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.”
by constitutional and legislative provisions mandating separation of powers between the executive, legislative and judicial branches of government, including measures to prevent, in practice, improper influence by other branches over the judiciary. While there can be a variety of measures for ensuring institutional independence, those measures tend to be directed at establishing three basic conditions: (1) security of tenure; (2) financial security of judges and the judiciary; and (3) independence with respect to matters of administration bearing directly on the exercise of judicial functions, such as assignment of cases and control over funds allocated to the judiciary.

Second, judges should be protected in their decision-making from improper influence from other judges and judicial actors, from the executive and legislative branches of government and from members of the public and the legal profession. There should be measures to identify and hold to account such interference. Court rulings should be subject to appellate review and not to review by the non-judicial branches. There should also be an appropriate level of judicial immunity for actions taken within the scope of judges’ official duties. Judges must be provided with an appropriate level of physical security and protection from threats. The judiciary should provide input into budgetary decisions, which, consistent with fiscal considerations, should ensure provision for adequately resourced facilities and qualified staff to assist them in conducting their work. Judges should also have access to legislation and case law. There should also be enough judicial positions to meet the workload of the courts.

The selection and advancement process is another useful indicator of judicial independence. No matter who does the actual appointing and promoting of judges, whether it be the judiciary itself, the executive or even the electorate, a system that emphasizes merit is critical to the perception of independence of and respect for the judiciary. After appointment, and in many cases before appointment, the system should provide access to initial and ongoing training in substantive and procedural law, judicial skills, and an understanding of the judicial role, including gender and cultural sensitivity.

The judiciary should have adequate powers to review administrative actions by government in accordance with legal standards. In many countries, although not all, the judiciary also has the power to review the constitutionality of legislation. The court should have the power to interpret legislation, including its own jurisdiction, as well as powers

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10 The African Union Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (see e.g. A.4 a), A.5. (a) refer to both the judiciary and judicial officers or decision-makers, thus protecting both the individual and the institution from interference “from all quarters.” The Bangalore Principles, with their emphasis on judicial conduct, are addressed strongly to individual judges and the role of their personal conduct and standards in upholding judicial independence. These instruments reflect increasing international consensus on the importance of this dual element of independence.

11 Including the selection of judicial trainees in countries where judges are appointed from among judicial trainees.
relating to contempt, subpoena, enforcement of judgments, and jurisdiction to rule on civil liberties cases.

Finally, it is important to bear in mind that judicial independence is not an end in itself \(^\text{12}\), but is grounded in the objective of serving the public. As stated by former United Nations Special Rapporteur on the Impartiality and Independence of the Judiciary, Dr. L.M. Singhvi, “[the] absence [of the concepts of the impartiality and independence of the judiciary] leads to a denial of justice and makes the credibility of the judicial process dubious. Impartiality and independence of the judiciary is more a human right of the consumers of justice than a privilege of the judiciary for its own sake.”\(^\text{13}\)

1.1.2 Judicial Accountability

Judicial independence must be complemented by judicial accountability. Accountability means application of neutral internal and external controls to hold judges and the judiciary accountable for their actions. In recent years there has been increased attention within international judicial principles and instruments to accountability.

*The Bangalore Principles of Judicial Conduct* are considered to be a leading instrument in the area of judicial accountability.\(^\text{14}\) The Principles set forth standards for the ethical conduct of judges and “presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial.”\(^\text{15}\)

Judges must themselves be dually active in their roles: first, by upholding thebroader independence, impartiality and integrity of the judicial system; and second, in actively maintaining appropriate personal standards of judicial conduct and performance.\(^\text{16}\) Clear

\(^\text{12}\) Professor Emeritus Peter H. Russell of the University of Toronto has stated that independence is not a goal, but rather a means to an end.


\(^\text{14}\) The Bangalore Principles of Judicial Conduct were developed and adopted in 2002 by the Judicial Group on Strengthening Judicial Integrity, comprised of senior judges from African and Asian common law nations.

\(^\text{15}\) Other instruments that have addressed judicial accountability include the *African Union Guidelines and Principles on the Right to a Fair Trial and Legal Assistance in Africa*, Section A. (4-5), *Latimer House Principles on the Three Branches of Government* (section VII (b)), *Limassol Conclusions* (Commonwealth Judicial Colloquium on Combating Corruption Within the Judiciary) and the *Caracas Declaration (Code of Ethics of the Ibero-American Judicial Civil Servant)*.

\(^\text{16}\) Transparency International (2007 Report) makes this point at 43, and this is in line with current international standards.
rules and limits in relation to judicial actions and activities must be in place so as to enforce such proper and ethical conduct.

International legal principles and recommendations set out benchmark measures that must be implemented to ensure accountability among judges. These include, in particular, a code of judicial conduct and principles of judicial ethics. There should also be a clear, accessible process for submitting complaints about improper judicial conduct for independent assessment and mandated disciplinary measures, where appropriate. Discipline should relate to impropriety of behaviour and not substantive decision making (which is overseen through the appeal process). The role of overseeing the disciplinary process, including reprimands, sanctions, suspension and removal should be undertaken by an independent body or, as is increasingly the case, by a judicial council composed of judges but that may also include members of the legislative, the executive branch, the prosecution, the bar and the public. It is generally agreed, however, that the majority of the members of the council must be from the judiciary and that if members of the legislative or executive branch are part of the council, extra care must be taken not to compromise judicial independence. The process for removal of judges should be rigorous and conducted in accordance with established standards. While there are a variety of procedures legitimately used for removing judges from office, ranging from removal by a judicial council to removal by the legislative branch, there is general agreement that removal cannot be vested solely in the executive.

Other areas in which consensus exists within the international legal community on both accountability and judicial independence include the need for judges to have ongoing access to legal education and legal resources so that they are able to provide the best service to the public and gain ongoing awareness as to the extent of their responsibility to the public.17

Further measures that relate to accountability are judicial workload standards to ensure that cases are disposed of in a timely manner and that judges have sufficient time to properly render decisions, and that workloads are fairly distributed. Accountability through formal performance evaluation has proven more challenging. Judicial workload standards and performance evaluation are already in place in some countries, mostly those with a civil law tradition. Measures for ensuring accountability are also being discussed in countries of common law tradition where there is, in particular, increasing interest in implementing performance evaluation, so long as it does not compromise independence of the judiciary.

17 International Covenant on Civil and Political Rights, Article 14 (1), 1966, provides for the right to a trial by a competent tribunal.
Courts are also expected to maintain judicial statistics and to report on their overall functioning, as well as on the performance of the judiciary as an institution. There should also be formal opportunities to obtain feedback from users of the justice system and from the general public.

1.1.3 Judicial Transparency

Transparency of the judiciary and the courts involves a number of factors that overlap with both independence and accountability. Its importance lies in the need to bolster public awareness of the rule of law and trust in the judiciary. This is achieved through the development and enforcement of measures that ensure clear and open lines of communication between the public on the one hand, and the judiciary and courts on the other.\(^\text{18}\)

For a long time, the hallmarks of judicial transparency have been public court proceedings and the publication of reasoned decisions. Such measures ensure that judges’ rulings are based strictly on the facts of the case and the law, and that they may be reviewed. Reasons for decisions should also be available to the legal profession and members of the public insofar as possible, bearing in mind legitimate fiscal restraints. Furthermore, civil society should be able to monitor court proceedings, except in some clearly set out cases. Effective case filing and case management systems also support the transparency of judicial proceedings. Other factors that can bolster transparency include free and publicly accessible information about court procedures and organization, basic rights and existing laws (e.g. information desks in courts).

1.1.4 Judicial Integrity

The principles of judicial independence, transparency and accountability are interrelated, both conceptually and in practice. They have also been conceptualized as leading to,

\(^{18}\) International principles and laws, together with literature across numerous sources, detail the elements that are increasingly seen within the international community as critical to achieving transparency and that are in practice or being developed and implemented in many countries. These include the African Union Guidelines, supra; Consultative Council of European Judges, Opinion No. 1 (2001); Caracas Declaration, supra; Limassol Conclusions. See also Transparency International 2007 Annual Report, Chapter 3; Judicial Accountability Mechanisms: A Resource Document (Institute for Democracy in South Africa, 2007); Judicial Transparency Checklist: Key Transparency Issues and Indicators to Promote Judicial Independence and Accountability Reforms (International Foundation for Electoral Systems, 2003).
arising from, or falling together under the broader principle of \textit{judicial integrity},\textsuperscript{19} a principle currently widely used by the international community to assess the scope and limits of the roles and responsibilities of judges and the judiciary.\textsuperscript{20}

The use of the term \textit{integrity} may assist in conceptualizing a more holistic definitional scheme than the previous either/or approach to independence and accountability. Any assessment should, therefore, consider the need to articulate judicial independence, accountability and transparency in light of this conceptualization. In all cases, the concept of a functioning and effective judiciary must be supported by commitment from all three branches of government. In this report, we use the term 'judicial integrity' as a holistic concept encompassing independence, transparency and accountability as defined earlier in this chapter.

\textbf{2. INDICATORS AND INTERNATIONAL BENCHMARKS FOR JUDICIAL INDEPENDENCE, ACCOUNTABILITY AND TRANSPARENCY}

\textsuperscript{19} The latter characterization of integrity as an umbrella concept was developed by the International Foundation for Electoral Systems in \textit{Global Best Practices: Judicial Integrity Standards and Consensus Principles} (Violaine Autheman, Keith Henderson, ed., April 2004). See also other papers from IFES's Rule of Law White Paper series, developed in part following work by IFES with USAID and further research on judicial independence. IFES has identified 18 "Judicial Integrity Principles" which encompass "judicial independence, judicial transparency, judicial accountability, judicial ethics and the enforcement of judgments."

\textsuperscript{20} The concept of judicial integrity has generally emerged as an important element of a functional judiciary in recent years, not lastly through the elaboration of \textit{The Bangalore Principles of Judicial Conduct} (2002), under which it is cited as a core value, and the related work of the Judicial Group on Strengthening Judicial Integrity, supported by the UNODC. The work of the Judicial Integrity Group, to cite a member at the Group’s Fourth Meeting in Vienna, October 2005, is to develop "truly universal principles and approaches to address the common concerns of the independence, competence, authority and effectiveness of the judiciary." More specifically, the work of the Judicial Integrity Group which is concerned with efforts to implement \textit{The Bangalore Principles of Judicial Conduct}, has as its mandate to “formulate the concept of judicial integrity and devise the methodology for introducing that concept without compromising the principle of judicial independence; to facilitate a safe and productive learning environment for reform minded chief justices around the world; and to raise awareness regarding judicial integrity and to develop, guide, and monitor technical assistance projects aimed at strengthening judicial integrity and capacity.” Several states under the auspices of the Group’s work have engaged in judicial reform initiatives aimed to strengthen judicial integrity and capacity. Other academic research has drawn on the use of the term integrity to help define the broader aims of judicial reform. For example, see the Centre for International Legal Cooperation, \textit{Applying the Sectoral Approach to the Legal and Judicial Domain} (November 2005), which highlights integrity as one of five core principles of legal and judicial systems: "Integrity implies that the judicial system operates independently, decision-making is impartial, decisions are respected, and that the judiciary is accountable and free from interference."
2.1 METHODOLOGY

In producing the following set of 30 indicators, the National Judicial Institute relied on both primary documents, including some 22 international instruments relating to judicial independence or accountability, and key secondary source documentation.21

Sources relied on set out general principles and factors necessary, from the perspective of a diverse cross-section of the international community, to an assessment of overall judicial integrity. Certain international instruments were of key relevance, as they have been drawn upon to create domestic legislation in many countries, and continue to impact domestic approaches internationally. These include the United Nations Basic Principles on the Independence of the Judiciary (1985) and the Procedures for [its] Implementation (1989), and The Bangalore Principles of Judicial Conduct (2002); however, all instruments on this subject that have contributed in some measure to the evolution of the dialogue on judicial integrity were considered. Secondary sources include, among others, the Judicial Reform Index (JRI) of the American Bar Association’s Rule of Law Initiative,22 and recent work by the Institute for Democracy in South Africa, the International Foundation for Electoral Systems on the subject of judicial assessments, and the United Nations Special Rapporteur on the Independence of Judges and Lawyers. Reference was also made to the indicators used in the broad baseline assessment of Ethiopia’s justice system by the Centre for International Legal Cooperation.

There is no universally accepted single set of indicators of judicial integrity. Some factors are more relevant to a specific legal system and judicial structure and context than others (e.g. judicial pre-service training). We have tried to select and group relevant factors by the essential principles underpinning them but as discussed earlier, they overlap to a substantial degree. Drawing from all the sources, four jurists, including one judge and one former judge, were involved in selecting an inclusive but succinct set of indicators that were believed to be most relevant to the Ethiopian judicial context.

21 The key documents are set out in the Bibliography.

22 The Judicial Reform Index (JRI) is a tool developed by the American Bar Association’s Central European and Eurasian Initiative (ABA-CEELI) to assess a cross-section of factors important to judicial reform in emerging democracies. The 30 indicators considered in the JRI process are themselves an aggregate of several factors drawn from international instruments and believed by judicial reform practitioners to be the most relevant to judicial reform. Drawing from the same sources, it is no surprise that the set of indicators proposed in this study are, in large measure, similar to the JRI indicators.
2.2 INDICATORS

The existence of each indicator in the chart below legitimately contributes to the independence, transparency and accountability of the judiciary in some sense but, as noted, overlap in respect to how they are defined. Here we attempt to classify the indicators according to the most pertinent principles to which they apply in order to highlight their particular importance in producing an effective judiciary.

<table>
<thead>
<tr>
<th>INDICATOR</th>
<th>Independence</th>
<th>Accountability</th>
<th>Transparency</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Constitutional or legal provisions mandating the clear separation of</td>
<td>✓</td>
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<tr>
<td>powers between executive, legislative and judicial branches of</td>
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<tr>
<td>government, and the independence of the judiciary</td>
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<td>2. Judicial powers to review the constitutionality of legislation and</td>
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<tr>
<td>administrative actions of government, and for courts to determine</td>
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<td></td>
<td></td>
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<tr>
<td>their own jurisdiction in accordance with legal standards</td>
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<tr>
<td>3. Judicial jurisdiction over civil liberties and remedies</td>
<td>✓</td>
<td></td>
<td></td>
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<tr>
<td>4. Judicial powers relating to contempt/subpoena/enforcement</td>
<td>✓</td>
<td></td>
<td></td>
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<tr>
<td>5. System of appellate review: judicial decisions may be reversed only</td>
<td>✓</td>
<td>✓</td>
<td></td>
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<tr>
<td>through the judicial appellate process</td>
<td></td>
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<tr>
<td>6. Some measure of judicial self-administration, particularly in</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>relation to judicial functions such as case assignment</td>
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<td></td>
<td></td>
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<tr>
<td>7. Judicial input into budgetary decisions and judicial control over</td>
<td>✓</td>
<td>✓</td>
<td></td>
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<tr>
<td>allocated funds</td>
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<tr>
<td>INDICATOR</td>
<td>Independence</td>
<td>Accountability</td>
<td>Transparency</td>
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<tr>
<td>8. Guaranteed tenure of judges and heads of court</td>
<td>√</td>
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<tr>
<td>9. Qualified judicial immunity and independent judicial association</td>
<td>√</td>
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<tr>
<td>10. Adequate salaries and benefits, and an adequate process to set them</td>
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<td></td>
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<tr>
<td>11. Adequate judicial working conditions, including adequate court support staff, resources such as technology, and adequate security</td>
<td>√</td>
<td>√</td>
<td></td>
</tr>
<tr>
<td>12. Access to law and case law – adequately resourced court libraries and updated legal texts</td>
<td>√</td>
<td>√</td>
<td></td>
</tr>
<tr>
<td>13. Judicial positions created as needed</td>
<td>√</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14. Objective, merit-based process for selection of judicial trainees or judges – appropriate gender and minority representation on courts</td>
<td>√</td>
<td>√</td>
<td>√</td>
</tr>
<tr>
<td>15. Transparent, objective and merit-based criteria for advancement; transparent, objective criteria for transfers</td>
<td>√</td>
<td>√</td>
<td>√</td>
</tr>
<tr>
<td>16. Training (pre-service and in-service) in substantive and procedural law, judicial skills and the judicial role</td>
<td>√</td>
<td>√</td>
<td></td>
</tr>
<tr>
<td>17. Mechanisms to ensure independent decision making without undue influence by judicial actors or from individuals /bodies outside the judiciary</td>
<td>√</td>
<td>√</td>
<td>√</td>
</tr>
<tr>
<td>INDICATOR</td>
<td>Independence</td>
<td>Accountability</td>
<td>Transparency</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------</td>
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<td>--------------</td>
</tr>
<tr>
<td>18. Code of conduct /ethical principles; training in judicial ethics and judicial conduct; clear and enforced conflict of interest rules</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>19. Established disciplinary criteria and process administered by an independent or judicial body</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>20. A formal public complaint process against judges</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>21. Standard judicial workloads; standard time frames for judicial procedures; efficiency measures</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>22. Open public hearings, with limited exceptions set out in legislation; court monitoring by NGOs, academics and the media</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>23. Public accessibility/availability of judicial decisions, including reasons</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>24. Maintenance of trial record; recording of proceedings</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>25. Proper case and records management, including case filing and tracking systems</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>26. Court organization and procedures that are transparent and comprehensible to the public – the public has access to free information on the functioning of courts</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>27. Public access to free information about basic rights and laws</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>INDICATOR</td>
<td>Independence</td>
<td>Accountability</td>
<td>Transparency</td>
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<tr>
<td>28. Opportunities to obtain feedback from users of the court system and the general public</td>
<td></td>
<td>√</td>
<td>√</td>
</tr>
<tr>
<td>29. Maintenance of judicial statistics: court reporting on performance; judges’ performance evaluation</td>
<td></td>
<td>√</td>
<td>√</td>
</tr>
<tr>
<td>30. Public perception of the courts as impartial and accountable</td>
<td>√</td>
<td>√</td>
<td>√</td>
</tr>
</tbody>
</table>

3. SPECIFIC COUNTRY PRACTICES

For the purpose of benchmarking practices illustrative of these indicators, nine countries were selected from among those with civil law and common law traditions, from older and more recent democracies and from a variety of domestic contexts. The countries are: Canada (with a focus on the Province of Ontario), Chile, France, India, the Netherlands, New Zealand, South Africa, Sweden, and the United States (with a focus on the State of California). The process of collecting relevant practices involved research into available documentation, including legislation, and input from local sources. Given the short time frame and resource constraints of this study, the process could not involve structured surveys or in-depth interviews with each of the countries; in that way, it cannot be considered a comprehensive benchmarking exercise. The content and precision of the information provided also varies considerably. It does, however, provide an array of provisions, practices and measures in relation to the selected indicators, and shows international trends in implementing judicial integrity. Both are useful in assessing the progress of Ethiopia’s judiciary toward international integrity standards.

The following chart compares how each indicator has been implemented in the nine countries selected. A conclusion follows.
### 3.1 IMPLEMENTATION OF INDICATORS IN SELECTED COUNTRIES

1. Constitutional or legal provisions mandating clear separation of powers between executive, legislative and judicial branches of government, and the independence of the judiciary

<table>
<thead>
<tr>
<th>Country</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CANADA</td>
<td>The structure of the Constitution of Canada separates the three powers, but does not expressly address separation of powers. The independence of federally appointed judges is implied by sections 96 to 100 of the Constitution (appointment; security of tenure; and financial security of superior court judges). The separation of powers is also a clearly accepted constitutional convention. The case law of the Supreme Court of Canada supports judicial independence (Beauregard v. Valente), and the Canadian Charter of Rights and Freedoms also sets out the right of individuals to be presumed innocent when charged, in a hearing before an “independent and impartial tribunal.”</td>
</tr>
<tr>
<td>CHILE</td>
<td>Chile’s Constitution sets out the various powers of the three branches of government and democracy in Chile, stating that (Article 24) the President has responsibility for the administration of the State, providing for (Article 54) the main functions of the Congress and (Article 73) mandating that the courts have the exclusive power to take cognizance of and resolve civil and criminal cases and to enforce compliance of judgments, and that “neither the President of the Republic nor the Congress may, in any case whatsoever, exercise judicial functions, take over pending cases, revise the grounds for or contents of their decisions or revive closed cases.”</td>
</tr>
<tr>
<td>FRANCE</td>
<td>France upholds a separation of powers. Title VIII of the 1958 Constitution deals with “Judicial Authority.” France has a dual system of courts. The Courts of Justice (tribunaux judiciaires), which deal with private disputes and crimes are established in the Constitution as clearly separate from the legislative and executive branches of government, and the President of the Republic is the formal guardian of their independence. Administrative courts (juridiction administrative) fall under the authority of the Council of State (Conseil d’État), a mixed executive/judicial body, and administrative judges are public servants. To remove any ambiguity as to their status, the Constitutional Council (Conseil Constitutionnel), in its decision of June 22, 1980, stated that the independence of administrative courts was a fundamental principle.</td>
</tr>
<tr>
<td>Country</td>
<td>Description</td>
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<td>-------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>India</strong></td>
<td>Article 50 of the Constitution provides that: “The State shall take steps to separate the judiciary from the executive in the public services of the State.” The case law also supports judicial independence and the separation of powers, with the Supreme Court of India ruling that a basic features of the Constitution included, “besides supremacy of the Constitution, the republican and democratic form of Government, and the separation of powers between the legislature, the executive and the judiciary.”</td>
</tr>
<tr>
<td><strong>The Netherlands</strong></td>
<td>The judiciary is independent and not subject to ministerial intervention or influence. Since the creation of the Council for the Judiciary on January 1, 2002, autonomization of the judiciary has occurred and resulted in the Minister of Justice being less directly involved in the functioning of the judiciary. The Minister now only holds political responsibility for the functioning of the justice system as a whole.</td>
</tr>
<tr>
<td><strong>New Zealand</strong></td>
<td>New Zealand’s three government branches are separated in practice. The Ministry of Justice notes that “the independence of the judiciary is an important principle of the New Zealand constitution,” so freedom from political interference is an essential feature of the judiciary’s position. This is reflected in the standing orders of the House of Representatives (i.e. their rules) which prohibit members from criticizing a judge.” New Zealand’s constitution is not a single written document, but is drawn from statutes, judicial decisions and customary rules known as constitutional conventions.</td>
</tr>
<tr>
<td><strong>South Africa</strong></td>
<td>The Constitution provides explicitly for the independence of the judiciary and states that no person or organ of state may interfere with the functioning of courts. The judiciary is subject “only to the Constitution and the law” (section 165). Chapter 2 of the Constitution also guarantees every person the right to a fair public hearing before an impartial and independent court or forum.</td>
</tr>
<tr>
<td><strong>Sweden</strong></td>
<td>According to the Swedish Constitution, the powers are separated as follows: Parliament enacts laws, decides about taxes and decides how State funds shall be divided; the government rules the country and is responsible to the Parliament; and the courts are responsible for the administration of justice. Article 11-2 of the Swedish Constitution states: “Neither a public authority nor the Parliament may determine how a court shall adjudicate a particular case or how a court shall in other respects apply a rule of law in a particular case.” In addition, the National Courts Administration – the Domstolsverket – serves as a buffer between the judiciary and the government.</td>
</tr>
</tbody>
</table>
2. **Judicial powers to review the constitutionality of legislation and administrative actions of government, and for courts to determine their own jurisdiction in accordance with legal standards**

| CANADA | Canadian courts have powers to review constitutionality of legislation and administrative actions of government, and to impose remedies (federal administrative action is reviewed pursuant to the Federal Courts Act and Federal Court Rules; review of Ontario administrative agencies and bodies is pursuant to the Judicial Review Procedure Act and Rules of Civil Procedure). The Canadian Constitution includes the *Charter of Rights and Freedoms*. The Minister of Justice must certify that the bills tabled before Parliament are in conformity with the *Charter*.

Constitutional questions can be appealed through regular courts up to the Supreme Court of Canada, but can also be referred specifically to the Court to rule on or interpret, including references with respect to legislation or powers exercised by the executive or legislative branches. The Supreme Court is composed of nine judges selected by the federal government from the provinces and territories from among superior court judges or from among barristers with at least 10 years of experience. The Court is the final arbiter of legal questions of fundamental importance. The Court can strike down legislative provisions, and often gives time to Parliament to reenact provisions in accordance with the Constitution. Out of more than 600 applications for leave and notices of appeal as of right that the Court receives per year, the Court hears less than 60 full cases. About 20 per cent of the cases heard raise constitutional or *Charter* issues. The decisions are binding on lower courts.

Courts have authority to determine their own jurisdiction in accordance with legal standards.

| U.S. AND CALIFORNIA | The federal Constitution mandates separation of powers in Articles I, II and III, the latter of which outlines the role and responsibility of the judiciary. Likewise, the California State Constitution indicates that, “The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution.”

| CHILE | In Chile, the supreme and higher courts have the capacity to review the constitutionality of laws, actions and rulings of administrative bodies when these affect, suppress or limit in an arbitrary and illegal way the rights established in the Constitution. |
Chile also has a Constitutional Tribunal which, though a separate entity and not part of the Judicial Branch, is mandated to rule on the constitutionality of specific laws and to decide on the constitutionality of laws that apply to cases being argued before it. In the latter case, where the Tribunal rules that the law is unconstitutional, the Tribunal may declare the law to be inapplicable to that particular case. The Tribunal’s powers are set out in the Constitution.

FRANCE

The Constitutional Council (Conseil Constitutionnel) was created by the Constitution of 1958 (Title VII). This body was given the power to determine the constitutionality of legislation. Prior to the body’s creation, there had been no review of the constitutionality of legislation. Matters may be referred to the Council by the President of the Republic, the Prime Minister and the Presidents of the two legislative chambers, or, since 1974, 60 members of either chamber. By this last means, the opposition can bring constitutional issues before the Council and, in fact, most now arrive in this way. The Council considers the constitutionality of legislation in the period between enactment and promulgation. If the legislation (or a severable part) is adjudged not in conformity with the Constitution, it (or that part) is never promulgated. The constitutionality of the legislation may not be raised later in court.

The Constitutional Council is comprised of the former Presidents of the Republic and nine nominated members. Three of the latter are nominated by the President of the Republic (including the President of the Council), three by the President of the National Assembly and three by the President of the Senate. They each have a mandate of nine years. No legal qualifications are required, although in practice a majority of members are jurists. There is debate whether the Council should be regarded as a judicial or a political body, with the majority of commentators taking the former view.

Since 1872, the Council of State (Conseil d’État), an organ of the French national government, has headed the system of administrative tribunals, which issue decisions binding on the administration. It has some 300 members, recruited by competition among the top graduates of the École nationale d’administration publique, or appointed directly by the government from the ranks of experienced public servants and members of the administrative courts. In 1987, an administrative Court of Appeal was inserted between the administrative tribunals of the first instance and the Council of State. The Council’s functions include assisting the executive with legal advice and being the supreme court for administrative justice. The Council hears cases against decisions of the national government (decrees, regulations issued by ministers, decisions by committees with a national competency, etc.), as well as recourses pertaining to regional elections. The Council of State examines the conformity of regulations and administrative decisions with respect to the Constitution, higher administrative decisions, the general principles of
law, statute law, international treaties and conventions. The Council has full latitude to judge on the legality of any decision from the executive branch, except for the very narrow category of "acts of government."

Two "political" courts have been set up to judge, if and when necessary, the President of the Republic and government ministers. The Haute Cour de Justice has jurisdiction to judge the President for high treason (Constitution, 1958, Articles 67, 68). It is composed of 24 judges, half elected from the National Assembly and the other half from the Senate. There have been no trials before this court. Cases are referred to the court by a majority of members of the two chambers of the legislature; investigation is by a commission of judges of the Cour de Cassation and the procureur général of that court prosecutes. The Cour de Justice de la République has jurisdiction over government ministers for crimes committed in the exercise of their functions (Constitution, 1958, Articles 68-1 and 68-2). It is composed of 15 judges, six members of each chamber of the legislature and three judges from the Cour de Cassation. Complaints against a minister may be brought by the procureur général of the Cour de Cassation or by a private individual and filtered through a special commission to the procureur général.

Courts determine if they have jurisdiction to hear a case.

**INDIA**

The constitutionality of legislation can be judicially reviewed if it violates any fundamental right guaranteed by Part III of the Constitution, or if it is beyond the legislative power conferred by Article 246. An amendment to the Constitution may be declared invalid if it is passed without following the constitutional procedure. A writ petition questioning the constitutionality of legislation can be filed in any High Court of the country.

The courts have the power to review administrative actions and to provide remedies such as writs of habeas corpus, mandamus, certiorari, prohibitio and quo warranto.

**THE NETHERLANDS**

In the Netherlands, only the legislature deals with the constitutionality of legislation. The Constitution states (Article 120) that, "The constitutionality of Acts of Parliament and treaties shall not be reviewed by the courts." Article 119, however, gives the Supreme Court jurisdiction to try present and former members of the Parliament, Ministers and State Secretaries for offences committed while in office.

**NEW ZEALAND**

In New Zealand, the courts are responsible for interpreting legislation, but the judiciary has no power to review the constitutionality of legislation. The judiciary does have power to review the acts of government and private administrative bodies to determine whether they have acted fairly and within their powers.
Legislation is interpreted consistently with the New Zealand Bill of Rights Act 1990, constitutional principles and international obligations. There may be power to issue declarations of inconsistency under the Bill of Rights. In a recent (2007) case of the Supreme Court, the Court did not rule out the possibility of the availability of a declaration of inconsistency in relation to criminal proceedings; however, the status of this remedy is still unclear. The High Court is the only court with inherent jurisdiction. The other courts have powers conferred under legislation.

**SOUTH AFRICA**

The High Courts, Supreme Court of Appeal and Constitutional Court may hear constitutional cases. The Constitutional Court is the highest court in constitutional matters. The High Courts and Supreme Court of Appeal can rule on constitutional matters, with the exception of specified matters that cannot be decided other than by the Constitutional Court. For instance, only the Constitutional Court may decide that Parliament or the President has failed to fulfill a constitutional obligation. The High Courts and Supreme Court of Appeal can also make orders as to the constitutional validity of legislation, but their decisions must be confirmed by the Constitutional Court. The Constitutional Court determines what is a constitutional matter.

The High Court, the Supreme Court of Appeal (only on appeal) and the Constitutional Court have jurisdiction to review administrative action.

**SWEDEN**

The Swedish Constitution does not favour judicial review of legislation, and the general view is that constitutional rights and procedures are safeguarded predominantly by non-judicial means. The critical role of the Swedish judiciary is to actively participate in the pre-legislative review of proposals, often in draft bill stage, or even in the formulation of policy. Courts are expressly invited to participate in the consultative process by which legislation is made in Sweden. Perhaps because of this, the judiciary’s approach to statutory interpretation shows much deference to the legislation. In the early 1970s, a consensus emerged on a very limited form of constitutional review. Under Article 11-14 of the Constitution, a court or an administrative agency can refuse to apply a provision only where it is manifestly contrary to the Constitution.

Article 9-5 of the Parliament Act states that appeals against decisions of Parliament bodies in administrative matters are considered by the Supreme Administrative Court in cases specially determined by the Parliament, and in other cases by the Parliament Complaints Board. The Board consists of a chairman who holds or has held in the past a judicial office and is not a member of the Parliament, and four other members elected from among the members of Parliament.

**U.S. AND**

Federal courts are often called the guardians of the Constitution because their rulings protect the rights and liberties guaranteed by it. U.S. case law gives the
<table>
<thead>
<tr>
<th>Country</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CALIFORNIA</td>
<td>Supreme Court – a court of nine justices – power to rule that a law is unconstitutional (judicial review). Federal judges have the power to review administrative actions of the government and to determine their own jurisdiction. The US Supreme Court has more than 10,000 cases on the docket per Term. Plenary review with oral arguments is granted in about 100 cases per Term. Formal written opinions are delivered in 80 to 90 cases. Approximately 50 to 60 additional cases are disposed of without granting plenary review. In California, the courts have implied powers to review constitutionality of legislation and administrative actions of government and to impose remedies based on the judicial power vested in them (California Constitution Article VI, section 1). Jurisdiction is set by the Constitution (Article VI, sections 10, 11). An integral aspect of judicial power is the authority of courts to determine their own jurisdiction.</td>
</tr>
<tr>
<td>CANADA</td>
<td>Jurisdiction is expressly conferred by the Canadian Charter of Rights and Freedoms, which is part of the Constitution. The Charter permits individuals with standing to apply to a court alleging the breach of constitutionally protected rights. All courts have jurisdiction to hear constitutional matters. Various remedies can be granted. Protections in ratified international treaties and conventions may be referred to by the courts to guide their decision making.</td>
</tr>
<tr>
<td>CHILE</td>
<td>Pursuant to Chile’s Constitution (Article 20), the judicial branch and, in particular, the supreme and higher courts, have exclusive jurisdiction over a civil rights action called “recurso de protección”. This action allows courts, first the higher court and then the Supreme Court, to examine any action or failure to act by a party, or any law or administrative policies of government institutions or private parties when these affect, suppress or limit in an arbitrary manner any Constitutional right established in the Constitution under Article 19.</td>
</tr>
<tr>
<td>FRANCE</td>
<td>Since 1971, the Constitutional Council has engaged in considerable rights-based review of legislation, setting aside laws that infringed personal liberty, equality, procedural due process, the right to travel, the right to vote, the right to a collegial trial and the right to a criminal appeal.</td>
</tr>
<tr>
<td>INDIA</td>
<td>The Constitution (Article 32) guarantees the right to apply to the Supreme Court for the enforcement of the fundamental rights protected under the Constitution. The Supreme Court has also developed the concept of public interest litigation, whereby</td>
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</tbody>
</table>
an individual or public interest group may petition the court on behalf of a socially
and/or economically disadvantaged group that has suffered a legal wrong. High
Courts also have original jurisdiction to hear public interest litigation and to issue
writs and orders for the enforcement of fundamental rights.

| THE NETHERLANDS | The Netherlands is a signatory to various international treaties that guarantee civil
liberties and human rights in addition to those provided for in the Constitution. Under
the Constitution (Article 94), international treaties take precedence over domestic
legislation. Individuals alleging that their rights under the Constitution or a treaty
have been infringed can have the issue adjudicated in the courts and obtain a
remedy, other than the striking down of legislation itself. |
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<tbody>
<tr>
<td>NEW ZEALAND</td>
<td>The New Zealand Bill of Rights Act 1990 was implemented to ensure New Zealand fulfilled its obligations under the International Convention on Civil and Political Rights. The Act applies to human rights breaches committed by Crown entities, local government and private bodies performing public functions under contract. Remedies beyond interpreting legislation and powers under legislation consistent with rights in the Act are not expressly provided for, but the courts have developed remedies for breaches of rights (e.g. exclusion of evidence in criminal cases, compensatory damages, potential for declarations of inconsistency, etc.). Common law remedies remain.</td>
</tr>
<tr>
<td>SOUTH AFRICA</td>
<td>The judiciary is empowered to provide remedies to citizens (and permanent residents) whose constitutional rights under the Bill of Rights have been threatened or infringed by either the state or private actors.</td>
</tr>
<tr>
<td>SWEDEN</td>
<td>Fundamental rights and freedoms are listed in the Swedish Constitution. There are also the Freedom of the Press Act and the Fundamental Law on Freedom of Expression. Offences listed in both of these statutes are judged according to the Penal Code. Sweden has also ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms. If the European Court of Human Rights finds that there has been a violation of the Convention or the protocols relating to it, and if the internal law of the party concerned allows only partial reparation to be made, the Court is able to rule on an appropriate remedy for the injured party. Further, a team of elected Parliamentary Ombudsmen is also mandated to investigate the correctness of administrative decisions and the impartiality of officials (including judges but excluding local government officials), as well as the protection of rights.</td>
</tr>
</tbody>
</table>
The Bill of Rights, set out in the U.S. Constitution, provides for due process, a speedy trial and a trial by jury, and a prohibition against cruel and unusual punishment. These rights can be enforced in the courts. There are also federal statutes protecting against discrimination in the workplace (Title VII of Civil Rights Act of 1964, Equal Pay Act of 1963, and others). Title 42 paragraph 1983 (1996) provides a mechanism for seeking redress for an alleged deprivation of a litigant’s federal constitutional and federal statutory rights by persons acting under colour of state law.

In California as well, these powers are an implied part of judicial power.

<table>
<thead>
<tr>
<th>4. Judicial powers relating to contempt/subpoena/enforcement</th>
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<tbody>
<tr>
<td>CANADA</td>
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<tr>
<td>CHILE</td>
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<tr>
<td>FRANCE</td>
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<tr>
<td>Country</td>
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</tr>
<tr>
<td>India</td>
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<tr>
<td>The Netherlands</td>
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<td>New Zealand</td>
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<td>South Africa</td>
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<tr>
<td>Sweden</td>
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<tr>
<td>U.S. and California</td>
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</tbody>
</table>
5. **System of appellate review: judicial decisions may be reversed only through the judicial appellate process**

<table>
<thead>
<tr>
<th>Country</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada</td>
<td>Canadian appeal courts include provincial superior courts, provincial courts of appeal, Federal Courts of appeal and the Supreme Court of Canada, which is the highest level of appeal. Judicial decisions may be reviewed for the purpose of determining whether there are errors of fact or law or both, only through the judicial appeal process and not through any other branch. Judges do not face reprisal from government or any other source for unpopular or even erroneous decisions.</td>
</tr>
<tr>
<td>Chile</td>
<td>Chile’s legal system, based on the inquisitorial model, establishes a broad judicial remedy against rulings that cause detriment to any party. The remedy allows the higher court to review the facts and the law (the entire contents of the case are on file and available to the higher court) and to vary the original ruling. The appeal process differs for Chile’s new criminal procedure, which is based on the adversarial, oral mode of hearing. In this case, the basis for disputing a judgment is limited to the incorrect application of the law. The facts cannot be reviewed by the appeal court.</td>
</tr>
<tr>
<td>France</td>
<td>Judicial courts and administrative courts have parallel appellate systems with a first original level, a second appellate level and, as bodies of last resort, the Cour de Cassation and the Conseil d’État, respectively. There is generally a right of appeal by way of a re-hearing from any first instance court, and then a right to a second appeal on questions of law. There is, in addition, a special procedure for the “revision” of criminal justice errors to a specially constituted Cour de Cassation, generally at the instance of the Minister for Justice. Finally, since 1991, the Cassation Court gives advice to lower courts on new or complex areas of law.</td>
</tr>
<tr>
<td>India</td>
<td>India has a single integrated system of courts, which administers both union and state laws. The Supreme Court, which has original, appellate and advisory jurisdiction, is the final court and its decisions are binding on all lower courts. Subordinate to the Supreme Court are state-level High Courts and subordinate, district-level District and Session Courts. Under section 96 of the Civil Procedure Code (CPC), except as otherwise provided, “an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.” Under section 100, “… an appeal shall lie to the High Court from every</td>
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<tr>
<td>Country</td>
<td>Description</td>
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<tr>
<td>THE NETHERLANDS</td>
<td>The 19 district courts have five Courts of Appeal that re-examine the facts of the appealed case and reach their own conclusions. In most cases, it is possible to contest the Court of Appeal’s decision by appealing in cassation to the Supreme Court of the Netherlands, the highest court, which determines whether the lower courts have observed proper application of the law in reaching their decision.</td>
</tr>
<tr>
<td>NEW ZEALAND</td>
<td>New Zealand has a hierarchy of courts. The Privy Council is the highest court, followed by the Court of Appeal, the High Court, and finally the District Court, which has some specialist divisions. The Employment Court is a separate, specialist court. Appeals from District Court decisions are usually to one judge of the High Court and further appeals to the Court of Appeal with leave, normally presided over by three judges. All jury trial appeals (whether from District Court or High Court) are appealable directly to the Court of Appeal. Further appeal is by leave to the Supreme Court. Leave is granted on matters of general or public importance, where a substantial miscarriage of justice may have occurred or may occur unless the appeal is heard, or an appeal that involves a matter of general commercial significance.</td>
</tr>
<tr>
<td>SOUTH AFRICA</td>
<td>Courts of appeal are provided for under the Constitution. Appeal courts include the Supreme Court of Appeal, divisions of the High Court, and the Constitutional Court. The executive and legislative branches are bound by court orders.</td>
</tr>
<tr>
<td>SWEDEN</td>
<td>Sweden has courts of general jurisdiction covering civil and criminal law, and special courts dealing with administrative law. Each of the two branches of courts operates at three levels: regional first instance and appeal courts, and a national supreme court.</td>
</tr>
<tr>
<td>U.S. AND CALIFORNIA</td>
<td>Under the U.S. Constitution (28 U.S.C. paragraph 43), each federal circuit court has a court of appeal. There is one appeal of right to the Federal Court of Appeal. Discretionary review by the Supreme Court is available by leave on issues of law only. In California, the state Constitution provides that original trial jurisdiction is in superior courts, with appellate courts having concurrent original jurisdiction in extraordinary writs and habeas corpus. Appellate jurisdiction is by right from superior courts to courts of appeal with discretionary appeal to the State Supreme Court, except for right of direct appeal from the superior court to the Supreme Court in</td>
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</table>
death penalty cases and from the superior court to the appeal department of the superior court in minor cases.

6. Some measure of judicial self-administration, particularly in relation to judicial functions such as case assignment

<table>
<thead>
<tr>
<th>Country</th>
<th>Description</th>
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<tbody>
<tr>
<td>CANADA</td>
<td>The Supreme Court of Canada and, to a large extent, the Federal Courts have complete control over their own administration. Provincial courts generally have control over specific parts of the courts’ budget (e.g. Chiefs’ offices, administration of judicial salaries and benefits, some training and conferences, etc.). Court buildings, equipment and court staff are under the control of the Ministry of Justice. Case law reinforces judicial control over assignment of judges to cases and courtrooms, sittings of the courts and court lists. Increasingly, courts are concerned about how government decisions about court administration can impact on judicial independence.</td>
</tr>
<tr>
<td>CHILE</td>
<td>The Judicial Branch of Chile has an administrative body called Administrative Corporation of the Judicial Power. This entity manages the different resources, such as budgets, human resources, technology, etc., of the judicial branch. Under the new criminal procedure, this includes the scheduling criteria for hearings.</td>
</tr>
<tr>
<td>FRANCE</td>
<td>Courts self-administer their budget under the supervision of the Court of Appeal; however, court facilities, equipment and most of the staff are administered by the Ministry of Justice. Case assignment is totally under the control of the courts. Files are assigned by the registrar to a chamber according to specialization, and then randomly to judges. The President of the Chamber can also assign files.</td>
</tr>
<tr>
<td>INDIA</td>
<td>Appointment of staff and the budget of the Supreme Court are governed by Article 146 of the Constitution, while that of the High Court's is governed by Article 229. The provision regarding the Consolidated Fund of India is governed by Article 266. Case assignment is entirely within the jurisdiction of the court. This is generally not doubted, but some decided cases deal with the issue, of course, with reference to the rules of the court. Some issues set out in the case law include the vesting of the administrative control of the High Court in the Chief Justice alone (apart from which...</td>
</tr>
</tbody>
</table>
the Chief Justice is considered equal to other judges); that the Chief Justice is the master of the roster and alone has the prerogative to constitute benches of the court and allocate cases; that the puisne judges can only do that work as is allotted to them by the Chief Justice or under his directions; and that until any determination made by the Chief Justice lasts, no judge who is to sit singly can sit in a Division Bench and no Division Bench can be split up by the judges constituting the Bench themselves, and one or both of the judges constituting such Bench sit singly and take up any other kind of judicial business not otherwise assigned to them by or under the directions of the Chief Justice.

**THE NETHERLANDS**

The Council for the Judiciary was established in 2002. It is part of the judicial system and has taken over responsibility for a number of tasks from the Minister of Justice. The Council has five members appointed by the Minister for a six-year renewable term. Three members, including the President, are judges. The tasks assumed by the Council are operational in nature and include the allocation of budgets, supervision of financial management, personnel policy, and accommodation. The Council supports the courts in executing their tasks in these areas. Courts throughout the country are responsible for running their own organization on the basis of integral management. Each court has its own collegial council, chaired by the court President. That council is charged with the general management and day-to-day running of the court.

Case assignment remains solely a function of the judiciary.

**NEW ZEALAND**

The management of courts lies in the hands of Ministry of Justice, subject to issues touching on judicial independence. Judges’ personal staff (associates and law clerks) and judicial administrators of each court, as well as other court staff are employed by the Ministry of Justice, but protocol is maintained to ensure that judicial control over matters impacting on judicial independence.

The District Courts Act 1947 provides that judges can determine when to hear cases, subject to the supervision of the Chief District Court Judge. The same applies at all other levels in court structure. The Rules Committee is a statutory body responsible for procedural rules respecting the judicial systems for the Supreme Court, Court of Appeal, High Court and District Courts. It is chaired by a judge and with judicial members, including the Chief Justice, Chief High Court Judge and Chief District Court Judge.

The Supreme Court Management Committee, Court of Appeal Management Committee, High Court Management Committee and Judicial Administrators deal with systems for allocation of cases and management of workflow, etc.
| SOUTH AFRICA | Each court has a measure of self-administration and controls its own role. The Constitution provides that the High Courts have the power to protect and regulate their own process. Case assignment is done by the Head of Court based on a court roll prepared by the registrar. |
| SWEDEN | The President or Chief Judge of the court is responsible for court functions. According to government regulations, cases are divided through organizational units. These units are formed in accordance with the rules set by the Chief Judge of the court, although some elements of this administration are coordinated by the National Courts Administration, whose function is to be responsible for the overall coordination and common issues within the Swedish judiciary, including providing services for the courts. It provides managerial support to the law courts, such as personnel and training management, facilities, automation and computer systems. |
| U.S. AND CALIFORNIA | The Federal Court system is administered independently of the executive and legislative branches. The Administrative Office of U.S. Courts (AO) was established in 1939 to oversee court administrative functions, including personnel, budget, judicial buildings and facilities, and court security. The Judicial Conference of the United States issues policy recommendations regarding the administration of the Federal Court system. Cases in the trial and appellate courts are assigned to judges randomly. This process is overseen by the clerk's office and is not influenced by individual judges, including the Chief Judge. (See 28 U.S.C. paragraph 137). In California, the Judicial Council (i.e. the policy-making body of the judicial branch, consisting primarily of judges and justices appointed by the Chief Justice and chaired by the Chief Justice) has general administrative authority over the judicial branch pursuant to the state Constitution. Individual case assignments in superior courts are determined by the presiding judge of that court (normally elected by a majority of judges in the court), pursuant to state administrative rules of court. |
| CANADA | In general, judges are able to make budgetary submissions for their courts, but the final allocation is a decision of government. In those areas where the judiciary has control over the budget, once allocated, there is some freedom to make financial decisions within the established government rules for financial management. |

7. **Judicial input into budgetary decisions and judicial control over allocated funds**

<p>| CANADA | In general, judges are able to make budgetary submissions for their courts, but the final allocation is a decision of government. In those areas where the judiciary has control over the budget, once allocated, there is some freedom to make financial decisions within the established government rules for financial management. |</p>
<table>
<thead>
<tr>
<th>Country</th>
<th>Budget Process</th>
</tr>
</thead>
<tbody>
<tr>
<td>CHILE</td>
<td>Every year the judiciary presents a budget proposal to the treasury of the executive branch, then defends or justifies the budgetary requirements set out in its proposal in a hearing at the senate. There is no constitutional guarantee that a percentage of the national budget will be allocated to the judicial branch, nor any other specific allocations solely benefiting the judiciary.</td>
</tr>
<tr>
<td>FRANCE</td>
<td>Court budgets are prepared by the Department of Justice in consultation with the courts and the Department of Finance, and are voted by Parliament. They are distributed to individual courts by the Department of Justice and the Court of Appeal. Courts have control over all funds allocated to them.</td>
</tr>
<tr>
<td>INDIA</td>
<td>The judiciary makes a submission regarding its budget, and the final decision regarding allocation is made by Parliament or the State legislature (as the case may be). The judiciary then has the freedom to reallocate funds, subject to accepted financial rules.</td>
</tr>
<tr>
<td>THE NETHERLANDS</td>
<td>The courts are accountable to the Council for the Judiciary with regard to how they use their resources. The Council reports to the Minister of Justice as to resource usage and requirements; it has a pivotal role in terms of preparing, implementing and accounting for the judiciary system’s budget. The budgetary system is based on a workload-measurement system maintained by the Council.</td>
</tr>
<tr>
<td>NEW ZEALAND</td>
<td>Some budget allocations are directly under judicial control, such as conference and education funds. The judiciary has input into other budgetary decisions through joint committees. There are set protocols as to judicial staff entitlements.</td>
</tr>
<tr>
<td>SOUTH AFRICA</td>
<td>There is judicial input through court managers, who are employed by the Department of Justice. The Head of Court (Judge President of a division) also gives input into the budget. Budgets are allocated to each court and are ring-fenced after they have been approved for various line items by the different courts.</td>
</tr>
<tr>
<td>SWEDEN</td>
<td>After consulting with the courts, the National Courts Administration drafts the budget and apportions the national budget for the judiciary among the law courts.</td>
</tr>
<tr>
<td>U.S. AND CALIFORNIA</td>
<td>The Administrative Office (AO) drafts the federal judiciary’s budget and submits it to the Judicial Conference for review. The Judicial Conference submits the budget to Congress. The AO executes the budget, and it is not subject to revision by the executive branch (See 31 U.S.C. paragraph 1105).</td>
</tr>
</tbody>
</table>
In California, statutory authority over appropriated funds resides in the Judicial Council and Chief Justice. There is judicial input into budgetary decisions, but no guarantees as to the precise budget allocations requested.

8. Guaranteed tenure of judges and heads of court

<table>
<thead>
<tr>
<th>Country</th>
<th>Description</th>
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<tbody>
<tr>
<td><strong>CANADA</strong></td>
<td>Tenure of all judges is protected by the Constitution Act of 1867. This is confirmed in the Federal Judges Act, which notes that judges may only be removed by Parliament if so recommended by the Judicial Council, following the required discipline procedure. Federally appointed judges and some provincially appointed judges may sit until age 75. Chief Justices may be appointed for fixed terms or, in some cases, may sit until retirement. If a Chief’s term expires, or he or she steps down, he or she remains a judge of the court.</td>
</tr>
<tr>
<td><strong>CHILE</strong></td>
<td>Chile’s Constitution provides that judges maintain their status, provided they perform their duties properly, until they reach the age of 75 or are incapable of performing their functions due to illness, etc.</td>
</tr>
<tr>
<td><strong>FRANCE</strong></td>
<td>Constitution, 1958, Article 64 states that “Judges shall be irremovable.” Judges must retire at 68 years of age. During his or her judicial career, a judge can request special leave (département judiciaire) to pursue assignments outside the judiciary. By law, former judges, except for Cassation Court judges, cannot practice as lawyers in the jurisdiction of the court where they were judges for five years after resigning or retiring.</td>
</tr>
<tr>
<td><strong>INDIA</strong></td>
<td>The Constitution (Articles 124, 217) provides that every judge of the Supreme Court will hold office until the age of 65, and that every judge of the High Court will hold office until the age of 62. No judge can be removed from office by the President, except by an order of the President confirmed in the same session after an address by each House of Parliament, supported by a majority of the total membership of that house, and by a majority of not less than two-thirds of those voting and present. A judge may only be removed on the grounds of proved misbehaviour or incapacity.</td>
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<td><strong>THE</strong></td>
<td>The Netherlands Constitution (Article 117) states that members of the judiciary are...</td>
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<td>Country</td>
<td>Appointment details</td>
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<tr>
<td><strong>NETHERLANDS</strong></td>
<td>appointed for life by Royal Decree, and only cease to hold office on resignation or on attaining the age specified by law. In terms of process, a judge can be discharged only through a proceeding before the Supreme Court. Presidents of the court are appointed through Royal Assignment.</td>
</tr>
<tr>
<td><strong>NEW ZEALAND</strong></td>
<td>In relation to superior court judges, the Constitution Act 1986 (section 23) provides that a judge can be removed only by the Sovereign or Governor-General acting on an address of the House of Representatives, and in relation only to that judge’s misbehaviour or incapacity to discharge the functions of office. In relation to District Court judges, the District Courts Act 1947 (section 7) provides that the Governor-General can, at their discretion, remove a judge for inability or misbehaviour. The Governor-General will act on the advice of the Attorney-General in these matters. The same rules as to removal apply for Chief Justices and Heads of Bench who, further, cease to hold office when they cease to be a judge. Judges of District, Court, High Court, Court of Appeal and Supreme Court may sit until age 70. Non-tenured judges may be appointed on acting or temporary warrants for fixed terms.</td>
</tr>
<tr>
<td><strong>SOUTH AFRICA</strong></td>
<td>Constitutional Court judges hold office for a non-renewable term of 12 or 15 years, or to the age of 70, except where an Act of Parliament extends the term. Other judges have permanent tenure ordinarily guaranteed to the age of 70. Removal from office must be based only on specified grounds (Constitution s. 176, 177) and must follow a prescribed procedure. The procedure for removal of judges involves the Judicial Service Commission recommending to the national legislature that a judge be removed. If the legislature passes a two-thirds vote in favour of removal, the President must remove the judge.</td>
</tr>
<tr>
<td><strong>SWEDEN</strong></td>
<td>Article 11-5 of the Constitution provides that a permanent judge may be removed from office only if he shows himself to be manifestly unfit to hold office, either through a criminal act or through gross or repeated neglect of his official duties, or if he reaches the relevant age of retirement. Any judge so removed is entitled to call upon a court to review the decision. These rules also apply to Chief Justices and Presidents of courts who are permanent judges. This special protection does not cover the non-permanent judges. They have an employment protection equivalent to what applies in the rest of the labour market, which means they are generally employed until further notice. Nevertheless, it is very unusual that a non-permanent judge is dismissed for any other reason than that he or she has committed a crime or grossly neglected his or her official duties.</td>
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</table>
The lay judges are appointed by the municipalities and the counties for a period of four years. If a lay judge commits a crime or is found manifestly inappropriate for the mission in any other way, the court can dismiss him or her.

**U.S. AND CALIFORNIA**

Federal judges have life tenure, provided they are on good behaviour (Constitution Article III).

In California, judges and justices serve terms of office (varying from six years for superior court judges to 12 years for appellate justices). Multiple consecutive terms can be served. Trial judges must face election but only appear on the ballot if they have opposition. Appellate justices always appear on the ballot, but question is: “Shall they be elected to office” with a yes/no choice in the event of no opposition.

9. **Qualified judicial immunity – independent association of judges**

**CANADA**

There are no legislative provisions at the federal level respecting judicial immunity; however, the case law states that immunity is absolute in Canada for civil suits brought against superior court judges in relation to their work as judges, for the sake of upholding judicial independence. There are statutory protections against civil suits for some provincial courts.

Judges may be charged with criminal offences as would any other citizen. There is no formal route required to charge a judge.

There is an independent federal association of judges, along with provincial associations.

**CHILE**

In Chile, there is no judicial immunity regarding the rulings or behaviour of judges. In the case of criminal rulings, Chile’s Constitution establishes a specific legal action against judges for rulings made in an unjustifiably erroneous or arbitrary way (Article 19 (7)(i)). The system provides for a special indictment to be presented at the High Court supervising that specific judge. If the High Court determines that there are sufficient grounds for a possible charge, the prosecution is entitled to engage in proceedings, including laying charges against that judge.

**FRANCE**

There is no procedural criminal immunity for judges. A criminal investigation against a judge proceeds exactly the same way as for an ordinary citizen. Substantive and procedural limitations on civil actions against judges result in effective judicial
Immunity from civil liability in relation to work as a judge. However, in a move towards greater accountability for judicial decisions, while protecting internal judicial independence, in 1972, the French introduced a system of vicarious State liability for damage caused by the “defective functioning” of the justice system, including the “personal fault” of a judge. A judicial agent of the Treasury is to be sued and not, in the latter situation, the judge, who is thus shielded from an aggrieved party. There is, however, a right of reimbursement in the State against the judge at fault in the event of a judgment against the State. This right must be pursued in the Cour de Cassation. Few cases have been brought by such aggrieved parties against the State, fewer still have succeeded, and there has so far been no claim brought by the State against a judge for reimbursement.

Three independent judges’ unions defend the interests and working conditions of judges: the Syndicat de la Magistrature, formed in 1968 (about 700 members); the Union Syndicale des Magistrats, formed in 1974 (about 1,500 members); and the Association Professionnelle des Magistrats, formed in 1981 (about 350 members).

| INDIA | The Constitution of India insulates the Supreme Court and the High Courts from political criticism. The conduct of a Supreme Court or a High Court judge in the discharge of his duties cannot be discussed in either Parliament or a State Legislature.
Under the Judges (Protection) Act, 1985, a judge is given protection from any civil or criminal proceeding for any act done in the discharge of his official or judicial function or duty. This is intended to protect the independence of the judiciary. The Supreme Court has also held that a judge can be proceeded against in a criminal court for allegations of corruption. |
| THE NETHERLANDS | No private immunity (civil or criminal) exists for judges. In principle, however, there is immunity for errors made in the course of judicial duties. |
| NEW ZEALAND | Common law judges have judicial immunity for acts done or words said in a judicial capacity. The Judicature Act 1908 (section 26Q), the District Courts Act 1947 (section 119) and the Employment Relations Act 2000 (section 203) provide statutory immunity for judges equal to the immunity of judges of the High Court at common law. There is no longer a requirement that judges must act within their jurisdiction in order to access immunity. |
| SOUTH AFRICA | Anyone charging or suing a judge must first obtain consent from the Head of Court |
(Judge President of a Division).

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<th>Country</th>
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<tbody>
<tr>
<td>SWEDEN</td>
<td>There is no special channel for charging a judge, nor any kind of immunity. If a judge is convicted of a crime, a process is followed to determine whether he or she should continue as a judge.</td>
</tr>
<tr>
<td>U.S. AND CALIFORNIA</td>
<td>Federally, as U.S. citizens, judges are subject to prosecution for criminal conduct. Judges cannot be sued for the substance of their opinions. In California, judges have absolute civil immunity for actions within their scope and authority as a judge. They are subject to the regular civil process for activities outside their scope and authority as a judge (although whether an action is within or outside can be a matter of judicial determination). Judges are subject to the normal criminal process for their actions.</td>
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10. **Adequate salaries and benefits, and an adequate process to set them**

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<tr>
<th>Country</th>
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| CANADA  | The Constitution Act 1867 (section 100) provides that salaries be fixed and that they be provided by Parliament. The Supreme Court of Canada has also held that there be a constitutionally protected right to financial security and to a fair, independent process for determining judicial salaries. 

A three-member Judicial Compensation and Benefits Commission is set up every four years and mandated under the Judges Act to make recommendations to the Minister of Justice on issues of salary, benefits and other compensation matters for federally appointed judges. The government may not unreasonably reject the Commission’s recommendations. Protocol regarding judicial salaries, expenses, leave, pensions and other matters are set out under Judges Act. Judicial salaries in Canada at all levels of the Court are roughly comparable to those paid to experienced lawyers and senior civil servants. All federally appointed judges have the same salary and benefits, except for the Chief Justices and the nine Justices of the Supreme Court of Canada. Judges cannot otherwise exercise remunerated functions. |
| CHILE   | Judicial salaries are divided according to a scale that distinguishes between Supreme Court, High Court and ordinary judges. This scale is publicly accessible.                                                   |
| FRANCE  | Salaries are set by a government decree. Judges’ salaries are aligned with those of senior public servants. There are two grades of judges, each having several salary |
Echelons determined by years of service. Judges’ remuneration includes a basic salary (based on grade and years of service), an allowance determined by the judge’s specific functions (34 to 39 per cent of the basic salary) and performance pay (up to 15 per cent of the basic salary). Judges are entitled to a pension. Judges cannot otherwise exercise remunerated functions, with the exception of teaching or administrative commissions.

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<th>Country</th>
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<tbody>
<tr>
<td><strong>INDIA</strong></td>
<td>The Constitution (Article 125) states that the salaries, privileges, allowances and pensions of Supreme Court judges are “as may be determined by Parliament by law.” This is subject to the safeguard that these cannot be varied during the course of tenure of the judges to their disadvantage. Article 221 provides similarly for High Court judges.</td>
</tr>
<tr>
<td><strong>THE NETHERLANDS</strong></td>
<td>In 2003, the salaries were set as follows: a Supreme Court Judge earns 9,572 euro gross per month; a District Judge/Prosecutor, 4,740-6,000 euro gross per month; a Judge-in-Training 2,161-3,426 euro gross per month. Salaries for the judiciary are compatible with high-level civil servants and would be equivalent to the top 5 per cent of the civil service.</td>
</tr>
<tr>
<td><strong>NEW ZEALAND</strong></td>
<td>The Constitution Act s. 24 provides that “The salary of a Judge of the High Court shall not be reduced during the continuance of the Judge’s commission.” District Courts Act 1947 (section 6(2)) provides the same in respect of District Court judges. The Remuneration Authority Act 1977 provides that three members appointed by the Governor-General have authority to determine judicial salaries. Determinations take effect without need for Cabinet approval or Orders in Council.</td>
</tr>
<tr>
<td><strong>SOUTH AFRICA</strong></td>
<td>The Judges’ Remuneration and Conditions of Employment Act, 2001 relates to the Constitutional Court, the Supreme Court of Appeal and the High Court and provides for annual salaries to be set “at a rate determined by the President by proclamation in the Gazette.” The manner of calculating salaries is set out in the Act. The recommendation is made by a judges’ remuneration commission. Judges’ salaries, allowances and benefits cannot be reduced (Constitution s 176). The Magistrates Commission advises the Minister of Justice in regard to the salary of magistrates.</td>
</tr>
<tr>
<td><strong>SWEDEN</strong></td>
<td>Salaries are individual. A newly appointed permanent judge negotiates with the National Courts Administration to settle his or her salary on the basis of the judge’s previous employment, though there is a minimum salary level. In some cases judges may receive a higher salary if they have specialized experience in one or more</td>
</tr>
</tbody>
</table>
areas. The salaries of non-permanent judges are negotiated through the union.

| U.S. AND CALIFORNIA | 2008 Judicial Salaries: Supreme Court Chief Justice – $217,400; Associate Justices – $208,100; Circuit Judges – $179,500; and District Judges – $169,300. In recent years, federal judges have not received cost of living salary increases. Pending legislation proposes significant judicial salary increases. Under the California Constitution, the Legislature sets judges’ compensation and retirement benefits. By statute, judges’ pay is increased every year by the same amount as the average increase for state government employees. Judges’ pay (like that of other constitutional officers) may not be reduced during their term of office (Article III, section 4). There is no salary commission for judges, although there is for other constitutional officers (Article III, section 8). |

11. **Adequate judicial working conditions, including adequate court support staff, resources such as technology and adequate security**

| CANADA | Court buildings and facilities are well maintained and resourced under current budgets. All judges have access to technological resources. There may be some minor disparity in terms of the distribution of resources between some courts. Judges are on occasion involved in the hiring of some court staff (registrar, court administrator, judicial secretaries, law clerks), although the hiring decision is made by the government. There are well-developed training programs for court staff, as well as professional associations. |

| CHILE | In the inquisitorial system, each judge has his own “court,” with a legal secretary and paralegals associated with him. As a result of the large number of cases, paper files and the lack of technology, working conditions are not up to standard. In the new, ‘reform’ systems in areas such as criminal law, family law and labour law, judges have good working conditions, including access to technology (e.g. internet, web mail, internet, etc.). Judges have their own chambers, although they do not directly supervise court employees, who are responsible to the whole court, and administratively support the court and judges as a whole. |

<p>| FRANCE | Working conditions are adequate. All courts and individual judges have access to technology support. Court staff are public servants and judges have no direct authority over them. |</p>
<table>
<thead>
<tr>
<th>Country</th>
<th>Information</th>
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</thead>
<tbody>
<tr>
<td>INDIA</td>
<td>The Supreme Court and some of the High Courts have been computerized since 1990. Through the efforts of the Supreme Court, a government funded E-Committee was constituted in 2004 to formulate a national policy on computerization of the Indian judiciary and to advise on changes related to technology, communication and management. The Computerisation of Courts project was launched in 2007 to standardize the use of electronic technologies across all courts in India. Judges, including those in the district courts, now have access to computers and have been provided with laptops. The E-Committee is expected to liaise with the Government to make the courts computer literate and compatible.</td>
</tr>
<tr>
<td>THE NETHERLANDS</td>
<td>The Council for the Judiciary grants a budget to each of the district courts, based on the workload measurement outcomes per District Court.</td>
</tr>
<tr>
<td>NEW ZEALAND</td>
<td>There are clear protocols as to adequate working conditions for judges. The judiciary is consulted on its needs through joint committees.</td>
</tr>
<tr>
<td>SOUTH AFRICA</td>
<td>There are still resource challenges and shortages in the magistracy.</td>
</tr>
<tr>
<td>SWEDEN</td>
<td>Individual Chief Judges are responsible for their courts’ budgets. The funds allocated by the National Courts Administration are required to meet the needs of each court, based on the number of cases each handles. The National Courts Administration provides technology, such as computers and computer systems, and there is an expectation that conditions be on par between the different courts.</td>
</tr>
<tr>
<td>U.S. AND CALIFORNIA</td>
<td>The Administrative Office (AO) works with the Federal Courts to provide adequate working conditions. The construction of new courthouses is based on these studies. The AO works with court personnel and staff to provide information technology and related training, as needed. In California, there has generally been adequate state support and other resources since funding of the courts was transferred from the counties to the state in 1997. Courthouses are being improved, and responsibility has recently passed (in part) from counties to the state. A legislative proposal partially addressing the need for improvements is pending in the Legislature.</td>
</tr>
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12. Access to law and case law – adequately resourced court libraries and updated legal texts

<table>
<thead>
<tr>
<th>Country</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>CANADA</td>
<td>Judges have access to legal databases, libraries and current law from all courts.</td>
</tr>
<tr>
<td>CHILE</td>
<td>Today, in the ‘reform’ areas, judges have access to all case law and legislation through intranet connections to the Administrative Corporation of the Judicial Power, as well as the Studies Unit of the Supreme Court.</td>
</tr>
<tr>
<td>FRANCE</td>
<td>There is a yearly publication of all codes and other laws; in addition, law journals publish the decisions of various courts. Judges have electronic access to all updated laws and case law. There are law libraries in every courthouse.</td>
</tr>
<tr>
<td>INDIA</td>
<td>Judges have free access to judgments of the Supreme Court and of most high courts through the internet. Libraries are provided to all judges.</td>
</tr>
<tr>
<td>THE NETHERLANDS</td>
<td>The Council for the Judiciary grants funds to the district courts to ensure judges have full access to legal resources at all times. These include a good electronic library with case law and all legislation from every court.</td>
</tr>
<tr>
<td>NEW ZEALAND</td>
<td>The Judicial Libraries Management Board oversees and develops the management of judicial library services (this is an inter-Bench committee). Online materials and traditional library materials are generally accessible.</td>
</tr>
<tr>
<td>SOUTH AFRICA</td>
<td>Courts are supplied with libraries and the use of electronic facilities. The Constitutional Court has an extensive library, including considerable electronic resources that are made available to the public.</td>
</tr>
<tr>
<td>SWEDEN</td>
<td>Every court keeps its own library and can subscribe to different legal databases. The funds disbursed from the National Courts Administration cover these costs.</td>
</tr>
</tbody>
</table>
| U.S. AND CALIFORNIA | Each court has a library and judges have access to electronic databases of case law.  
In California, judges and justice departments have adequate libraries, computerized legal research and legal research assistance as part of their budgets. |
## 13. Judicial positions created as needed

<table>
<thead>
<tr>
<th>Country</th>
<th>Details</th>
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<tbody>
<tr>
<td>Canada</td>
<td>Generally, judicial positions are created by the government as needed, although there may be delays in responding to requests from the courts. The total judicial complement for each court is frequently legislated, in which case the number of complement positions can be increased by amendment to legislation (e.g. Federal Judges Act, provincial regulations under the Ontario Courts of Justice Act).</td>
</tr>
<tr>
<td>Chile</td>
<td>Efforts made by Chile as it transitions from an inquisitorial to an adversarial system have given rise to the need to create new judicial positions in criminal, family and labour courts. Since reform has been implemented in the area of criminal law, the number of judges having jurisdiction over criminal matters has increased from 200 to 751. The situation has been more challenging in the area of family law, where implementation has been more complex, and there are backlogs. Increasing the number of judges would address this challenge.</td>
</tr>
<tr>
<td>France</td>
<td>The Minister of Justice is responsible for the number and location of courts in the country and for the creation of judicial positions.</td>
</tr>
<tr>
<td>India</td>
<td>Judicial positions in the Supreme Court are created by amending the Supreme Court (Number of Judges) Act, 1956. Judicial positions in the high courts are created by the government in consultation with the High Court. It is estimated that there are only about 11 judges for every one million citizens. This is one of the lowest ratios in the world.</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>The Council for the Judiciary is responsible for creating new positions.</td>
</tr>
<tr>
<td>New Zealand</td>
<td>Under the District Courts Act 1947 (section 5(2)), the Governor-General can appoint judges from time to time, as needed, to a maximum of 140 judges. There is a cap of 55 judges for the High Court (section 4(1) Judicature Act 1908), nine judges for the Court of Appeal (section 57(2) Judicature Act 1908), and six judges for the Supreme Court (section 17 Supreme Court Act 2003). There are currently five Supreme Court judges. Whether judges are appointed to the maximum legislated limit depends on the workload. The creation of new positions is a decision of the executive.</td>
</tr>
<tr>
<td>South Africa</td>
<td>The Judge Presidents of Courts request additional posts from the Ministry of Justice. Once the positions have been approved, they are advertised by the Judicial Service Commission, a body responsible for interviewing and recommending persons for</td>
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<tr>
<td>Country</td>
<td>Description</td>
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<tr>
<td>SWEDEN</td>
<td>As a rule, the need for a new permanent judicial position is identified in the specific court. The court consults with the National Courts Administration, which must agree that there is a need, after which the position is declared vacant. The Board for the Judiciary then prepares proposals to the government concerning appointment of judges. The government then appoints a permanent judge(s) to the vacancy(ies).</td>
</tr>
<tr>
<td>U.S. AND CALIFORNIA</td>
<td>New judgeships must be approved by Congress. Requests are submitted to Congress by the Judicial Conference. In California, the legislature creates judicial positions in accordance with the Constitution, without any standard being set by law. The Judicial Council requests the creation of judicial positions based on the projected need in each county. Currently, of a total Bench of over 1,500, there are 300 positions that need to be filled. There have been fewer than average positions created in the past 10 years.</td>
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14. Objective, merit-based process for selection of judicial trainees or judges – appropriate gender and minority representation in courts

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<tr>
<th>Country</th>
<th>Description</th>
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<tbody>
<tr>
<td>CANADA</td>
<td>In order to be appointed at the federal level, a judge must have 10 or more years of experience as a lawyer (i.e. a law degree and bar admission exams), or comparable experience in a legal and judicial capacity (Judges Act). A committee of judges, lawyers and a representative of the law enforcement community determines if applicants are qualified for appointment, and then the executive may choose from the list of qualified candidates. There is no qualifying exam or other formal assessment prior to appointment. The Supreme Court of Canada Act (section 6) and the Federal Court Act (section 6) ensure there is appropriate representation of judges from the civil law and common law legal communities on these courts. At the provincial level, there are more extensive procedures. For example, in Ontario, vacancies are advertised and applicants are assessed and interviewed by the Ontario Judicial Appointments Advisory Committee (statutory body comprised of 13 members appointed for three-year terms, including judges, a member of the Ontario Judicial Council and lay persons). Judges are assessed on the basis of their experience, knowledge, skills and ethics. The government can only appoint persons from the list recommended by the Committee. At both the federal and provincial levels, there is a formal effort to ensure an increasingly representative proportion of minorities and women. The number of judges from minority groups and women is appropriate for the population of the province.</td>
</tr>
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women judges at the superior court level is indicated on the website of the Office of the Commissioner for Federal Judicial Affairs, as are assessment criteria for judicial appointments.

| CHILE | In Chile the selection of candidates for judicial training is a responsibility of the Judicial Academy. The process consists of pre-selection of candidates, based on an examination of civil, criminal, procedural, commercial and constitutional law. The highest 120 scores are then further tested. First, the candidates must provide rulings for three cases on the above subject areas, and are then administered a psychological test. Finally, the candidates’ law school grades are considered before the best 40 scores are obtained by averaging individual achievements for the latter three elements. Those 40 candidates are interviewed by the Academy and selections are made from among them. |
| FRANCE | Judging is a career in France, and normally preceded by specialized training. Since 1958, this training has been done in the École Nationale de la Magistrature (ENM) in Bordeaux. The ENM is under the administrative control of the Minister of Justice.

There are some 6,100 members of the judiciary in France. Of those, 4,600 (75 per cent) are judges and 1,500 (25 per cent) are prosecutors. Judges (juges du siège) and prosecutors (juges du parquet) share the same professional status. They receive the same training at the ENM and are organized in similar hierarchies. Prosecutors do not enjoy constitutional protection against removal from office as judges do.

Of the entire judiciary, 82 per cent have entered through the ENM and the remainder have been recruited directly. More than 75 per cent of ENM recruits are now women, and, as time passes, women will be in the majority. Entry to the ENM is by examination for three categories of candidates: the main category comprises those who have successfully completed four years of law school; competitions are also run for public servants with four years of relevant experience, and for experienced jurists from the private sector. Between 100 and 200 entrants (auditeurs de justice) are admitted each year at the ENM, but the number has been falling. The age of the trainees is slightly on the rise and, increasingly, they have had previous professional experience before entering the ENM.

Training lasts 31 months: eight months of studies at ENM; internships of three months in government administration or with a business corporation; and 14 months in the courts, followed by six months of specialized study at the ENM. At the end of the training, there is an exit examination set by a jury composed mostly of judges, as well as law teachers and members of the Conseil d'État. Successful trainees are appointed to judicial posts on the recommendation of the Superior Judicial Council. |
The choice of post is determined by the candidate's rank in the exit examination. Graduates from the ENM enter the judiciary at approximately age 30. They have been paid a salary during their training. The ENM is presently in the process of reforming its recruitment process, approach and curriculum. This should be in place in 2009.

There are two grades of judges, topped by a third level, *hors hiérarchie*. Most of the judges (65 per cent) are in the lower grade, while only 5 per cent belong to the top level.

For nominations to the top level (*Cour de Cassation*, First Presidents of the Courts of Appeal, Presidents of the higher level trial courts), proposals are made by the Council itself for approval by the Minister for Justice. They are appointed for a seven-year term. At the end of the term, if they are not appointed to another function, they remain as a judge on the court. Court Presidents and court heads are responsible for the administration of the courts, but occasionally also hear high-profile cases.

**INDIA**

The Constitution (Articles 124, 217) provides for the appointment of judges by the President after “consultation with the Chief Justice of India.” In 1993 and 1998, the Supreme Court read into the Constitution, not only that the Chief Justice’s opinion must be a collective opinion formed after taking the views of his senior colleagues into account, but also that when that opinion conflicts with the executive, the judiciary’s opinion should have primacy.

A citizen of India may be appointed a judge of the Supreme Court if he has been a judge of the High Court for at least five years, or has been an advocate of a High Court for at least 10 years, or is, in the opinion of the President, a distinguished jurist (Article 124). To be a judge of the High Court, a citizen must have held judicial office for at least 10 years or have been an advocate of a High Court for at least 10 years.

Directly recruited judicial officers are appointed only after they pass an open competitive examination.

**THE NETHERLANDS**

The Council for the Judiciary is responsible for the recruitment, selection and training of judicial and court officials. It carries out its tasks in these areas in close consultation with the court councils. The Council has a significant say in appointing members to the court council.

There are two programmes. For lawyers with more than six years’ experience, there is a one-year programme, after which they apply when a position is free. The duration of the position is six years, encompassing all sectors in a district court and an assignment as prosecutor in the Office of the Prosecutor. For a limited group of
lawyers with less than six years’ experience, an in-house on-the-job education programme exists, and there is an official entrance exam. For lawyers with more than six years’ experience there is only an interview, which is partly content based, as well as on-the-job training for one or two years. The training is considered very difficult, and even some experienced lawyers do not succeed.

**NEW ZEALAND**

Judicial appointments are made by the executive; however, it is a constitutional convention in New Zealand that, in deciding who is to be appointed, the Attorney-General acts independently of party political considerations. The appointment process followed by the Attorney-General is not prescribed by any statute or regulation, but the present procedure is perceived to function well.

In terms of experience, the Judicature Act 1908 (section 6) (whose provisions relate to High Court and Court of Appeal judges) provides that, to have been considered for appointment, judges must have practiced as a barrister or solicitor for at least seven years. The District Courts Act 1947 (section 5(3)) provides the same in respect to District Court judges. Judges also require much more than just experience in practice. They are appointed according to their qualifications, personal qualities and relevant experience. They must be of good character, have a sound knowledge of the law and of its practice, and have a real sense of what justice means and requires in present-day New Zealand. They must have the discipline, capacity and insight to act impartially, independently and fairly.

**SOUTH AFRICA**

In general, judges are appointed from among the ranks of experienced legal practitioners. South Africa’s judicial appointment process is public, and transcripts are posted on the internet.

The Judicial Service Commission (JSC), an independent body provided under the Constitution, provides a list of candidates from which the President selects permanent judges after further consultation. The JSC is comprised, in accordance with the Constitution (section 178), of the Chief Justice, the President of the Constitutional Court, the Minister of Justice, two practicing advocates, two practicing attorneys, one law professor, six members of the National Assembly and four members of the National Council of Provinces, in addition to other persons designated by the President.

The JSC has determined criteria and guidelines for appointments, which are available to the public; it reports on its activities, and holds public interviews of candidates for judgeship. The JSC’s decisions require the support of a simple majority of its members. In practice, the President follows the recommendation of the JSC.

In the case of the appointment of the Chief and Deputy Chief Justices of the Supreme Court, the JSC’s recommendation is not binding on the President.

In terms of lower court judges, the Magistrates’ Commission has a committee to deal
with appointments, as well as promotions, transfers, discharge or disciplinary action against lower court judges “without prejudice or favour.” The Commission is composed of a judge, six magistrates of different ranking, four members of the legal profession, an academic lawyer, the head of the justice college, eight members of Parliament and various other persons. Persons cannot be considered for appointment as magistrates without having completed the civil service lower law examination or higher law examination, or their equivalent.

In making its recommendations for appointment to judicial office, the Judicial Service Commission is obliged to consider the imperatives of competence, as well as race and gender. It is accepted that there is a need to facilitate the appointment of women to the Bench. The Constitution requires that, at the time of appointment, only suitably qualified people be appointed. A programme has been formulated to ensure that suitably qualified women are appointed, by focusing on creating a pool of trained women who will be available for acting appointments to the Bench. Admission to the programme is not a guarantee for appointment. It has three phases: (1) a three-month theoretical course on a full-time basis. If successful, the applicant moves forward; (2) two terms of mentoring – applicant sits with a judge of the High Court and produces dummy judgments, which are submitted and assessed. If successful, the applicant moves on to the next phase; (3) a two-week debriefing session where applicants are given various assignments. Successful applicants are then recommended to Judge Presidents as candidates that can act as judges. The course takes 12 months to complete.

There is an orientation programme for new judges.

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<th>SWEDEN</th>
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<tr>
<td>The Swedish selection system is based on an open, transparent meritocratic competition. At the end of the law degree, a candidate applies to become a trainee in one of the lower courts. Applications are handled by the National Courts Administration, and are judged according to a points system that favours high academic achievement, but is also flexible enough to take account of alternate prior experience. Equality in gender and minority representation are important considerations in the recruitment of judges.</td>
</tr>
<tr>
<td>Despite the basic initial selection of trainees being controlled by the National Courts Administration, further recruitment through the judicial system’s multiple phases of training and roles is governed by an independent recruitment body called Domänmänden, or The Board for the Judiciary.</td>
</tr>
<tr>
<td>As for lay judges, they are appointed by the local authority to reflect the choice of the local community, since they are to represent the community within the administration of justice. They are chosen on a proportional basis, based on political representation at the last local elections. The Riksdag (Swedish Parliament) has made it clear that</td>
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being a lay judge is a special role, not a political task, despite the method of appointment.

Following recruitment there is a two-year period of training. During this period, the trainee assists non-permanent and permanent judges with their workloads and participates in some three weeks of compulsory training courses. The trainee is gradually allowed to make determinations in regard to smaller matters. Toward the end of this period, the trainee presides over a hearing and works with lay judges to make his or her decision.

| U.S. AND CALIFORNIA | Federal judges in the U.S. are appointed by the President on the advice, and with the consent of, the Senate. The Senate Judiciary Committee typically conducts confirmation hearings for each nominee. There are no formal professional criteria for federal judges, nor is an examination administered to judicial candidates. Potential nominees, often recommended by senators or members of Congress, are carefully screened by the White House to assess their competence and ethical standing. The process for appointing federal judges is highly selective. Judicial bodies play no role in the nomination or appointment process.

California’s system of judicial selection is basically one of initial appointment, followed by contestable elections (superior courts) or retention elections (appellate courts). If a superior court judge lets his or her term expire without resigning or retiring, there is an open election for that position rather than an initial appointment. In all cases of appointment, the Commission on Judicial Nominees Evaluation (a voluntary function of the State Bar) evaluates all persons who are appointed as a judge, and provides the Governor with its evaluation prior to the Governor’s action. The only requirement for becoming a judge is 10-year membership in the State Bar.

| CANADA | Within a Court, a judge may be appointed to an administrative position, such as Associate Chief Justice or Chief Justice. Otherwise, there is no advancement within a Court. Judges are promoted to higher courts on the decision of the Executive, with no formal process or criteria for promotion. In practice, consultation takes place with the judiciary and others prior to promotion, and the judge’s reputation, judicial record, involvement in judicial education, etc., are taken into account. Following the usual appointment process, persons may be appointed directly to higher courts, including the Supreme Court of Canada, on the basis of outstanding legal

<p>| 15. Transparent, objective and merit-based criteria for advancement; transparent, objective criteria for transfers |</p>
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<tr>
<th>Country</th>
<th>Description</th>
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<tbody>
<tr>
<td><strong>Chile</strong></td>
<td>Any judge who wishes to be promoted must take a course at the judicial academy and a final examination by the immediate High Court supervising the particular judge. The judge is then evaluated on merit.</td>
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<td></td>
<td>In terms of transfer, the Constitution (Article 77) states that the President of the Republic, at the proposal or decision of the Supreme Court, may authorize exchanges or order the transfer of judges or other officials and employees of the judiciary from one post to another of equal rank.</td>
</tr>
<tr>
<td><strong>France</strong></td>
<td>In terms of promotions, a special commission of judges (Commission d'avancement) elected by their peers and presided over by the first President of the Cassation Court, reviews performance appraisals and prepares a list of candidates ready for advancement to the Superior Judicial Council and the Minister of Justice. The Minister requests the advice of the Superior Judicial Council on his proposed candidates. If the advice conflicts with the proposal, the Minister may present it to the President of the Republic, who then makes a final determination. In terms of transfers, by law a judge cannot be transferred to another court or location, even in the context of a promotion, without his/her consent.</td>
</tr>
<tr>
<td><strong>India</strong></td>
<td>Directly recruited judicial officers are appointed only after they pass an open, competitive examination. Thereafter, they are promoted by the High Court based on merit.</td>
</tr>
<tr>
<td><strong>The Netherlands</strong></td>
<td>There is some performance evaluation by the team leader (another judge), but this mostly concerns administrative and procedural matters. In the last four years, a voluntary performance evaluation has been provided and accepted by judges.</td>
</tr>
<tr>
<td><strong>New Zealand</strong></td>
<td>Advancement is based on merit.</td>
</tr>
<tr>
<td><strong>South Africa</strong></td>
<td>The Magistrates’ Commission has a committee to deal with appointments of (as well as promotions, transfer, discharge or disciplinary action against) lower court judges “without prejudice or favour.” The Judicial Service Commission is involved in appointments to higher courts.</td>
</tr>
</tbody>
</table>
### SWEDEN

The process for advancements and transfers is similar to that of recruitment in terms of criteria and standards. Although the basic initial selection of trainees is controlled by the National Courts Administration, further recruitment through the judicial system’s multiple phases of training and roles is governed by an independent recruitment body called *Domamämnnden*, the Board for the Judiciary. The process of promotion is relatively open, although there remains a distinction between lower and higher posts. Lower posts are advertised and candidates must apply. The application is then examined by the Board for the Judiciary, who will make a decision based on the application, but without an interview. The Board is made up of senior judges, lawyers, prosecutors and an academic representative. Senior posts are within the control of the Ministry of Justice.

A permanent judge may be transferred “to any other judicial office of equal status” for organizational reasons.

### U.S. AND CALIFORNIA

Advancement is based on merit, with objective criteria for transfers.

### CANADA

All judicial education occurs after appointment, although all judges come to the Bench with at least 10, and usually many more, years of experience as practicing lawyers. All judges have exposure to several sources of education. The National Judicial Institute coordinates and acts as a primary deliverer of education for judges from all court levels and jurisdictions. Court-based education programs for judges and programs offered by such bodies as the Canadian Association of Provincial Court Judges are provided in partnership with the NJI. Education is voluntary, but the average judge completes approximately 12 days of judicial education each year.

A core curriculum exists for newly appointed judges, and judges develop an educational plan for their first four years. This includes a special two-week course for newly appointed judges, a one-week judicial skills course (for provincial judges) and the opportunity to take separate courses on specific topics, such as judgment writing; oral judgments; credibility and fact-finding; managing the trial process; communications skills; judicial ethics; and evidence.

Several courts have developed judicial mentoring programs and the National Judicial Institute has developed educational seminars on “How to Establish a Mentoring
<table>
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<tr>
<th>Country</th>
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<tbody>
<tr>
<td>CHILE</td>
<td>The Judicial Academy provides judges with the opportunity to continue studying different areas of the law, and also the possibility to obtain new skills, including litigation. The Academy offers judicial trainees a course in judicial ethics. Judges are also offered advanced courses in judicial ethics, which are voluntary. Other courses are mandatory.</td>
</tr>
<tr>
<td>FRANCE</td>
<td>Judges are required to hone their skills and knowledge through continuous training. In-service training is provided by the École Nationale de la Magistrature, and is compulsory during the five first years of service.</td>
</tr>
<tr>
<td>INDIA</td>
<td>The National Judicial Academy provides in-service continuing judicial education to judicial officers and judges at all levels, including judges of the Supreme Court. Each state has its own judicial academy (like the Delhi Judicial Academy), and these provide one-year induction programmes for newly appointed judges, based on a Supreme Court ruling. In-service continuing education is also imparted by the state judicial academies. There is no mandatory continuing judicial education.</td>
</tr>
<tr>
<td>THE NETHERLANDS</td>
<td>The Netherlands has a tradition in initial and continual training of judges.</td>
</tr>
<tr>
<td>NEW ZEALAND</td>
<td>The Institute of Judicial Studies was established in 1998 through a Memorandum of Understanding between the judiciary and the Department of Courts. The Institute is autonomous. The governing board is largely comprised of members of the judiciary. The Institute runs substantive law programmes, skills workshops and contextual education (social issues). Annual reports from the Institute are published online and are accessible to the public.</td>
</tr>
<tr>
<td>SOUTH AFRICA</td>
<td>Judicial training is provided for under the Constitution. The Justice College currently provides training for magistrates (as well as prosecutors and officials of the Department of Justice and Constitutional Development) on a voluntary basis. The question of whether training should be mandatory for sitting judges is being debated. Currently, the South Africa Judicial Education Institute Bill has been tabled before the President. The Bill will establish a judicial training institute that will act as an integrated judicial education framework for both judges and magistrates. The</td>
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</table>
Institute will be governed by a multi-sectoral council chaired by the Chief Justice, to ensure its independence with respect to curriculum development and the training programme.

**SWEDEN**

Initial training of judges follows an apprenticeship model. A number of courses are organized in stages by the National Courts Administration, but there is no general or systematic judicial college course. Programs are also put on by the National Courts Administration in response to demand. On the whole, participation in training is voluntary, but in practice most judges participate. In 2008, a school of judges, the Academy of Courts, was formally established by the National Courts Administration and is adapting the format and curriculum of the programs previously implemented by the National Courts Administration. The Academy's main task is to provide higher education for newly appointed permanent judges.

Training of lay judges is predominantly provided through a voluntary association of lay judges, the Namndemannaforeningen. Some funding is provided by the National Courts Administration for events such as visits to other courts. The local association may also obtain funding for its activities from the local commune.

**U.S. AND CALIFORNIA**

The Federal Judicial Center is the education and research agency for the U.S. Federal Courts. The Center provides orientation programs for newly appointed judges, as well as continuing judicial education. Center programs, publications and media resources address a range of substantive, procedural and skills-based topics. Judicial participation in all educational programs is voluntary.

California has one of the oldest and most comprehensive programs of judicial education and is considered a leader in the field. Throughout the year there are programs in various locations in the state, involving all aspects of the judicial role, including skills, procedure and substantive law in various areas. There are also distance learning programs and publications. The program is designed, staffed and operated by the judicial branch and funded by the state government.
17. **Mechanisms to ensure independent decision making without undue influence by judicial actors or from individuals/bodies outside the judiciary**

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<th>Country</th>
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<tbody>
<tr>
<td><strong>CANADA</strong></td>
<td>Cabinet ministers and other government personnel are not permitted to contact judges in relation to cases they are currently considering – anyone who does so would have to resign. Cases of interference by members of the executive or others have been investigated and have led to the resignation of persons who acted inappropriately and, in some cases, criminal prosecution. Judges have been subjected to the disciplinary process for allowing such interference. Former judges are barred from appearing before the court where they served for a period of time defined by the rules of the Law Society of the province.</td>
</tr>
<tr>
<td><strong>CHILE</strong></td>
<td>Generally the judicial branch is seen as independent and impartial in its decision making.</td>
</tr>
<tr>
<td><strong>FRANCE</strong></td>
<td>The Constitution provides that everyone has the right to a fair and public hearing by an independent and impartial court. The Superior Judicial Council has stated in its decisions that independence, impartiality and neutrality are part of the obligations of judges, as well as the obligation to respect the constitutional division of powers. Disciplinary sanctions have been imposed (ranging from reprimand to dismissal without pension) on judges for allowing influence, for corruption or for communicating confidential information to outsiders. For five years after resigning or retiring, former judges (except for Cassation Court judges) cannot appear as lawyers before the courts in the jurisdiction in which they served.</td>
</tr>
<tr>
<td><strong>INDIA</strong></td>
<td>Supreme Court judges and all the High Court judges are constitutional appointees not subject to administrative directions of the Supreme Court or any other person or institution. The superior judiciary is completely independent and brooks no interference from the legislature or the executive.</td>
</tr>
<tr>
<td><strong>THE NETHERLANDS</strong></td>
<td>Independence of judges is guaranteed.</td>
</tr>
<tr>
<td><strong>NEW ZEALAND</strong></td>
<td>The New Zealand Bill of Rights Act 1990 (section 25(a)) provides for “the right to a fair and public hearing by an independent and impartial court.” By convention, the Executive is required to respect judicial independence. Ministers may not criticize judicial decisions and should not reflect adversely on the impartiality, personal view</td>
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or ability of a judge. The “Cabinet Manual” provides guidance for ministers in this respect. Members of Parliament may not comment on matters awaiting judicial decision in the House or use offensive words against any member of the judiciary under the Standing Orders of the House of Representatives. Judges can be removed for misbehaviour.

### SOUTH AFRICA

The Constitution (section 165(2)) states that the courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice. Section 177(1) provides that a judge may be removed from office only if: (a) the Judicial Service Commission (JSC) finds that the judge suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct; and (b) the National Assembly calls for that judge to be removed by a resolution adopted with a supporting vote of at least two-thirds of its members. The President must remove a judge from office upon adoption of a resolution calling for that judge to be removed. The President, on the advice of the JSC, may also suspend a judge who is the subject of a procedure under sub-section (1).

### SWEDEN

The principle of judicial independence is one of the main principles of the Swedish judiciary. Breach of the principle can be prosecuted as a crime according to the Penal Code (e.g. example illegal threat). There is, however, no special crime that outlaws interference in decision making. There are currently efforts in place, with which the National Courts Administration is engaged, to prevent corruption.

### U.S. AND CALIFORNIA

Cannon 2 of the “Code of Conduct for United States Judges” states, “A judge should avoid impropriety and the appearance of impropriety in all activities,” mandates that judges avoid family, political, or social relationships that may be viewed as interfering in a judge’s ability to preside over and issue ruling on a case.

Canon 1 of the “California Code of Judicial Ethics,” says a judge "shall uphold the integrity and independence of the judiciary." The commentary of that Canon says, “The integrity and independence of judges depend in turn upon their acting without fear or favor.” Canon 3B(2) says, “A judge shall be faithful to the law regardless of partisan interest, public clamor, or fear of criticism...” Thus, judges may not allow their decisions to be influenced by outside interests such as politicians or special interest groups. As to communications with their peers, judges are permitted to communicate with other judges, and it is not improper for a judge to make an unsolicited communication to another judge. It would, however, be improper for a judge to attempt to require or influence another judge to make a particular decision in a matter before the other judge. Judges have been disciplined for meddling in other judge’s cases.
## 18. Code of conduct or ethical principles; training in judicial ethics and judicial conduct; clear and enforced conflict of interest rules

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<tr>
<th>Country</th>
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<tr>
<td>CANADA</td>
<td>The “Judges Act” sets out general standards for removal of judges. Past cases provide guidance on what the standard means. As well, the Canadian Judicial Council has published “Ethical Principles for Judges” and a committee of judges exists to which judges can turn for advice on ethical issues. Extensive judicial education on judicial ethics is available, as well as education on the process for dealing with complaints of judicial misconduct. Legislation and case law establishes when a judge should recuse himself or herself because of conflict of interest. A judge who fails to do so may be subject to discipline proceedings.</td>
</tr>
<tr>
<td>CHILE</td>
<td>The Supreme Court has set out a “Code of Conduct” for judges; however, judges and academics have been critical of the “Code” as it does not clearly define the sanctioned conduct. The Judicial Academy incorporates in the education of judicial trainees a course in judicial ethics. Judges are also offered on a voluntary basis advanced courses in judicial ethics.</td>
</tr>
<tr>
<td>FRANCE</td>
<td>General principles are contained in the legislation: Loi organique relative au statut de la magistrature (order no. 58-1270, December 22, 1958) and amendments. They are further defined in the disciplinary precedents of the Superior Judicial Council (Conseil supérieur de la magistrature). Principles of conduct are contained in the oath all judges take, and in the general rules of the judiciary statute and the precedents of the Superior Judicial Council. In 2003, the Superior Judicial Council recommended increased training on judicial ethics as part of pre-service and in-service training of judges. The Superior Judicial Council (Conseil supérieur de la magistrature) is now working on a manual on ethical duties of the judiciary. Judges in a conflict of interest must withdraw from cases (Article 341 Civil Procedure Code).</td>
</tr>
<tr>
<td>INDIA</td>
<td>No statutory code of ethics is prescribed. However, all superior court judges (Supreme Court and High Court) have accepted the “Restatement of Values (1999)” and take an oath of office as provided for by the Constitution. Judicial ethics is also imparted in judicial education programs. In terms of conflicts of interest, where a judge perceives such a conflict, he/she</td>
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</table>
would normally recuse himself or herself and decline to hear a particular case.

THE NETHERLANDS

In 2004, the Dutch Association for the Judiciary, together with the Dutch Assembly of Court Presidents, released guidelines entitled “Judicial Impartiality Guidelines.” Since establishment of the Council for the Judiciary, every judge takes a course in moral dilemmas, in aid of developing integrity codes and integrity risk management within the court organization. Individual courts have the option to devise integrity codes or take other initiatives in that respect, such as appointing a trustee or installing an ethics committee, and some have done so.

If a judge feels too closely connected to one of the parties in a case, the judge can refuse to take the case. In general, any judge who may have a conflict in a case must declare it and withdraw from the case. There is a public list of supplementary employment/task judges and prosecutors available in such cases.

NEW ZEALAND

The *Guidelines for Judicial Conduct* provide non-binding guidance to judges. The guidelines are very much a work in progress and draw heavily on the Canadian and Australian models. They are not yet publicly available, but are expected to be once the judiciary has engaged with them to a greater extent.

There are clear conflict of interest rules defined in the case law.

SOUTH AFRICA

A code of conduct dealing with conflicts of interest, entitled “Guidelines for Judges of South Africa,” was drafted and adopted by senior judges and published by the Chief Justice in 2000. The guidelines uphold the independence and integrity of judges and the courts, and cover a wide range of conduct issues, including avoidance of conflicts of interest and bias, diligent performance of duties, delivery of judgments without undue delay, and extra judicial work. They are not legally binding.

Currently the Judicial Services Commission Amendment Bill has been tabled and will introduce a new, more formal Judicial Code of Conduct, to be compiled by the Chief Justice in consultation with the Minister, and providing for a complaints mechanism and sanctions for breach.

SWEDEN

These subjects are part of the normal course of judicial training and education. Before a judge is permitted to serve, he or she must take an oath before the court or its chairperson, according to the Code of Judicial Procedure, as follows: “I (name) promise and affirm on my honour and conscience that I will and shall impartially, as to the rich as well as to the poor, administer justice in all matters to the best of my ability and conscience, and judge according to the law of the Realm of Sweden; that I will never manipulate the law or further injustice for kinship, relation by marriage,
friendship, envy, ill-will, or fear, nor for bribes or gifts, or any other cause in whatever guise it may appear; nor will I declare guilty one who is innocent, or innocent one who is guilty. Neither before nor after the pronouncement of the judgment of the court shall I disclose to the litigants or to other persons the in camera deliberations of the court. All this, as an honest and righteous judge, I will and shall faithfully observe."


| U.S. AND CALIFORNIA | The Federal Judicial Center and the Judicial Conference Committee on Conduct and Discipline provide ethics education for newly appointed and experienced judges. A judge must disqualify himself “where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.” (See 28 U.S.C. paragraph 455(b)). In California, judges are subject to the “California Code of Judicial Conduct,” which was adopted by the California Supreme Court and sets forth standards of judicial conduct. Judges who violate provisions of the Code are subject to discipline by the Commission on Judicial Performance (CJP), which has the authority to impose private or public discipline, including removal from office. All new judges must attend two- and one-half days of ethics training within six months of sitting on the Bench. They must also attend a judicial college within two years, which offers additional ethics training. Finally, all judges who wish to take advantage of free insurance that covers defence costs for proceedings before the CJP must complete an ethics training program once every three years, which currently consists of three hours of mandatory training and two hours of electives. |

19. Established disciplinary criteria and process administered by an independent body or judicial body

| CANADA | Judges can be removed from office on clearly defined, legislated bases. The removal process is provided for under the Constitution Act of 1867, with general criteria and a formal process for removal by Parliament, but only after a recommendation by the Canadian Judicial Council. The legislated, detailed, formal process for independent adjudication of complaints about judicial conduct is established by the Judges Act. The Canadian Judicial Council, comprised of chief justices from superior courts, investigates conduct under the Judges Act in response to complaints about federally |
appointed judges. The process may include a formal inquiry. In practice, if the Council recommends removal after a full and fair hearing, the judge retires before the matter is considered in Parliament. Short of recommending removal, the Council may express its disapproval of a judge’s conduct, Chief Justices may provide informal counselling, or a judge may be expected to take relevant judicial education programming. At the provincial level, a greater variety of sanctions is generally available.

Public scrutiny of decisions serves as a strong inducement for judges to conduct themselves at high standards.

<table>
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<tr>
<th>CHILE</th>
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<tr>
<td>The Constitution (Article 76) says that judges are personally liable for bribery, failure to observe substantial matters of law or governing procedure, denial and wrongful administration of justice; and in general, for any prevarication incurred in the performance of their functions. Article 77 states that “the Supreme Court may, upon demand by the President of the Republic, upon request made by an interested party or by an official letter, declare that Judges have not performed their duties properly, and, subject to the statement by the defendant and to a report from the respective Court of Appeals, the majority of its members may agree to remove them from office. These agreements shall be communicated to the President of the Republic in order that they may enter into effect.”</td>
</tr>
<tr>
<td>The body that deals with the complaints presented against any judge is the High Court that has supervising powers over him or her. Currently, the criteria against which judges’ behaviour is assessed are not clear or transparent, and there have been challenges in this regard when judges have been sanctioned before and without becoming aware that they were under sanction.</td>
</tr>
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23 Federal legislation established the Canadian Judicial Council, which is a body composed of all the Chief Justices and Associate Chief Justices of the Superior Courts and chaired by the Chief Justice of Canada. It has a well-staffed secretariat. The Council is responsible for the disciplinary process, the development of judicial policies in key areas, such as judicial independence, court security, the role of the judge, court technology, ethical principles, etc. The Council does not manage the process for judicial appointments or the process for determining judicial salaries. These processes are managed by the Office of the Commissioner for Federal Judicial Affairs, a semi-independent body that is part of the government. It also manages the payment of judges’ salaries and expenses, and the costs related to judges’ attendance at judicial education seminars.

Most provincial courts also have judicial councils that usually have some lay representatives on them. These Councils are independent of government. They have similar functions as the Canadian Judicial Council, and many also oversee the appointments’ process, the court’s education program and the payment of salaries and benefits.
### FRANCE

The Superior Judicial Council (*Conseil supérieur de la magistrature*), the disciplinary body for judges, is in the process of being reformed. It will no longer be presided over by the President of the Republic or the Minister of Justice as his substitute, but by the President of the Cassation Court. The Council will have 14 members, including six judges (no longer a majority of the members), one prosecutor, one lawyer, and six appropriately qualified members (not from the public service, the judiciary or Parliament), of whom two are nominated by the President of the Republic, two are nominated by the President of the *Assemblée Nationale* and the remaining two are nominated by the President of the Senate. When sitting as a disciplinary body for judges, the Council also includes the judge who sits on the Council that serves as a disciplinary body for prosecutors. The Minister of Justice will no longer participate in disciplinary hearings.

To conduct investigations, the Council is assisted by the Department of Justice's *Inspection générale des tribunaux*.

Disciplinary measures are provided for in the 1958 law on the status and regulation of the judiciary. This law specifies the following disciplinary measures available in the case of judicial “fault”: a reprimand recorded in the judge’s file; transfer to another position; being relieved of certain functions; downgrading; enforced retirement; being relieved of all functions; and dismissal with or without pension rights. Outside of formal disciplinary action, the head of a jurisdiction, a court President or the Inspector General of Court Services can give a written warning to a judge.

Disciplinary proceedings before the Council are initiated by the Minister for Justice or by Senior Courts Presidents, but not by the Superior Judicial Council.

A preliminary investigation is conducted by a member of the Council (*rapporteur*). It may lead to a formal investigation. Disciplinary hearings are public, with a few exceptions. The decision is public. There is a right of appeal against disciplinary decisions of the Council to the *Conseil d'État*, but on questions of law only.

In 2006, eight disciplinary sanctions were applied, ranging from dismissal without pension rights to reprimand, and eight warning notices were given to judges from the head of the court or the jurisdiction.

### INDIA

Judicial impeachment requires a two-thirds majority in Parliament. The Judges (Inquiry) Act, 1968, prescribes a procedure for investigating misbehaviour by, or incapacity of, a judge by a committee. If the report of the committee makes an unfavourable finding against the judge, then the report of the committee will be taken up for consideration by Parliament. Legislation creating a National Judicial Council for this purpose has been proposed and it will be made up of five judges and the
Chief Justice of India. Currently, there is no formal transparent disciplinary process.

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<tr>
<th>Country</th>
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<tr>
<td>THE NETHERLANDS</td>
<td>The same reform that brought about the Council for the Judiciary also included an instruction to courts to provide a procedure for complaints against judges and provided a new system of disciplinary measures for judges. The number of complaints and the way they are dealt with are published in the yearly reports of those different institutions. Disciplinary sanctions can be imposed on judges.</td>
</tr>
<tr>
<td>NEW ZEALAND</td>
<td>The Judicial Conduct Commissioner's Office examines complaints and makes recommendations to the Attorney-General as to whether further investigation is necessary. In relation to superior court judges, the Constitution Act 1986 (section 23) provides that a judge can be removed only by the Sovereign or Governor-General, acting on an address of the House of Representatives relating to that judge’s misbehaviour or incapacity. In relation to District Court judges, the Governor-General can remove a judge for inability or misbehaviour. There are no sanctions available for disciplining a judge other than removal.</td>
</tr>
<tr>
<td>SOUTH AFRICA</td>
<td>The Constitution states that the national legislature may provide for procedures for dealing with complaints about judicial officers, and provides for a Judicial Service Commission (JSC). Current practice is as follows: a complaint is sent to the JSC against a judge. When the JSC receives the complaint, it is acknowledged and referred to the Judge President of the division in which the judge sits. The Judge President requests comment from the judge against whom the complaint was made. Once the JSC receives the comment, it is sent to the complainant for further comments, if any. If there is a further response, it is again referred to the Judge President to be passed on to the judge complained against. Responses received by the JSC are tabled on its agenda. The process is largely based on a consideration of statements received from, or on behalf of, the complainants and the responses obtained from the judges concerned. The process also applies to the Chief Justice and Judge Presidents. Judges can be subject to removal if the JSC finds that the judge suffers from incapacity, is grossly incompetent, and is guilty of gross misconduct and makes a recommendation to the National Assembly (where followed) for the judge’s removal. This is set out in section 177 of the Constitution. The JSC adopted rules for the impeachment process in 2006. For complaints regarding actions by judges that are not considered worthy of removal, informal practices are followed by the JSC, which are not clearly set out in the public domain. The Judicial Services Commission Amendment Bill, currently...</td>
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</tbody>
</table>
tabled as noted above, provides for formal regulation of disciplinary procedures.

Under the Bill, a formal judicial Code of Conduct is being introduced which will include a mechanism for members of the public to lodge complaints by affidavit to the Chairperson of the Judicial Conduct Committee on one or more of five listed grounds. The Judicial Conduct Committee pursuant to the Bill will be composed of five members, including the Chief Justice (the chairperson of the committee), Deputy Chief Justice, and three judges, of whom at least one must be a woman, and each designated by the Chief Justice in consultation with the Minister. When a complaint is received, the Chairperson of the Committee has several options, including dismissing the complaint, investigating the complaint in an inquisitorial manner and, if necessary, holding a formal hearing or recommending the matter be referred to a Judicial Conduct Tribunal. Further steps are set out in the Bill, including the powers of the Tribunal, its procedure for hearing the complaint and reporting to the JSC, and the process followed by the JSC subsequent to receiving the report of the Tribunal. The Bill provides for the JSC’s power to impose remedial steps if its own findings fall short of warranting removal, and, where removal is warranted, submission of this determination to the Speaker of the National Assembly. Where such a determination has been submitted, the National Assembly would then call for the judge to be removed with a resolution supported by a vote of two-thirds of its members.

SWEDEN

There is no Code per se or otherwise any list of sanctions in Sweden. A permanent judge is tenured, but can be dismissed under special circumstances (e.g. if he or she has committed a criminal act or if he or she has neglected his or her official duties repeatedly, or in a gross fashion. See Article 11-5 of the Swedish Constitution).

On matters of discipline, the Swedish judiciary is subject to the controls applicable to the civil service as a whole. To this effect, the Parliamentary Ombudsmen or Ombudsmen of Justice (JO) is a politically neutral body consisting of four elected individuals who essentially act as a complaints system for the administration, which includes the government and the courts, but excludes elected local government. They are sometimes senior judges. The JO investigates the correctness of administrative decisions and the impartiality of officials, as well as the protection of rights. It receives complaints against the courts, investigates them and makes findings, and initiates and conducts other forms of inquiry. In the most extreme cases, an Ombudsman is allowed to act as a special prosecutor and bring charges against the official for malfeasance or other irregularities. This is very rare. Awareness by judges of the authority of the JO to engage such recourse may act as a deterrent. The JO also has the right to initiate disciplinary procedures against an official for misdemeanours, the most frequent outcome of which is normally a critical, non-binding advisory comment from an Ombudsman, including a warning or a
recommendation. As a rule, all processes undertaken by the JO are transparent and the Swedish government is not allowed to interfere with its work.

| **U.S. AND CALIFORNIA** | Complaints can be submitted to the Chief Circuit Judge. He or she reviews the complaint, and either forwards it to a special committee for further investigation or dismisses it. The Judicial Council reviews the Chief Judge’s dismissal orders, and may investigate, dismiss, take corrective action, or refer the matter to the Judicial Conference for action. The Committee on Judicial Conduct and Disability reviews the Judicial Council investigation. If merited, the complaint moves to the Judicial Conference to determine if the House should consider impeachment. Impeachment is rare, but if warranted, the House of Representatives governs impeachment, followed by a trial in the Senate. A judge is removed if convicted (see the “Judicial Conduct and Disability Act” of 1980).

In California, the Commission on Judicial Performance (CJP) is the only entity with the authority to discipline judges for violations against the Code of Judicial Ethics. The CJP is an independent state agency consisting of three judges, two lawyers and six public members. If the CJP imposes a certain level of discipline, the judge may seek review in the Supreme Court, but such review is discretionary. The CJP has a detailed process for receiving, handling and resolving complaints of judicial misconduct. Case law and CJP precedent provide guidance in determining whether certain conduct warrants a certain level of discipline. As noted above, the CJP has the authority to issue private discipline (e.g. advisory letters and private admonishments) and public discipline (e.g. public admonishments, public censures and removal). Rules governing the disqualification of judges are set forth in statutes codified in the California Code of Civil Procedure for trial court judges and in the Code of Judicial Ethics for appellate justices. |

**20. A formal public complaint process against judges**

<p>| <strong>CANADA</strong> | Any member of the public can make a complaint about judicial conduct (under the Judges Act) to the Canadian Judicial Council. The process is generally seen to be fair and objective, and information on the complaints criteria, process and decisions are online and easily accessible to the public. |
| <strong>CHILE</strong> | There is a procedural remedy called “recurso de queja,” which is similar to a complaint action or remedy. This action is set out in the Code of Civil Procedure. |</p>
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<tr>
<th>Country</th>
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<tbody>
<tr>
<td>FRANCE</td>
<td>In the past, public complaints were made to the court’s President without any formal process. Under the current reform, the public will also be able to lodge a complaint directly with the Superior Judicial Council.</td>
</tr>
<tr>
<td>INDIA</td>
<td>Many citizens want more judicial accountability, as they feel there is no avenue for them to remedy minor misbehaviour and maltreatment of witnesses or litigants at the hands of judges. They sometimes feel that these behaviours are not corrected by superior courts, which appear to protect their own judges, and that it is useless to make a complaint. It is hoped that the new National Judicial Council (legislation pending) will provide a first, clear and formal solution for this.</td>
</tr>
<tr>
<td>THE NETHERLANDS</td>
<td>The same reform that brought about the Council for the Judiciary also included an instruction to courts to provide a procedure for complaints against judges. Complaints about the behaviour of a judge may be filed with the board of the court where the judge in question holds office. Every court has a complaints procedure setting out rules for dealing with complaints. People can complain about lack of independence in their own cases to the President of each court, to a special bureau of the Supreme Court, or to the Office of the Ombudsman. The number of complaints and the way they are dealt with are published in the yearly reports of those institutions.</td>
</tr>
<tr>
<td>NEW ZEALAND</td>
<td>The process for filing a complaint against a judge is outlined online. Complaints can be made to the Office of the Judicial Conduct Commissioner. The Office’s functions and powers are set out in the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004. The Judicial Conduct Commissioner has a duty to act independently. The Commissioner conducts a preliminary examination to consider whether the complaint could warrant the removal of the judge from office, or whether it could be dismissed under s 16(1). Grounds for dismissal include lack of jurisdiction, the complaint having no bearing on judicial functions or duties, the complaint being frivolous, the complaint relating to a judicial decision or function subject to a right of appeal or review, etc. The Commissioner may dismiss the complaint, refer it to the Head of Bench, or recommend that the Attorney-General appoint a Judicial Conduct Panel, if the conduct may warrant removal. The Attorney-General is obliged to consult the Chief Justice as to the membership of the panel and such membership will include at least one judge. The Panel must hold a hearing on the matters referred to it and report its findings of fact, its opinion on whether consideration of removal is justified, and its reasons to the Attorney-General. The Attorney-General has absolute discretion under section 33 of the Act to initiate...</td>
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removal proceedings if the Panel has reported that it is of the opinion that consideration of removal is justified.

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<tr>
<th>SOUTH AFRICA</th>
<th>The Constitution states that the national legislature may set out procedures for dealing with complaints about judicial officers. Complaints can be made to the Judicial Service Commission, which is responsible for matters relating to the judiciary, including disciplinary processes. See above for further elaboration of tabled legislation that will render the complaints course more accessible to the public.</th>
</tr>
</thead>
<tbody>
<tr>
<td>SWEDEN</td>
<td>The Parliamentary Ombudsmen (JO) consists of four elected individuals who act as a complaints system for the administration, which includes the courts, but excludes elected local government. The Parliamentary Ombudsmen investigate the correctness of administrative decisions and the impartiality of officials, as well as the protection of rights. They receive complaints against the courts, investigate them and make findings.</td>
</tr>
</tbody>
</table>
| U.S. AND CALIFORNIA | Complaints can be submitted to the Chief Circuit Judge. The Chief Circuit Judge reviews the complaint and either forwards it to special committee for further investigation or dismisses the claim. The Judicial Council reviews the Chief Judge’s dismissal orders and may investigate, dismiss, take corrective action, or refer the matter to the Judicial Conference for action. The Committee on Judicial Conduct and Disability reviews the Judicial Council’s investigation. If merited, the complaint moves to the Judicial Conference to determine if the House should consider impeachment. Impeachment is rare, but if warranted, the House of Representatives governs impeachment, followed by a trial in the Senate. A judge is removed if convicted (see the Judicial Conduct and Disability Act of 1980).

In California, the process for submitting a complaint to the Commission on Judicial Performance is clear, accessible and fair. It is not, however, transparent. All complaints (and CJP proceedings) are confidential and remain confidential until and unless formal proceedings are instituted and the discovery process is triggered. Even then, the complaint is discoverable only if the CJP intends to use it in the case against the judge. Formal proceedings are instituted in cases involving serious misconduct. |
### 21. Standard judicial workloads; standard time frames for judicial procedures; efficiency measures

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<th>Country</th>
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<tr>
<td><strong>CANADA</strong></td>
<td>In 1985, the Canadian Judicial Council developed a guideline that stated that judgments should be rendered no later than six months after hearings, except in special circumstances. The Council perceives procedural delays as a serious problem and has worked with Chief Justices to rectify issues in the past. Judges are offered judicial education on how to ensure timely disposal of cases, including providing written and oral decisions. Various case management programs help to ensure the equitable assignment of cases to judges, but the ultimate decision on case assignment is for chief justices and coordinating judges. The case management process provides opportunities for the parties to settle, narrow or consolidate issues in order to streamline proceedings and reduce the time and cost of trials. It involves early and active intervention by the court (master or case management judge) to promote the resolution of disputes (including mediation) or to bring cases to trial in the timeliest manner. The process includes case conferences, settlement conferences and trial management conferences.</td>
</tr>
<tr>
<td><strong>CHILE</strong></td>
<td>The Administrative Corporation of the Judicial Power has developed workload standards for each court (e.g. criminal court, family, labour, etc.). This standard is only a guideline.</td>
</tr>
<tr>
<td><strong>FRANCE</strong></td>
<td>There are no judicial workload standards or time frames for procedures. Judges are expected to deliver their decisions “within a reasonable time.” Delays are a major cause of disciplinary action.</td>
</tr>
<tr>
<td><strong>INDIA</strong></td>
<td>There is a large backlog of cases. The outer limit for delivering or pronouncing judgment is six months, in accordance with a ruling of the Supreme Court of India. Parties whose cases have not been heard within this time limit are entitled to apply to the Chief Justice of the High Court to withdraw and make a new case to another Bench for fresh arguments. The Chief Justice has discretion to grant the application or “to pass any other order as he deems fit in the circumstances.”</td>
</tr>
<tr>
<td><strong>THE NETHERLANDS</strong></td>
<td>After court proceedings, a decision is generally made public within two weeks. Some delays arise, however, in planning the proceedings, such that the actual disposal of the case can take longer.</td>
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<tr>
<td>Country</td>
<td>Measures and Timelines</td>
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<tr>
<td><strong>NEW ZEALAND</strong></td>
<td>There are no formal measures ensuring the timely delivery of judgments. Regular reports are made, however, to Heads of Bench on the numbers of outstanding judgments, and Heads may inquire as to judgments that are outstanding for more than three months, particularly if a certain judge has a number of such judgments outstanding.</td>
</tr>
<tr>
<td><strong>SOUTH AFRICA</strong></td>
<td>There is scrutiny of courts’ workloads and timelines by the Judicial Service Commission and the heads of courts. Allocations of caseloads are done by the heads of courts, who bear in mind the workload of individual judges.</td>
</tr>
<tr>
<td><strong>SWEDEN</strong></td>
<td>There are no generally applicable rules in regard to time frames. In special matters, such as when a person is in custody, there are time frames in the Swedish Code of Judicial Procedure. The government sets general outlines for time frames and the courts themselves are obliged to set time frames, according to the outlines. For instance, the government prescribes that 75 per cent of all criminal cases should be settled within five months, and the same proportion of civil cases should be resolved within seven months.</td>
</tr>
<tr>
<td><strong>U.S. AND CALIFORNIA</strong></td>
<td>There is not a specific cap regarding the number of cases a judge can hear, but, there is a case weighting process used to ensure equitable distribution of cases among judges. In California, standards for time frames in regard to proceedings fall into three categories. Penal Code provisions, for example, require dismissal of criminal charges if a matter is not brought to trial within 60 days (for felony) or 30 days (for a misdemeanor) unless the time is waived (section 1382). There is also a general policy giving precedence to criminal cases and a policy against continuances in criminal case (section 1050). There is statutory authority under the Government Code suggesting that civil cases generally should come to trial within a year of being filed (see generally sections 68600 et seq.) and providing that the judge is responsible for the movement of cases through the system (section 68607). Finally, there is a requirement that a judge render a decision on a matter within 90 days after taking it under submission. He or she cannot receive his or her salary if any matter is under submission for longer than that period (Constitution Article VI, section 19).</td>
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22. Open public hearings, with limited exceptions set out in legislation; court monitoring by NGOs, academics and the media

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<th>Country</th>
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<tr>
<td>CANADA</td>
<td>All cases are heard in open public hearings, with very few exceptions (e.g. where serious harm or injustice to a person might occur if the hearing were open – Ontario Courts of Justice Act). The academic community and the media comment regularly on decisions.</td>
</tr>
<tr>
<td>CHILE</td>
<td>It is fair to say that, in this matter, Chile has two realities. The inquisitorial system does not hold public hearings -- this is the general situation in Chile. The other reality is the new criminal system; and in this situation, hearings are public.</td>
</tr>
<tr>
<td>FRANCE</td>
<td>All trials are public, except in cases where national security or the protection of privacy is involved. Academics and the press regularly comment on judicial decisions.</td>
</tr>
<tr>
<td>INDIA</td>
<td>The Constitution (Article 142) states: “No judgment shall be delivered by the Supreme Court save in open court.” All hearings are public hearings, except where the judge is of the opinion that there is a great deal of sensitivity involved, and it is not in the interests of the parties or the public interest to have an open hearing, such as in cases pertaining to child abuse, sexual abuse, etc.</td>
</tr>
<tr>
<td>THE NETHERLANDS</td>
<td>The Constitution (Article 121) states that trials are to be held in public, except in cases laid down by Act of Parliament. All courts in the Netherlands have a press judge who is the face of the court to the outside world, acting as the contact person for the media. All international and external public relations communications flow through the press judge. Access is available to anyone, including NGOs and academics.</td>
</tr>
<tr>
<td>NEW ZEALAND</td>
<td>Hearings are open, subject to suppression orders made in the interests of justice and certain protective measures, i.e. relating to children and rape victims.</td>
</tr>
<tr>
<td>SOUTH AFRICA</td>
<td>Hearings are generally open to the public. Exceptions include cases such as those involving minors. The Constitution guarantees the right to a public hearing in civil matters and the right to a public criminal trial. The Constitutional Court and Supreme Court of Appeal publish short media statements on their judgments. They also post</td>
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<td>Country</td>
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<tr>
<td>SWEDEN</td>
<td>The Swedish Constitution states that proceedings in courts of law shall be open to the public. Media relations are not specifically structured. There are situations when the court will inform the media about cases that have been decided, but formal press releases are rare. In lower courts, it is not uncommon to have journalists regularly attend hearings. The National Courts Administration has a list of judges around the country who have undertaken to be available for questions from the media. Instances arise where the court is not open to the public; these are governed by the Swedish Official Secrets Act. Sexual violence cases are one example.</td>
</tr>
<tr>
<td>U.S. AND CALIFORNIA</td>
<td>All Federal Court proceedings are open to the public unless the presiding judge determines, upon motion of one of the parties, that the courtroom must be sealed because of a security interest. (See 28 U.S.C. paragraph 753). In California, proceedings are open, except in juvenile cases or to protect witnesses or parties under very rare circumstances (and subject to appellate review).</td>
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### 23. Public accessibility/availability of judicial decisions, including reasons

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<tr>
<th>Country</th>
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<tbody>
<tr>
<td>CANADA</td>
<td>All provincial superior and federal court decisions, including reasons, are available on the internet; many are not published, but are available from the Court. In exceptional cases, judges may rule that a particular decision shall be sealed or the legislation may provide for decisions to remain sealed documents, such as in matters involving national security. All court decisions are public records.</td>
</tr>
<tr>
<td>CHILE</td>
<td>The judicial branch website publishes all the rulings in various subject areas, including civil, labour, criminal, and civil liberties law.</td>
</tr>
<tr>
<td>FRANCE</td>
<td>Court decisions are public documents. Law journals publish key decisions of various courts, which are also available electronically. Decisions are generally short and follow a standard format, with a statement of the applicable rule of law, highly condensed fact situations and a short decision. This brevity may make decisions more difficult to analyze and use as precedents.</td>
</tr>
<tr>
<td>INDIA</td>
<td>Members of the public can access court judgments online. The Judgements Information System (JUDIS) provides access to all judgments passed by the</td>
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</table>
Supreme Court of India since its inception in 1950, and judgments by certain other High Courts. Judgments can also be searched according to the name of the petitioner or respondent, the name of the judge, the name of the party, the date of judgment, etc. The database is updated daily. Some categories of cases, such as those relating to sexual abuse, the Official Secrets Act, etc., are not available to the public, but are available to the parties involved in the case. There is no law regulating this, but it keeps the interests of the parties in mind.

Acts of Indian Parliament are also available online, including the full text of Central Acts of Parliament from 1834 onwards. Full text of most acts is available and can be retrieved though searching short title, Act number, year or objective, or text.

**THE NETHERLANDS**

The Constitution (Article 121) states that judgments shall specify the grounds on which they are based and be pronounced in public, unless otherwise laid down by Act of Parliament. Consolidations of all laws in the Netherlands are published yearly. There are also publications of various law journals, where decisions of courts are collected, published and commented on by senior academics and legal experts. Each district court has a press judge and press prosecutor to give information to the media.

**NEW ZEALAND**

Decisions of the Supreme Court, Court of Appeal and High Court are available online through the Ministry of Justice website, with limited exceptions. Decisions that the judges consider to be of public interest are also made available under the Courts of New Zealand website. It is unclear whether there is legislation making these publications mandatory, but availability seems to flow from principles of open justice.

**SOUTH AFRICA**

Constitutional Court decisions are available electronically. Other superior court decisions are accessible on request, and there is full media exposure for all decisions.

**SWEDEN**

All parties in a case get a copy of the decisions and judgments made. In cases of interest to the media, some courts publish their rulings on the website. It is also possible to obtain judgments by e-mail. Rulings are publicly available, with the exception of those governed by the Swedish Official Secrets Act. The Act governs the non-publication of any or all of the content of a ruling where individuals’ identities are protected, most often victims of crimes.

**U.S. AND CALIFORNIA**

Court decisions are available online, usually shortly after being issued, and are also published in bound court reports. As is the practice in the common law system, U.S. judges provide the reasons for their judgments in the body of their written decisions.
In California, all court records are public, except in rare cases where the court provides otherwise for the protection of parties or others providing information (subject to appellate review). Decisions are public. Some trial court and all appellate court opinions are available on the internet. Electronic access to all court records is under development.

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<th>24. Maintenance of trial record; recording of proceedings</th>
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<td>CANADA</td>
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<td>CHILE</td>
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<td><strong>U.S. AND CALIFORNIA</strong></td>
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<td><strong>25. Proper case and records management, including case filing and tracking systems</strong></td>
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<td><strong>CANADA</strong></td>
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<td>SWEDEN</td>
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<td>U.S. AND CALIFORNIA</td>
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26. Court organization and procedures that are transparent and comprehensible to the public

<table>
<thead>
<tr>
<th>Country</th>
<th>Description</th>
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<tbody>
<tr>
<td>CANADA</td>
<td>Information is available on provincial and federal court websites, and information desks are found in every court. Organizations exist in all provinces that work to improve public knowledge and understanding of courts and the judicial process.</td>
</tr>
<tr>
<td>CHILE</td>
<td>Information regarding the procedures and organization of the court is transparent and, at least in the newly reformed areas, accessible to the public. Every court has an obligation to display in every courtroom a chart detailing judicial procedures and the role that each party and the judge play. This information is basic. A person, NGO, academic, or other party requiring more information must submit a request to the court, which may or may not be granted.</td>
</tr>
<tr>
<td>FRANCE</td>
<td>Publications and websites provide information to the public on courts and court proceedings. There is an information office in each courthouse providing information to parties on cases before the court.</td>
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<tr>
<td>Country</td>
<td>Information</td>
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<tr>
<td><strong>INDIA</strong></td>
<td>All relevant information is available on the websites of high courts that have them and of the Supreme Court, as well as of various district courts. The Supreme Court and Delhi High Court have also published a users’ guide.</td>
</tr>
<tr>
<td><strong>THE NETHERLANDS</strong></td>
<td>See <a href="http://www.rechtspraak.nl">www.rechtspraak.nl</a>. Post Office Box 51 provides leaflets in all courthouses, as well as in other public facilities (e.g. post offices and schools) about the functioning of the courts. Information about the courts is also broadcast on television.</td>
</tr>
<tr>
<td><strong>NEW ZEALAND</strong></td>
<td>The Courts of New Zealand website provides resources with regards to court functioning, court structure, trial dates, etc. The Justice Ministry has an access to justice website providing information and education on the justice system, etc.</td>
</tr>
<tr>
<td><strong>SOUTH AFRICA</strong></td>
<td>The Constitutional Court and Supreme Court of Appeal set out clear, detailed information as to their processes, structure, etc., online. Other courts provide information to the public, available from the registrar and court managers.</td>
</tr>
<tr>
<td><strong>SWEDEN</strong></td>
<td>The National Courts Administration has a website with details of the court system for the general public, including information for defendants, witnesses and victims.</td>
</tr>
</tbody>
</table>
| **U.S. AND CALIFORNIA** | The Federal Courts have websites that publish court procedures, rules and decisions. Many courthouses have kiosks that provide relevant information to the public.  
In California, court rules – from the local to the state level – are in writing and publicly available in courts, libraries and via the internet. Nearly all procedures are part of the court rules. In addition, most superior courts maintain a public website with information about the court and its processes. The Administrative Office of the Courts maintains a website for the judicial branch, including the appellate courts, at [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov). |

### 27. Public access to free information about basic rights and laws

<table>
<thead>
<tr>
<th>Country</th>
<th>Information</th>
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<tbody>
<tr>
<td><strong>CANADA</strong></td>
<td>Information on basic rights and laws is readily available online and free at public libraries. There are measures taken to publicize important laws and decisions impacting members of the public.</td>
</tr>
<tr>
<td>Country</td>
<td>Information Provided</td>
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<tr>
<td>CHILE</td>
<td>Every tribunal has a publicly available chart that explains in a user-friendly way</td>
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<td>general rights and applicable laws.</td>
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<tr>
<td>FRANCE</td>
<td>Numerous publications, websites, print articles, and radio and television programs</td>
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<td>provide information to the public on the law and their rights.</td>
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<td>INDIA</td>
<td>A National Legal Services Authority (NALSA) has been created under the Legal Services</td>
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<td>Authorities Act (1987). Each state has a State Legal Services Authority and each</td>
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<td>district has a District Legal Services Authority. All these authorities disseminate</td>
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<td>legal information to the less advantaged members of society.</td>
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<td></td>
<td>The motto of the Delhi Legal Services Authority, constituted under the Legal Services</td>
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<td>Authorities Act, 1987, is “Access to Justice for All.” Its mandate is to secure</td>
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<td>justice for the weaker segments of society, and it actively promotes legal literacy</td>
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<td>and awareness. Legal Aid is administered by the Authority.</td>
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<tr>
<td>THE</td>
<td>See &lt;www.rechtspraak.nl&gt;. All laws are published and available to the public.</td>
</tr>
<tr>
<td>NETHERLANDS</td>
<td>Post Office Box 51 provides leaflets in all courthouses, as well as other public</td>
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<tr>
<td></td>
<td>facilities (e.g. post offices and schools) about changes to the law. Legal information</td>
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<td>is also broadcast on television.</td>
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<tr>
<td>NEW ZEALAND</td>
<td>The Acts and Regulations Publication Act 1989 provides for the publication and of</td>
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<td>public access to all acts and regulations. Access to all acts, regulations and bills,</td>
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<td></td>
<td>as well as decisions, is provided online.</td>
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<td>Brochures explaining legislation and rights are available through relevant government</td>
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<td>departments.</td>
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<tr>
<td>SOUTH AFRICA</td>
<td>Public access to free information about basic rights and laws is available through</td>
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<tr>
<td></td>
<td>the Office of the Registrar. Constitutional court judgments are posted online. The</td>
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<tr>
<td></td>
<td>Ministry of Justice has reported on numerous tasks undertaken to educate the public</td>
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<td></td>
<td>(in all official languages) on its constitutional rights. It has established, as of</td>
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<td>the past year, a Translation Services Unit to ensure that Bills are accessible to all</td>
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<td>members of the public. The Unit is currently translating Bills from English to Xhosa,</td>
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<td></td>
<td>isiSwati, isiZulu and Afrikaans.</td>
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<tr>
<td>SWEDEN</td>
<td>Basic information about laws can be found in libraries. A number of internet sites</td>
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<td></td>
<td>provide free access to laws and regulations.</td>
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</table>
### U.S. AND CALIFORNIA

The AO and FJC offer information and education about courts. The American Bar Association (ABA), Division for Public Education, provides free information about basic rights and laws.

The California Courts website contains extensive self-help information for individuals seeking information about basic rights and law and how to represent themselves in actions at <www.courtinfo.ca.gov/selfhelp/>. Currently, the information is available in English and Spanish, with other languages under consideration. Many superior courts have such sites as well. The State Bar of California also has a number of publications on individual rights and laws.

### 28. Opportunities to obtain feedback from users of the court system and the general public

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<tr>
<th>Country</th>
<th>Description</th>
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<tbody>
<tr>
<td>CANADA</td>
<td>There is no formal feedback system, although regularly organized Bench and Bar, court advisory or similar committees frequently provide feedback to courts. Law Societies, Bar Associations and other interested groups also propose changes or adaptations to the law that they believe are required. Periodic surveys poll users of the system, victims, the general public, etc.</td>
</tr>
<tr>
<td>CHILE</td>
<td>Every court is obliged to provide a complaint box, and complaints must be reviewed and answered. The Administrative Corporation of Judicial Power has established objective criteria against which the general function of a specific court can be measured, so as to provide a basis on which to assess complaints.</td>
</tr>
<tr>
<td>FRANCE</td>
<td>There are no specific mechanisms to obtain users’ feedback in courthouses. Periodic surveys of the general public are carried out by the Ministry of Justice.</td>
</tr>
<tr>
<td>INDIA</td>
<td>There is no formal feedback system.</td>
</tr>
<tr>
<td>THE NETHERLANDS</td>
<td>Every year, the National Bureau of Statistics assesses the public perception of the independence of the judiciary. As well, from time to time, every court conducts a survey of the quality of the work of that specific court, including its independence.</td>
</tr>
<tr>
<td>NEW ZEALAND</td>
<td>Annual surveys are produced on the public perception of the court system. Meetings are also held with the Law Society. There was a recent Law Commission review of the court system.</td>
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<tr>
<td>Country</td>
<td>Description</td>
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<tr>
<td>SOUTH AFRICA</td>
<td>Surveys have been produced to ascertain public views concerning crime rates, but not in connection with the courts' work. The public does not generally provide the courts with feedback.</td>
</tr>
<tr>
<td>SWEDEN</td>
<td>The Swedish National Council for Crime Prevention assesses public trust of the judicial system. In the context of the quality of the courts' work, some courts have obtained feedback from individuals involved in different cases.</td>
</tr>
</tbody>
</table>
| U.S. AND CALIFORNIA | The public may file complaints via ethics mechanisms and contact the clerk of the court with feedback, but no systematic program of judicial and court performance reviews exists for users of the federal courts.  
In California, all courts have public outreach programs pursuant to policies of the Judicial Council. In addition, the council, as the policy making body for the judicial branch, adheres to open meetings, accessible materials and public comment policies in regard to its meetings. |

29. Maintenance of judicial statistics; courts reporting on performance; judges' performance evaluation

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<th>Description</th>
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<tr>
<td>CANADA</td>
<td>As a general practice, the courts report on their work. Virtually all courts produce annual plans and reports, which include detailed statistical reporting. The federal government has established the Canadian Centre for Justice Statistics, which regularly produces research and information on the Canadian justice system. The provincial governments and the offices of chief justices gather substantial statistics about the functioning of the courts and use these in their strategic and operational planning. Increasingly, use is made of justice summits that bring together all of the key elements of the system for planning purposes. There is no evaluation of judges' performance.</td>
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| CHILE            | Recently, the website of the judicial branch has added a statistics section, but many statistics have yet to be collected and collated. As well, the judicial branch publishes a yearbook of its general statistics. Users who seek further information must request this from the court, which has the discretion to grant the request.  
Chile has a system for evaluating the qualitative and quantitative performance of judges. Judges are evaluated yearly by judges who are their immediate superiors. The process and substantive criteria employed to evaluate judges are available to
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<th>Country</th>
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<tr>
<td>FRANCE</td>
<td>Statistics on court administration (e.g. number of cases filed, decided and adjourned, disposal time, etc.) are collected and published quarterly and annually. Courts develop a plan with objectives and performance indicators (average disposal time, number of cases processed per judge, rate of cassation of decisions, number of requests for corrections, interpretation, rate of enforcement of decisions). Heads of courts have a supervisory role over the courts in their jurisdiction and provide an annual report to the Minister of Justice. In terms of performance evaluation, judges are reviewed by the heads of their jurisdiction every two years or sooner if they are applying for a promotion.</td>
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<tr>
<td>INDIA</td>
<td>All courts maintain statistics on the quantitative performance of individual judges. Overall, statistics are shared with the government and are even published on government websites, by way of official annual reports.</td>
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<tr>
<td>THE NETHERLANDS</td>
<td>Each district court provides annual workload reports. There is some performance evaluation by the team leader (another judge), but this mostly concerns administrative and procedural matters. In the last four years, a voluntary performance evaluation has been provided and accepted by judges.</td>
</tr>
<tr>
<td>NEW ZEALAND</td>
<td>The Courts of New Zealand Website publishes yearly reports and statistics, and provides them online. The Ministry of Justice also reports on court performance statistics.</td>
</tr>
<tr>
<td>SOUTH AFRICA</td>
<td>Statistics are readily available with regard to caseloads, racial and gender representation in the judiciary, and conviction rates. There is no system for the evaluation of judges and magistrates per se. When a judge applies for appointment to the Supreme Court of Appeal or Constitutional Court, or for appointment as a Judge President or other higher rank, the Judicial Service Commission will make an assessment of the judge that includes an examination of judgments that he/she previously delivered.</td>
</tr>
<tr>
<td>SWEDEN</td>
<td>In Sweden, there is a law of official statistics. As well, the National Courts Administration is responsible for statistics concerning the courts and has a system from which statistics can be collected. The system is connected to the courts, thus</td>
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judges and administrative personnel of the Judicial Branch, but not to the public. The results of evaluations are only available to judges. A judge’s evaluation is considered in any decision relating to promotion to a higher judicial position.
allowing figures to be continually updated.

In terms of performance evaluation, there is no individual assessment of judges, either by the Courts or the National Courts Administration. The performance of courts as a whole is assessed through statistical data collection. There is some relation between the funds each court receives and the number of cases expected to be heard at the court each year. This is not, however, related to the performance of individual judges.


In California, courts are required to report to the Chief Justice concerning the condition of their judicial business (State of California Constitution, Article VI, section 6(f)). The Judicial Council prepares annual reports and recommendations to the Legislature and the Governor (Article VI, section 6(d)) and issues an annual statistical report. By way of custom, the chief justice also addresses the Legislature once a year on the state of the judiciary. |

30. Public perception of the courts as impartial and accountable

| CANADA | National surveys are conducted periodically. There is, in general, a high level of trust in judges in Canada and in the Court system, particularly at the higher levels of the Court system. In 2000, 77 per cent of Canadians expressed their satisfaction with the way the Supreme Court of Canada has been working, and 66 per cent of Canadians believed that courts, rather than the legislature, should have the final say as to a law's constitutionality. In 2006, a survey showed that judges had earned 78 per cent of the public's trust. At the same time, there is mixed public confidence in the effectiveness of the judiciary's response to criminal behaviour. |

<p>| CHILE | The general perception is that the court is an impartial entity, but public understanding of judicial accountability and of the reasons for decisions is weak. There is also a lack of clarity and transparency around the sanction and disciplinary process, leading to the perception that judges are not being held fully accountable. However, since reforms have been implemented in the area of criminal procedure, including the establishment of an open and transparent judicial process, the media and the public have had increased access, and paid greater attention to, the |</p>
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<td><strong>FRANCE</strong></td>
<td>Periodic surveys are carried out by the Ministry of Justice. A 1994 survey revealed the following:</td>
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<td>- 69 per cent of those questioned thought that judges carried out their functions satisfactorily or very satisfactorily;</td>
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<td>- 48 per cent thought that the administration of justice was slow because the courts were overstretched (4 per cent thought it was because judges did not work enough);</td>
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<td>- 75 per cent thought judges were competent and the same percentage thought they were honest;</td>
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<td>- 79 per cent thought judges were cold and distant;</td>
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<td></td>
<td>- Interestingly, 67 per cent thought judges were subject to government influence. In response to the question: “Is the judiciary in your country independent from political influences of members of government, citizens or firms?” (1 = no, heavily influenced; 7 = yes, entirely independent), France’s result was: 5.26.</td>
</tr>
<tr>
<td><strong>INDIA</strong></td>
<td>There are no formal efforts to measure public perceptions of the judiciary and the courts. However, the public perception is generally that the justice delivery system is impartial, and the judiciary commands substantial respect for its independence.</td>
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<tr>
<td></td>
<td>In terms of accountability, the general impression is that the judiciary should be more transparent in its functioning, particularly the appointments process in the superior judiciary.</td>
</tr>
<tr>
<td><strong>THE NETHERLANDS</strong></td>
<td>In response to the question: “Is the judiciary in your country independent from political influences of members of government, citizens or firms?” (1 = no, heavily influenced 7 = yes, entirely independent), the Netherlands’ result was: 6.16.</td>
</tr>
<tr>
<td><strong>NEW ZEALAND</strong></td>
<td>There is an annual survey of the public perception of the court system. In 2008, as to whether court processes are fair: 11 per cent strongly agree, 43 per cent agree, 15 per cent neither agree nor disagree, 19 per cent disagree, 5 per cent strongly disagree, and 7 per cent don’t know. As to whether courts provide services to all New Zealanders: 16 per cent strongly agree, 60 per cent agree, 5 per cent neither</td>
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agree nor disagree, 10 per cent disagree, 3 per cent strongly disagree, 5 per cent do not know.

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<tr>
<th>SOUTH AFRICA</th>
<th>Less than 40 per cent of the public polled indicated that they saw the judiciary as corrupt (Transparency International).</th>
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<tr>
<td>SWEDEN</td>
<td>In a national safety investigation, the Swedish National Council for Crime Prevention measured the confidence of the public in the judiciary. The public generally indicated a high degree of confidence in the judiciary, apart from the manner in which the Swedish Prison and Probation Service works and how victims are handled in the legal system. In response to the question: “Is the judiciary in your country independent from political influences of members of government, citizens or firms? (1 = no, heavily influenced; 7 = yes, entirely independent),” Sweden’s result was: 6.41. Source: “World Economic Forum Executive Opinion Survey 2006 2007.”</td>
</tr>
<tr>
<td>U.S. AND CALIFORNIA</td>
<td>In 2007, a public survey was conducted by The Pew Research Center for the People &amp; the Press, in which 57 per cent of respondents stated they had a favourable opinion of U.S. courts. In California, the Judicial Council, on behalf of the judicial branch, periodically surveys the public about its perception of the courts as impartial and accountable. The results are generally favourable and improving, although there is always further room for improvement.</td>
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</tbody>
</table>

Overall, most of the indicators were met – to a greater or lesser degree – in all of the countries reviewed, showing a high level of consensus on how to build integrity in judicial systems and a strong momentum toward achieving it. Some countries were able to rely on deep-rooted traditions of judicial independence and accountability, and the rules were often implied and highly integrated into mechanisms. Other countries are more recent democracies, with more recent Constitutions and often a shorter history of judicial independence. In this case, the rules and mechanisms to ensure judicial integrity are spelled out explicitly in the Constitution, legislation and regulations. Finally, as shown by this review, depending on a country’s context and its legal and political traditions, a variety of provisions and mechanisms can be used effectively to achieve judicial independence, transparency and accountability.
3.2 INDICATOR-BASED SUMMARY OF COUNTRY EXPERIENCE – BEST PRACTICES

1. Separation of Powers – Independence of the Judiciary

Independence of the judiciary is fundamental and, in all reviewed countries, the separation of the judicial authority is ensured, usually by express constitutional provision or as a constitutional convention. It may be indirectly reinforced by constitutional provisions that assume there is or must be a separate judicial arm of government. As well, case law in most countries reinforces the requirement that there be a clear separation of powers. Administrative courts and tribunals may be quasi-independent and more closely allied with the executive arm of government, but the trend is toward making them and those who sit on them more independent. In most jurisdictions, an independent judicial body, such as a judicial council, helps as a further administrative buffer between the judiciary and other branches.

**Best practices:** a constitutional framework enshrining the separation of powers and the independence of the judiciary, a culture of judicial independence strengthened by appropriate institutions and practices: independent judicial councils, objective, merit-based appointment and promotion practices, guaranteed tenure and judicial training. Administrative tribunals are created at arm’s length from the government agencies, are operating under a code of procedure and subject to judicial review.

2. Judicial Power to Review the Constitutionality of Legislation and the Actions of Government, and the Power to Determine Court Jurisdiction in Accordance with Legal Standards

Countries with a robust culture of judicial independence vary in how they approach the determination of constitutional issues. The political structure of the country and its legal and political tradition influence the mechanism selected by a country to ensure the constitutionality of legislation and the actions of the executive branch of the government.

In some countries, the constitution or binding court decisions grant courts of justice the right to determine the constitutionality of legislation and the legality of administrative actions of government (e.g. U.S., Canada, and India). In some cases, the power is vested in a special constitutional court (e.g. in South Africa) or a special quasi judicial constitutional council (e.g. in France). The constitutional review may only be done before the law comes into force (e.g. France). In other countries, the courts may have less extensive powers of review of enacted legislation (e.g. when a provision is manifestly contrary to the
constitution or when government action is unfair or not within legislated authority (e.g. New Zealand, Sweden). In the Netherlands (and to a large extent in Sweden), the courts are not permitted to review the constitutionality of legislation, although in Sweden they may do so prior to the passing of the legislation and are consulted on legislation in general.

In most countries, administrative actions are reviewable by the courts of justice, both as to their conformity to the constitution and as to whether they are permitted by the relevant legislation. In some other countries, this is vested in a special body that reviews the decisions of the administration (e.g. in France and in Sweden). Infringements of rights and liberties may also be brought before a supra national tribunal such as the European Court of Human Rights.

Some countries expressly provide for court review of alleged criminal behaviour by the head of government or by ministers of the government. That review is either by the regular courts (e.g. the Netherlands) or by specially established courts (e.g. France).

In all the countries reviewed, it is for the courts to determine their own jurisdiction according to legal standards.

**Best Practices:** The international trend is to vest the power to review the constitutionality of the legislation or the actions of the executive power in an independent judicial or quasi-judicial organ. In some countries the review of the constitutionality of the legislation can only be done before it is enacted; in others it can still be challenged after enactment in the context of litigation. Regular courts or specialized courts have the power to review the legality of the actions of the administration and to grant remedies for breaches. It is a corollary the separation of powers that courts determine their own jurisdiction according to legal standards.

### 3. Jurisdiction over Civil Liberties

All countries provide for access to the courts when fundamental human and civil rights guaranteed by the constitution or bill of rights (and in some cases, contained in ratified treaties and international conventions) have been violated.

The remedy provided will vary depending on the legislative or constitutional arrangements, and may be an individual remedy rather than a declaration of invalidity. In Sweden and the Netherlands, the remedy may not be a declaration that the relevant law is unconstitutional, but the court does have jurisdiction to
grant remedies for breach of civil liberties. In Sweden and other European countries, there may be recourse to the European Court of Human Rights.

**Best Practices:** All the government institutions and the courts are bound by the basic rights enshrined in the constitution. Citizens have access to courts to remedy violations of rights and liberties provided in the constitution, legislation and treaties or international conventions incorporated into domestic laws.

4. ** Judicial Powers Relating to Subpoena, Contempt and Enforcement**

In all jurisdictions, there is the power to subpoena, to hold persons in contempt and to enforce the judgments of the courts.

**Best practices:** Courts have adequate powers to subpoena witnesses and documentary evidence, summon defendants, issue bench warrants, hold persons in contempt and to enforce court decisions. There are adequate enforcement mechanisms and the capacity to ensure that court orders are implemented in a timely and credible manner.

5. **Appellate Review of Judicial Decisions**

In all countries, there is a system of appellate review, usually to more than one level of appellate court, with final review (generally with leave) by a Supreme Court or Cassation Court.

**Best practices:** Court and tribunal decisions can only be reversed by the judicial appellate process. Citizens have a fair and timely access to appellate review of decisions. Balance is provided by appropriate filters- to prevent a multiplicity of appeal recourses over minor issues from overburdening the courts and paralysing the application of justice - while ensuring an adequate right of appeal over fundamental issues. Decisions of the highest appellate level or cassation court bind lower courts or have strong persuasive value.

6. **Some Measure of Judicial Self-Administration**

All countries have a significant measure of courts administration vested in the courts. In several countries, the courts are in charge of courts administration as a whole (e.g. France, and the U.S. Federal Court). In others, the administration of budgets, human resources, accommodation and technology is vested in a special judicial administrative body (e.g. the Netherlands, Chile, Sweden). In others, the
administration is in the hands of government, typically the Ministry of Justice, although some aspects of courts administration that are directly part of the judicial function will be directly administered by the judiciary, (e.g. New Zealand and most courts in Canada). In all countries reviewed, the judiciary controls scheduling; the assignment of judges and the assignment of cases, and this is often seen as a constitutionally protected aspect of judicial independence.

**Best practices:** The courts have a large measure of administrative autonomy-increasingly through judicial administrative bodies - and total autonomy over court processes such a scheduling and assignment of cases. Case assignment is based on clear and objective criteria. There is increased vigilance by the judiciary to prevent administrative practices from impeding on the independence of courts.

7. **Input into Budget and Control over Allocated Funds**

In general, where the judiciary administers the courts, it is directly involved in the budgetary process. In other cases, the judiciary is consulted in the budget-setting process. In all cases, the legislative and/or the executive finally establish the budget for the courts. Once determined, the courts are able to control how the assigned budget that is within their authority is allocated and spent, usually within established guidelines for the expenditure of public funds.

**Best practices:** Court budgets are so far as possible tied to objective norms such as workload measurement and the judiciary is directly involved in the preparation of the budget. Courts have access to their budgets in a timely and efficient manner. They have control for allocating and spending it within established guidelines.

8. **Guaranteed Tenure**

Security of tenure is another critical component of judicial independence, meaning that judges can only be removed in exceptional circumstances by the legislature, usually following an independent assessment by a body that has a majority of judges on it. The one significant exception is some form of election system used in some state courts of the U.S.

In general, judges serve until a specified retirement age (varying from 62 to 75), or for life in some instances, and can only removed before then for cause and by way of due process. In the U.S., Federal Court appointments are for life, while State Court judges are elected for specified terms. Chief justices or court presidents are appointed by the government for life or until retirement (e.g. US,
Canada), or for a fixed term (e.g. Canadian provinces). Where a chief justice or court president completes his or her term or steps downs from the position, he or she retains the position of judge of the court.

**Best practices:** Judges have guaranteed tenure and can only be removed for cause specified in legislation and through a formal process conducted by an independent body and involving the legislature. Presidents of courts are full members of the court and they have tenure as judges. They hold their position as chief justice or court president for life, until retirement or for a term. They cannot be removed as such by a simple decision of government.

9. **Qualified Judicial Immunity – Independent Association of Judges**

Most countries protect judges from civil liability for actions taken in their judicial capacity. This is provided for in legislation, in the constitution, by constitutional convention or through court decisions. France provides for vicarious state liability with the possibility of judicial reimbursement (which has never happened). In general, there is no criminal immunity but a limited immunity is provided in India and South Africa. The Netherlands provides immunity for errors made in the course of judicial duties. Sweden provides no civil or criminal immunity. India constitutionally protects judges from criticism.

There are independent associations of judges in most of the countries reviewed.

**Best Practices:** Civil immunity for actions taken in judicial capacity. Criminal procedural immunity is rare but may be warranted in some contexts. Independent judges’ associations represent the interests of the judiciary, contribute to strengthening judicial independence and ethics and facilitate a better understanding of the role of the judge.

10. **Adequate Salaries and Benefits – Adequate Process to Set Them**

An essential attribute of judicial independence is the provision of an adequate salary and protection against reduction in salary by the executive as a means of influencing judicial decision making.

While judicial salaries are set by the government, the process by which the salaries are set varies and often includes legislative approval. In Canada, the courts have determined that financial security is constitutionally protected and that there must be an independent process (special commission) for determining judicial salaries recommended to the government. In New Zealand, the decision from their independent process is binding. Some countries provide that a judge’s salary may not be reduced (e.g. South Africa and New Zealand). In other
countries, judicial salaries are aligned with the salaries of senior civil servants (e.g. France and the Netherlands). In Sweden, the independent body responsible for courts administration negotiates with each judge. Fair pensions are provided on retirement in all countries reviewed.

**Best practices:** Salaries and working conditions are sufficient to attract and retain qualified candidates and confer some prestige to the function. The salary level is based on some objective process and criteria. Judges’ salaries and benefits cannot be reduced. Salary scales are made public.

11. **Adequate Judicial Working Conditions**

In general, there are adequate court buildings and working conditions in the countries studied A secure environment is provided for judges, court staff and litigants. Emphasis is now on the introduction of good computer technology. Funding levels may require prioritization of needed improvements. There is adequate trained court staff, usually belonging to the public service.

**Best practices:** Court buildings and facilities support efficient and effective dispensation of justice. Judges operate in a safe environment. They have access to the tools and support they need to efficiently carry out their judicial duties. All judges have access to a computer.

12. **Access to Case Law and Adequate Libraries**

Most countries now provide for electronic access to case law and legislation, and legal publications.

**Best practices:** Timely updated versions of laws are available electronically; judges have access to electronic data bases of laws and to relevant jurisprudence and case law, and have access to a well resourced court library.

13. **Judicial Positions Created as Needed**

In most countries, this is a government decision that may have to be confirmed in legislation. Countries with independent bodies to manage the courts may have the power to decide within available budgets. In some countries, the political process can create serious problems with unfilled vacancies (e.g. U.S California.). Some countries are developing workload measures to determine
when new positions are needed. In others (e.g. Chile), there have been major expansions linked to broader court or legal reforms.

**Best practices**: Workload measures to establish how many judicial positions are needed. Effective recruitment and selection processes allow for timely appointments of quality candidates.

### 14. Objective, Merit-Based Selection Process

The process for selection of judges has a merit-based component in all the reviewed countries but the emphasis on knowledge, skills, attitudes, ethics and reputation varies. As well, there is usually some form of review by an independent body before final selections are made. A law degree is a prerequisite in almost all cases. Gender and minority representation may be considered. Vacancies or a competitive process may be advertised.

In common law countries, the appointments are made by the executive. There may be specific, legislated criteria (e.g. 10 years as a lawyer), and some countries have a process by which candidates are assessed and possibly interviewed by a special committee or commission. Vacancies may be advertised and, in some countries, a list of recommended candidates is forwarded to the executive, after which one candidate from the list is chosen. Some countries provide for consultation with the chief justice before the government makes an appointment (e.g. India). In the U.S., federal judicial appointments are subject to the approval of the Senate. Many U.S. states provide for the election of the State Court judges or their confirmation by the electorate.

In civil law countries, persons are generally selected as judicial trainees through an open competitive process (82% in France) or by a judicial body. On objective criteria (academic achievement, prior experience etc) Candidates write exams before moving into the judicial role. Some civil law countries also provide for the direct appointment of some persons who have substantial legal experience or for a short training period if the candidate has relevant legal experience. Pre-appointment training can be lengthy (e.g. 31 months in France; four years of on-the-job training in the Netherlands).

**Best practices**: Competition or vacancies are advertised and all qualified persons can apply; a law degree is a prerequisite to qualify as a judicial trainee or judge, and relevant experience is favoured; a merit based, rigorous selection process ensures that only candidates with the right qualifications, ethics, motivation and skills are accepted as judicial trainees and appointed as judges. Balanced representation of women and minorities is a consideration in the selection process.
15. Transparent, Objective Criteria for Advancement and Transfer

In common law countries, advancement to higher positions within the judiciary (becoming Chief Justice or being appointed to a higher court) is an executive decision. In some cases, a certain number of years as a judge or other exemplary service is a prerequisite to advancement (e.g. India). In civil law countries, advancement is usually tied to years of service, regular evaluation of the judge’s performance and may include success in in-service examinations. A judicial council or other independent body will usually be in charge of the evaluation, advancement and transfer process. Judges are usually transferred at their request. They are not transferred without their consent.

**Best practices:** Promotion within a courts or advancement to a higher court is tied to experience and performance. There are clear rules known by the judges for advancement and transfers. There is objectivity and some predictability to the process that is led by a judicial body.

16. Training

An attribute of accountability is the requirement or expectation that the members of the judiciary will continue to upgrade their substantive knowledge and skills through in-service training. Generally, all of the countries studied have in service training programs. Some programs are mandatory (e.g. during the first five years in France; initial training in India). Many countries use independent, judicial education organizations. Education always encompasses substantive and procedural law, but increasingly programs focus on judicial skills (such as legal analysis, giving reasons for decisions, judgment writing, and case management) and the role of the judge in society.

**Best practices:** Life-long, well structured and accessible training programs for all judges based on rigorous needs assessment and modern adult education methods, controlled by the judiciary and focussed largely on the acquisition of judicial skills and attitudes. There is a requirement or practice that judges spend a specific amount of judicial time in training.

17. Mechanisms to Ensure Independent Decision Making

Judicial independence requires a prohibition against interference with a judge’s independent decision making by government. In some cases (e.g. Canada) this is reinforced through published ethical principles, and all countries provide for
discipline, including the possibility of removal from office, for allowing oneself to be influenced in one’s decision making. In some countries (e.g. Canada), it is clear that communication with a judge about a case by a member of the government would be grounds for dismissal of the government member. In all countries, there is the possibility of criminal sanctions for attempting to influence or threaten a judge. In most countries, former judges cannot practice law in the jurisdiction (e.g. France) or before the court (e.g. Canada) where they served for a specified period of time after resigning or retiring.

**Best practices:** The public has expectations of judicial independence; the judges, the bar and the executive are adequately trained in the principle of judicial independence; there are sanctions for breaches; the judiciary is vigilant to dissuade any impropriety or interference. Former judges are prohibited for a period of time from appearing before the courts where they served or heard appeal from as judges.

18. Code of Conduct or Ethical Principles, Supported by Judicial Training – Clear and Enforced Rules Against Conflict of Interest

The countries studied generally have codes of conduct or general standards of behaviour that may be contained in regulations, the oath of office or in principles of conduct. South Africa is developing a code. Some countries (e.g. New Zealand and Canada) also have ethical principles or guidelines. Generally, all the countries studied offer some education in judicial ethics. Some also offer extensive, mandatory programs (e.g. California State Court), while others are voluntary but extensive (e.g. Canada). All countries have rules about conflict of interest and the requirement to withdraw from the case in such situations. Most are legislated (e.g. France and the U.S.), but some are established by case law.

**Best practices:** There is a Code of conduct setting clear general or specific standards the breach of which may lead to disciplinary sanctions and judges are familiar with it. As well, to help judges making ethical choices there are ethical guidelines, adequate training in judicial ethics and a judicial committee to which judges can submit requests for advice.

19. Established Disciplinary Process

The practice in almost all countries is to have an established disciplinary process, generally set out in legislation and involving an independent commission or council. The trend has been to make these processes more independent of government (see the new process under development in France). In most cases, removal from the Bench is done by the legislature on recommendation from the
commission or council. Good due process protections are generally available and decisions made public.

**Best practices:** There is a transparent and predictable process known to the judges and the public for dealing with disciplinary matters. Discipline breaches and the possible sanctions are clear. Specific complaints go to a judicial disciplinary body for investigation. Minor complaints are also dealt with in a transparent and appropriate manner. There are clear rules when a matter can be dealt with internally or when they go to an independent decision body for decision making. Where there is a *prima facie* case of a serious discipline breach the international trend is to have the matter investigated by a different body (e.g. sub-committee of council, special investigator etc.) than the one adjudicating on the matter. Judges can defend themselves adequately against the charge. Reasoned decisions disposing of the complaint are made public.

**20. Existence of a Public Complaint Process**

In all countries, there is an independent complaint process that is generally well publicized and easy to use. Complaints are usually made to the body, agency or committee that investigates the complaints, including specific elected or appointed ombudsmen, such as in Sweden and the Netherlands (the Netherlands also allows the public to complain to the President of the court or to a bureau of the supreme court when a lack of independence is perceived), although in some cases it is to the president of the court, such as in France ( the process is being modified so that complaints will be made to the Judicial Council). In some jurisdictions there are concerns that the process as a whole is not sufficiently transparent and accountable.

**Best practices:** Public awareness of expected judicial conduct and the process to complain of a breach. The complaint process is fair and transparent; the results are made known to the complainant and, in most cases, to the general public.


In general, there are rules or guidelines for the time within which trials of criminal matters, in particular, should be completed. In some jurisdictions, they are established by law (e.g. in Sweden and California’s State Courts) and in others, there is a constitutional requirement for a trial within a reasonable time period (e.g. in Canada). In some countries,(e.g. Canada ) courts are actively involved in
case management processes to promote early settlement, the narrowing or consolidation of issues in order to streamline court proceedings and to bring cases to trial in a timely manner.

Most countries have rules or guidelines as to when judges should complete their judgments, ranging from two weeks to six months. In California, judges’ salaries are withheld if they fail to meet the timeline. In general, there are no formal rules regarding the appropriate judicial workload, and it is left to those assigning cases to assign them equitably. Some courts have developed methods of publicizing within the court comparable statistics on the work done by the judges of the Court.

**Best practices:** Appropriate administrative guidelines and standards for judicial work; case management processes and systems for efficient processing of cases; evaluations to hold judges accountable for strong work practices.

22. Open Public Hearings

Transparency requires that, except in exceptional circumstances, the courts be open and subject to scrutiny by the public, the press and interested organizations. In all of the countries studied, cases are held in public. Generally the court has the discretion to close the court room in exceptional situations (e.g. in matters of national security, or cases involving children or highly sensitive issues). In many countries, the requirement that proceedings be in public is protected in the constitution.

**Best practices:** All hearings are held in public except for the cases provided in the law. Courtrooms are adequate to hold public hearings. Training sessions are provided to the media; and media relations staff or a press judge foster public awareness of the justice system through competent media reporting.

23. Access to Judicial Decisions

Transparency requires that judicial decisions be made public. All countries respect this requirement, with some discretion provided through the common law or legislation to keep some decisions, in exceptional circumstances, from becoming public. In some civil jurisdictions (e.g. Chile), public access to decisions is part of the move away from an inquisitorial system of justice. Decisions are often made available electronically on court websites free of charge and in searchable databases. Reasons for decisions may be more or less detailed depending on the decision format.
**Best practices:** Judges are required to produce reasoned decisions, most often by law; judges receive training on judgment writing; templates are developed for standard decisions. The judiciary, the legal profession, the media and the public have easy access to court decisions. Law journals comment on court decisions regularly.

24. **Maintenance of Trial Record and Recording of Proceedings**

Subject to some budgetary constraints, it is acknowledged that transparency and accountability require a complete and accurate record of court proceedings. In general, proceedings are audio-recorded. There is reform underway to move to full recording and increased use of digital technology so as to ensure trial records are easily maintained and accessible. In some countries (e.g. France), only criminal proceedings are audio-recorded. For civil trials, there are minutes only.

**Best practices:** Recording of all proceedings, either manually or electronically, by qualified court staff; maintenance of records in proper condition. Increasingly, the record is in electronic format to facilitate storage and retrieval.

25. **Case and Records Management**

Accountability and transparency depend upon accurate file management. In most countries, there is an increasing effort to introduce electronic case management systems and good electronic methods of recording and tracking cases.

**Best practices:** Effective computerized case management systems allow court staff, litigants and lawyers to track cases, trace files and monitor time requirements; electronic filing facilitates records management.

26. **Transparent and Comprehensible Court Structures and Procedures**

There is a steadily increasing effort in all the countries studied to make the courts and court procedures more understandable, often through websites, written materials and information desks in courts, and in some cases (e.g. Canada), public education programs.

**Best practices:** Accessible public awareness material and services inform users about the court system and process. Easy access for litigants to information about the status of their cases.
27. Free Public Access to Information about Rights and Laws

Public legal education programs exist in most of the countries studied. In some cases (e.g. India), specific bodies have been established to make the public and especially disadvantaged members of the public more aware of its rights and of the law generally. Increasing use is being made of websites, the printed media but also and radio and television broadcast.

**Best practices:** Awareness programs tailored to specific segments of the population (e.g. women, tenants, etc.) provided in the most accessible format (e.g. radio or the Internet). Legal awareness is part of schools’ civic education curricula.

28. Obtaining Feedback from Users and the General Public

There is an increased trend toward obtaining feedback from the public, especially from users of the system, such as litigants or witnesses. This is seen as an important means of enhancing accountability. Some countries do regular surveys of the public, including public perceptions of the independence of the courts (e.g. Sweden and the Netherlands). Others do so periodically. In some countries, (e.g. Chile) courts have to provide a complaint box and to review and answer complaints. In many countries, legal organizations and NGOs assess and provide feedback on how the courts are perceived to be functioning.

**Best practices:** The courts meet regularly with stakeholders to discuss issues and how to improve the court system; and users are surveyed for feed-back.

29. Maintenance of Judicial Statistics; Reporting on Court Performance; and Judges’ Performance Evaluation

There is increasing recognition that a system cannot be held accountable unless good statistics are gathered that make it visible and capable of being studied and evaluated. Most courts in the countries studied provide annual reports with relevant workload statistics. In France, the courts report every three months and publish annual plans and performance objectives. In India, statistics on individual judges are available. In Sweden, the National Courts Administration must comply with the law of official statistics. There is increased use of technology to gather statistics and to provide reports on the functioning of the courts.
Judges’ performance evaluation is rare in common law countries, emphasis being placed on access to needs assessment and high quality in-service judicial education, but it is increasingly being discussed. In a number of civil law countries, such as France, judges are evaluated regularly on defined criteria.

**Best practices:** Courts gather statistics on their operations and report regularly on their performance; judges’ performance is assessed through a process with clear and objective criteria and the results of which are used to develop appropriate training plans.

### 30. Public Perception of the Courts as Impartial and Accountable

Periodic surveys are done in most countries (e.g. annually in New Zealand). In general, they report high public satisfaction with the judiciary and a perception that the judiciary is independent. Criticisms are directed at the perceived leniency of the judiciary in criminal proceedings and at a lack of transparency in the courts.

**Best Practices:** Regular public surveys on the perception of courts are conducted and also used as opportunities to raise awareness of the role of courts.
PART II – ASSESSMENT OF ETHIOPIAN COURTS

1. COUNTRY PROFILE

The Federal Democratic Republic of Ethiopia (Ethiopia) is Africa’s oldest independent country. It is also one of Africa’s most important, largest and poorest countries. It has a diverse cultural heritage, with some 80 ethnic groups and more than 250 distinct languages. Ethiopia has a population of over 80 million people,\(^{24}\) of whom almost two-thirds are illiterate. The economy revolves around agriculture, which employs more than 80 per cent of the population. Life expectancy is 52 years for men and 54 years for women. Ethiopia ranked 169 out of 177 countries on the UNDP Human Development Index (HDI).\(^{25}\) The gross national income (GNI) per capita is US$160.\(^{26}\) The economy has been enjoying a buoyant expansion in the last five years, with an average gross domestic product (GDP) growth rate of more than 10 per cent. Inflation has, however, also accelerated, to 19 per cent in 2007.\(^{27}\)

In 1991, the Ethiopian People’s Revolutionary Democratic Front (EPRDF) toppled a brutal military junta, the Marxist Derg regime, ending its 17-year reign of terror. Once the EPRDF assumed power, it set the foundation of the modern federal republic. The 1995 Constitution created a highly decentralized federation, with nine ethnically based fully autonomous regional states\(^{28}\) and two chartered federal city governments (Addis Ababa and Dire Dawa). The Constitution established a bicameral parliament, with the popularly elected House of People’s Representatives (HoPR) vested with the legislative and oversight powers to define the powers of government and control revenue resources. It also approves the appointment of federal judges; the majority party in this House forms and leads the executive. The House of Federation, is a senate elected by state councils, vested with the constitutional role of safeguarding the interests of the nations and nationalities of Ethiopia; it has unique quasi-judicial duties to interpret the Constitution.

\(^{24}\) National Data Archive of Ethiopia, 2007.
\(^{26}\) World Bank, 2006.
\(^{28}\) Afar, Amhara, Benishangul-Gumuz, Gambella, Harari, Oromia, Somali, Tigray, and Southern Nations, Nationalities and People’s Region (SNNPR).
The Constitution is the supreme law of the land and all laws and all government bodies, including courts, must conform to it. It also guarantees important fundamental rights and freedoms of the population and due process, in addition to enshrining the separation of powers and the independence of the judiciary.

As a federation, Ethiopia has a dual system of courts: a three-tiered federal judiciary, led by the Federal Supreme Court, with jurisdiction over federal matters, mirrored in each state with a three-tiered judiciary with jurisdiction over regional matters.

While Ethiopia is certainly moving toward multi-party democracy, it has not always been a smooth journey, as demonstrated by the political turmoil following the May 2005 elections. People were killed in street violence, and opposition figures, members of civil society and journalists were reportedly intimidated and harassed. Some were arrested, charged and convicted of treason. The opposition leaders and activists who had been charged with capital offences in the wake of the 2005 events, were pardoned and released in 2007, and more recently in May 2008. In Ethiopian society, including in the legal profession and in the judiciary, opinion remain polarized about these events, which have obviously left scars and fissures not yet healed.

In 2007, Ethiopia ranked 138 out of 179 countries for its perceived level of corruption. A Federal Ethics and Anti-Corruption Commission (FEACC) was established in 2001. If most observers agree that large-scale corruption has not become ingrained in Ethiopia, they comment that the lack of transparency threatens this advantage. The media and civil society play a marginal role in Ethiopia. The government is, in fact, the single main driver of economic and societal change.

The Ethiopian government has embarked on an ambitious program of reforms to encourage economic and social development and poverty reduction. The federal Ministry of Capacity Building (MoCB) was established with a mandate to supervise, coordinate, guide and monitor the implementation the broad national 2004-2009 Public Sector Capacity Building Action Plan (PSCAP), which includes the five-year Justice System Reform Program. (JSRP). Ethiopia needs international assistance and cooperation to support structural reforms and to achieve its development goals. Several donor countries are supporting the JSRP, including Canada, France, the Netherlands, Norway, and the U.S., as well as multilateral donors, such as the World Bank.

29 Government actions were condemned by the European Union and a number of Western governments. Most donors suspended direct budget support to the Government at that point.


2. HISTORICAL CONTEXT OF THE JUDICIARY

To properly assess the current state of the Ethiopian judiciary, it is important to understand its evolution over time, along with the evolution of the legal framework governing it. The history of the Ethiopian judiciary can be divided into four major periods: pre-1931 Constitution; 1931-1974; the military government; and post-1991, the restoration of a democratic regime in Ethiopia.

2.1 Pre-1931 Constitution

In Ethiopia, the judicial and the legislative branches of government did not exist independently of the executive until the adoption of the 1931 Constitution. Before 1931, both formally and in practice, the judicial and legislative functions of government were intermingled, and were taken on by the Emperor and his executive functionaries, who served at various levels as law givers, dispute settlers and administrators. Judicial functions were considered to be part of public administration.

Prior to 1908, the Ethiopian judiciary based its decisions mainly on customary law (and to some extent religion as well), with no written rules of procedure or jurisdictional stratification. Dispute settlement took the form of mediation and arbitration by elders.

The year 1908 proved to be a watershed year. For the first time in the country’s history, executive departments were organized by imperial order. The Ministry of Justice was created, and the Minister (the Afe-Negus) became the head of the judges of the country, responsible for carrying out justice according to the Fetha Nagast. Judgments were to be recorded, and all documents of the various courts were to be sent to him yearly to be examined. The judiciary was made part of the executive arm of the government, and remained so for a long period of time. Below the Afe-Negus were three court levels presided over by the governors of the respective administrative levels.

32 Aberra Jembere argues that, at all levels, the governors had the power to dispense justice until 1973, the end of the imperial regime. Aberra Jembere, An Introduction to the Legal History of Ethiopia: 1434-1974 (Munster: LIT, 2000), p. 217.

33 Aberra Jembere writes about the existence of “road side courts” whereby, to settle their disputes, disputants submitted their case to any passerby who happened to be at the scene. If the passerby was not successful, the disputants would be taken to the local chief. See Id., p. 222. See also Perham, The Government of Ethiopia (1948) cited in James C.N. Paul and Christopher Clapham, Ethiopian Constitutional Development: A Sourcebook, Vol. II (Addis Ababa: Artistic Printers 1971) pp. 841-842). This practice seemed to be more common in the northern part of the country, predominantly with the Amharas.

34 Literally, “the mouth of the King.”

35 The “Book of Kings.”
Appeals could still, however, be taken to the Emperor’s *Zufan Chilot* (Crown Court). The structure of the judiciary continued until the Italian occupation (1936-1941).

### 2.2 1931-1974

Ethiopia adopted its first Constitution in 1931. For the first time in the country’s history, the legislative branch of the government and the judiciary were established as separate organs of the government. Chapter 7 of the Constitution provided that the judges were to sit regularly and administer justice in conformity with the laws of the country (Article 50). Judges were to be selected from among men having judicial experience (Article 51). The organization of the courts, as well as the jurisdiction of each court, was to be determined by law (Articles 50 and 53). Administrative affairs were withdrawn from the jurisdiction of other courts and given to ‘special courts.’

The position of the judiciary was further consolidated after the Italian occupation. The first important step was taken with the enactment of the Administration of Justice Proclamation No. 2 of 1942. This proclamation established four levels of court: the Supreme Imperial Court; the High Court; the provincial courts; and regional and communal courts. The proclamation gave only the Supreme Court an appellate jurisdiction, while the High Court was given “full criminal and civil jurisdiction,” and sat anywhere in the country as was convenient. The provincial court was below the High Court in hierarchy, and appeal of its decisions would lie with the High Court.

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36 The *Zufan Chilot* remained at the apex of the judicial system until the end of the monarchical regime. It was given as a constitutional right of citizens to submit petitions to the Emperor in the 1955 Revised Constitution (Article 63) and the procedural requirements for submitting petitions to the Emperor were regulated in the 1965 Civil Procedure Code, which is still in force; its provisions relating to the *Zufan Chilot* have obviously become obsolete.


38 It also states that judges shall administer justice in the name of the Emperor (Article 50).

39 See the text of the Proclamation in id., pp.356-359.

40 See Id., Article 18. In fact by an amendment to Proclamation No. 2 of 1942 (Amendment Proclamation Number 90 of 1947), *Atbia Dagna* (literally ‘village judge’) was established as the lowest court level to make decisions according to traditional means and through amicable settlement or by compromise.

41 See Articles 3-10 of Proclamation No. 2/1942.
1942 Imperial Decree provided that the governors-general and governors of all levels would serve as Presidents of the courts established in the towns in which they resided.\(^{42}\)

An Imperial Order (No. 1 of 1943) gave the Minister of Justice the power to: propose persons for appointment as judges and judicial officials to the Emperor, who appointed them; make arrangements for the establishment of courts throughout the country; and, most importantly, to organize and supervise the administration of justice.\(^{43}\) Again, the executive was exercising direct supervision over the judiciary.

The basic court system in the country remained more or less as organized in Proclamation No. 2/1942 and its amendments\(^{44}\) throughout the remaining years of the monarchy.\(^{45}\)

One should also note the existence of quasi-judicial bodies – both religious and non-religious – that functioned at various levels and within various institutions, side by side with the regular courts of justice, such as ecclesiastical courts\(^ {46}\) (which had jurisdiction over cases of marriage and disputes over church property) and Muslim courts\(^ {47}\) (which had jurisdiction over family and succession cases of the Muslims).

In 1955, a revised Constitution was enacted, stating for the first time that judges were to be independent in conducting trials and giving judgments in accordance with the law, and that they were to submit to no other authority than that of the law (Article 110). It stated also that judges were to be appointed by the Emperor (Article 111).\(^ {48}\)

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\(^{42}\) See Articles 78, 81-83 of Decree No. 1/1942, Negarit Gazeta, Year 1, No.6. This state was discontinued in 1973 by Proclamation No. 323 of 1973 (Negarit Gazeta, 32\(^{nd}\) Year, and No.24).

\(^{43}\) See Article 61 of Order No. 1 of 1943, Negarit Gazeta, 2\(^{nd}\) Year, No.5.

\(^{44}\) Important amendments include Proclamation No. 90 of 1947 (Negarit Gazeta, 6\(^{th}\) Year, No.10); Proclamation No. 102 of 1948 (Negarit Gazeta, 8\(^{th}\) Year, No.4); and Proclamation No. 323 of 1973 (note 21 above).

\(^{45}\) The structure and jurisdiction of the courts have been modified by the Civil Procedure Code of 1965 and the Criminal Procedure Code of 1961. By implication, the Provincial Courts were abolished by the Criminal Procedure Code of 1965.

\(^{46}\) In 1942, the Ethiopian Orthodox Church ecclesiastical court was established by a Decree (No. 2 of 1942, Negarit Gazeta, year 2, No.3). Under this decree, the Church’s ecclesiastical courts were organized in three levels: supreme, high and first instance. The substantive laws they used were the Fetha Negest, but they also used customary rules of procedure. Aberra Jembere (Note 1, above) p 235.

\(^{47}\) The first law that provided for the Muslim courts was Proclamation No. 12 of 1942 (Negarit Gazeta Year 1, No.2) which was later replaced by Proclamation No. 62 of 1944 (Negarit Gazeta year 3, No. 9). This court had three hierarchies, which in descending order were Sharia Court, the Qadis’ Court and the Naiba Court.

\(^{48}\) This Constitution shows a significant departure from that of 1931 with respect to the independence of the judiciary.

In 1974, the military government (Derg) took power and suspended the operation of the 1955 Constitution and key civil institutions. Countless special tribunals or courts were set up, usurping the powers of the judiciary. Judges were literally reduced to insignificance, dealing with petty and mundane matters of no interest to the junta. The judiciary was put under the authority of the Minister of Justice, where it stayed until the 1987 Constitution came into force.\(^49\) Not all judges of the imperial regime were replaced by the junta, but senior members of the judiciary and those who had been active players in the previous regime were removed in various ways, such as by imprisonment, retirement and forced resignation. Many of the judges continued on the Bench, while new appointments were also made. In general, the new appointees were poorly qualified from a legal or judicial perspective, although the situation improved considerably after the 1987 Constitution came into force, at least at the Supreme and High Court levels.

The 1987 Constitution brought about a somewhat better situation for the judiciary. It stipulated that judicial authority was vested in the Supreme Court, courts of administrative and autonomous regions, and other courts to be established by law.\(^50\) It also set the Supreme Court as the highest judicial organ and gave it supervisory power over all courts in the country.\(^51\) In addition, the Constitution incorporated a judicial independence provision,\(^52\) but the constitutional setting for the judiciary had severe shortcomings with respect to judicial independence. First and foremost, all judges were electable for five-year terms\(^53\) by the shengo (legislative assemblies) at various levels (national, administrative and autonomous regions). The shengo could dismiss judges at will.\(^54\) The President of the country had the power to appoint and dismiss the President, Vice-President and judges of the Supreme Court between sessions of the National Shengo when compelling circumstances arose, and to ensure that the Supreme Court discharged its responsibilities.\(^55\)

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\(^{49}\) The 1987 Constitution made the Federal Supreme Court autonomous, leaving the High Court and the other courts under the authority of the Ministry of Justice.

\(^{50}\) Article 100 of the 1987 Constitution.

\(^{51}\) Id., Article 102.

\(^{52}\) Id., Article 104.

\(^{53}\) Id., Article 101.

\(^{54}\) Id., Article 101.

\(^{55}\) Id., Article 86.
2.4 1991-2008

In May 1991, the military government was brought down by the EPRDF after a long civil war. A transitional government was established that lasted until August 1995. Fundamental changes were brought about in the political, social and legal areas. First and foremost, the federal state structure was laid out, establishing national/regional self-governments. The court system that had been unitary until this point became a highly decentralized system, with courts established at the federal, state and, in some cases, city levels.

The 1991 Transitional Period Charter states that the Council of Representatives (legislature) was to provide for the administration of justice on the basis of the Charter, and further states that “the courts shall, in their work, be free from any governmental interference with respect to items provided for in Part One, Article One of the Charter”. Article 1 of the Charter incorporates the 1948 Universal Declaration of Human Rights and lists some of those rights, such as the right to freedom of conscience, expression, association and peaceable assembly, and the right to engage in unrestricted political activity. The Charter did not, however, give the courts authority to pass judgment on matters relating to the rights of groups (nations, nationalities and peoples).

Courts were organized both at the central government level, as well as at the national/regional self-government levels. Laws defined the jurisdiction of central government courts while the respective national/regional self-governments also enacted laws defining the jurisdiction for their courts on matters excluded from central courts’ jurisdictions.

The transitional period was also a time of upheaval for the judiciary. At the central level, a significant number of experienced judges associated with the military regime (mainly in Addis Ababa) were purged. Some judges also relinquished judicial service of their own choice.

The loss of many experienced judges, combined with the creation of new courts in all the regional self-governments, resulted in a severe shortage of judges. To deal with this shortage, the government aggressively recruited for judicial positions. While some of these recruits were degree holders, a majority only had a sub-degree in law (diploma), and a fair number of them had barely three to six months of legal training (certificate) after graduating from high school before they started to hear cases. The recruits were,

56 Decentralization, or federalization, was put in place in a very general way in the Charter, but further consolidated by other legislation that came after it, such as Proclamation No. 7/1992, which established 14 national/regional self-governments, including the Addis Ababa City Government.

57 Transitional Period Charter, Article 9.
for the most part, also quite young and had no judicial training or court experience. To this day, challenges of legal qualifications, judicial skills and maturity remain in the judiciary.

3. CURRENT SYSTEM

3.1 Mixed Legal System

The formal Ethiopian legal system is a blend of two major legal systems – the Continental civil law system and the common law system, along with a significant amount of Ethiopian traditional (customary) law. The major influences of the two foreign legal systems came about through different means, but essentially by a process of legal transplantation that took place during the mid-twentieth century, when Ethiopia codified its six major areas of law.\(^{58}\) Four of the new codes (the penal code, civil code, commercial code and maritime code) were based on the civil law system,\(^{59}\) while the procedural laws in the criminal procedure code and civil procedure code, which guide the day-to-day judicial process of the courts, show the influence of the common law system.\(^{60}\)

The influence of customs and tradition on these codes was not uniform, but in some areas there was a noticeable incorporation of customary rules – for example, in family, property and succession matters in the civil code, and in some aspects of the traditional criminal and civil procedure rules. There is yet another separate set of rules that complicate the official body of laws and courts in Ethiopia – the religious and customary laws that influenced the codes, as noted, and that are integral to the customary courts provided for under the Constitution.

\(^{58}\) The penal code (1957), civil code (1960), commercial code (1960), maritime code (1960), criminal procedure code (1961), and the civil procedure code (1965). The 1957 penal code replaced a 1930 penal code, which had replaced the *Fetha Negest.*

\(^{59}\) The 1957 penal code was drafted by Jean Graven, a Swiss jurist whose principal source was the Swiss Penal Code of 1937 and Swiss jurisprudence to 1957. The 1960 civil code was drafted by the well-known French jurist, Rene David, who stated that the fundamental principles of the code were taken from the continental legal tradition. The same is true of the commercial code, which was drafted by Jean Escarra and Alfred Jauffret, both French jurists. The maritime code was drafted by Jean Escarra as well.

\(^{60}\) The drafting of both the criminal procedure code and civil procedure code was originally entrusted to Jean Graven but was finalized by an English jurist, Charles Mathew. Because of this, the criminal procedure code is dominated by the adversarial system, though it retains some aspects of the inquisitorial system. In the case of the civil procedure code, the drafting was done by Ethiopian experts in the Ministry of Justice, but it was based on the Indian code of civil procedure, which was in turn based on the common law court procedures of the British.
The confluence of the different legal traditions does at times cause confusion in the application of the various laws and with respect to the role of the judge. The substantive laws, based on the civil law system, may require the judge to play an active role in proceedings, while the procedural laws influenced by the common law system provide for an adversarial process and a more restrained judicial role. Legal education may have exacerbated the confusion resulting from the merger of the two major legal systems, since the training in law schools is heavily based on common law literature and references from North America and the United Kingdom.\footnote{It is to be noted that the first law school of the country, Addis Ababa University Law Faculty, was established in early 1960s by American law professors, and remained dominated by them until the early 1970s. Their influence is still apparent.}

One noteworthy recent development is the introduction of a precedent (\textit{stare decisis}) rule by Proclamation No. 454/2005 into the legal system. Under Provision 2(1), interpretation of law by the Federal Supreme Court’s Cassation Division, with not less than five judges, shall be binding on all federal as well as regional courts.\footnote{The Cassation Division may, however, render a different legal interpretation in the future of the same law, and hence change the \textit{stare decisis}.} This is a meaningful legal and relational change in the judicial hierarchy.

However, the existing court structure, as well as changes that are being introduced, cannot be likened to either of the two major legal systems, nor can they be seen as resulting from the influence of one legal system or the other. They can, however, be considered an eclectic approach to structuring, influenced mostly by the geopolitical factors in the country.

\section*{3.2 Judicial System}

The current structure of the Ethiopian judiciary exists in a highly decentralized federal system. The 1995 Constitution lays the foundation for both the regular judiciary and courts outside the formal judicial system. With respect to the regular courts, the Constitution creates a dual judicial system at the federal and state levels, with three tiers at each level: supreme court, high court and first instance court.\footnote{Articles 78(2) and (3).} According to published national statistics there were 2,729 judges in Ethiopia’s federal and regional courts in 2007, excluding the sharia courts and the social courts.\footnote{National Data Archives of Ethiopia, Law and Order, Federal and States’ Courts, 2007.}
The Ethiopian Constitution provides for common rules and principles that apply to both the Federal Courts and the state courts, as well as specific rules and principles applicable only to one or the other. The Constitution plainly states that an independent judiciary is established in the country\textsuperscript{65} and that courts of any level shall be free from interference or influence from a governmental body or official or any other source.\textsuperscript{66} The Constitution provides further common rules with respect to the removal of judges, court budgets, appointment of judges and judicial administrative councils.

**Federal Courts:** Proclamation 25/1996 formally establishes the Federal Courts in keeping with the Constitution’s design of three court levels: the Federal Supreme Court, the Federal High Courts, and the Federal First Instance Courts. Proclamation 25/1995, as amended several times subsequently, remains the most important piece of legislation regulating the federal judiciary and determining its powers. All Federal Courts were given original and appellate jurisdiction over cases arising under the Constitution,\textsuperscript{67} federal laws and international treaties, parties specified in federal laws, and places specified in the Constitution or federal laws.\textsuperscript{68} In terms of the substantive laws, the Federal Courts settle cases on the basis of federal laws and international treaties, and on the basis of regional laws (if they are consistent with federal laws and international treaties) when the cases relate to regional matters.\textsuperscript{69}

The Federal Supreme Court has three divisions: Civil, Criminal and Labour. In addition, the Federal Supreme Court also has a Cassation Division, which has a power to review final decisions of the Federal High Court rendered in its appellate jurisdiction, final decisions of the Federal Supreme Court itself, and final decisions of the State Supreme Courts containing fundamental errors of law.\textsuperscript{70} Each division of the Federal Supreme Court sits with a minimum of three judges.\textsuperscript{71} However, cases relating to a provision of law that has been interpreted in a fundamentally different way among the divisions of the Federal Supreme Court, cassation cases, and cases directed to be heard by the

\textsuperscript{65} Article 78(1).
\textsuperscript{66} Article 79(2).
\textsuperscript{67} The Federal Courts’ jurisdiction does not, however, extend to constitutional interpretation, as the latter is given to the House of the Federation.
\textsuperscript{68} Article 3 of Proclamation No. 25/96.
\textsuperscript{69} Id., Article 6.
\textsuperscript{70} Id., Article 10.
\textsuperscript{71} Id., Article 20.
President of the court, pursuant to Article 21(1) of Proclamation 25/1996, are adjudicated by a Bench of five or more judges.\textsuperscript{72}

Federal High Court and First Instance Courts are allowed by law to have as many divisions as are necessary for their functions.\textsuperscript{73} Cases before the Federal High Court and First Instance Courts are heard by a single judge, except in criminal cases involving offences punishable with more than 15 years of imprisonment, or as may otherwise be required by directives issued by the Federal Judicial Administrative Council,\textsuperscript{74} where Benches of three judges of the Federal High Court hear the case.

The Federal Supreme Court sits in Addis Ababa. The Federal High Court and First Instance Court sit in Addis Ababa and Dire Dawa. Federal High Courts may be established in some or all parts of the country by the House of People’s Representatives.\textsuperscript{75} These Courts have been established in five states of the country: Afar, Benishangul-Gumuz, Gambella, Somali and SNNPR.\textsuperscript{76}

**State Courts:** In the states, there are three tiers of courts mirroring the federal model: State Supreme Court, High Court (known in the states as Zonal Court) and First Instance Court (also known in the states as Woreda Court\textsuperscript{77}). The State Supreme Court has a cassation division that is empowered to review decisions of state courts (including those of the regular divisions of the State Supreme Court) on the basis of a fundamental error of law.\textsuperscript{78} Article 80 of the Constitution allows for the delegation of federal judicial power to the state courts, therefore state supreme courts exercise the jurisdiction of Federal High Courts arising in their respective regions, while State High Courts exercise the jurisdictions of the Federal First Instance Courts arising in their areas. State First Instance courts (Woreda Courts) also hear appeals from Social Courts.

**City Government Courts:** There are two autonomous city governments in Ethiopia, Addis Ababa and Dire Dawa. The Charters of the respective cities create two tiers of city

\textsuperscript{72}Id., Article 21 as amended by Proclamation 454/2005. As noted earlier, this Amendment Proclamation has further introduced a precedent system into the Ethiopian legal system.

\textsuperscript{73} Id., Article 23 of Proclamation 25/1996 as amended by Proclamation 138/1998.

\textsuperscript{74} Id., as amended by Proclamations 138/1998 and 454.2005.

\textsuperscript{75} See Article 78(2) of the Ethiopian Constitution.

\textsuperscript{76} See Proclamation 322/2003.

\textsuperscript{77} The Woreda is considered the fundamental unit of local government and has an average population of 100,000.

\textsuperscript{78} See Article 80(3b). The respective state constitutions have also reiterated this competence of the state supreme courts.
courts exercising municipal jurisdiction: First Instance and Appellate Courts. They have created cassation divisions within appellate courts that review final decisions of the regular appellate divisions on the grounds of fundamental error of law. As is the case in state courts, cassation review of appellate court decisions can be brought before the Federal Supreme Court. The Federal Supreme Court also decides jurisdictional conflicts between the city and federal courts. Kebele social courts are also established within the judicial system of the two cities, with a jurisdiction to hear petty criminal offences, such as city hygiene and public health contraventions and small civil disputes involving claims up to 2,000 ETB (about US$208). They cannot, however, hear cases involving negotiable instruments and insurance claims. Social Court decisions can be appealed to the municipal first instance courts.

Social Courts: The Ethiopian Constitution does not specifically mention the Social Courts that currently exist in Addis Ababa and in several states within the country, including Tigray, Oromia, Amhara, Harari and SNNPS (but not yet practically established in Benishangul-Gumuz). Social Courts are created in the state constitutions as part of the Kebele administrative structure, and Social Court judges are appointed by the Kebele administration. This arguably makes them tribunals within the executive, and not part of the court system as such. Their jurisdiction is fixed with respect to establishing laws. They handle small claims, petty offences and minor disputes using customary rules, as long as those rules are compatible with the law. Social Courts are the source of legal redress for the vast majority of Ethiopians. They are speedier, cheaper, and physically and culturally more accessible than courts of law. Their decisions are appealable to the Woreda courts. At this point in time, the jurisdiction of the Social Courts is in a state of flux throughout most of Ethiopia, as jurisdiction over land use, and criminal and family law have been withdrawn from most of these courts.

Religious and customary courts: One of the bold steps taken by the 1995 Ethiopian Constitution was the recognition of religious and customary laws, which was never the case in past Ethiopian Constitutions. The Constitution, under its Articles 34(5) and 78(5), takes a permissive stance with regard to adjudication of disputes relating to personal and family matters in accordance with religious or customary laws. The Constitution

79 Proclamation 361/2003 (Addis Ababa Charter) and Proclamation 416 (Dire Dawa Charter).

80 The Kebeles are villages or urban communities with an average population of 5,000. In practice, they serve as the first level of administration for most Ethiopians.

81 Also called Kebele Courts.

82 The Kebele is an administrative division for communities with a population of 5,000 to 10,000.

83 In some instances some of the Social Court judges are elected by the population, while the chair is appointed by the Kebele administration.
empowers the federal or state legislative organs to grant official recognition to both religious and customary courts.

On this basis, Sharia Courts have been established at the federal level, with three tiers mirroring regular courts of justice: the Federal Supreme Court of Sharia, the Federal High Court of Sharia and the Federal First Instance Court of Sharia. These courts are accountable to the Federal Judicial Administrative Council (FJAC). Sharia Courts use Islamic law for adjudication of disputes submitted to them, and the civil procedure code for conducting proceedings. Proclamation No. 188/1999 reiterates that only those disputants who have clearly consented are permitted to submit their cases to the Sharia Courts. Several states have also followed suit and established similar sets of Sharia Courts. The Constitution and laws do not provide for appeal of Sharia Court decisions to the regular judiciary. However, a 1999 case showed that the decisions of Sharia Courts may be challenged before the cassation divisions of the Supreme Courts – both federal and state – on the grounds of fundamental error of law. These decisions can also be challenged before the House of the Federation (and the CCI) with respect to the federal Constitution, and the respective interpreters of the regional state constitutions for violations of constitutionally recognized fundamental rights and freedoms.

Along with religious courts, customary courts (also recognized in the 1995 Constitution) are meant to settle cases and disputes on the basis of the customs and traditions of the respective societies within which they function. So far, no customary courts have been established at the federal and state levels.

3.3 Administrative Tribunals

In Ethiopia, as in most countries, there are also specialized administrative tribunals that engage in quasi-judicial activities at the federal and state levels, as well as in Addis

84 See Proclamation 188/1999.

85 In the Kedija Beshir case, an inheritance dispute, the decision of the Federal Supreme Court of Sharia was submitted to the Cassation Division of the Federal Supreme Court. After looking at the case, the Cassation Division determined that there was no basic error of law committed by the Sharia Courts. Ms. Beshir took the case to the CCI in objection to this decision, and the CCI found that the plaintiff’s constitutional rights had been violated, and reversed the Supreme Court’s decision. The recommendation of the CCI was approved by the House of the Federation. The fact that the Federal Supreme Court agreed to hear the case and that the CCI and the House of the Federation decided the case, shows there is convergence, at least at the apex, of the Sharia and the regular judicial systems.

86 Part of the reason for the delay seems to be the complex nature of customary law that emanates from the long practice (with opinio juris) of the respective societies, likely overlap with Social Courts as well as concerns that many of the customary norms may not be compatible with human rights principles recognized in the Constitution.
Ababa City, where, for example, the Civil Service Tribunal,87 the Labour Relations Board,88 the Tax Appeal Commission,89 the Urban Land Clearance Matters Appeal Commission and the Court Martial90 are the prominent quasi-judicial tribunals that function side by side with the regular judiciary in their respective areas of jurisdiction. Although not clearly referred to in the Constitution, administrative tribunals are compatible with the constitutional framework.91 The essential common feature of tribunals is that their decisions on questions of fact are final and non-appealable, while their decisions on questions of law are appealable to the regular courts (to the High Court or the Supreme Court, or to the Cassation Division of the Supreme Court, as the case may be).92

3.4 Council of Constitutional Inquiry (CCI): The regular courts have no jurisdiction over constitutional matters. The CCI, established by the 1995 Constitution as a quasi-judicial body, is vested with making recommendations to the House of Federation (HoF) on issues of constitutional interpretation.93 If, on considering a matter submitted by a court or a litigant,94 the CCI finds that an interpretation of the Constitution is, in fact, required, it makes its recommendation to the HoF.95 The CCI has 11 members, comprising the President of the Federal Supreme Court, who presides; the Vice-President of the Federal Supreme Court, who serves as its Vice-President; six legal experts (appointed by the President of the Republic on recommendation of the House of

87 See the Civil Servants Proclamation No. 515/2007; Articles 74-78.
88 See the Labour Proclamation No. 377/2003; Articles 144-156.
89 See, for example, the Income Tax Proclamation No. 286/2002, Articles 104- 117.
90 See Proclamation No. 27/96, Articles 25-36.
91 For example, Article 37(1) of the Constitution states, “Everyone has the right to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power.” The phrase “any other competent body with judicial power” embraces such tribunals that are legally established and given certain judicial competences.
92 Decisions of the labor relations board are appealable to the Federal High Court on the grounds of error of law; decisions of the Civil Service Tribunal are appealable to the Federal Supreme Court, while decisions of the Appellate Military Court are appealable to the Cassation Division of the Federal Supreme Court.
93 Article 82(1) of the Constitution.
94 According to the Constitution and Proclamation No. 250/2001, a constitutional interpretation issue arises where a law or the decision of a government organ or official is alleged not to be in accordance with the Constitution.
95 See Article 84 of the Constitution, and Article 17 of Proclamation No. 250/2001.
People's Representatives), who have proven professional competence and high moral standing; and three members from the HoF.  

3.5 Institutional Framework for the Administration of Judges - Judicial Administrative Councils: Ethiopia’s 1995 Constitution provides for the establishment of Judicial Administrative Councils (JAC) at federal and state levels. The FJAC was formally established by Proclamation 24/1996. All the states have followed suit in establishing their own JACs. The FJAC has nine members: the President and the Vice-President of the Federal Supreme Court, the most senior judge of the Federal Supreme Court, the President of the Federal High Court, the most senior judge of the Federal High Court, the President of the Federal First Instance Court and three members of the House of People’s Representatives. A majority of the membership of the FJAC comes from the regular judiciary and the rest comes from the legislature. However, in the case of the members coming from the House, it is possible that they could as well be senior members of the Executive as a result of the parliamentary form of government that allows the blending of executive and legislative membership.

The number of members and composition of a council at the regional level is determined by the state legislature concerned. In terms of the composition, they mostly follow the federal approach, but with some variation in number and provenance of members. For example, the Harari state JAC consists of only the President and Vice-President of the State Supreme Court, Presidents of the High (Zonal) Court and First Instance (Woreda) courts, the President of the State’s Supreme Sharia Court, one representative from the Harari Upper House and one representative from the Harari Lower House. In some of the states, such as Oromia and SNNPS, sub-state JACs have been established, primarily at the zonal level, comprised of representatives from the judiciary and the zonal administration. For example, a zonal-level JAC decision on disciplinary measures is appealable to the state-level JAC.

JACs at both the federal and state levels are given important powers, some of which are stipulated in the Constitution. Powers include the selection of candidates for judicial appointment, issuance of regulations on disciplinary and code of conduct rules.

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96 Article 82(2) of the Constitution.
97 Article 4 of Proclamation 24/1996.
98 This was the case before the 2005 general election in Ethiopia, where an influential federal minister was on the JAC. Currently, the Chair of the Legal and Administrative Affairs Standing Committee and two other (non-executive) members of the House are serving on the JAC.
99 The Harari State uniquely has two legislative chambers, one of which the Upper House represents only ethnic Hararins.
investigation of disciplinary complaints, and decisions on issues regarding the transfer, salary, allowance, promotion, suspension, medical benefits, assignment and termination of judges.\textsuperscript{100}

3.6 Government Institutions

**Ministry of Justice/Justice Bureaus:** The Ministry of Justice (MoJ) is part of the executive ministries at the federal level. At the state level, Justice Bureaus exercise the same kinds of functions. The Minister of Justice is the chief advisor to the federal government on matters of law. He represents the federal government in criminal suits falling under the Federal Courts’ jurisdiction, heads the prosecutorial function, orders investigations as well as discontinuance of investigations, and withdraws charges on crimes falling under the jurisdiction of federal courts. He also licenses lawyers for practicing before Federal Courts.\textsuperscript{101} In sharp contrast with the past, the Minister of Justice and the state Justice Bureaus no longer have any authority over courts.

**Justice System Reform Program Office:** The Justice System Reform Program (JSRP) is an ambitious plan, designed under the aegis of the Ministry of Capacity Building (MoCB) in early 2002, as part of the overall Public Sector Reform Program. The judiciary, law enforcement, law making and revision, and legal education fall within the ambit of JSRP. Within the MoCB, the Justice System Reform Program Office (JSRPO) was established to coordinate and supervise the reform program. Some of the specific objectives of the JSRP are to review the overall condition of the justice system, conduct a needs assessment and work out plans of implementation of the reforms that need to be undertaken.

The Justice System Reform Program Office was dissolved in 2006 and its mandate passed on to the Justice and Legal System Research Institute (JLSRI). The transition has not been altogether smooth and the justice reform program at the federal level, at least, has not progressed as much as expected in the last year. Coordination between the federal and regional justice reform programs, including the court reform component, remains a challenge.

\textsuperscript{100} Some of the powers, such as the horizontal transfer of judges, have now been delegated to the Presidents of the respective court levels.

\textsuperscript{101} Article 23 of Proclamation No. 471/2005.
In March 2003, JSRPO had entered into an agreement with the Center for International Legal Cooperation to undertake the Baseline Study of the reform program. The study, covering the period of June to December 2003, put forward certain findings and recommendations regarding all the components of the JSRP. It concluded that there are matters of concern in areas such as independence of the judiciary, selection, appointment and training of judges, and disciplinary mechanisms. The Baseline Study underlined the limited public perception of the independence of the Ethiopian judiciary. Ethiopian courts have taken note of this report and have implemented some of its conclusions.

3.7 Conclusion

A few conclusions can be drawn from this overview of the judiciary and the current judicial system.

1. The formal judicial system, established for the first time in the 1931 Constitution of Ethiopia, has a very short history. There is even less of a tradition of a confident and independent judiciary. The period up to the 1931 Constitution was a history of absolute monarchy where justice was administered at the whim and desire of the monarch without there being any uniform law on which to base the administration of justice. The long history of justice dispensed at the King’s Court without a judiciary seems to have created a mind-set in the succeeding generations of Ethiopians that the executive is the most important or sole institution of government. Until 1987, the judiciary also continued to be considered part of the executive or, in one way or another, under the control of the executive arm of the government.

2. Even after it was formally established in the 1931 Constitution, the Ethiopian judiciary functioned under authoritarian regimes, the worst being the reign of terror of the Derg (1974 to 1991). The massive extra-judicial summary executions, disappearances and abuses under that regime destroyed hope for the rule of law and an independent judiciary. It has thus been impossible to have the culture of judicial independence develop until quite recently in Ethiopia.

102 Comprehensive Justice Sector Reform Program: Baseline Study Final Report, Centre for Intentional Legal Cooperation (CILC), 2005.

103 The Baseline Study said that the criteria for selection and appointment of judges in Ethiopia are overly general and lack objective criteria, among other problems.

104 See generally pp. 159-179, and 213-227.
3. 1991 marked a profound change in the country’s judicial structure brought about by the federalization of the state structure. A sharp increase in the number of courts, especially at the lower levels of administration (where they were not previously available), brought the courts closer to the people, both physically and in allowing the use of local language in courts. On the other hand, the sudden creation of a large number of courts throughout the country resulted in an acute shortage of judges. The government responded with aggressive recruitment to judicial positions of mostly young people with, in many cases, minimal qualifications and no judicial training or experience of courts. This, in turn, created another set of challenges, some of which remain today.

4. Customary law and methods of dispute resolution have always played and continue to play a large role in the provision of justice in Ethiopia. The challenge today is to modernize this tradition in a way that will complement the role of the courts of justice and enhance service to the public without compromising the principles of an independent, transparent and accountable judiciary and the rule of law.

5. The formal Ethiopian legal system has borrowed from two major legal traditions: the Continental civil law system and the common law legal system as well as its own traditional law. With respect to the judiciary, the structure, principles, approaches and processes have been – and probably will continue to be – drawn from both systems with a significant level of local adaptation. This mixture of influences presents some challenges that must still be addressed. For example, these systems have different approaches as to the proper role of the judge during judicial proceedings that need to be reconciled. Implementing principles from different systems, such as cassation courts and the rule of stare decisis, can be confusing. On the positive side, both legal traditions have allowed for an independent judiciary to flourish. A judicious selection of practices from these traditions, that are appropriate to the culture and system in place, can assist Ethiopia in moving ahead effectively with the reform of its judicial institutions and practices.

The legal and institutional aspects of independence, accountability and transparency of the judiciary are still evolving at both the federal and state levels. The basics of an appropriate legal framework are in place to support an independent, transparent and accountable judiciary, but there are still some gaps in the laws and in the institutions affecting judicial independence. They will be discussed in the rest of this report.
This section of the report assesses the current situation of the Ethiopian courts in light of the indicators best facilitating the development of an independent, transparent and accountable judiciary. Each indicator is analyzed and conclusions provided in the order followed in the charts contained in Section 2.2 Indicators.

1. INDICATORS AND CONCLUSIONS

**INDICATOR 1: Constitutional or legal provisions mandating the clear separation of powers between executive, legislative and judicial branches of government, and the independence of the judiciary**

Judicial independence is the cornerstone of the justice system and a necessary prerequisite for realizing the rule of law. Ethiopia’s federal and state constitutions establish a clear separation of the powers of the legislative, executive and judicial branches of government. The federal Constitution unequivocally embraces the principle of judicial independence. It is plainly stated in the 1995 Constitution that an independent judiciary is established by the Constitution, that “courts of any level shall be free from any interference or influence of a government body, government official or from any other source”, and that “judges shall exercise their functions in full independence and shall be directed solely by the law”. The federal and state constitutions also provide fundamental operational and governance rules for the judiciary at both levels of government. The constitutional provisions have been followed up with specific legislation – proclamations and regulations – again at both levels of government. The true test of judicial independence, however, is whether it exists in practice. Actual judicial independence depends upon the support of the public, the executive and parliamentarians, who must affirm and safeguard it as a fundamental democratic value.

Judicial independence starts with a sound understanding of the principle by judges themselves. This understanding should encompass the fact that judicial independence is not a privilege of the judiciary for its own sake, but is grounded in the objective of serving the public. Training on the subject of judicial independence is essential, including how to

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105 See Articles 78(1) and 79(2) and (3) of the Federal Constitution.
recognize when it is threatened, how to exercise it properly and how to uphold it in practice.

It is generally admitted that federal and regional governments are increasingly aware and respectful of judicial independence, more so than under any previous regime. Opinions are, however, sharply divided on the actual level of independence enjoyed by the courts. It is not possible in the context of this study to validate the views held by the various players and observers of the justice system. However, we note that since 2005, judges have fled the country, alleging government interference. Judges were reportedly arrested, threatened, intimidated, pressured to resign, transferred to remote locations or somehow removed from active judicial duties. It may well be that the reported incidents were isolated and their seriousness exaggerated, nonetheless, the fact that these allegations were made suggests some gap between the constitutional principles and the actual practice of judicial independence.

As well, some senior members of the government are reported to have made damaging public comments on the impartiality and integrity of the judiciary. Recently, the Minister of Justice wrote to judges to admonish them for assuming jurisdiction over cases that, in his view, fell outside their mandate. He also filed complaints against those who had rendered decisions that did not agree with his interpretation of the law. On the other hand, the assertive manner in which the JAC dealt with those complaints proved to be an important object lesson on judicial independence, and could serve to enhance the perception of judicial independence. Judicial independence, in any country, is a battle never totally won and requires strong institutions and ongoing vigilance. It is even more so in a country with a short history of judicial independence.

**Conclusion:**

1. The independence of courts is adequately recognized and protected in the Ethiopian Constitution\(^{106}\) and the various laws concerning the judiciary.

2. In practice, progress remains to be made in the understanding of, and respect for, judicial independence. Awareness training of officials at all levels, and of legislators, should be pursued. The judicial education curriculum should include courses that help judges understand, in practical terms, how to protect judicial independence, exercise it properly as well as understand the accountability that comes with it.

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\(^{106}\) Articles 78 and 79 (2) and (3) of the Constitution.
3. JACs have a key role to play in guarding judicial independence. Strengthening JACs will support robust judicial independence as well as judicial accountability.

INDICATOR 2: Judicial powers to review the constitutionality of legislation and administrative actions of government, and for courts to determine their own jurisdiction in accordance with legal standards

Article 83 of the Constitution of Ethiopia states that “all constitutional disputes shall be decided by the House of Federation (HOF).” HoF is aided by the Council of Constitutional Inquiry (CCI), which investigates constitutional disputes submitted to it. If it concludes that constitutional interpretation is necessary, the CCI makes its recommendation on the proper interpretation to the HoF, which is responsible for making the final decision. If the CCI finds there is no need for constitutional interpretation, the case is remanded to the court. This decision can be appealed to the HoF. Membership of the CCI is set by article 82 of the Constitution. It has 11 members and is chaired by the President of the Federal Supreme Court, creating a formal link with the courts of justice. The members comprise the Vice-President of the Federal Supreme Court, who serves as its Vice-President, six legal experts (appointed by the President of the Republic on recommendation of the House of People’s Representatives), who have proven professional competence and high moral standing, and three members from the HoF. The state courts also do not have the power to interpret their constitutions. These powers have been given to bodies established in the states’ constitutions under different designations and compositions.

Any court or a litigant who has exhausted all administrative remedies can submit issues for constitutional interpretation to the CCI and the HoF. To this point, only a few cases have been decided, all brought directly by litigants, although many applications have been dismissed on procedural grounds by the CCI. It appears that up to now the HoF has followed all the recommendations of the CCI. The decisions of the HoF serve as interpretative precedents for similar cases.

As the benchmarking exercise in Part I of the report shows, there is a great deal of diversity in how democratic countries with strong judiciaries go about reviewing the constitutionality of legislation and acts of government. In several jurisdictions, the courts can interpret legislation, but cannot review the constitutionality of enacted legislation.

107 Article 84 of the Constitution.

108 See Articles 62(1), 81, 83 and 84 of the Constitution.

109 Article 84(2) of the Constitution.
This is the case in New Zealand, France, the Netherlands and Sweden. However, in these jurisdictions, the courts have the power to review the acts of government bodies to determine whether they have acted fairly in accordance with the constitution and within their powers. A tendency can also be observed in some of these countries to grant a more limited form of constitutional review; for example, the court can refuse to apply a provision where it is manifestly contrary to the constitution.\footnote{110}

Ethiopia’s constitution is not unique in devolving constitutional interpretation to a body other than a court,\footnote{111} but in none of the benchmarked countries, or in any country we know of, is the upper chamber of the legislature given constitutional interpretative power.\footnote{112}

Constitutional issues can be said to fall into two broad categories: issues of constitutional governance that are basically political (an extreme example would be the right for a federation member to secede); and issues of individual rights and liberties. Courts may very well not be the most competent body to interpret and rule on the former. Cases involving individual rights and liberties raise more fundamental questions. Litigants need to have access to a competent and impartial body for the determination of their constitutional rights and freedoms and the opportunity to obtain redress in cases where those rights have been violated.

The experience of Ethiopia under its present constitution is relatively short and it is hard to predict how it will evolve. Where the constitutional issue raised concerns rights and freedoms guaranteed by the Charter, the CCI and the HoF interpretation of the provisions must be in conformity with the Universal Declaration of Human Rights, international covenants on human rights and International Instruments adopted by Ethiopia.\footnote{113} This is an important safeguard.

The membership of the CCI set out in the Constitution reflects a good understanding of the importance of the issues the CCI is asked to consider. Moreover, in its few decisions up to this point, the HoF has been deferential to the recommendations of the CCI and has affirmed the rights and liberties guaranteed in the Constitution. If that practice is continued, particularly on matters of individual rights and liberties, it would generate a

\footnote{110} For example, Sweden and New Zealand.

\footnote{111} For example, France and Chile have independent Constitutional Councils.

\footnote{112} In fact, this point was hotly debated during the making of the Constitution in the early 1990s and even today, most legal scholars would favour the establishment of a Constitutional Court to interpret the constitution.

\footnote{113} Chapter 3 of the Constitution, Art. 13(2)
sound body of precedents that could eventually evolve into constitutional principles as it has in several countries -- principles that could be applied by the courts in similar cases. The HoF has a legal duty to publish periodically its decisions in some kind of publication\textsuperscript{114}. However it has not done so yet, making it more difficult to extract general principles from its decisions.

To a large extent, it is the practice that will determine whether the Ethiopian system of review meets international standards. If the current practice should change, for example, a politicization of the appointments to the CCI or a failure to give deference to its recommendations, especially on issues of individual rights and freedoms, then international practice would suggest that the process be reassessed and amended.

Right now there is some evidence that the courts are avoiding citing the Constitution for fear of raising constitutional issues that would need to be resolved by the CCI, or because they are uncertain of their jurisdiction in reviewing the legality of regulations, rules, orders or administrative acts. As this can only have a negative effect on the general application of constitutionally protected rights and freedoms, in our view it needs to be addressed.

The courts have the power to interpret the legislation to decide if they have jurisdiction. This is in line with international standards.

Conclusion:

1. The courts have the power to interpret the legislation to decide if they have jurisdiction. This is in line with international standards

2. There is a need for at least clarifying the role of the courts in applying constitutional principles established in the HoF’s decisions when deciding on the legality of rules, orders, regulations and actions of the executive.

3. The judiciary needs training in the application of constitutional law.

4. The development of a coherent body of precedents and scholarly commentaries on constitutional interpretation should be encouraged, with a view to developing a set of constitutional principles that would guide the courts, as well as the legislative and executive powers. This would be helped by the HoF issuing clearly articulated decisions along the model of court decisions. And a good first step would be for the HoF to publish a journal of its decisions

\textsuperscript{114} Proclamation No.251/2001, Art. 11(2)
5. It may be appropriate at some point to review how the existing process of constitutional review is working out, including the processes followed by the CIC and the HoF to determine if, in practice, international standards are being met; if the courts, the legislature and executive are receiving the guidance they need on issues of constitutional interpretation; and if citizens’ rights and freedoms guaranteed under the constitution are being fairly and efficiently addressed by this process.

**INDICATOR 3: Judicial jurisdiction over civil liberties and remedies**

The Constitution is the supreme law of the land and all government bodies, including the courts, must conform to and enforce the fundamental rights and freedoms set forth in the Constitution. The courts have the power to decide cases regarding the rights and liberties of citizens, but the lack of clarity over the role of courts in applying constitutionally protected rights has resulted in the courts largely avoiding these issues.

Courts also have the power to apply the provisions of international treaties ratified by Ethiopia. However, lack of access to the international covenants, lack of training (both in law school and through judicial training) and, here again, lack of clarity as to the extent to which courts should take judicial notice of these instruments has resulted in infrequent application of the international provisions\(^\text{115}\). Both lawyers and judges lack the confidence to apply international conventions as domestic laws. During the interviews, judges repeatedly asked for better access to the covenants and training on applying international instruments, such as the child protection covenants.

**Conclusion:**

\(^{115}\) Only notices of ratifications are published in the Gazeta and then only for some international instruments. There is a raging controversy in the legal community over the application of international instruments to court cases. The majority of the legal community believes that it is a legal requirement that the ratified treaties be published in the Gazeta to become domestic law. It may well be so. It may also be beside the point: a plain reading of Art. 9(4) of the Constitution gives courts the power to apply the treaties directly to cases. This seems to be the approach recently taken by the Cassation Division of the Federal Supreme Court in applying the *United Nations Convention on the rights of the Child* to decide a case. This is held as a landmark decision by human rights activists. However the fact that ratified treaties are not published raises significant issues of access for litigants and the courts.
1. The Constitution and the international conventions on human rights incorporated into the domestic laws of Ethiopia provide a proper framework for the protection of fundamental rights.\textsuperscript{116}

2. The powers of the courts to decide cases regarding the rights and liberties of citizens, and to apply ratified international human rights treaties are in line with international standards. However, in practice, uncertainty of the courts as to their jurisdiction and unfamiliarity with the provisions, and difficulty in accessing the ratified treaties have resulted in infrequent application of human rights principles. Judges recognize that the respect by the courts for human rights provisions is essential for public confidence in the judiciary. There should be clarification on the application of human rights principles and training for the judiciary.

3. The international conventions ratified by Ethiopia should be accessible to all judges through publication.

**INDICATOR 4: Judicial powers relating to contempt/subpoena/enforcement**

Under the Civil Code of Procedure and the Criminal Code, courts have the power to punish acts of court contempt, although according to judges this power is rarely used today. The courts can issue summons, subpoena any witness or document, and order the arrest of witnesses who fail to appear as summoned without good cause or who are avoiding service. In criminal trials, the court can issue bench warrants to compel the appearance of summoned witnesses or accused persons.

In practice, judges in several courts acknowledge that there are problems in bringing people to court, especially in criminal cases due to severe capacity issues in the police, prosecutions and prison administration. These problems contribute to the backlogs in courts, the low rate in convictions and the public perception of the courts as inefficient. Better cooperation with law enforcement forces and new approaches to the administration of criminal justice, such as “speedy trials”\textsuperscript{117} for flagrante delicto minor offences, are expected to alleviate some of these problems.

Courts have total enforcement power and have the power to compel the government to act or enforce judicial decisions. In talking with us, members of the general public raised

\textsuperscript{116} Chapter 3 of the Constitution, articles 13 to 28.

\textsuperscript{117} Under the “speedy trial” process, a person caught committing a petty crime can be arrested, tried and sentenced in as short a time as one day; and on the same day, stolen property can be handed back to the victim.
spontaneously again and again the long delays for the enforcement of decisions as a major problem of the justice system. Enforcement of civil decisions has improved through several measures, including the establishment of execution of judgments benches\textsuperscript{118}, but it remains challenging in most courts, especially with respect to land-related decisions\textsuperscript{119}. The Federal Courts Judgment Execution Department is the only judgment enforcement office in the country. Most courts just have one or two staff whose job it is to execute court ordered auctions\textsuperscript{120}. There is no system of private bailiffs’ agencies in Ethiopia. Enforcement often involves government agencies or the police and their level of cooperation and diligence varies. Court enforcement officials recognize that the enforcement process can be fraught with delays, inefficiencies and corruption. Technology is missing. Even in federal courts, there is no computerized database for judgments to be executed.

Some of the delays in execution may be attributable to a rather liberal appeal system: getting injunctions on decisions before execution are common. Finally, some decisions are too deficient to be executed and have to go back to the execution bench to be turned into an enforceable order. The introduction of standard formats for judgment is expected to improve this situation. On the positive side, most courts reported that the enforcement of decisions against the government did not meet obstacles.

Under Phase II of the Court Administration Reform Program (CAR II), some pilot project activities had been undertaken at the federal level to improve the enforcement of court decisions and it had been fairly successful\textsuperscript{121} but unfortunately there was no follow-up.

**Conclusion:**

1. In terms of judicial powers, all the basics of an appropriate legal framework are in place to support the effectiveness of the courts including subpoena, contempt and enforcement powers.

2. The problems experienced in bringing people to court in criminal cases and of enforcing decisions in civil cases are attributable to lack of appropriate process, resources and capacity more than to any deficiencies in the law or court powers. They need to be addressed to improve public confidence in courts.

\textsuperscript{118} Execution benches exist only at the federal level at this point.

\textsuperscript{119} Although the majority of decisions are executed more expeditiously, the execution of some federal High Court decisions is still pending eight to 10 years after judgment.

\textsuperscript{120} Evaluation Report on the National Court Reform Program, p. 68
3. There should be execution offices at least at the Zonal Courts level.

4. The work started under CAR II at the federal level should be pursued and extended to other courts.

5. Improved case flow management and appropriate databases could contribute significantly to streamlining the enforcement of court decisions.

**INDICATOR 5: System of appellate review: judicial decisions may be reversed only through the judicial appellate process**

A three-tiered system of courts has been put in place at the federal and state levels, with two levels of regular appellate courts (High /Zonal Courts and Supreme Courts) and a cassation jurisdiction in the Supreme Court as the ultimate revision level. The right of appeal is liberal, with fewer filters limiting the appeals process than in many jurisdictions.

Administrative tribunal decisions (e.g. related to tax, labour and civil service) can also be appealed in the regular courts – up to the cassation court – on points of law.

**Conclusion:**

1. Ethiopia has a well-structured appellate system to review court decisions. Judicial decisions can only be reversed through the appellate process on grounds set by law. This fully meets the international standard.

2. The international experience suggests that the legal filters regulating the right of appeal could be reviewed to see if they provide an adequate balance between preventing a multiplicity of appeal recourses over minor issues which can overburden appellate courts and paralyse the judicial process and the need to ensure a robust right to judicial review.

**INDICATOR 6: Some measure of judicial self-administration, particularly in relation to judicial functions such as case assignment**

The Ethiopian Constitution gives Federal and State Courts considerable administrative powers, through either the presidents or the Judicial Administrative Councils, or both.

**Judicial Administrative Councils** – Judicial Administrative Councils constitute the major institution for ensuring an independent, competent and ethical judiciary. Their establishment at the federal and state levels is provided for in the 1995 Constitution and their membership set by proclamation. The JACs are given the power to recommend candidates to fill judicial positions, issue and enforce disciplinary and ethical standards,
investigate disciplinary complaints, and decide issues concerning the transfer, salary, allowance, benefits promotion, assignment, suspension and termination of judges. They can issue guidelines, codes of conduct and regulations on these issues. That these important functions are exercised by a body composed only of, or dominated by, the judiciary can be an important safeguard for judicial independence.

Membership of the JACs has to fully respect the principle of judicial independence, and inspire the trust of the judicial community and the public. The number of members on the various JACs across Ethiopia differs, but there is always a majority of judges. Since decisions are made by majority vote, this majority of seats should ensure, at least in theory, that the judiciary has the last word on decisions. For most JACs, the remaining members come from the legislative branch. The presence on JACs of powerful members of the governing party could raise concerns about the councils’ real independence. These members would have to be very respectful of the constitutional separation of powers and judicial independence. In a few regions, some members are from the executive branch of government, raising even more concerns for judicial independence, but with some contextual nuances. Clearly, having the Women’s Bureau participate is less likely to raise perceptions of influence than having members from the Justice Bureau, for example.

The presence of appropriate external members could allay many of these concerns, but having external members on JACs is relatively rare. There is one member from the public on Amhara’s 12-member JAC, along with one representative from the Justice Bureau, one from Women’s Affairs, and two from the Regional Council, but in practice, meetings are mostly attended by the judicial members only. Oromia’s JAC started out with a larger, more inclusive council, with members from the bar, the police association and the public. Faced with serious attendance problems of the non-judicial members, they recently went back to a smaller committee. Attendance by external members might be improved if they were provided with more support by the secretariat to the JAC, and perhaps paid honoraria for their work.

JACs need to inspire the confidence of both the public and the judiciary. They have been criticized for a perceived lack of autonomy, professionalism and transparency, for arbitrariness and for a lack of predictability in decisions. In general, the rules and criteria

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122 Proclamation 24/1996 prescribes that the FJAC will be composed of nine members: the President and the Vice-President of the Federal Supreme Court, the most senior judge of the Federal Supreme Court, the President of the Federal High Court, the most senior judge of the Federal High Court, the President of the Federal First Instance Court, and three members of the HoPR.

123 This is more common at Zonal-level JACs.

124 For example, South Africa has legislators on its Judicial Council, but also members of the Bar and the public.

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used by JACs to make decisions are not made public. Recently, however, some JACs have prepared or issued regulations detailing their selection, promotion and discipline processes.\textsuperscript{125}

JACs wield enormous power over judges’ careers, and they need to inspire trust within the judicial community. That is not entirely the case right now. The Oromia region is working on an amendment to allow judges to elect some of the judicial members on JAC from a short list of candidates selected by the JAC Chair on the basis of their experience, reputation and ethics. This kind of measure could go a long way toward building trust within the judiciary.

JACs have a broad mandate, and most of them have set up sub-committees. At this point, however, they are not properly organized and equipped to deliver effectively on their mandate. JACs tend to operate essentially as committees meeting periodically, while their responsibilities would require a structure for ongoing management of operations and issues. JACs’ secretariats tend to be understaffed and weak. They need to be built up and professionally staffed.\textsuperscript{126}

**Self-administration of judicial functions** – Structurally, the courts have total independence for judicial functions, such as case management, case assignment and scheduling. Presidents assign judges to benches according to their experience and interests, but also bearing in mind the court’s operational needs. The President has the power to set up special benches.

The reform of the filing process and having professional registrars has made case assignment more efficient and unbiased. Courts’ Presidents are generally not involved in case assignment. Cases are assigned by the registrar, either randomly on the basis of a lottery system or by allotting certain file numbers or geographic areas to a bench. Cases are also assigned to a specific bench on the basis of its area of expertise. The judge chairing the bench distributes the work to the judges on the bench according to specialization and workload. Judges have to withdraw from cases when they are in a conflict of interest (either at their own initiative or on the successful petition of litigants). Judges on the whole believe that the assignment process is fair and working.

In some courts, judges do not necessarily handle a case from start to finish. The presiding judge of the bench can re-assign the file midway. This is done to deal with

\textsuperscript{125} For example, in Benishangul-Gumuz and the Harari Region.

\textsuperscript{126} The benchmarking exercise indicates that similar bodies are supported by effective, professionally staffed secretariats. It is certainly the case of the Conseil supérieur de la magistrature in France and of the Canadian Judicial Council.
workload, but is also seen as preventing corruption. Judges within a bench may also exchange files. In other courts, however, they keep the file from start to finish, and this is believed to be more efficient; it is also more transparent and accountable. In a majority of the benchmarked countries, the latter is the rule. The advantages of each system should be studied more closely.

Court Presidents do not normally sit on a bench but, as is the case in other countries, they may and sometimes do, especially in important or sensitive cases. In the past, this has been a subject of controversy in Ethiopia, with judges refusing to let presidents sit in their stead in highly publicized trials. As a result, Presidents filed complaints with the JACs against the judges in question and the legislation was subsequently amended to clarify that Presidents may sit in any division or bench as they see fit. Some judges, former judges and members of the legal community we interviewed believed that there had been instances in the past of delicate political cases being assigned to perceived pro-government benches. Whether such allegations are true or not, they certainly can erode public trust in the independence of the judiciary and the impartiality of court proceedings.

Conclusion:

1. Structurally, Ethiopian courts have the self-administration powers required for independent functioning with regard to judicial functions, such as case management, case assignment and scheduling. What they are often lacking are the resources to self-administer effectively.

2. A well-functioning JAC system is essential for ensuring judicial independence, and a competent, ethical and effective judiciary. As an institution, the system needs to be strengthened in its operations, made more transparent in its work and procedures and, in some cases, made more independent in its decision making. Allowing judges to elect some of the judicial members on JAC from a short list of candidates selected by the JAC Chair on the basis of their experience, reputation and ethics would go a long way toward building trust within the judiciary.

3. Court Presidents must be careful about how they exercise their power to assign cases to avoid the perception of interference. For example, they may limit the exercise of that power to steering complex cases to the most

127 For example, in France, Canada and the U.S. where this is standard practice.

128 A Proclamation to Reamend the Federal Courts Proclamation No. 25/2005
competent or specialized bench or to the reassignment of cases where a judge has withdrawn because of a conflict of interest. When they choose to sit on a bench, they must take care that no perception of partiality or influence ensues.

**INDICATOR 7: Judicial input into budgetary decisions and judicial control over allocated funds**

Sub-paragraphs 79(6) and (7) of the Constitution provide that the Supreme Court shall draw up a budget proposal for the courts, submit it for approval to the House of People’s Representatives and administer it, and that budgets of State Courts shall be determined by the respective State Councils. This is perfectly in line with the principles of the separation of powers and of judicial independence.

The prescribed process is being followed at the federal and regional Supreme Courts. Courts are canvassed by the Supreme Court for their resourcing needs and, after discussion with the heads of the courts, the Supreme Court prepares a comprehensive budget for the courts. In practice, and in recognition that the legislature will rely on the advice of the Ministry of Finance, the Supreme Court often consults with the Ministry first, before sending its budget to the legislature; and some courts even send their budgets directly to the Ministry. This is not a matter of concern, as long as it is the courts that prepare the budget proposal and ultimately defend it before the legislature -- and as long as the legislature makes the final decision. In any country, the department of finance responsible for planning the overall government budget will be involved in the budgets of the various institutions, including the courts, to give indications on fiscal flexibility and ceilings to be respected. In general, supreme courts have been fairly successful in obtaining from the legislatures the resources they asked for, except for major capital funding. The court’s budget in some regions have more than doubled in the last three years. However, it is rarely enough to meet the sharp increase in caseload and the need for equipment, staff and facilities. Once the budget is approved by the legislative body, the courts have control over it. A major problem is the monthly budget distribution, which results in significant administrative inefficiencies.

The budgeting process may vary from one region to another, but the greatest variance is found at the Woreda Courts level. With the current government policy on

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129 The courts have also received separate funding for court reform initiatives under the PSCAP.

130 For example, courts can move funds between line items, but not between salaries and capital expenses without approval of the legislature.
decentralization, some Woreda Courts\textsuperscript{131} are now resourced through pool budgeting or a similar system.\textsuperscript{132} They are not included in the Supreme Court submission for court budgets to the Regional Council. These Woreda Courts have no say in the preparation of their budget, which is decided by Woreda Councils without any representation from the courts. Nor do they truly administer their budget; they are required to go through the central administration for purchases, maintenance repairs or supplies. This budgeting process, which is most likely unconstitutional, has aggravated the already precarious resource situation of the Woreda Courts and is impeding effective implementation of court reform measures.

\textbf{Conclusion:}

1. Where they are resourced through pool budgeting or a similar system, Woreda Courts should be taken out of it, since it is not compatible with the independence of the judiciary or the requirements of the Constitution. Their budget should be presented by the Supreme Court to the Regional Council, along with the budget of other courts.

2. Yearly budget allocations that courts could freely draw on, with appropriate financial controls, would be highly desirable in terms of independence and efficiency. Moving to at least quarterly or better biannual distribution of court budgets would allow for more efficient court management and provision of service to the public.

\textit{INDICATOR 8: Guaranteed tenure of judges and heads of court}

Tenure is universally recognized as an essential element of judicial independence. The federal Constitution provides that a judge (of any and all of the three tiers of courts) at both state and federal levels shall be removed from office only if he/she has attained retirement age determined by law\textsuperscript{133} or if he/she is found to be in violation of disciplinary rules, grossly incompetent and inefficient, or unable to carry out judicial duties due to

\textsuperscript{131} This is the case at least in the regions of Tigray, Benishangul and SNSP. By contrast, in Amhara and Harare, the Supreme Court presents the budget for all the courts, including Woreda Courts, to the Regional Council.

\textsuperscript{132} In the pool system, the courts are in direct competition with other Woreda administration sectors, such as education or health.

\textsuperscript{133} The JAC establishment Proclamations have set this age at 60.
The Constitution provides that removal is to be made by the appropriate legislature upon recommendation by the respective JACs. This is in line with international standards.

The practice must also respect the constitutionally guaranteed principle. In our interviews, we heard of cases where judges had allegedly been transferred, taken off active judicial duty or had their salary discontinued in order to pressure them into resignation. Whatever the validity of these stories, the very fact that they circulate in judicial circles cannot but affect the sense of security and independance of judges.

We are also concerned about a gap in the institutional safeguards surrounding the President. Although the Constitution sets out the process through which the President or Vice-President of a Court are appointed, Ethiopian laws and regulations are silent as to the process for dismissing them from their position or from the court. In actual fact, Presidents and Vice-Presidents have been removed from courts, but through an unknown process that did not involve the legislature that had appointed them to the position.

Presidents and Vice-Presidents of the Federal and Regional Supreme Courts are nominated by the executive and their status is perceived by some as somewhat ambiguous. Some argue that their mode of appointment makes them part of the executive branch. We cannot agree. This view represents a profound misunderstanding of the appointment process of head of courts. In fact, in many countries with a high reputation for judicial independence, and in all but one of the benchmarked countries, Court Presidents or Chief Justices are nominated by the executive often, as is the case in Ethiopia, with the added safeguard that the nomination must be approved by the legislature.

Presidents who are not appointed for a term should enjoy tenure until they step down as President – in which case they would remain judges on the court unless they resign from the Bench. The practice has been quite different in some instances. An extreme example is provided in the Benishangul Region, where six Supreme Court Presidents have succeeded each other in a ten-year span. These Presidents were not “removed from their duties” by Parliament or the JAC; they were simply reassigned to other functions within the civil service as if they were public servants working within the

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134 Article 79 of the Federal Constitution.

135 Even the language can be ambiguous, legal texts sometimes defining Presidents as “officials” instead of judges.

136 In India, the position of Chief Justice is determined by seniority.

137 Article 79 (4) Constitution of Ethiopia.
executive branch. This kind of situation can affect Presidents’ sense of independence and fuel the perception of Presidents as agents of the executive. We also met a number of long tenured Court Presidents with five or even 10 years in the position of head of the court. Stability in court leadership is important to implement broad court reforms that can only be a long term endeavour.

Conclusion:

1. The protection of judicial tenure in the provisions of the Constitution and in regulations is in line with international standards. It is important that both the letter and the spirit of those guarantees be respected in practice.

2. The role of Court Presidents as head of courts should be clarified and their tenure designed in a way that is fully compatible with the independence of the judiciary.

3. Stability in court leadership is an important success factor in implementing broad and challenging reforms, such as reform of the courts.

**INDICATOR 9: Qualified judicial immunity and independent judicial association**

The Ethiopian Civil Code of 1960 provides that action for liability may not be brought against a judge as a result of an act connected with his/her function. This protects judges’ independence in decision making, but does not interfere with the disciplinary process. There is no criminal immunity for the judiciary at the federal level or in most states. A form of procedural immunity is provided in the regulations of some states, such as Benishangul-Gumuz and Harari.

In most countries with well established democracies, there is no criminal immunity for judges, procedural or otherwise. Given the recent history of Ethiopia, a limited criminal immunity would contribute to giving judges the confidence to make independent decisions based only on the law. Such immunity would mean that a judge could not be arrested or charged without the JAC’s assent, except in cases of _flagrante delicto_ offences. Criminal immunity, no matter how limited, is fraught with risks of abuse. It would require clear criteria and procedures and for JAC to report to Parliament on the cases.

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138 Article 2138.
There are no judicial associations in Ethiopia, and the law is silent about the right of judges to associate, neither specifically permitting it nor prohibiting it. It is believed that the right of judges to associate would fall under the general constitutional right of association guaranteed by the 1995 Constitution. Article 31 provides that “every person has the right to freedom of association for any cause or purpose.”

Previous attempts to establish a judicial association have failed. However, an independent judges’ association could, as it does in many countries, protect and enhance judicial independence, encourage judicial ethics and behaviour, support continuing education for judges, improve the administration of justice, and promote public understanding of the role judges play in the justice system.\textsuperscript{139}

Conclusion:

Two measures would further strengthen judicial independence:

1. A limited criminal procedural immunity – no judge could be charged without JAC’s involvement unless the judge was caught committing a flagrant offence—with appropriate criteria and procedures for JACs and reporting to Parliament on these cases.

2. An independent judges’ association to represent the interests of the judges and contribute to strengthening judicial independence and ethics, and fostering in the public a better understanding of the role of the judge.

\textit{INDICATOR 10: Adequate salaries and benefits, and an adequate process to set them}

Security of tenure, administrative independence, and personal and financial security are core characteristics of judicial independence. The general rule for judges’ salaries is that they should be sufficient to attract and retain qualified judges, provide them with a reasonable standard of living and allow them to live in a sufficiently secure environment without needing recourse to other sources of income. Judges’ remuneration should adequately reflect their essential importance to maintaining a healthy democracy. To ensure there is no politicization of the process for setting judicial remuneration, it is appropriate to use a process independent of the executive that considers objective factors, such as cost of living and comparators such as legal practitioners’ average
revenues and executive compensation over the broader public service.\textsuperscript{140} The fiscal flexibility of the country is always a consideration in setting judges’ remuneration.

The pay scale and benefits of judges are determined by the federal and regional JACs within a range generally determined in consultation with the Department of Finance. In Ethiopia, judges are required to devote themselves exclusively to judicial duties and cannot, with a few exceptions, engage in other remunerated activities or business.\textsuperscript{141} All judges are entitled to a pension. Other benefits may include medical insurance, a house allowance, transportation, insurance, \textit{per diem} on circuit and a mobile phone. The higher the court, the greater the benefits. Woreda Court judges have very few.

The federal government and the regional states have been sensitive to the need to provide adequate judicial compensation, and judges’ salaries have been raised substantially in the last few years; in some instances, they have even doubled. But the rapidly rising cost of living may, in a large measure, have cancelled the effect of the increases. As a result, many of the judges interviewed believed that their salaries and benefits were inadequate.

In a number of regions, and especially in larger cities, the private market is much more lucrative and is luring away qualified and experienced judges. Some regions have lost 10 to 15 judges in a couple of years. In effect, the Bench has become a training ground for private practice. This trend may well increase in the next few years as the practice of law expands with the modernization of the Ethiopian economy. There is a high cost to the ongoing recruitment and training of new judges. There is an even higher cost in terms of quality of justice, since sound judicial skills and mature judgment take a considerable number of years to acquire. Constant turnover of judges and the resulting inexperienced judiciary are not conducive to effective justice or to establishing public trust. By the criterion of retention, the remuneration of Ethiopian judges, except in the higher courts, would probably not be deemed to be adequate.

Judges are certainly better paid than the average public servant \textsuperscript{142}. They recognize the economic constraints of the government, and the recent substantial efforts to improve judicial compensation. However, in light of their level of responsibilities and sharply increased workload, many judges still believe that their salaries and benefits are meagre

\textsuperscript{140} An example of this would be the Quadrennial Judicial Compensation and Benefits Commission in Canada.

\textsuperscript{141} Teaching can be allowed. Sitting extra weeks during the summer months can also be a source of extra income.

\textsuperscript{142} In most of the benchmarked countries, the salaries of the judges are aligned with the top echelon of the public service.
compared to those of other professions. It was especially poignant to hear experienced judges, highly motivated and committed to serving the public, but obviously over-worked, confess that they would switch to a better-remunerated position without any hesitation if the opportunity presented itself.

Salaries and benefits are important, but not the only factors affecting retention. Appropriate workload, adequate working conditions, facilities and equipment, accessibility of training, career paths, quality judicial leadership, and the respect afforded to the profession all can play a significant role in judges’ satisfaction with their judicial career, and should be fostered to the greatest extent possible.

Conclusion:

1. JACs are an appropriately independent mechanism to determine judicial salaries and benefits.

2. There is a pressing need to improve the job satisfaction of judges. Compensation and working conditions need to be improved in most courts to attract the best candidates and to foster the retention of a qualified, experienced and stable judiciary. In particular, benefits and working conditions for Woreda Court judges should be examined.

**INDICATOR 11: Adequate judicial working conditions, including adequate court support staff, resources such as technology, and adequate security**

Previous assessments of the Ethiopian justice system concluded that the courts, along with other parts of the system, were overwhelmed and severely under-resourced.\(^{143}\) As a developing country, Ethiopia has limited fiscal flexibility. In recent years, there has been a major and laudable investment in court reform by federal and state governments, as well as by donor countries. This investment in courts through the JSRP has resulted in a marked increase in court efficiencies, transparency and accountability in spite of a sharp increase of the courts’ caseload. To reap the full benefits of court reform, a steady and increased investment needs to be made in the court system and in the broader justice system.

\(^{143}\) For example, the Baseline Study, p. 46.
Resources – All the courts we met with would require more resources to further court reform. The situation of the Supreme Courts and High Courts has improved significantly in terms of facilities and equipment, but in First Instance/Woreda courts – the courts dealing with the highest volume of cases and litigants – the resources are totally deficient. Court buildings – generally not built for this purpose at the outset – are woefully inadequate for the volume of cases and litigants.144 Some Woreda Courts spend more than 60 per cent of their budget on leasing often inadequate accommodation. Many times, hearings are not held in open court for lack of big enough court rooms; transcription systems cannot be installed in some courthouses for the same reason; judges share offices (sometimes even with prosecutors) in which they also hear cases; office furniture is dilapidated; waiting areas for the public are inadequate; and equipment is grossly insufficient or out of order for lack of maintenance. In a number of courts, computers are insufficient to support the necessary databases, the information desk and the processing of court documents. Most courts do not have enough transcription systems – some, in fact, have none – and judges still take down all evidence in longhand in most cases they hear. Many registry offices are inadequate for proper filing and keeping of records; even basic supplies such as paper and pens are lacking in some courts. Courthouses without generators are regularly without power. Transportation or vehicle fuel is often not available for circuit Benches. Access to law, in-service education and upgrading of qualifications for judges are severely restricted for lack of budget.

Judges’ security – Police officers are present in judicial compounds and maintain order in court rooms, mostly in criminal hearings. For the most part, they could use training in courteous and effective management of the public. Still, no security incident within court precincts has been reported and judges are not concerned for their safety. Incidents of intimidation of judges outside the courthouse were all related to the political events of 2005. No recent incidents were reported.

Court staff – Both the Baseline Study and the Court Administration Reform (CAR) Project Evaluation Report145 point to the need to upgrade the skills of support staff in administrative and court procedures and in the use of technology (i.e. computer skills). This is one area where there has not been significant progress. Lack of skilled support

144 In one instance, the need for an adequate courthouse is so acute, that the community itself, including the business community, is raising the money to build it. This is not without raising awkward issues with regard to judicial independence.

staff is affecting court capacity in general and needlessly diverting judges from their judicial functions to deal with administrative matters. Affecting both recruitment and training, it is an issue of budget, of adequate classification of court support positions within the public service system, and of availability of qualified staff.

Lack of skilled staff is a problem in all courts we have met with, but again most acutely in First Instance/Woreda Courts. Some Woreda Courts cannot afford a proper registrar, so this vital function is performed by a court secretary or by the judges themselves taking turns at being registrar, in addition to their regular duties.

The overall power of administration of the court is entrusted to the President, who has by law the power to employ and administer court personnel. In reality, however, the bulk of court staff is made up of civil servants that are hired, managed and promoted under the civil service rules, without consideration for the nature and requirements of court work, and over which the judiciary has almost no control. In many countries, court staff are hired from the public service, just as in Ethiopia. Nonetheless, through administrative arrangements with the public service, court-specific classifications and qualifications standards have been developed, and courts have delegated authority to hire directly or at least to participate in the hiring of court staff. Some progress has been made with respect to registrars, with some JACs setting qualification standards and a salary scale. The same should be done for other key positions, such as court managers.

To meet the increasing workload, judges have to be better supported by skilled staff. In all likelihood, courts could operate with fewer staff if that staff were properly qualified, trained and equipped. Training of court staff, including ethics and proper behaviour, is recognized as a priority by all the courts. Some staff have been provided with short training sessions by the courts. To make any significant difference in court capacity, though, there needs to be a more structured approach, encompassing human resource planning for court staff, the setting of workload standards and performance evaluation, in-service training programs and the development of administrative tools, defining appropriate qualification requirements and encouraging the development of professional training programs.

**Conclusion:**

1. In recent years, a sizable investment has been made by federal and state governments, as well as by donor countries, in modernizing the court system. However, the workload of the courts has grown much more rapidly and there is still much to be done to create a truly accessible and effective judicial system. 

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146 Benishangul-Gumuz Proclamation 9/2003 is an example.
system. To yield the results the government is looking for in terms of efficiency and effectiveness of the courts, and public satisfaction, the effort has to be sustained over a much longer period of time.

2. Appropriate court facilities and equipment are required to provide efficient and quality justice. Priority for resources should be given to First Instance/Woreda Courts at this point. This is where the resource problems are most acute and where improvements will be most perceptible to the public.

3. At this point, judges’ security within court precincts appears to be adequate.

4. Court staff with the right skill sets and attitudes are vital to efficient and effective court services. There should be a human resources planning and performance evaluation system for court staff that truly meets the needs of the courts. Structured training of staff should be a system-wide priority.

**INDICATOR 12: Access to law and case law – adequately resourced court libraries and updated legal texts**

Access to statutory law and case law is fundamental to improving the quality of judicial decisions. The intention is to have federal and state laws available on the federal and the regional network. It is certainly an efficient and cost effective way to distribute legislation and legal material for the future. However, for now, the network systems and the courts sites are not fully built and a large number of courts, especially at the Woreda level, do not yet have access to the internet. Even in the Federal High Court, 40 judges share a single internet access point in the law library.

There have been improvements in the distribution of laws, but there is often a delay in judges receiving amendments of federal and state laws. For example, judges have to apply the new provisions of the code of criminal procedure, but when we met with them, many still had only a copy of the old code.

There is no full consolidation of Ethiopian laws, making the application of laws more difficult. Even compilations of proclamations, a very basic tool, are not available to all courts. It is up to the judges themselves to find all the various amendments promulgated in the official Gazeta and piece them together to determine the provisions that are in force. When they learn about amendments, some judges even try to buy their own copy of the Gazeta. Judges have little access to the international conventions that have been integrated into the domestic laws of Ethiopia; not surprisingly, they rarely take them into account in making decisions. Judges all too often have to rely on the lawyers appearing before them to tell them what the law is. Not surprisingly, this lack of timely access to
current laws has resulted in some incorrect decisions based on provisions no longer in force. This is hardly conducive to confidence in the courts.

The consolidation of laws planned in the current JSRP will benefit not only judges, but also legislators, legal practitioners and law schools. That said, it is a lengthy and costly process that most jurisdictions undertake only periodically.

At minimum, a compilation of proclamations, a much simpler process, should be available to all courts. There has to be a convenient mechanism for judges to have ongoing access to an updated version of the main federal and state laws. An effective approach could be for each state and the federal government to maintain an electronic updated and indexed version of the main laws that judges could access through the internet or, given the low penetration of Internet in many courts, it could simply be burned and distributed regularly on compact discs (CDs). Most courts have or will shortly have at least one computer.

The Federal Supreme Court is responsible for the publication and distribution in bound volumes of the Cassation Division decisions. These decisions bind all lower courts by application of the *stare decisis* rule adopted in 2005. Although they generally take a long time to arrive, the volume of decisions find their way into most courts and are very useful. The cassation decisions, as well as other decisions of the Federal Supreme Court, will be available on the Supreme Court website in the future.

**Conclusion:**

1. Access to the law is fundamental and needs to be addressed if the quality of decisions is to improve.

2. Access to law and case law through the internet will, in the future, be the most effective and cost efficient way to provide access to all courts. Access to international electronic law libraries would be of great value to courts with good access to the internet. However, given the current state of the technology infrastructure and the number of courts that have limited or no access to the internet, some other temporary solution must be implemented. At this point, basic access for all courts to updated laws should be the priority. A possible solution, as an alternative to paper distribution, could be to maintain an updated electronic version of main laws at the federal and state levels and make it accessible to the judges on CDs.

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147 Some Regional States, such as Tigray, have produced a consolidation of their laws.
INDICATOR 13: Sufficient judicial positions created as needed, and filled in a timely manner

Most of the judges we interviewed at the federal and regional levels told us that there is a serious shortage of judges. This situation is most acute in first instances courts.

In fact, several new judicial positions were added recently to handle the sharply increased caseload. Moreover, in the last few years, the judiciary has been working steadily at increasing the efficiency and productivity of the courts\textsuperscript{148} in order to meet the increasing caseload without creating new positions. This has been largely successful. For example, the Federal Supreme Court disposes now of more than twice as many cases as it did a few years ago with only a small increase in the number of judges. Similar results have been observed in other courts. Those efficiency gains have been achieved through reengineered court processes and modernized procedural rules, better access to court management information, the establishment of assistant-judge positions, and the training of court staff to competently handle administrative matters. Circuit courts and the transfer of judges have also been used to meet the caseload.

But even spectacular gains in efficiency will not be able to make up for the rapid increase in caseload. Although progress has been made, especially on the supply side, the process of obtaining a new judicial position and a qualified individual in it can be perceived as discouragingly slow. The reasons are many, with the major one being the shortage of qualified candidates. Some Court Presidents also believe the JAC process is inefficient, with weak secretariats and reference checks taking far too much time (from six months to a year).\textsuperscript{149} At the Woreda level, the process to obtain a judge is often lengthy and cumbersome, involving submitting a request to the Zonal JAC, which, after having completed the selection process, submits the profile of the candidate to the Regional Supreme Court; from there it is further submitted to the Federal Supreme Court. If the candidate is endorsed by all, the appointment is made by the Regional Council.

Judicial vacancies can put intolerable pressure on the sitting judges, especially in small courts with only a few judges. In one instance, in a two-judge Woreda Court, the President of the Court – by that time the only judge of the court – had been waiting for more than a year to have his transferred colleague replaced.

\textsuperscript{148} Efficiency gains are discussed further under Indicator 21.

\textsuperscript{149} The appointment process is further discussed under Indicator 14.
However, the time required for the approving and staffing of positions should continue to improve for two reasons: firstly, the courts increasingly have the statistical data to calculate caseload increases and manpower requirements; secondly, the law schools and the innovative recruitment processes\textsuperscript{150} put in place are generating a fair number of qualified candidates for appointment. In fact, in many regions there is now a large pool of qualified applicants who have submitted their names for a judicial position.\textsuperscript{151}

**Conclusion:**

1. Initiatives to generate efficiencies and productivity gains should be pursued to manage the increasing caseload, however some new judges are also required in several courts

2. Recruitment /sponsoring programs have been effective at providing qualified candidates for appointment and should continue wherever there is a shortage of candidates.

3. JACs selection processes and secretariat support should be studied to see if their effectiveness could be improved.

**INDICATOR 14: Objective, merit-based process for selection of judicial trainees or judges – appropriate gender and minority representation on courts**

Quality judicial appointments are one of the most important safeguards of judicial independence and predictors of public trust. Article 81 of the 1995 Constitution provides general rules on the appointment of judges at all courts The President and Vice-President of the Federal Supreme Court are appointed by the House of People’s Representatives on the recommendation of the Prime Minister, while other federal judges, including those of the Supreme Court, are selected by the FJAC and their names submitted by the Prime Minister for appointment to the House of People’s Representatives.\textsuperscript{152}

The State Supreme Court President and Vice-President are appointed by the State Council on recommendation of the Chief Executive of the State. Other State Supreme

\textsuperscript{150} For example, the Amhara MOJ and Justice Bureau sponsored candidates to get a 15-month certificate in law. Under a similar program, CIDA sponsored the legal studies of 90 young women in the Amhara and Benishangul regions.

\textsuperscript{151} At the time of the interview, the Federal First Instance Court had a pool of 300 to 400 applicants.

\textsuperscript{152} Article 81(1) and (2) of the Constitution.
Court judges and state High Court judges are appointed by the State Council on the recommendation of the State JAC. The State JAC is required to solicit and obtain views of the FJAC on the nominees and to forward those to the State Council.\textsuperscript{153} The JAC Proclamation prohibits someone from becoming a judge while serving as a member of the executive or legislative organs, or while a member of a political organization.\textsuperscript{154}

In the case of judges of the State First Instance Courts, they are appointed by the State Council on recommendation of the State JAC without the latter soliciting the views of the FJAC.\textsuperscript{155} The Federal Constitution’s provisions on the appointment of state judges have been carried over into the respective state constitutions.

The Federal Judicial Administration Commission Proclamation No. 24/1996 sets general selection criteria. Any Ethiopian 25 years old or over, who is loyal to the Constitution and who is not a member of a political organization, who has legal training or has acquired adequate legal skill through experience, and who has a good reputation for diligence, sense of justice and good conduct, can be appointed a judge. Regional states have similar criteria, often with the added requirement of knowing the local language. Such broad and general criteria leave almost total discretion in the selection process. International standards recognize the vital importance of objective criteria for the selection of judges.\textsuperscript{156}

**Selection Process** – The Judicial Administrative Councils play the most important role in ensuring the high quality of judicial appointments and safeguarding the process from improper influences. JACs, whose membership is dominated by the judiciary, are vested with the power to select candidates and recommend appointments to the legislative body. JACs can establish their own selection process and additional criteria such as minimal legal qualifications for each level of court.

Parliament and regional councils generally endorse JACs’ recommendations for appointment more or less as a formality. On a few occasions, there has been debate over an appointment.\textsuperscript{157}

\textsuperscript{153} Id., Articles 81(3) and (4). If the FJAC does not submit its views within three months, it can be disregarded.

\textsuperscript{154} Article 8(2) of Proclamation No. 24/1996.

\textsuperscript{155} Article 81(5) of the Constitution.

\textsuperscript{156} For example, the Universal Charter of the Judge, Article 9, states that the “selection of a judge must be carried out according to objective and transparent criteria based on proper professional qualifications.”

\textsuperscript{157} A recent example is the debate in Parliament around the appointment of three candidates from the Tigray region to the Federal Supreme Court.
The recruitment and selection process is rather opaque. For the most part, openings are never advertised, although some regional JACs are starting to do so.\textsuperscript{158} In practice, people apply directly to the JAC or to the President of the court.\textsuperscript{159} Candidates can also be suggested by any JAC member. In particular, Supreme Court Presidents, who have a general responsibility for the proper functioning of all the courts, routinely identify promising candidates among prosecutors, lawyers or judges of lower courts and suggest them as candidates. Sometimes, the executive or members of Parliament also bring candidates to the attention of the JAC.

The process used by the JACs to screen candidates and make a selection is unknown. Informal criteria used in practice by JACs, such as ethnic balance or preference for candidates with knowledge of local language, are not made public. In countries where candidates are recruited from law school and go through pre-service training before appointment, a written entrance exam and a formal interview with a selection jury are generally part of the selection process.\textsuperscript{160} This does not occur in Ethiopia, with the exception of the Amhara region, where a competitive process, including a written exam, was recently set up.\textsuperscript{161} The current selection process is basically paper-based, although some Presidents admit to interviewing candidates prior to suggesting their names to the JAC. The educational and personal background of applicants (behaviour, reputation and suitability) is checked through a process that is not made public. There are no opportunities for input from the Bar, law professors or civil society.\textsuperscript{162}

In regions with an assistant judge program there is a more reliable two-step appointment process. Candidates are first selected as assistant judges, allowing the court to observe their work, ethics and behaviour for a period of time before a recommendation is made for appointment. The duration of the assistant judgeship is normally two years, though, in practice, it can vary from six months to three or four years.

The current appointment process is criticized in many quarters, including by the judges themselves, for not being efficient, effective or transparent. There are no clear selection criteria available to the candidates and the public, beyond the general ones cited earlier. There is no competitive process to assess capacity. Without an interview process,

\textsuperscript{158} In Tigray, for example.

\textsuperscript{159} As of writing, there were close to 400 pending applications at the Federal First Instance Court.

\textsuperscript{160} This is the case in Chile, France and the Netherlands. In countries such as New Zealand, Canada and the U.S, where judges are selected from outstanding and experienced members of the legal profession, the track record of the candidates speaks to their legal knowledge and no test is administered. The selection process focuses on experience, qualities and skills.

\textsuperscript{161} In the last selection round, 26 candidates were selected out of 300 applicants.

\textsuperscript{162} The same remarks were made in the Baseline Study and the 2004 World Bank Assessment Report.
suitability and motivation of candidates are difficult to assess properly. Loyalty to the Constitution is a subjective criterion that can easily be abused. JAC secretariats are inefficient in supporting the process. Background checks can take as long as six months, and the reliability of the information is often an issue.

More worrisome, many judges do not believe that the current practice results in the appointment of the best candidates, echoing comments from legal practitioners and the legal academic community. Many believe that criteria unrelated to candidates’ merits are applied: that is, that candidates are hand-picked by court Presidents and that support letters issued by the Executive on the basis of political affiliation play a role in the JAC’s decisions. There is nothing sinister per se in the Executive suggesting worthy candidates. It is quite a different matter, however, if candidates are, to all intents and purposes, recruited by the Executive and submitted to the JAC with an expectation that they will automatically be recommended for appointment. This seems to be the case with some JACs, and can seriously undermine the quality of appointments, along with the independence of the judiciary.

Judicial Qualifications – One of the foundations for a capable and legitimate judiciary is the professional competence of individual judges; that is, judges with sufficient legal knowledge, legal and judicial skills, and a maturity of judgment. Access to a professionally competent tribunal is considered a human right of court users by the United Nations.

Ethiopia has made an enormous and commendable effort in the last few years to upgrade the education of judges, improve their professionalism and competence, and thus strengthen the capacity of the judiciary. While everyone associated with the administration of justice concedes that much remains to be done, it is important to recognize the great strides that have been made, especially given the historical context.

As stated earlier, the decision to replace most of the Military Regime judges during the mid-1990s and the establishment of a new regional system of courts, introduced in the 1995 Constitution, created enormous staffing demand. This came at a time when the pool of legally trained people was utterly insufficient – in fact almost non-existent in some regions – to meet those demands, especially when combined with the requirement to speak and write the local language. To put judges on the Bench as quickly as possible,

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163 Especially with some background checks being done by the police or security services.

164 The Executive would tend to recommend public servants or graduates from the Civil Service College legal program, who were selected and sponsored by the executive Civil Service College.

165 “In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” (ICCPR, Article 14(1)).
possible, the requirements for legal qualifications were set at the lowest possible standard, and the requirement of relevant experience interpreted so broadly as to encompass almost any prior civil service work. The Civil Service College was set up to help remedy the shortage of qualified individuals in courts and other areas of the civil service. In regions where the shortage was most acute, special programs were set up to recruit young people with basic education and provide them with minimal legal training with a view to putting them on the Bench almost overnight. Hence some judges recruited as high school graduates were hearing cases in Woreda Courts after as little as three months of legal training. As one member of a regional JAC stated, “There was so little choice, we appointed anyone who had the most basic legal training, no obvious ethical problems and met the language requirements.” The resulting judiciary was more diverse than it had been in the past, but it was also overwhelmingly young and inexperienced, with minimal legal knowledge and skills. Some of the current weaknesses in the system stem from that appointment policy.

In addition to regular law degrees (LL.B, LL.M, Ph.D), two additional levels of legal qualifications are recognized in Ethiopia for the purpose of judicial appointments: the advanced diploma (two years of legal studies after high school) and the certificate (six months of legal training after high school).

The challenge for Ethiopia has been, and remains, balancing competing needs for legal competence in the judiciary, having enough judges to meet the immediate demand, and ensuring fair representation based on gender and ethnic background. This is not an easy balance to strike. In general, the immediate need for judges and fair representation has been given greater priority than legal competence. The 2003 Baseline Study warned that such a strategy, as attractive and needed as it was in the short-term, would be damaging in the long term to the performance of the justice system and to the confidence of the public. We can only restate the obvious.

The quality of legal education offered in the various law schools and other institutions is beyond the scope of this assessment. We identify this issue here because the quality of legal education has a direct impact on the capacity of the judiciary to carry out its

166 The Civil Service College provided access to higher education to people from economically disadvantaged regions and backgrounds in return for an undertaking to serve in their region for a certain number of years after graduation. The Civil Service College has been criticized for the quality of its legal education and the politicization of its students’ recruitment. With over 80 per cent of the current judiciary issuing from the Civil Service College Law Program in some regions, these perceived weaknesses color the perception some have of the competency and independence of the judiciary.

167 Baseline Study, p. 45.

168 Judicial pre-service training is discussed further under Indicator 16.
tasks. It is acknowledged within and outside the judiciary that judges often have difficulty applying the law when conducting trials and rendering decisions. The Baseline Study concluded that the lack of legal knowledge was one of the most serious weaknesses of the Ethiopian judiciary. While there has been significant progress made in the last five years in judges’ qualifications and training, there is still an important deficit in legal knowledge, especially at the Woreda Court level. However, most observers agree that the current overall legal expertise of the judiciary is higher now than at any point before.

A significant development in the last 10 years that should have an impact on the competency of the judiciary is the proliferation of legal education institutions. Across Ethiopia, there are now several state universities and numerous private colleges offering legal training, including through extension and distance education, but the quality of legal education from these institutions is quite uneven. The Baseline Study concluded that the level of legal education in the country was fairly low, and our interviews confirm that the quality of law schools needs to be strengthened significantly in terms of curriculum, teaching methods and quality of the faculty. Moreover, the modernization of the Ethiopian economy is generating new types of cases and an increasing need for specialized legal expertise on the Bench in fields such as bankruptcy and commercial law.

The accessibility and quality of legal education has a direct impact on the competency of judicial candidates. Judicial training, whether pre-service or in-service, cannot and should not have to compensate for the weaknesses of formal legal training. The solution lies in improving the quality of legal training in universities and colleges, and this is part of the current federal reform program.

The requirement in federal and regional regulations that candidates must have legal training and adequate legal skills through experience is such a broad criterion that it allows for almost total flexibility in appointments. Right now it is for each JAC to establish

\footnotesize
\begin{itemize}
  \item Baseline Study, p.130.
  \item Colleges offer diploma programs, for the most part, although a few have acquired a reputation for quality law degree programs.
  \item Many observers believe the disparity is increasing with the proliferation of institutions providing legal education. Problems include lack of qualified faculty, low entry standards, antiquated methodologies, poor access to texts and precedents, lack of focus on legal skills, etc.
  \item Baseline Study, p.45.
  \item The current federal JSRP provides for stocking law libraries, providing training to law school instructors and developing teaching material for higher legal education.
  \item For example, Article 8(1) b) of the federal Proclamation on the Establishment of the Federal Judicial Administration Commission (no 12 -1996).
\end{itemize}
what level of legal training is good enough, even on a case-by-case basis. Although its stated goal is to target the best qualifications, the FJAC has not come up with a more specific standard reflecting this policy. By contrast, in some regions such as Benishangul-Gumuz, the JAC has issued regulations with detailed requirements for minimum legal qualifications to become a judge at each level of court and to become a President or Vice-President.175

All the JACs we have spoken with are now looking for higher qualifications than in the past. For Federal Courts, Regional Supreme Courts and Zonal Courts, a law degree is now expected and a graduate degree preferred; for Woreda Courts the standard is becoming a law diploma, with preference for a law degree. With a potential candidate pool of some 1,000 law graduates each year, a more rigorous selection process can and should be implemented.

Informed observers agree that the legal quality of judicial appointments has been going up. They also note that in spite of a wider pool of qualified candidates, recent appointments did not necessarily go to degree holders or, among degree holders, to the most meritorious candidates.

Improvements in the qualifications of the judiciary have been achieved through higher selection standards and continuous upgrading of credentials. At the federal level, roughly 98 per cent of judges now have a law degree and several have graduate degrees. This is the case as well for the Supreme Court in a number of regions, such as Tigray, Benishangul-Gumuz and SNNPR. Statistics from the Harari region provide on a small scale a good sense of how the evolution of qualifications plays out across court levels and gender. Out of 12 judges,176 four judges appointed to the first instance court more than 10 years ago only have a certificate. The six judges on the Supreme Court and High Court have law degrees. Except for one, they were appointed in the last six years. The two women judges are diploma holders and were appointed to the First Instance Court within the last two years; one of them is studying toward her LL.B, and the other is planning to do so.

It is generally recognized that legal skills can only be gained to a certain extent in law school. Many of the interviewees believed that judges, before being appointed, should gain some legal experience as legal practitioners, prosecutors, registrars or assistant judges. There is a perception in the legal community that there may be a bias in the

175 Articles 28-32 of the Benishangul-Gumuz Regional State Supreme Court Revised Judicial Administration Regulations No.09-2003 stipulate in detail the required legal qualifications and experience required of all levels of judges, including assistant judges and the President.

176 There are 14 judges altogether in Harari courts, excluding the presidents. Twelve of these judges answered a survey questionnaire.
selection process against the appointment of experienced lawyers to the Bench where they could, bring in valuable experience. In common law countries, recruiting among experienced law practitioners is the practice. Even in countries with a selection system similar to Ethiopia’s – i.e., appointing judges mostly from among the graduates of law schools and judicial training institutions – experienced law practitioners are also recruited either from the private or public sectors.\textsuperscript{177}

Increasingly, the Federal Supreme Court – and to some extent the High Court – is recruiting from among regional Superior Courts. As long as the promotions are merit-based – and not simply focused on balancing ethnic groups and regions – this is a good step in creating a career path for judges, as well as a strategy to ensure credibility, diversity, judicial skill and experience on the highest courts in the country.

**Gender and minority representation** – There remains a very real shortage of legally trained women and members of minority groups from which to recruit.

In 2007, according to the published Ethiopian Government statistics,\textsuperscript{178} there were 362 female judges out of 2,729 judges, representing a little over 13 per cent of the total judiciary. The majority of courts show an increase in the number of women judges but, because of attrition in other courts,\textsuperscript{179} the net increase is only 10 female judges across Ethiopia in the last three years. Women judges are mostly found at the first instance level. A few hold the positions of President or Vice-President of a court. Their educational level is still lower than that of male judges – 16 per cent of them hold an LL.B or higher law degree compared with 22 per cent of the male judges – but the disparity is rapidly disappearing. In the last three years, the number of women judges with LL.B degrees or higher went from 41 to 58. Women judges reported a significant change in the attitudes of litigants towards them in the last few years. They are now well respected as judges and confident that, with the right qualifications, they will access positions of increased responsibility in the judiciary.

There are affirmative action programs in place that give an advantage to women in the selection process. Supreme Courts reported having plans to promote women to higher courts once they have acquired the experience and qualifications required. The number

\textsuperscript{177} In France, for example, 20 to 25 per cent of the judges are recruited from among experienced practitioners.

\textsuperscript{178} National Data Archives of Ethiopia 2006-2007, Law and Order, Source: Federal & Regional Supreme Courts. These numbers have not been verified with each court.

\textsuperscript{179} Dire Dawa still has no women judges; the Amhara courts lost 12 women judges in 2005-2006 and have not yet completely made up for the loss; the Federal Supreme Court has gone from five women judges in 2004-2005 to three in 2006-2007.
of female law graduates is increasing sharply in some universities,\textsuperscript{180} but in the regions, the challenge remains to recruit qualified candidates. A few years ago, a special program\textsuperscript{181} under the auspices of CIDA provided the legal training required for a certificate to 90 young women in the Amhara and Benishangul-Gumuz regions. Of the group, 78 were subsequently appointed as judges to Woreda Courts,\textsuperscript{182} increasing dramatically the gender representation at the Woreda Court level and easing the shortage of judges in both regions.\textsuperscript{183}

The member states of the Ethiopian federation are demarcated largely along linguistic and ethnic lines. Within a state, a majority ethnic group frequently coexists with a number of minority groups. Selection advantage is often given to candidates of a specific ethnic group through provisions requiring fluency in the local language.\textsuperscript{184} These provisions have resulted in increased access to the courts for the local population, but have limited the pool of candidates for judicial appointments. Some regulations invite JACs to take into account the reality and the educational conditions of the nationalities in setting their selection criteria for judges or Court Presidents.\textsuperscript{185} In multi-ethnic regions, JACs are also sensitive to the need to ensure ethnic balance in the courts. There are no available statistics for minorities comparable to those for women judges, so it is impossible to assess progress in the last few years.

**Conclusion:**

1. Similar to the Baseline Study, we conclude that the selection process is insufficiently transparent and lacking in opportunities for outside input, and that the applicable criteria are too broad and general to ensure objective and merit-based appointments. The appointment processes itself, and the perception of independence and competency of the judiciary, would be improved if the process was made more transparent. We found the judicial community to be generally in agreement. At a

\begin{footnotesize}
\textsuperscript{180} Currently, the proportion of female law students in the Faculty of Law, Addis Ababa, is about 50 per cent. \\
\textsuperscript{181} As part of the Court Administration Reform Project. \\
\textsuperscript{182} The rest of the group were appointed as prosecutors. \\
\textsuperscript{184} In the past, the Amharic language had been used in courts across Ethiopia. \\
\textsuperscript{185} Benishangul-Gumuz Regulation.
\end{footnotesize}
minimum, clear selection criteria and procedures should be made public, and vacancies advertised by posting in court houses and law schools. 186

2. Experienced law practitioners should be invited to apply for positions.

3. Now that there is a much broader pool of qualified candidates to choose from, the JACs should implement a rigorous and transparent process to ensure that the most meritorious candidates are selected.

4. An entrance exam would help screen candidates and contribute to the objectivity and transparency of the appointment process. Interviews with the top candidates would allow the JAC to assess more effectively the motivation, attitudes and personal suitability of candidates for joining the judiciary.

5. Further transparency could be achieved by making public the names of the nominee(s) before they are ratified by Parliament.

6. The legal qualifications of the selected candidates for the Bench have been going up in the last few years, but overall they remain substantially below international norms. Strengthening legal training in universities is important to ensure a future pool of well-qualified candidates for the Bench.

7. Balanced gender and minority representation is far from being achieved, but progress is being made. Affirmative action goals are properly considered by JACs in making selection decisions. However, the shortage of qualified women and minority groups’ candidates remains a problem in several regions. Quite properly, affirmative action criteria are in place that allow for flexibility on legal requirements. This flexibility has to be combined with programs to sponsor legal education, as well as pre-training and in-service training for members of underrepresented groups in order for them to attain appropriate representation as quickly as possible, while contributing to the general strengthening of judicial qualifications.

8. Relevant statistics should be compiled on the legal qualifications of the judiciary at the national level.

**INDICATOR 15: Transparent, objective and merit-based criteria for advancement; transparent, objective criteria for transfers**

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186 In some of the benchmarked countries, vacancies and selection competitions are advertised in national papers.
**Promotions** – There are two kinds of promotions: promotion from one salary grade to another within the same court, and appointment to a higher court. Salary grade promotion has not been much of an issue to this point, since it has been based on objective criteria of legal qualifications and years of service. Increasingly, though, courts are expecting to tie it to judges’ performance criteria. This would raise many of the same issues as appointment to a higher court.

The JAC decides on appointments to a higher court, usually on the recommendation of the President of the lower court. There are no clear criteria or procedures at the federal level or in most regions, and many judges perceive the process as highly subjective. The same criticisms levelled at the initial appointment process – not transparent, not merit-based – are also directed at the promotion to a higher court. A committee of judges at the federal level has been looking at this. Some regions, such as the Harari region, have moved further and developed, in consultation with the judges, a promotion process and criteria covering both grade promotion and promotion to a higher court.

**Transfers** – Judges, especially at the Woreda level, often start out their career in remote, unpopular and, at times, dangerous areas. They are gradually “promoted” to more popular places. JACs decide on transfers, on judge’s application, based on seniority and on compassionate grounds (health, family). This is a very sensitive issue with judges and there is intense competition for good places. Judges want more transparency over transfers. Some regions, such as Amhara, have developed detailed transfer procedures and criteria.

Judges also raised concerns about “negative transfers,” whereby judges are transferred to another location or court against their will. In some cases, the transfer simply appears arbitrary when, for no apparent reason, a judge is transferred from the place where he or she has settled and wishes to remain. This may be interpreted by the judicial community as a form of punishment for having rendered decisions that were unpopular with the government or judicial leadership. Although judges can appeal the transfer decision, it takes a long time to get a decision reversed. Judges are worried about the potential for abuse and executive interference with transfers. These perceptions may serve to undermine judicial independence, even though the transfer power is exercised by the JAC and not the government. Such transfers also affect morale. In addition, transfers may affect the effective delivery of justice in the region. If judges are transferred from a region without being quickly replaced, an intolerable burden may be placed on the remaining judges.

**Conclusion:**

1. For greater accountability, grade promotion or appointment to a higher court should be linked to the overall performance of a judge. To ensure the fairness,
transparency, and integrity of the promotion process, clear procedures and criteria for performance evaluation and for merit-based promotions need to be established. The current work in several courts to define criteria and process should be continued, and efforts made to come up with shared national standards.

2. Clear, objective criteria and transparent processes are needed to ensure fairness in transfers. Arbitrary transfers without the judge’s consent can undermine judicial independence. The consent of the judge should be sought for a transfer to different functions or court location. Administrative reasons to transfer a judge without his/her consent, which should be very few, need to be clearly spelled out in the JAC’s rules and communicated to the judge.

INDICATOR 16: Training (pre-service and in-service) in substantive and procedural law, judicial skills and the judicial role

In every country, judges require training before, or as soon as, they start exercising judicial functions, and continuously throughout their career to fulfill their role in a competent manner. This is even more critical in Ethiopia, where the quality of legal education is uneven, and many judges have been appointed to the Bench with insufficient legal qualifications and skills. Everyone we talked with emphasized the need for better-qualified and better-trained judges.

One cannot but be impressed by the federal and regional governments’ commitment to training and by the exemplary dedication of individual judges in upgrading their legal qualifications. In spite of their heavy workload, judges have been attending night classes in various law schools, spending summer after summer in law programs, or enrolling in distance education. As an example, out of the 50 judges interviewed for this study, three had upgraded their skills to LL.M, six to a law degree and six to a diploma; 11 more were studying toward their LL.B, one toward an LL.M and one toward a Ph.D. Several more expressed the fervent wish to be given the opportunity to pursue their legal education toward a degree or an LLM. Concern was also expressed by certificate holders that they could be replaced if they do not upgrade their qualifications.

The upgrading of the judiciary’s legal qualifications in the last few years constitutes a remarkable individual and collective achievement. Nonetheless, the level of legal qualification, especially in the lower courts, remains well below international standards,

187 Judges can attend special two-month summer programs offered by several universities, and obtain a law degree after four or five summer sessions. It is a truncated program; the regular LL.B program normally takes four or five years to complete.

188 The impediment to studying was the lack of resources in court budgets.
both in level\(^\text{189}\) and in quality. A more knowledgeable cadre of judges is essential to dispense quality justice in Ethiopia. Judges should continue to be actively encouraged and supported in completing their legal studies.

**Training Centres** – Four years ago, the Baseline Study concluded that “lack of training remains one of the most important problems of the Ethiopian judiciary.” This is still the case, notwithstanding the substantial efforts made to build judicial training since then. The most important achievement is certainly the institutionalization of training, through the creation of judicial training centres. The Federal Justice Organ Professionals Training Centre (FJOPTC), which reports to the Federal Supreme Court,\(^\text{190}\) was created in September 2003 and has trained some 7,000 to 10,000 prosecutors and judges in the last three years. More recently, six states (Oromia, SNNPR, Tigray, Harari, Gambella and Amhara) have set up their own centres to increase the accessibility of training for their lower courts and to tailor judicial education to the actual needs of their courts. They have also withdrawn their faculty members from the FJOPTC, creating a shortage in trainers.\(^\text{191}\) The resources and capacity of the regional training centres varies significantly. Although they are independent of the FJOPTC, the regional centres are for the most part using the federal curriculum and methodologies, and FJOPTC’s lectures are broadcast to the regional centres. This is an efficient use of resources and also contributes to consistency in the application of the law across Ethiopia.

The coordination of court reform between the federal and regional levels remains a challenge, and the relationship between the FJOPTC and the regional training centres is still evolving. However it is defined in the future, it will be important to ensure a high level of coordination and commonality between the federal and regional training centres, to foster uniformity in the application of law and in judicial practice. The FJOTPC could assume a leadership role for research-based curriculum development and development of judicial material in cooperation with the regional centres, such as the development of civil and criminal bench books that the FJOPTC has developed.

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\(^\text{189}\) This would be a law degree for all the judges in every court, except for lay judges, if any.

\(^\text{190}\) Modeled largely after the well-respected École de la magistrature of France, the FJOPTC trains future prosecutors and judges together. However, in Ethiopia, prosecutors and judges do not belong to a single profession, and Ethiopian criminal procedure is mostly based on an adversarial common law-inspired model. Not surprisingly, there are tensions between the two groups of trainees. The question of how much common training there should be could well need to be revisited in the future.

\(^\text{191}\) There are now 10 full-time faculty members; the rest of the instructors work part-time.
**Pre-service Training** – The focus of the federal and regional centres has mostly been on pre-appointment training to remedy the shortage of qualified candidates for the Bench. With the benefit of a few years of experience, it is obvious that the training approach, curriculum and methodologies require a substantial overhaul. In terms of curriculum, FJOPTC’s course content too often duplicates that of law schools in an attempt to remedy legal knowledge deficits in trainees. One of the consequences has been a lack of focus on judicial practice, skills, ethics and behaviour. The lecture/discussion group format is not conducive to the effective acquisition of skills and attitudes. The trainers themselves often do not have the required experience and background for this kind of instruction. The FJOPTC has been asked to formulate a revised curriculum, possibly shortening the two-year program and introducing more skills-based learning.

The recruitment of qualified instructors is an ongoing problem, especially at the regional level. Furthermore, it is a principle in many countries that judicial practice, skills and ethics are taught by experienced judges (or retired judges) because they can draw on their own experience in providing high-quality education that meets the practical needs of new judges. In Ethiopia, this is still relatively rare. An effort should be made to develop such a practice. Of course, it would be impractical and insufficient to have all courses developed and taught by judges. They should be aided by experts in the field and in pedagogy, along with other relevant people in the legal community. That said, judges should lead the development of the curriculum, be a major part of the teaching, and be committed to learning the skill of good judicial education, and in this way to contribute significantly to the development of a strong culture of integrity and professionalism across the courts of Ethiopia.

Another weakness is the lack of evaluation of trainees. There is no entry exam for most judicial training programs. At the FJOPTC, judicial candidates selected by the various JACs are automatically accepted as trainees. Some are even being appointed as judges before commencing their training. This not only causes disparity between students in terms of income, but it also precludes disqualifying trainees whose behaviour is not suitable for the judiciary. At the FJOPTC, there is no assessment of trainees during their training and no exam to qualify them at the end of the training period. This makes it impossible to weed out trainees who are not suitable or who have not mastered the requirements, and also results in a less rigorous program. In fact, a number of trainees find themselves under-challenged, and some even find the time to pursue concurrent

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192 Various reasons have been put forward to explain this: lack of tradition, a shortage of judges, judges not wanting to compete with the academic community, and judges’ reluctance to openly share their experience and dilemmas.
graduate studies at university. Some regional centres have established a more rigorous approach. In Oromia, for example, there is an entrance exam (as part of the judicial trainees selection process) and, as in Tigray, trainees are regularly assessed for knowledge and skills acquisition, including at the end of training. Appointment is conditional on graduation. This should become the norm.

The initial plan of the Ethiopian authorities was that all judicial candidates would go through the pre-service training program. In practice, this proved hard to achieve, even at the federal level. Only a portion of judicial candidates are benefiting from adequate pre-service training. The rest, as in the past, are appointed more or less directly to the bench. Until now, the FJOPTC training has mostly focused on higher courts, leaving behind the lower courts, which constitute the bulk of the judiciary and are most in contact with the public. The regional training centres, where they exist, may help fill this gap. As long as the first instance courts that serve the majority of the public do not get access to effective pre-service and in-service training, the desired quality leap in the judiciary and public confidence may prove elusive.

Graduates from the judicial training centres are of an increasingly younger age. At the FJOPTC, four years ago the average age of the first group of graduates was 33 years. It is currently 24 years. The appointment of such young magistrates is not without its challenges, especially where they sit as single judges. Maturity, judgment, patience and appropriate judicial manners are often lacking. The problem needs to be addressed in the pre-training curriculum, with a greater emphasis on skills and attitudinal training. However there is only so much that pre-service training can do. Two additional measures could be put in place to better support new judges that is: compulsory in-service training for their first five years on the bench, and formal mentoring by experienced judges.

**In-Service Training** – To a large extent, in-service training has taken a backseat to pre-service training, although it affects a much larger contingent of judges. Even Federal Court judges have insufficient access to in-service training. At the Woreda Court level, the situation is dismal. In contrast to pre-service training, there is still no comprehensive, structured program for the design and delivery of continuing judicial education. Refresher courses are sporadic and do not always meet the needs of the judges. Competition to attend is fierce, and judges are often not aware of the availability of some training programs.

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193 This is the case in France, for example.

194 Canada, although it has seasoned lawyers appointed to the Bench, has developed a formal mentoring program for newly appointed judges.
The in-service training needs of the judiciary are extensive. There is a need for training on new procedural and substantive laws, in addition to refresher courses on evidence law, administrative law, family law, human rights law, and on the application of international conventions.

Judicial skills are just as important as legal knowledge in creating a competent judiciary. It is the universal view that judicial skills are severely lacking in Ethiopian courts, and that training is not addressing the gap. Gaps in judicial skills raised during interviews include: statutory interpretation, framing issues in civil cases, decision making, judgment writing, sentencing, fact-finding, weighing evidence, assessing credibility, interrogating witnesses including children, dealing with the police and prosecutors, case management, bench management and trial management, the role of the judge, how to apply cassation powers (for example, what is a fundamental error in law), and application of the rule of stare decisis.

Also raised repeatedly during interviews was the need for training in judicial ethics, ethical behaviour and attitudes inside and outside the courtroom, judicial independence, the rule of law, judging with impartiality, and the obligation to serve the public with courtesy and fairness.

One issue that is consistently raised in terms of accountability is that of judges continuing to rely on traditional practices instead of applying the current law, mainly new procedural laws. Judges are expected not only to use the new provisions, but also to show the way to reluctant lawyers and prosecutors who have not had adequate training and continue with the former practices. In our view, this issue is less one of accountability than one of training. The solution is sufficient judicial training for judges to have the knowledge and skills necessary to ensure implementation of the new rules in court proceedings. Where the judges have been given the necessary training, they have stopped relying on traditional practices and now apply the legal provisions.

Conclusion:

1. The benefits of effective pre-service and in-service training are many: better-quality decisions, better run proceedings, more uniformity and predictability of outcomes, and better perception by the public. Quality education will also produce a more confident judiciary that is better able to protect its independence; this could result in better retention of judges within the judiciary. Judicial training should continue to be a major priority, if not the major priority for the Ethiopian government and the donor community.

2. There has been an enormous effort in the last few years to train the judiciary and definite progress has been made. However, training remains below international standards and is not meeting many of the actual needs of the
The establishment of training centres is a considerable accomplishment that needs to be developed and sustained.

3. Some of the training programmes' focus needs to shift to the development and delivery of in-service training where there is a great need.

4. Judicial candidates should all successfully complete judicial centre training before being appointed.

5. Training should be made much more available to First Instance/Woreda Courts judges since they generally start out less qualified than their colleagues on the higher courts. This may be more easily achieved through effective regional training centres.

6. There is a need for training on new procedural and substantive laws, in addition to refresher courses on evidence law, administrative law, family law, human rights law, and on the application of international conventions.

7. More work is required to ensure that the pre-service and in-service curriculum truly meets the needs of future judges and sitting judges, especially in the areas of judicial practice, skills, ethics and behaviour.

8. Judges should lead the development of the curriculum, be a major part of the teaching, and be committed to learning the skill of good judicial education and in this way contribute significantly to the development of a strong culture of integrity and professionalism across the courts of Ethiopia.

9. The establishment of regional training centres is a good development in terms of accessibility, but it requires strong coordination to ensure common direction and content. The FJOPTC should play a leadership role in needs-based curriculum research and development.

10. There should be compulsory in-service training for newly appointed judges for their first five years on the Bench.

11. Judges should be accountable for achieving and maintaining an appropriate level of professional knowledge.

12. A formal mentoring programme for newly appointed judges should be instituted.

**INDICATOR 17: Mechanisms to ensure independent decision making without undue influence by judicial actors or from individuals/bodies outside the judiciary**
Influence – Judges acknowledge that political interference in civil and criminal trials has greatly diminished, but is not totally absent.\textsuperscript{195} They also believe that most judges are now confident and assertive enough to resist such pressure, and do so. Attempts at interference are more frequent at the level of Woreda Courts, where judges are also more vulnerable to outside pressure.\textsuperscript{196} Of particular note is the role played by the Presidents of the various courts when such incidents are brought to their attention. A number of Presidents have met with the officials in question to discuss the constitutional requirements of judicial independence. This intervention is reported to invariably put an end to interference. Courts have also given awareness training sessions to the executive and to members of the legislature on judicial independence and the rule of law.

The role Court Presidents play in ensuring judicial independence in practice cannot be overstated. Presidents should be the rampart protecting judicial independence, and most are playing this role admirably, supporting judges in deciding independently, shielding them from interference, and educating officials about judicial independence. The appointment of strong, capable Presidents is essential for strengthening judicial independence, but also to build trust within the judicial community and in the public.

Corruption – According to Transparency International, in 2007, Ethiopia ranked 138\textsuperscript{th} out of 179 countries for its perceived level of corruption. It is, therefore, not surprising to find corruption in the court system; however, the public perceives the judiciary as an institution affected by corruption to a lesser extent than many other public offices.\textsuperscript{197} Needless to say, both the reality and the perception of corruption are highly damaging to the justice system.

Admittedly, there is less judicial corruption than in the past, and certainly less tolerance of it, both from the public and judicial authorities. But problems remain, as evidenced by the number of judges dismissed for corruption in recent years. Some regions and courts are more affected than others and require energetic intervention.

Judges we met were asked directly if they had ever been offered bribes. Many had been offered bribes or heard of attempts, especially at the Woreda level. Interestingly, women judges, even those who had been on the Bench for several years, had much less experience of being offered a bribe. Bribes are rarely offered directly to a judge but through friends and relatives acting as go-betweens. In many courthouses, signs warn

\textsuperscript{195} For the most part, local officials act for purely personal motives, largely out of ignorance of the principle of judicial independence.

\textsuperscript{196} Less educated, often with no training on judicial independence, more isolated and financially dependent on Woreda administrations for even basic equipment, Woreda Court judges are more vulnerable to pressure.

off people from attempting to bribe, remind people that it is their right to have a fair hearing without bribes, and invite them to denounce any situation amounting to bribery.

Judges were of the view that it was up to them, by their ethics and behaviour outside the courtroom, to dissuade potential bribers. Most judges with whom we met stressed the importance of, and need for, greater emphasis on ethics training to assist in preventing corruption and in fostering a culture of judicial integrity.

Petty corruption also occurs among court staff and may foster a public perception of corruption of the courts. Judicial codes of conduct state that judges have a responsibility to supervise court staff assigned to them, and to take disciplinary measures against those who use their position to further their personal interests. However, the majority of court staff members are governed by public service rules, and judges have only limited capacity to discipline. The reform of the filing system now in place in most of the courts of Ethiopia has put an end to a prevalent form of corruption. Judges have also put in place various mechanisms to deal with the issue.

Most observers agree that lawyers play a significant role in the problem, either by attempting to bribe judges or by making statements to their clients implying corruption in the courts, thereby encouraging attempts at bribery by litigants. An ethical and responsible Bar, denouncing corruption where they encounter it and refusing to take any part in bribery on behalf of their clients, would go a considerable way towards solving this issue. There should be greater efforts at educating law students and the Bar to encourage ethics in the practice of law, and a professional culture against corruption.

Another concern is that former judges are entitled to argue cases before their former colleagues immediately following their resignation as judges. Not surprisingly, many people perceive them as being “well connected” and influencing the Bench. This is hurting the perception of the integrity of the courts. This situation should be regulated, as it is in most countries, to avoid any perception of influence on the court.

Conclusion:

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199 For example, under Rule 6.08 of the Rules of Professional Conduct of the Law Society of Upper Canada (Ontario), a retired judge may not appear or advocate before a court he or she served on or any lower court or administrative tribunal he/she had judicial review jurisdiction over for a period of two years from the date of his/her retirement or resignation. A retired appellate judge cannot appear before any court except in exceptional circumstances and on special permission of the Law Society.
1. The legal framework provides the required guarantees for judicial independence. In practice, judicial independence has improved substantially, but still needs to be strengthened in several ways. Proper understanding of judicial independence and how to exercise it and protect it in practice should be part of the pre-training and in-service curriculum of judicial training centres.

2. The principle of judicial independence needs to be better understood by the executive at all levels, and with special emphasis at the local level where it is weakest.

3. A judge experiencing interference will normally bring it up to the President of his/her court, who will intervene appropriately. An alternative avenue should also be provided for the judge to complain about lack of independence to the President of the Federal or Regional Supreme Court, who assumes overall responsibility for the functioning of all the courts.

4. With respect to corruption, the overall situation is reported to have improved in the last few years due to a variety of measures that have been put in place. Various codes of discipline and ethics of the courts are in place clearly and specifically prohibiting conflicts of interest, the use of judicial power for personal gain, a judge receiving directly and indirectly a bribe, payoffs, gifts or any other form of benefit from litigating parties or any person serving as a go-between. Corruption is grounds for dismissal, and several judges have actually been dismissed. As an added penalty, dismissed judges cannot get licensed as lawyers by the Ministry of Justice.

5. Eliminating corruption in the courts starts with the appointment of judges with impeccable ethical backgrounds. As long as considerations other than merit and reputation play a role in appointments, there is a risk of obtaining less-than-ethical judges.

6. The appointment of Presidents with high ethical standards is essential, as they need to serve as role models, create a corruption-free environment, provide appropriate guidance to their court, enforce strict standards in matters of integrity, and act as guardians of the principle of judicial independence.

7. Salaries, benefits and working conditions of judges have to be adequate to ward off the temptation of corruption.

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8. Judicial trainees and sitting judges must receive appropriate and practical training on ethics by experienced, credible judges. Confident judges with pride in their function are less vulnerable to corruption.

9. Court staff need to receive ethical training; effective mechanisms should be established to identify instances of staff corruption and provide swift discipline.

10. The re-engineering of court processes should include the removal of opportunities for corruption in court work practices.

11. Ethical behaviour in the legal community needs to be reinforced. Training should be provided in law schools on the ethical practice of law, and bar associations should be involved in corruption prevention activities. Lawyers involved in corruption of the courts should not have their licence to practice renewed.

12. Rules should be established to regulate the situation of former judges practicing law. Former judges should not be allowed to practice before the courts in the jurisdiction they served in for at least two years, and should permanently be prohibited from arguing a case before a former colleague.

13. Signs in courthouses should make clear that bribery is an offence, that everyone has a right to a fair hearing without bribes, and that they are invited to denounce any situation amounting to bribery.

**INDICATOR 18: Code of conduct or ethical principles; training in judicial ethics and judicial conduct; clear and enforced conflict of interest rules**

At the federal level, there is a code of ethics, a code of conduct and a disciplinary code, attesting to a high level of concern about judicial integrity. States have codes of discipline or conduct. Most judges we met had their own copy. Only a portion of them, however, had had training in judicial ethics. At Woreda Court level, training in ethics is the exception rather than the rule.

Court Presidents will admit that the behaviour of some judges in and out of the courtroom leaves much to be desired, and that better rules and enforcement of rules, as well as more ethics training, are needed.

**Conclusion:**

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201 An often-cited example is of judges who drink with lawyers or even parties appearing before them.
1. All judges should be supplied with their own copy of the codes of discipline, conduct and ethics, as required.

2. Ethics training should be developed to address the practical issues faced by the judiciary and made compulsory for judicial trainees and judges.

**INDICATOR 19: Established disciplinary criteria and process administered by an independent or judicial body**

A successful disciplinary process is one that is trusted by the judges for its fairness and by the public for its accessibility, effectiveness and integrity. The disciplinary process is more or less the same in all parts of Ethiopia. In some cases, the code of conduct and a separate disciplinary procedure code\(^\text{202}\) govern judicial behaviour, establish the procedure for responding to cases of alleged judicial misbehaviour and set out the various sanctions that can be applied against a judge: oral warning, written warning, fine, demotion and dismissal. Some codes attach specific sanctions to offences,\(^\text{203}\) while others, such as the federal discipline procedure code, do not.

Formal complaints can be made by anyone directly to any JAC member, but most are made to the President of the court. The judge gets notice of the complaint and discusses it with the President, who can satisfy himself or herself that there is no merit to the complaint, that it is a minor issue better dealt with by the court,\(^\text{204}\) or that there is a *prima facie* breach of the code of conduct. In the latter situation, the complaint is sent to the JAC for investigation. The investigation may be conducted by a committee\(^\text{205}\) made up of judges who are not on the JAC or by an investigative body. The committee makes a recommendation to the JAC, and the judge facing the complaint can present a defence. The JAC can impose disciplinary sanctions on judges found guilty of a disciplinary breach except for dismissal, which has to be approved by the legislature. After some period of time, the judge can apply to have the penalty decision lifted, except if the sanction was dismissal.

Not surprisingly, given the seriousness of the matter and the consequences both to the judge and the administration of justice generally, the dismissal process can sometimes

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\(^\text{202}\) For example, the discipline procedure code for federal judges, March 2006.

\(^\text{203}\) The Benishangul-Gumuz Regulation or the Oromia Code of Conduct, for example.

\(^\text{204}\) Some codes provide specifically that in the case of a minor breach, minor penalties can be imposed on the judge directly by the court President but have to be reported to the JAC.

\(^\text{205}\) For example, Benishangul-Gumuz Regulation 1/2003 and the Addis-Ababa City Court disciplinary complaint hearing procedure.
seem to be prolonged, even up to two years. The reasons for the delay are often not well understood by the public. A judge cannot be released from his/her judicial functions while there is a pending complaint. Dismissed complaints are not kept on the personnel file of the judge. Complainants are generally notified of the outcome of the complaint. In some regions, dismissals are publicized.

The judicial disciplinary system is being used. Complaints are lodged and disciplinary measures taken, including the dismissal of judges. The situation varies a great deal with the size and culture of each region. For example, the small Harari region has not yet had a disciplinary case, while a large region recently had to dismiss more than 10 judges for corruption. In general, the executive does not intervene in disciplinary cases, although some officials would advocate dismissal of judges for what are relatively minor faults.

Criticisms of the disciplinary process concern mostly the lack of transparency and fairness before the formal JAC process is set in motion. A President receiving a complaint has wide discretion in dealing with it. The President can summarily dismiss or resolve an obviously frivolous complaint without even asking the judge for comment, rather than sending it on to the JAC. Some judges were concerned that a poor relationship with the President could lead to a discriminatory exercise of this summary dismissal power. In at least one reported case, a judge was required to spend valuable time responding to frivolous complaints because the President chose not to dismiss them. While we are not persuaded that this is a widespread problem, one solution to the perception of lack of even-handedness would be for the President to delegate to a standing committee of the JAC or a committee of the court the responsibility for screening complaints. This would have the advantage of removing an irritant for some judges and also make the process less dependent on the subjective view of one person—the President.

There are also criticisms of unofficial “disciplinary measures” being applied without any legitimate process, such as removing a judge from judicial responsibilities, or transferring a judge to another region or a different bench (see further discussion under Indicator 22).

**Conclusion:**

1. The formal discipline process under the JACs’ authority is sound and meets international criteria for judicial independence. More transparency in its criteria and process, including during the initial processing of complaints, is needed. Detailed disciplinary codes should be developed where they are not in place.

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206 Some judges felt this was unfair.
2. Long delays in processing complaints can undermine the credibility of the complaint process. Delays could be improved by giving the courts, especially lower courts, the power to solve minor disciplinary matters such as habitual lateness, mildly disrespectful comportment with witnesses, or granting too many adjournments. These kinds of behaviours have an impact on the public’s perception of the courts and need to be addressed through a disciplinary process. However JACs’ time should be focussed on more serious disciplinary complaints. We recommend that a study be conducted to determine an appropriate, fair and transparent, but speedier, process at the court level to deal these minor disciplinary issues.

**INDICATOR 20: A formal public complaint process against judges**

Any one can make a complaint against a judge. Complaints can be made directly to any JAC member, but most are made to the President of the court. Most complaints come from the public, although some complaints are filed by executive branch officials and bar associations. Typically, people complain of judges’ lack of respect toward litigants and witnesses, improper use of judicial power, delays in decisions, lack of transparency, partiality, conflict of interest and corruption. Most of the complaints are filed against First Instance/Woreda Courts judges.

Some observers note that, while people are now more conscious of their rights and speak up more, lodging a complaint against a judge is not yet part of the culture. In general, members of the public are not aware that they can complain or how to do it. Efforts have been made by courts to raise awareness by putting up posters in the courthouse and through radio broadcasts. As is the case in almost all countries, individual lawyers find it difficult to lodge a complaint against a judge in front of whom they may have to appear. A solution is for bar associations to lodge the complaints after ensuring they appear to have merit. It would both protect the lawyers and ensure the complaints would be taken seriously.

Finally, there are informal complaint mechanisms available to the public, such as comments books and suggestion boxes. They are discussed further under Indicator 28.

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207 For example, a number of complaints are made to the Office of the Ombudsman, which has no jurisdiction over complaints against the judiciary.

208 The Benishangul-Gumuz Bar Association recently lodged 100 complaints and is pleased with the way the complaints are being dealt with.
Conclusion:

1. A complaint process is available to the public, but it needs to become better known. One of the most important safeguards of judicial integrity is an informed public. The public needs to be educated about its right to complain and about the process that is then followed.

2. All complaints against judges or court staff should be dealt with. At present, this is believed to be mostly the case. Those who file complaints formally or informally, if they can be identified, should be advised of the result.

3. Dismissal of judges should be publicized.

INDICATOR 21: Standard judicial workloads; standard time frames for judicial procedures; efficiency measures

Standards – In Ethiopia, it was long believed by the judiciary that judicial activities could neither be planned nor assessed. In the past few years, however, time standards for case disposal and judicial workload have been developed. The performance of the courts is now measured, closely monitored locally and centrally, and regularly reported upon. A healthy competition is encouraged among courts. High-performing courts are recognized. Courts plan their activities, set ambitious targets for backlog reduction or for disposal of cases, and can explain their performance. Even in the smallest of Woreda Courts, Presidents displayed court statistics on their wall and were referring to their strategic plan during interviews.

Efficiency – Efficiency and standards are part of accountability. Courts and individual judges are accountable to use their talent and resources to maximize quality service to the public. The concerted effort of recent years to improve the efficiency of the courts has resulted in considerable progress. With clear workload standards and close monitoring of cases and of adjournments, case disposition time has dropped dramatically.\textsuperscript{209} Courts have eliminated most of their entire backlog, notwithstanding a sharp increase in the number of cases before the courts. Courts are continuing to look at ways to improve the rate of case disposal and general efficiency. Further opportunities for efficiency have been identified, for example in developing standard formats for court applications\textsuperscript{210} and general formats for decisions.

\textsuperscript{209} Most court cases are now decided within six months, which is in line with international standards.

\textsuperscript{210} In Amhara courts, there are currently no less than 27 formats in which to present an application.
This progress has been achieved through re-engineering of court processes, strengthening court administration, improving case and file management and providing better access to case management information. Procedure has been modernized to promote more efficiency, such as the introduction of a “speedy trial” for flagrante delicto offences, and shorter pleadings, written arguments and oral arguments. It has also been achieved through a change of attitude in judges. They now understand that case management is part of their work. However, these measures have not always been well received by the legal community, which to a great extent is lagging behind the judiciary in terms of reform and can act as a brake for reforms. Prosecutors and legal practitioners need to be brought along more than they have been in the past.

Conclusion:

1. The progress achieved in the last few years in terms of court efficiency and related accountability is considerable. The work of convincing judges of the need for transparency and accountability has largely been accomplished. Judges understand and support these goals.

2. However there is still considerable work to be done to train and equip the judges to meet ever-increasing caseloads and to apply the law effectively. Further efficiencies could be achieved but are dependent on having enough judges who are properly trained, in addition to qualified court staff and appropriate equipment.

3. Courts efficiency and effectiveness cannot be achieved without the involvement of other players, such as lawyers, prosecutors and the police. There is now in most regions more structured dialogue between the judiciary, prosecutors and the police on criminal justice issues. Consultation with the bar and legal scholars has been less successful, partially for lack of organizational capacity on their part, but efforts should be renewed. Further reforms, especially procedural reforms, should involve as many stakeholders as possible through effective consultations.

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211 The reform of the court filing system has eliminated the problem of lost files and opportunities for petty corruption.

212 The Bar was not within the ambit of this assessment. However, we can only agree with the Baseline Study assessment that the Bar is intolerably weak as a profession, whatever the individual competencies of its members. The existence of several competing bar associations is an obstacle to meaningful dialogue with the courts and to effective participation in justice system reform.
INDICATOR 22: Open public hearings, with limited exceptions set out in legislation; court monitoring by NGOs, academics and the media

The Constitution provides that criminal trials be held in open court and that the court may hear cases in a closed session only to protect the right of privacy of the parties, public morals and national security.\(^\text{213}\) The public and media can attend court, and benches are now provided for the public in the courtrooms used for criminal trials.\(^\text{214}\) What is quite common, especially in Woreda Courts, is that proceedings other than criminal trials are not held in open court due to lack of courtroom space.\(^\text{215}\) The proceedings are often held in judges’ small offices, with all the available seating used by the parties and witnesses.

A visible effort was made in the courthouses we visited to help the public and litigants find their way. The Supreme Court of Ethiopia publishes the court’s list for the day on its website. In other courts, the docket is posted on the walls of the courthouse and the information is also available at the information kiosk.\(^\text{216}\) Case databases allow litigants access to information about the status of their case, either through touch screens in a few courthouses, or through information desks. This information is also available by phone for the Federal Supreme Court\(^\text{217}\) and could soon be available through the internet. This is major progress towards achieving accessibility and transparency of court proceedings for the public.

The media could and should be playing more of a role, both in scrutinizing the work of the courts and in helping the public understand and value the justice system. But the media is not strong in Ethiopia, and there is an evident lack of critical analysis. Few, if any, journalists specialize in legal issues. The focus of the media has been mostly on reporting sensational court cases and very little on informing the public about the justice system. There have been a few reported cases where the media were allegedly not allowed to attend trials on grounds of dubious legality. Very few courts have a media officer. The Federal Supreme Court and a few other courts have held meetings and provided some kind of training for the media. These initiatives should be pursued. Quality media reporting is an important way to ensure the transparency of justice and

\(^{213}\) Article 20 (1).

\(^{214}\) Accused persons, however, have to stand throughout their trial.

\(^{215}\) See discussion under Indicator 11.

\(^{216}\) Information desks pioneered under the Court Administration Reform Program are now established across all the courts. They provide information about the cases, the court process and provide some help to litigants on how to present their cases.

\(^{217}\) At the Federal Supreme Court level, litigants have access to case information through an Interactive Voice Response System (IVR) by dialling 992.
raise public awareness about the justice system and individual rights. Several of the benchmarked countries have well-structured court programs for the media that could be of use to Ethiopia.\(^{218}\)

**Conclusion:**

1. Major progress has been made with regard to the transparency of the court process and accessibility of information to litigants and the public. Information on case status to litigants is now meeting international norms.

2. The major obstacle to meeting the international norm on open court hearings is the lack of adequate court buildings. This involves a major capital expense and will not be solved overnight. New court facilities need to be planned for almost all regions of Ethiopia. The need is most acute at the first instance level.

3. The media need to play more of a role both in scrutinizing the work of the courts and in helping the public understand and value the justice system. The establishment of well-structured media programs, including media training and appointing a court media officer or press judge, should be encouraged. Several of the benchmarked countries have well-structured court programs for the media that could be of use to Ethiopia.

**INDICATOR 23: Public accessibility/availability of judicial decisions, including reasons**

Judicial decisions are a matter of public record and should normally be obtainable on request. In reality, due to lack of resources and staff, some courts restrict copies of decisions to the litigants themselves.

With a view to promoting increased uniformity in legal interpretation across the country, Ethiopia adopted the common law rule of *stare decisis* in 2005. Decisions of the Cassation Division of the Federal Supreme Court are now binding on all lower courts. Access to judicial decisions has never been more important for the courts, lawyers, law professors and law students. Decisions of the Federal Supreme Court Cassation Division are published\(^ {219}\) yearly and distributed in bound volumes to lower courts\(^ {220}\) and

\(^{218}\) For example, the Netherlands’ Press Judge and Sweden’s list of judges’ spokespersons.

\(^{219}\) Supreme Court Cassation Journal.

\(^{220}\) The challenges of judges to have access to case law was discussed earlier under Indicator 12.
to various legal libraries; they will soon be available on the Supreme Court website, which is currently under construction. All the decisions of the Federal Courts, including reasons and pleadings will also be located on the website. Regional Supreme courts intend to follow the same practice. At present, however, public accessibility to court decisions is very limited.

By law, judges are required to render reasoned decisions.\textsuperscript{221} There is general acknowledgment that judgment writing needs improvement. Moreover, members of the legal community, including legal practitioners and law teachers, believe that the current emphasis on case disposal and judicial efficiency is compromising the quality of judgments. They express dissatisfaction with the Federal Supreme Court’s introduction of a short template for reasons for judgment in cases where the appeal is dismissed; this backlog-reducing measure was intended to allow the court to concentrate its decision writing on reversed decisions. Most of the last-resort appeal courts in the benchmarked countries use standard templates to rule on applications to appeal, and usually write short decisions to dismiss appeals. In fact, well-designed templates can be very useful for a certain number of court orders. Assessing the quality and sufficiency of reasons in decisions was not within the purview of this study. It is, however, an issue that should be studied further and best practices identified as part of designing an effective judgment-writing program.

Legal scholars rarely publish commentaries about court decisions, including those of the Cassation Division of the Federal Supreme Court\textsuperscript{222}. This is unfortunate, since the development of a robust body of jurisprudence would contribute to raising the quality of legal interpretation, judicial decision making and legal training. The development of jurisprudence should be encouraged.\textsuperscript{223}

Conclusion:

1. Access to court decisions needs to improve.

\textsuperscript{221} Civil Code of Procedure Article 182, Criminal Procedure Code, Article 149.

\textsuperscript{222} Several reasons are given for this situation. Perhaps the most important is that Ethiopia being of civil law legal tradition, the legislation the only source of the law until the recent adoption of the \textit{stare decisis} rule. As a result legal education and other scholarly activities do not consider case law as central to what they do. Other reasons include poor access to decisions and lack of tradition of publishing commentaries in the legal scholar community.

\textsuperscript{223} In fact, the current federal JSRP lists the establishment of a law journal as one activity under the Plan.
2. The intelligibility of decisions needs to improve, as well. The establishment of writing standards and broadly offered training in judgment writing is recommended.

3. Partnerships should be established with law schools to promote a practice of scholarly commentaries on key decisions and the building of a robust body of jurisprudence.

**INDICATOR 24: Maintenance of trial record; recording of proceedings**

As a result of the CAR Project, the maintenance of trial records and the recording of proceedings have improved substantially. Transcription technology now allows for the recording and transcription of evidence, to the great satisfaction of judges. This technology reduces trial time to hear the evidence, allows the judge to fulfil his or her function of directing the hearing, and provides a reliable record of the proceedings, should there be an appeal. Transcription equipment has not, however, been provided to every court. It is still relatively rare in Woreda Courts and, where equipment is available, its use is limited to criminal hearings. In some courthouses, there is insufficient space to use the technology. There is also a lack of qualified staff to operate it. For the rest, judges still take down the evidence in longhand, a time-consuming process and one that, at best, is not totally reliable and, at worst, can allow for the perception of the selective capture of evidence.

**Conclusion:**

1. Transcription machines should be rolled out to all the courts, as budgets and facilities permit.

2. Staff must be trained in using this technology.

**INDICATOR 25: Proper case and records management, including case filing and tracking systems**

Even harsh critics of the court system agree that considerable progress has been achieved in court administration and in case and records management. Modern systems, methods and skills for case management, tracking and scheduling have been successfully introduced to a number of courts under the CAR Project, and expanded nationally to 727 court sites under the National Court Reform Project. As a result,

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224 Court Administration Reform Project (CAR I & II) sponsored by CIDA.

225 Supreme Court of Ethiopia website.
courts are more productive, transparent and accountable. Judges, lawyers and the public have immediate information about court cases. Computerized databases allow courts to better manage their caseload, reduce delays, allocate resources and measure productivity year after year.\textsuperscript{226} This is a considerable achievement.

Sustainability challenges remain. The First Instance/Woreda Courts are often lacking sufficient equipment, staff training and the resources to successfully implement reforms. Many registry offices are inadequate for proper filing and keeping of records. The successful color-coded filing system that was recently introduced is being abandoned by some courts because they do not have the budget to buy the required supplies. It is distressing to see some registry offices using photocopied black and white coding numbers for their files, in a last-ditch effort to preserve the new filing system.\textsuperscript{227}

**Conclusion:**

1. The introduction of modern court and case management systems at the national level has been successful, and the results in terms of court productivity and transparency are impressive. It needs to be fully extended to all courts, with adequate budgets and equipment, to make it sustainable.

2. Staff training needs to be a priority.

**INDICATOR 26: Court organization and procedures that are transparent and comprehensible to the public – the public has access to free information on the functioning of courts**

Efforts have been made in the last few years to make court houses more user-friendly and functional, with waiting areas, clear directions\textsuperscript{228} and accessible services. The introduction of information desks, that not only give information to users but often provide them with some help in preparing their application to the court, represents a considerable progress in terms of transparency and service to the public. This is important since most litigants, at least at the first instance level, are not represented.


\textsuperscript{227} At first, color codes were provided centrally. They are not anymore, at least in some regions.

\textsuperscript{228} In a number of courthouses, judges have not only their name but their picture on the door of their office.
Most courthouses are also using public space to educate the public on their rights and to discourage crime.\textsuperscript{229}

\textbf{Conclusion:}

1. Progress has been achieved under the CAR Project that need to be pursued with the development of appropriate material for the public explaining the court process; the development of standard templates to present an application to the court; and further training of information desk staff.

\textit{INDICATOR 27: Public access to free information about basic rights and laws}

All observers agree that there is little public knowledge about the justice system. The challenge of informing a largely rural and illiterate population about the rule of law, their rights, and how to enforce them through the court system is a significant challenge.

Radio and television programming would be one of the best ways to reach the general public. However, these media are not widely used for public legal education about individual rights and the justice system. In some regions, courts have started to broadcast legal information, but this is done on an ad hoc basis. To develop public awareness will require an increase in efforts.

Basic legal information should be part of the school curriculum.\textsuperscript{230} Bar associations and NGOs should play an important role in public legal education initiatives.

\textbf{Conclusion:}

1. Radio and television broadcasts about the courts, the legal system and rights should be encouraged.

2. Bar associations and NGOs should be engaging in public legal education to a greater extent.

3. Basic knowledge about the justice system should be part of the school curriculum.

\textsuperscript{229} For example, in the waiting areas of most of the first instance courts visited, there were easy-to-understand posters about children’s and women’s rights.

\textsuperscript{230} In one area visited, primary and secondary level students attended a trial and had the opportunity to talk with the judge afterwards as part of their civic education course.
**INDICATOR 28: Opportunities to obtain feedback from stakeholders of the justice system and the general public**

The notion of public satisfaction about court services was quite novel when introduced approximately five years ago, and it is fair to say that the judiciary and court staff did not immediately take to it. The fact that all the judges now talk in terms of services to the public shows a sea change in attitudes. What needs to happen now is to enhance mechanisms to obtain public feedback. Courts have suggestion boxes and comment books in courthouses and people use them. Internal committees have been set up to look at complaints and suggestions, and to make recommendations for improvements to management. More work remains to be done.

Several courts also collect feedback at meetings with the public or through stakeholder surveys (police, prisons, prosecutors, women’s groups), but this is mostly done in an ad hoc way. In the Tigray Region, courts have been surveying litigants to measure their level of satisfaction.

Benchmarking information shows that most jurisdictions conduct regular, structured meetings with key stakeholders such as prosecutors, the Bar (through structures such as Bench and Bar committees), government agencies (such as the Women’s Bureau) and NGOs working in the field of justice. Many of the courts visited commented on the usefulness of consultations with organizations such as the Ethiopian Women’s Lawyers Association. Courts need to engage in dialogues with civil society to improve services and to better meet public expectations and reputable justice sector NGOs can play a very useful role in this regard.²³¹ Most countries conduct periodic surveys about public confidence in the justice system and the courts.²³²

**Conclusion:**

1. There has been progress in obtaining public feedback. Courts now understand that they are at the service of the public and that independence does not mean lack of dialogue with stakeholders. Suggestion boxes are good, but cannot replace more structured feedback mechanisms.

2. More regular and structured meetings with key justice system stakeholders, including relevant NGOs, should take place.

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²³¹ In this regard, the currently proposed legislation to govern NGOs cannot but raise major concerns.

²³² For example, the Dutch National Bureau of Statistics conducts yearly surveys about public perception of the independence of the judiciary, and individual courts conduct surveys on the perceived quality of their work.
3. Public surveys should be conducted periodically as a tool to improve service and measure progress.

**INDICATOR 29: Maintenance of judicial statistics; court reporting on performance; judges’ performance evaluation**

There are two aspects to performance measurement for accountability purposes: assessing the performance of the Court and assessing the performance of the individual judge.

**Court performance reporting** – The introduction of computerized databases allows courts to generate statistics that reflect reality, and to plan and report. Reliable judicial statistics are now generated by every court, closely monitored locally and nationally, and reported to the Federal Supreme Court and to the legislature. A climate of healthy competition among the courts is encouraged over time for case disposal and backlog reduction. This represents a significant change from the past in terms of transparency and accountability, and a sound basis for deciding on further investments in, and improvements to, the court system.

Courts report twice a year to the legislature on their achievements, including on the results of public feedback obtained through comment books, suggestion boxes or more structured surveys of litigants and other stakeholders.

**Conclusion:**

1. The requirement for courts to report on performance is in line with, and may well exceed, international standards.

2. Courts now have the technology to generate reliable statistics on their functioning; however, national statistics about the judiciary could be further strengthened to help measure progress in the future, as they are not readily available in a number of areas.

**Judges’ Performance Evaluation** – At this point, almost all evaluative activities are targeted at measuring global court performance rather than the performance of individual judges. The measurement of court performance is an important step, and we were impressed with the work courts have done in that respect. There is, however, no formal and transparent system in place to evaluate judges’ performance, except in a few regions that have very recently developed formal criteria and a process.
One of the greatest challenges for any country’s judiciary is the performance evaluation of individual judges. On the one hand, a poorly thought-out evaluation process can threaten judicial independence and undermine the confidence and morale of judges. On the other hand, if done skillfully and with sensitivity, performance evaluation can contribute to accountability and to the competence and trustworthiness of the judiciary. Performance evaluation can be of particular importance in Ethiopia, given its history and the recruitment of judges with limited formal legal education. It can be an important tool for enhancing in-service training by identifying particular individual and systemic weaknesses and needs, and for designing appropriate training programs to improve capacity.

Performance evaluation can also be a tool to ensure performance-based promotion (to a higher salary grade or a higher court) and to influence behaviour. It is not, however, a disciplinary tool and is no replacement for a robust and effective appellate process.

Most judges agree on the need for individual performance evaluation (in itself a profound change in mentality). They reasonably want a fair and transparent process, based on objective standards that are clear to all judges. They are also concerned that performance not be defined solely in terms of volume of decisions rendered and of numerical targets met. They are aware that an unsuitable process could endanger judicial independence. In the view of judges and other members of the legal community, the quality of decisions, integrity, diligence and professional comportment of judges should also be taken into account, along with efficiency of case processing. There is no one view as to who should have input in the evaluation beyond the president of the court, but there is general agreement that more input is required for transparency, balance and fairness. Peer review is currently used in at least one region. Input from the public, including the Bar, understandably raises more issues.

Currently, court databases provide information for the objective measurement of the efficiency of judges in case processing. The development of objective tools for qualitative measurement of judges’ performance is more challenging. The approach to be taken for judicial performance evaluation is being studied at the federal level and in several regions. Other regions have moved even further. The Oromia Supreme Court expects to conduct pilot projects this fall. The Harari Supreme Court has developed, in consultation with the judges, a formal process, criteria and an evaluation form they are ready to implement. Each region seems to be moving forward in defining their own norms in isolation. This is one area where common standards across Ethiopia would be helpful.

Conclusion:
1. The fact that the judiciary sees the need for performance evaluation as a measure of accountability is indicative of an important change in mindset. Effective performance evaluation will contribute to improving the quality and accountability of the judiciary.

2. Objectivity, fairness and transparency of the process are critical. The approach and tools have to be considered carefully so as not to encroach on judicial independence. The quality of decisions, integrity, diligence and professional comportment of judges should be taken into account, along with efficiency of case processing. The judge should be given the opportunity to participate, be given feedback and challenge the result.

3. The President of the Court would be a key player in any performance evaluation, but the process should also allow for other sources, such as appropriate input from peers, the Bar and the public to ensure transparency, balance and fairness.

4. There is currently a great deal of activity to develop processes and criteria in several courts. Performance evaluation should be in place in the near future, preferably with consistency across the country. Conducting pilots is recommended.

**INDICATOR 30: Public perception of the courts as impartial and accountable**

Public perception of the courts as impartial and accountable is undoubtedly the best indicator of overall judicial integrity, and positive changes to this perception would constitute one of the best measures of progress.

This study did not conduct a survey of public perception of the judiciary, and no court-specific statistical survey results were available. We did discuss the issue with every person we met in Ethiopia, including people working within the justice system, users of the justice system and members of the general public. All concurred that the perception of the integrity and effectiveness of the judiciary is low. This is confirmed by international surveys, such as those conducted by Transparency International. The courts want to change this.

Litigants agree that the courts have improved significantly in terms of efficiency, timeliness of trials and decisions, and accessibility of information. Efforts have been made to make the courts more welcoming and user-friendly, with trained information clerks, touch screen information on cases in some courts, waiting shelters, toilets and private breastfeeding areas. Lawyers and litigants interviewed at federal and regional courts (in the context of the evaluation of the CAR Project) were unanimous in the view that the courts’ performance had greatly improved in recent years. They also noted that petty corruption had decreased, and that there had been a positive change in the
attitude of court staff toward users. The courts have been less than successful, however, in conveying these positive changes to the general public.

Observers believe that the public’s opinion of the courts appears to be slowly improving, but there is still a widespread perception that the courts are very slow, intimidating, easily influenced by the executive branch of the government, and often corrupt. Even the judges recognized that the perception of influence and corruption is a significant problem that must be addressed.

This is not an area where overnight change can be expected. It may well be generational. The negative perceptions are long-standing and rooted in the previous history of the judiciary. Perceptions are notoriously difficult to change. It is also expected that an increasingly better-educated and -informed population will have much higher expectations and be even more critical of the justice system.

**Conclusion:**

1. The public’s perception of the justice system is important, since the viability of the system depends on trust; the public will not use an institution it does not trust. It is necessary to reinforce judicial independence, ethics and competence, and to make the appointment and disciplining of judges more transparent to counter negative perceptions currently held about the judiciary.

2. The courts have to be more active in informing the public of their achievements, and court decisions need to be better understood by the public. This can only be achieved through closer work with the media and NGOs.

3. There is a need for civic education programs on the rule of law, rights, the independence of the judiciary, the role of judges and court process. NGOs could play a significant role in this respect.

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234 The perception of many government officials, however, is that courts are biased against the government.

235 Certain courts have an especially negative reputation, and people openly discuss the ‘starting rate’ of judges.
RELATED ISSUES

Two other issues – Social Courts and court effectiveness – need to be discussed, as they raise multiple issues of independence, transparency and accountability, but do not conveniently fall under any single indicator.

Social Courts\textsuperscript{236}

Social Courts were not within the purview of this study, but are mentioned here because they raise significant issues of independence, transparency and accountability, and influence public perception of the court system. They also present workload implications for the regular judiciary due to the availability of appeals to the First Instance/Woreda Courts. No one knows with certainty how many Social Courts there are in Ethiopia. In the SNNPR alone, it is estimated that there are more than 4,000 Social Courts. These courts are responsible mainly for small value cases,\textsuperscript{237} but also, in some regions, for petty criminal offences, land use and family cases.

Judges on Social Courts are appointed by Kebele Councils. In some areas, some of the judges are elected by the local population, while the chair is appointed by the Kebele Council. It is an understatement to say that Social Courts do not meet any of the standards for judicial independence, transparency or accountability. That said, Social Courts provide accessible justice services to probably the majority of the population, and divert from the courts a large number of cases that the courts would be unable to handle.

Social Courts are expected to render decisions that are in line with the law. Social Court “judges,” however, have neither legal training nor access to the law. Not surprisingly, many of their decisions are not in accordance with the law, and a large number of their decisions are appealed to First Instance/Woreda Courts. In some cases, a written decision is not even issued to the litigants, negating their appeal right. The jurisdiction of Social Courts is now being re-examined and restricted across Ethiopia\textsuperscript{238}.

There is general agreement that something needs to be done about Social Courts. Three possible solutions were suggested by the people we met. The first is simply to abolish Social Courts. This would create severe problems in terms of access to the justice system, especially in remote areas, and would choke the regular court system.

\textsuperscript{236} Also called Kebele Courts.

\textsuperscript{237} Usually cases where the monetary value is lower than 500 ETB in regions; the ceiling is fixed at 5,000 ETB in Addis Ababa.

\textsuperscript{238} Typically by removing their jurisdiction for land use.
The second option is to give Social Court “judges” some legal training and turn them into “real courts.” Given the major training challenges within the regular court system and the large number and low educational level of Social Court “judges,” this option is wholly unrealistic. The third, and most viable, option is to turn Social Courts into Alternative Dispute Resolution (ADR) bodies (covering mediation to voluntary arbitration) with a small claims court jurisdiction under the supervision of First Instance/Woreda Courts. Some regions are already moving in this direction with legislation; others are running ADR pilot programs at the village level with the Social Courts. For its part, the Ethiopian Arbitration and Conciliation Centre (EACC) has started to train Social Court “judges” in mediation and arbitration techniques, a most promising development.

Conclusion:

1. The reform of Social Courts should meet the dual objectives of ensuring accessibility of justice for the population and diverting the bulk of cases from the regular courts of justice. The idea of turning Social Courts into ADR bodies is promising. However, legislation by itself will not bring about the required change in focus and capacity in the Social Courts. Structured training, such as that dispensed by the EACC, and pilot programs are absolutely needed.

Court Effectiveness

At the end of the day, for the public, the best measure of justice is its effectiveness. Much of the focus of the reform until now has been on accountability and efficiency, and major progress has been achieved on those fronts. But progress in those areas will also end up highlighting problems of effectiveness. Several issues are being raised with respect to effectiveness: quality of decisions (decisions not following the law), predictability and consistency of decisions, enforcement of civil decisions, and system-wide problems in the criminal justice system.

The quality of decisions depends on several factors discussed earlier, such as qualification of judges, adequate pre-training and in-service training, and access to statutory law and case law. In addition, the predictability of judicial decisions would improve with more uniformity in the interpretation and application of law by judges of the

239 Proponents of this option also propose that these ADR bodies not be called “courts” and that the mediators/arbitrators not be called “judges.”

240 Harari State.

241 In Amhara courts.
various courts across the country. The adoption of the *stare decisis* rule is a good way to achieve more uniformity of interpretation and consistency in decisions, especially in a country as judicially decentralized as Ethiopia.\(^{242}\) The combination of cassation benches\(^ {243}\) and the common law rule of *stare decisis* in a legal system largely based on the civil law tradition do raise certain challenges. At this point, the legal community and many judges are of the view that the introduction of cassation benches, together with the introduction of the *stare decisis* rule, has not been wholly successful.\(^ {244}\) Uncertainty exists as to what is a fundamental error in law that would send a case to the cassation court and as to when the cassation court can vary from one of its previous decisions. These areas require further legal development and judicial training.

Some structural weaknesses of the justice system affect, in a major way, the effectiveness of courts as well as public perceptions of the integrity and functioning of the court system. With respect to civil justice, beyond enforcement issues discussed earlier, the lack of registry systems for marriages, births and land ownership needlessly clogs the courts with petitions for declaratory judgments. These cases, which may be totally dependent on oral evidence, are vulnerable to perjured testimony and provide fertile ground for corruption.

With respect to criminal justice, weaknesses in the areas of police investigations, prosecution of cases and evidence collection result in a very low rate of court convictions, minimal deterrent effect for the public, and poor perception among the population of the effectiveness of criminal courts.

**Conclusion:**

1. Part of the focus of court reform should now turn to the effectiveness of the judiciary.

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\(^{242}\) The *stare decisis* rule was adopted by law three years ago. Cassation decisions of the Federal Supreme Court now bind all lower courts.

\(^{243}\) At this point, the only cassation Bench is in the Federal Supreme Court; the law provides for cassation benches in every Regional Supreme Court, but they have not been established yet.

\(^{244}\) The Canadian Province of Québec provides an example of a successful integration of the *stare decisis* rule in a justice system based on the civil law tradition.
CONCLUSION

In 2003, the Baseline Study diagnosed the problems of the Ethiopian judiciary as follows: “low professional competence of judges and court staff, lack of continuous training of judges and staff, limited independence of judges, lack of systems to hold judges accountable for misconduct, poor systems for case management and other aspects of court management, limited access by courts to legal information, limited access by the public to court judgments and court information, little knowledge of the justice system by the general public, little access of the public to justice and, hence, very limited confidence of the general public in courts.”

Compared to the situation of five years ago, we can conclude that progress has been made on almost all of the indicators applied in this study, and there has been noteworthy progress in improving efficiency, court management, accountability, and the qualifications of court staff and judges. In many ways, the judiciary is now ahead of other areas of the justice system. This is appropriate, since the judiciary should be playing a leadership role with respect to justice sector reform acting as a role model for other justice sectors and ensuring the integrity of the system through this period of change.

There are, however, still important gaps to be addressed in terms of independence, transparency, accountability, competency, efficiency, effectiveness and resourcing.

With respect to court reform, the 2004-2008 federal JSRP focuses on modernizing the filing system, implementing database case management systems, case recording and transcribing systems, establishing information counters for the public in courthouses, establishing local area networks (LANs) and a Wide Area Network (WAN) for the courts, improving the production of court orders and decisions, establishing a judicial training centre, and providing training for the judiciary and court staff. The Regional States’ Public Sector Capacity Building Plans (RPSCAP) focus on largely the same issues. As discussed earlier in this study, significant results have been achieved

245 Baseline Study, p.125.
247 Statute consolidation and review of legislation to ensure compatibility with the Constitution and strengthening of legal education in law schools are also included in the JSRP.
248 For example the RPSCAPs of the Benishangul-Gumuz, Gambella, Oromia and Tigray regions.
under the JSRP, but as it stands the JSRP is not adequate to address the gaps identified in this and previous studies.

The Rule of Law requires competent, impartial and accountable courts. Judicial independence and accountability are best achieved with high-quality appointments and training. Neutral, competent judges – appointed on merit and provided with the requisite skills through training and the tools required to do their work – are the best rampart against influence and corruption, and also the best guarantee of effectiveness of the courts and public confidence in the justice system.

In our view, some areas stand out for emphasis in court reform in the next few years:

- The commendable effort of the last few years to improve the competency of the judiciary and upgrade its qualifications must be continued, with special attention given to lower courts. There is a pressing need to develop and deliver training programs for both new judges and sitting judges, focused on the acquisition of judicial skills and attitudes. Practical ethics training needs to be developed and made compulsory for all judges.

- Additional progress needs to take place in the proper understanding of and respect for the principle of **judicial independence**, both by judges and by the executive. The JACs – federal and state – as the key institutions of judicial independence and **accountability** need to be strengthened in their operational capacity, made more transparent in their work and procedures and, in some cases, made more independent in their decision making.

- **Court administration** reform initiatives have been highly successful. They have resulted in better accountability, important efficiencies, improved personnel capacity and better **service to the public** in the courts where they have been implemented. Court administration reform now needs to be further implemented in lower courts.

- The **First Instance Courts** and especially Woreda Courts need to be better supported in terms of access to law, judicial training, facilities and working conditions.

- Court reform must have an increased **focus on effectiveness** including the quality of decisions and the uniformity and predictability in the application of the law.

The suggested priorities are a continuation of the initiatives undertaken under CAR and the JSRP. Appropriate activities could be integrated in the next Justice System Reform Program plans at the federal and state levels.
A detailed list of the recommendations by indicator follows. These indicators are believed to best facilitate the development of an independent, transparent and accountable judiciary. As mentioned earlier, the indicators have strong links to each other and many of the recommendations naturally overlap. They will be consolidated in the Action Plan.

Recommendations are, by necessity, made at a general level. They are not meant to infer that no efforts have been expanded or progress been made in these areas, but rather that there is a need for further strengthening in some or all of the courts.
DETAILED RECOMMENDATIONS

**INDICATOR 1: Constitutional or legal provisions mandating the clear separation of powers between executive, legislative and judicial branches of government, and the independence of the judiciary**

1. The independence of courts is adequately recognized and protected in the Ethiopian Constitution and the various laws concerning the judiciary.

2. In practice, progress remains to be made in the understanding of, and respect for, judicial independence. Awareness training of officials at all levels, and of legislators, should be pursued. The judicial education curriculum should include courses that help judges understand, in practical terms, how to protect judicial independence, exercise it properly as well as understand the accountability that comes with it.

3. JACs need to play a key role in guarding judicial independence. Strengthening JACs will support robust judicial independence as well as judicial accountability.

**INDICATOR 2: Judicial powers to review the constitutionality of legislation and administrative actions of government, and for courts to determine their own jurisdiction in accordance with legal standards**

1. The courts have the power to interpret the legislation to decide if they have jurisdiction. This is in line with international standards.

2. There is a need for at least clarifying the role of the courts in applying constitutional principles established by the HoF and deciding on the legality of rules, orders, regulations and actions of the executive.

3. The judiciary needs training in the application of constitutional law.

4. The development of a coherent body of precedents and scholarly commentaries on constitutional interpretation should be encouraged, with a view to developing a set of constitutional principles that would guide the courts, as well as the legislative and executive powers. This would be helped by the HoF issuing clearly articulated decisions along the model of court decisions. A good first step would be for the HoF to publish a journal of its decisions.
5. It may be appropriate at some point to review how the existing process of constitutional review is working out, including the processes followed by the CIC and the HoF to determine if, in practice, international standards are being met; if the courts, the legislature and executive are receiving the guidance they need on issues of constitutional interpretation; and if citizens’ rights and freedoms guaranteed under the constitution are fairly and efficiently addressed by this process.

**INDICATOR 3: Judicial jurisdiction over civil liberties and remedies**

1. The Constitution and the international conventions on human rights incorporated into the domestic laws of Ethiopia provide a proper framework for the protection of fundamental rights.

2. The powers of the courts to decide cases regarding the rights and liberties of citizens, and to apply international human rights treaties that have been incorporated in domestic laws by ratification, are in line with international standards. However, in practice, uncertainty of the courts as to their jurisdiction, unfamiliarity with the provisions, and difficulty in accessing the ratified treaties have resulted in infrequent application of human rights principles. Judges recognize that the respect of the courts for human rights provisions is essential for the public to have confidence in the judiciary. There should be clarification on the application of human rights principles and training for the judiciary.

3. The international conventions ratified by Ethiopia should be accessible to all judges through publication.

**INDICATOR 4: Judicial powers relating to contempt/subpoena/enforcement**

1. In terms of judicial powers, all the basics of an appropriate legal framework are in place to support the effectiveness of the courts including subpoena, contempt and enforcement powers.

2. The problems experienced in bringing people to court in criminal cases and of enforcing decisions in civil cases are attributable to lack of appropriate process, resources and capacity more than to any deficiencies in the law or court powers. They need to be addressed to improve public confidence in courts. Improved case flow management and appropriate databases would also help.

3. There should be executive offices at least at the Zonal Courts level.
4. The work started under CAR II should be pursued and extended to other courts. Improved case flow management and appropriate databases could contribute significantly to streamlining the enforcement of court decisions.

**INDICATOR 5: System of appellate review: judicial decisions may be reversed only through the judicial appellate process**

1. Ethiopia has a well-structured appellate system to review court decisions. Judicial decisions can only be reversed through the appellate process on grounds set by law. This fully meets the international standard.

2. International experience suggests that the legal filters regulating the right of appeal could be reviewed to see if they provide an adequate balance between preventing a multiplicity of appeal recourses over minor issues, which can overburden appellate courts and paralyse the judicial process, and the need to ensure a robust right to judicial review.

**INDICATOR 6: Some measure of judicial self-administration, particularly in relation to judicial functions such as case assignment**

1. Structurally, Ethiopian courts have the self-administration powers required for independent functioning with regard to judicial functions, such as case management, case assignment and scheduling. What they are often lacking are the resources to self-administer effectively.

2. A well-functioning JAC system is essential for ensuring judicial independence, and a competent, ethical and effective judiciary. As an institution, the system needs to be strengthened in its operations, made more transparent in its work and procedures and, in some cases, made more independent in its decision making. Allowing judges to elect some of the judicial members on JAC from a short list of candidates selected by the JAC Chair on the basis of their experience, reputation and ethics would go a long way toward building trust within the judiciary.

3. Court Presidents must be careful about how they exercise their power to assign cases or to sit on a bench taking care that no perception of partiality or influence ensues.
**INDICATOR 7: Judicial input into budgetary decisions and judicial control over allocated funds**

1. Where they are resourced through pool budgeting or a similar system, Woreda Courts should be taken out of the pool, since this is not compatible with the independence of the judiciary or the requirements of the Constitution. Their budget should be presented by the Supreme Court to the Regional Council, along with the budget of other courts.

2. Yearly budget allocations that courts could freely draw on, with appropriate financial controls, would be highly desirable in terms of independence and efficiency. Moving to at least quarterly or better biannual distribution of court budgets would allow for more efficient court management and provision of service to the public.

**INDICATOR 8: Guaranteed tenure of judges and heads of court**

1. The protection of judicial tenure in the provisions of the Constitution and in regulations is in line with international standards. It is important that both the letter and the spirit of those guarantees be respected in practice.

2. The role of Court Presidents as head of courts should be clarified and their tenure designed in a way that is fully compatible with the independence of the judiciary.

3. Stability in court leadership is an important success factor in implementing broad and challenging reforms, such as reform of the courts.

**INDICATOR 9: Qualified judicial immunity and independent judicial association**

Two measures would further strengthen judicial independence:

1. A limited criminal procedural immunity – no judge could be charged without JAC’s involvement unless the judge was caught red-handed – with appropriate criteria and procedures for JACs and reporting to Parliament on these cases.

2. An independent judges’ association to represent the interests of the judges and contribute to strengthening judicial independence and ethics, and fostering in the public a better understanding of the role of the judge.
**INDICATOR 10: Adequate salaries and benefits, and an adequate process to set them**

1. JACs are an appropriately independent mechanism to determine judicial salaries and benefits.

2. There is a pressing need to improve the job satisfaction of judges. Compensation and working conditions need to be improved in most courts to attract the best candidates and to foster the retention of a qualified, experienced and stable judiciary. In particular, benefits and working conditions for Woreda Court judges should be examined.

**INDICATOR 11: Adequate judicial working conditions, including adequate court support staff, resources such as technology, and adequate security**

1. In recent years, a sizable investment has been made by federal and state governments, as well as by donor countries, in modernizing the court system. However, the workload of the courts has grown much more rapidly and there is still much to be done to create a truly accessible and effective judicial system. To yield the results the government is looking for in terms of efficiency and effectiveness of the courts, and public satisfaction, the effort has to be sustained over a much longer period of time.

2. Appropriate court facilities and equipment are required to provide efficient and quality justice. Priority for resources should be given to First Instance/Woreda Courts at this point. This is where the resource problems are most acute and where improvements will be most perceptible to the public.

3. At this point, judges’ security within court precincts appears to be adequate.

4. Court staff with the right skill sets and attitudes are vital to efficient and effective court services. There should be a human resources planning and performance evaluation system for court staff that truly meets the needs of the courts. Structured training of staff should be a system-wide priority.

**INDICATOR 12: Access to law and case law – adequately resourced court libraries and updated legal texts**

1. Access to the law is fundamental and needs to be addressed if the quality of decisions is to improve.
2. Access to law and case law through the internet will, in the future, be the most effective and cost efficient way to provide access to all courts. Access to international electronic law libraries would be of great value to courts with good access to the internet. However, given the current state of the technology infrastructure and the number of courts that have limited or no access to the internet, some other temporary solution must be implemented. At this point, basic access for all courts to updated laws should be the priority. A possible solution, as an alternative to paper distribution, could be to maintain an updated electronic version of main laws at the federal and state levels, and to make it accessible to the judges on compact disc (CD).

**INDICATOR 13: Sufficient judicial positions created as needed, and filled in a timely manner**

1. Initiatives to generate efficiencies and productivity gains should be pursued to manage the increasing caseload.

2. Recruitment/sponsoring programs have been effective at providing qualified candidates for appointment and should continue wherever there is a shortage of candidates.

3. JACs’ selection processes and secretariat support resources should be studied to see if their effectiveness could be improved.

**INDICATOR 14: Objective, merit-based process for selection of judicial trainees or judges – appropriate gender and minority representation on courts**

1. The selection process is insufficiently transparent and lacking in opportunities for outside input, and the applicable criteria are too broad and general to ensure objective and merit-based appointments. The appointment process itself, and the perception of independence and competency of the judiciary would be improved if the process were made more transparent. We found the judicial community to be generally in agreement. At a minimum, clear selection criteria and procedures should be made public, and vacancies should be advertised by posting in courthouses and law schools.

2. Experienced law practitioners should be invited to apply for positions.

3. Now that there is a much broader pool of qualified candidates to choose from, the JACs should implement a rigorous and transparent process to ensure that the most meritorious candidates are selected.
4. An entrance exam would help screen candidates and contribute to the objectivity and transparency of the appointment process. Interviews with the top candidates would allow the JAC to assess more effectively the motivation, attitudes and personal suitability of candidates for joining the judiciary.

5. Further transparency could be achieved by making public the names of the nominee(s) before they are ratified by Parliament.

6. The legal qualifications of the selected candidates for the Bench have been going up in the last few years, but overall they remain substantially below international norms. Strengthening legal training in universities is important to ensure a future pool of well-qualified candidates for the Bench.

7. Balanced gender and minority representation is far from being achieved, but progress is being made. Affirmative action goals are properly considered by JACs in making selection decisions. However, the shortage of qualified women and minority groups’ candidates remains a problem in several regions. Quite properly, affirmative action criteria are in place that allow for flexibility on legal requirements. This flexibility has to be combined with programs to sponsor legal education, as well as pre-training and in-service training for members of underrepresented groups in order for them to attain appropriate representation as quickly as possible, while contributing to the general strengthening of judicial qualifications.

8. Relevant statistics should be compiled on the legal qualifications of the judiciary at the national level.

**INDICATOR 15: Transparent, objective and merit-based criteria for advancement; transparent, objective criteria for transfers**

1. For greater accountability, grade promotion or appointment to a higher court should be linked to the overall performance of a judge. To ensure the fairness, transparency, and integrity of the promotion process, clear procedures and criteria for performance evaluation and for merit-based promotions need to be established. The current work in several courts to define performance evaluation criteria and process should be continued, and efforts made to come up with shared national standards.

2. Clear, objective criteria and transparent processes are needed to ensure fairness in transfers. Arbitrary transfers without the judge’s consent can undermine judicial independence. The consent of the judge should be sought for a transfer to different functions or court location. Administrative reasons to transfer a judge
without his/her consent, which should be very few, need to be clearly spelled out in the JAC’s rules and communicated to the judge.

**INDICATOR 16: Training (pre-service and in-service) in substantive and procedural law, judicial skills and the judicial role**

1. Judicial training should continue to be a major priority, if not the major priority for the Ethiopian government and the donor community.

2. The establishment of training centres is a considerable accomplishment that needs to be nurtured, strengthened and sustained.

3. Judicial candidates should all successfully complete judicial centre training before being appointed.

4. Training should be made much more available to First Instance/Woreda Court judges since they generally start out less qualified than their colleagues on the higher courts. This may be more easily achieved through strengthened regional training centres.

5. There is a need for training on new procedural and substantive laws, in addition to refresher courses on evidence law, administrative law, family law, human rights law, and on the application of international conventions.

6. More work is required to ensure that the pre-service and in-service curriculum truly meets the needs of future judges and sitting judges, especially in the areas of judicial practice, skills, ethics and behaviour.

7. Judges should lead the development of the curriculum, be a major part of the teaching, and be committed to learning the skill of good judicial education and in this way contribute significantly to the development of a strong culture of integrity and professionalism across the courts of Ethiopia.

8. Some of the training programmes’ focus needs to shift to the development and delivery of in-service training where there is a great need.

9. The establishment of regional training centres is a good development in terms of accessibility, but it requires strong coordination to ensure common direction and content. The FJOPTC should play a leadership role in needs-based curriculum research and development.

10. There should be compulsory in-service training for newly appointed judges for their first five years on the Bench.
11. Judges should be accountable for achieving and maintaining an appropriate level of professional knowledge.

12. A formal mentoring programme for newly appointed judges should be instituted.

**INDICATOR 17: Mechanisms to ensure independent decision making without undue influence by judicial actors or from individuals/bodies outside the judiciary**

1. The legal framework provides the required guarantees for judicial independence. In practice, judicial independence has improved substantially, but still needs to be strengthened in several ways. Proper understanding of judicial independence and how to exercise it and protect it in practice should be part of the pre-training and in-service curriculum of judicial training centres.

2. The principle of judicial independence needs to be better understood by the executive at all levels, and with special emphasis at the local level where it is weakest.

3. A judge experiencing interference will normally bring it up to the President of his/her court, who will intervene appropriately. An alternative avenue should also be provided for the judge to complain about lack of independence to the President of the Federal or Regional Supreme Court, who assumes overall responsibility for the functioning of all the courts.

4. With respect to corruption, the overall situation is reported to have improved in the last few years due to a variety of measures that have been put in place. Various codes of discipline and ethics of the courts are in place clearly and specifically prohibiting conflicts of interest, the use of judicial power for personal gain, a judge receiving directly and indirectly a bribe, payoffs, gifts or any other form of benefit from litigating parties or any person serving as a go-between. Corruption is grounds for dismissal, and several judges have actually been dismissed. As an added penalty, dismissed judges cannot get licensed as lawyers by the Ministry of Justice.

5. Eliminating corruption in the courts starts with the appointment of judges with impeccable ethical backgrounds. As long as considerations other than merit and reputation play a role in appointments, there is a risk of obtaining less-than-ethical judges.

6. Salaries, benefits and working conditions of judges have to be adequate to ward off the temptation of corruption
7. Judicial trainees and sitting judges must receive appropriate and practical training on ethics by experienced, credible judges. Confident judges with pride in their function are less vulnerable to corruption.

8. Court staff need to receive ethics training; effective mechanisms should be established to identify instances of staff corruption and provide swift discipline.

9. The re-engineering of court processes should include the removal of opportunities for corruption in court work practices.

10. Ethical behaviour in the legal community needs to be reinforced. Training should be provided in law schools on the ethical practice of law, and bar associations should be involved in corruption prevention activities. Lawyers involved in corruption of the courts should not have their licence to practice renewed.

11. Rules should be established to regulate the situation of former judges practicing law. Former judges should not be allowed to practice before the courts in the jurisdiction they served in for at least two years, and should permanently be prohibited from arguing a case before a former colleague.

12. Signs in courthouses should make clear that bribery is an offence, that everyone has a right to a fair hearing without bribes, and that they are invited to denounce any situation amounting to bribery.

**INDICATOR 18: Code of conduct or ethical principles; training in judicial ethics and judicial conduct; clear and enforced conflict of interest rules**

1. All judges should be supplied with their own copy of the codes of discipline, conduct and ethics, as required.

2. Ethics training should be developed to address the practical issues faced by the judiciary and made compulsory for judicial trainees and judges.

**INDICATOR 19: Established disciplinary criteria and process administered by an independent or judicial body**

1. The formal discipline process under the JACs’ authority is sound and meets international criteria for judicial independence. More transparency in its criteria and process, including during the initial processing of complaints, is needed. Detailed disciplinary codes should be developed where they are not in place.
2. Long delays in processing complaints can undermine the credibility of the complaint process. Delays could be improved by giving the courts, especially lower courts, the power to solve minor disciplinary matters such as habitual lateness, minor disrespectful comportment with witnesses or granting too many adjournments. These kinds of behaviours have an impact on public perceptions of the courts and need to be addressed through a disciplinary process. However, JACs’ time should be focussed on more serious disciplinary complaints. A study should be conducted to determine what would be an appropriate, fair and transparent but speedier process at the court level to deal these minor disciplinary issues.

**INDICATOR 20: A formal public complaint process against judges**

1. A complaint process is available to the public, but it needs to become better known. One of the most important safeguards of judicial integrity is an informed public. The public needs to be educated about its right to complain and about the process that is then followed.

2. All complaints against judges or court staff should be processed. It is believed to be mostly the case right now. Those who file complaints formally or informally, if they can be identified, should be advised of the result.

3. Dismissal of judges should be publicized.

**INDICATOR 21: Standard judicial workloads; standard time frames for judicial procedures; efficiency measures**

1. The progress achieved in the last few years in terms of court efficiency and related accountability is considerable. The work of convincing judges of the need for transparency and accountability has largely been accomplished. Judges understand and support these goals.

2. However there is still considerable work to be done to train and equip the judges to meet ever-increasing caseloads and to apply the law effectively. Further efficiencies could be achieved but are dependent on having enough judges who are properly trained, in addition to qualified court staff and appropriate equipment.

3. Courts’ efficiency and effectiveness cannot be achieved without the involvement of other players, including lawyers, prosecutors and the police. In most regions, there is now more structured dialogue between the judiciary, prosecutors and the police on criminal justice issues. Consultation with the Bar and legal scholars has been less
successful, partially for lack of organizational capacity on their part, but efforts should be renewed. Further reforms, especially procedural reforms, should involve as many stakeholders as possible by means of effective consultations.

**INDICATOR 22: Open public hearings, with limited exceptions set out in legislation; court monitoring by NGOs, academics and the media**

1. Major progress has been made with regard to the transparency of the court process and accessibility of information to litigants and the public. Information on case status to litigants is now meeting international norms.

2. The major obstacle to meeting the international norm on open court hearings is the lack of adequate court buildings. This involves a major capital expense and will not be solved overnight. New court facilities need to be planned for almost all regions of Ethiopia. The need is most acute at the first instance level.

3. The media need to play more of a role, both in scrutinizing the work of the courts and in helping the public understand and value the justice system. The establishment of well-structured media programs, including media training and appointing a court media officer or a press judge, should be encouraged. Several of the benchmarked countries have well-structured court programs for the media that could be of use to Ethiopia.

**INDICATOR 23: Public accessibility/availability of judicial decisions, including reasons**

1. Access to court decisions needs to improve.

2. The intelligibility of decisions needs to improve as well. The establishment of writing standards and broadly offered training in judgment writing is recommended.

3. Partnerships should be established with law schools to promote a practice of scholarly commentaries of key decisions and the building of a robust jurisprudence.

**INDICATOR 24: Maintenance of trial record; recording of proceedings**

1. Transcription machines should be rolled out to all the courts as budgets and facilities permit.
2. Staff must be trained in using this technology.

**INDICATOR 25: Proper case and records management, including case filing and tracking systems**

1. The introduction of modern court and case management systems at the national level has been successful, and the results in terms of court productivity and transparency are impressive. They need to be fully extended to all courts, with adequate budgets and equipment, to make it sustainable.

2. Staff training needs to be a priority.

**INDICATOR 26: Court organization and procedures that are transparent and comprehensible to the public – the public has access to free information on the functioning of courts**

1. Progress has been achieved under the CAR project, which needs to be pursued with the development of appropriate material to explain the court process to the public; the development of standard templates to present an application to the court; and further training of information desk staff.

**INDICATOR 27: Public access to free information about basic rights and laws**

1. Radio and television broadcasts about the courts, the legal system and rights should be encouraged.

2. Bar associations and NGOs should be engaging in public legal education to a greater extent.

3. Basic notions about the justice system should be part of the school curriculum.

**INDICATOR 28: Opportunities to obtain feedback from stakeholders of the justice system and the general public**

1. There has been progress in obtaining public feedback. Courts now understand that they are at the service of the public and that independence does not mean lack of dialogue with stakeholders. Suggestion boxes are good, but cannot replace more structured feedback mechanisms.
2. More regular and structured meetings with key justice system stakeholders, including relevant NGOs, should take place.

3. Public surveys should be conducted periodically as a tool to improve service and measure progress.

**INDICATOR 29: Maintenance of judicial statistics; court reporting on performance; judges’ performance evaluation**

1. The requirements for courts to report on performance are fully in line with, and may well exceed, international standards. Courts now have the technology to generate reliable statistics on their functioning. However national statistics about the judiciary could be strengthened to help measure progress in the future are surprisingly not readily available in a number of areas.

2. The fact that the judiciary sees the need for performance evaluation as a measure of accountability is indicative of an important change in mindset. Effective performance evaluation will contribute to improving the quality and accountability of the judiciary.

3. Objectivity, fairness and transparency of the process are critical. The approach and tools have to be considered carefully so as not to encroach on judicial independence. The quality of decisions, integrity, diligence and professional comportment of judges should be taken into account, along with efficiency of case processing. The judge should be given the opportunity to participate, be given feedback and challenge the result.

4. The President of the Court would be a key player in any performance evaluation, but the process should also allow for other sources, such as appropriate input from peers, the Bar and the public to ensure transparency, balance and fairness. The judge should be involved in the evaluation process,

5. There is currently a great deal of activity to develop processes and criteria in several courts. Performance evaluation should be in place in the near future, preferably with consistency across the country. Conducting pilots is recommended.

**INDICATOR 30: Public perception of the courts as impartial and accountable**

1. The public’s perception of the justice system is important, since the viability of the system depends on trust; the public will not use an institution it does not trust. It is necessary to reinforce judicial independence, ethics and competence, and to
make the appointment and disciplining of judges more transparent to counter negative perceptions currently held about the judiciary.

2. The courts have to be more active in informing the public of their achievements, and court decisions need to be better understood by the public. This can only be achieved through closer work with the media and NGOs.

3. There is a need for civic education programs on the rule of law, rights, the independence of the judiciary, the role of judges and court process. Reputable NGOs within the justice sector could play a significant role in this respect.

Related issues

1. The reform of Social Courts should meet the dual objectives of ensuring accessibility of justice for the population and diverting the bulk of cases from the regular courts of justice. The idea of turning Social Courts into ADR bodies is promising. However, legislation by itself will not bring about the required change in focus and capacity in the Social Courts. Structured training, such as that offered by the Federal Ethics and Anti-Corruption Commission. Pilot programs are required.

2. For the public, the best measure of justice is its effectiveness. Much of the focus of the reform until now has been on court administration, accountability and efficiency, and major progress has been achieved on those fronts. Several issues are being raised with respect to effectiveness such as the quality of decisions (decisions not following the law), the predictability and consistency of decisions, enforcement of civil decisions, and system-wide problems in the criminal justice system. Part of the focus of court reform should now turn to the effectiveness of the courts.
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### LIST OF ACRONYMS

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tr>
<td>ABA</td>
<td>American Bar Association</td>
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<tr>
<td>ADR</td>
<td>Alternative Dispute Resolution</td>
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<tr>
<td>CAR</td>
<td>Court Administration Reform</td>
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<td>CIDA</td>
<td>Canadian International Development Agency</td>
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<td>CILC</td>
<td>Center for International Legal Cooperation</td>
</tr>
<tr>
<td>CSC</td>
<td>Civil Service College</td>
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<td>CCI</td>
<td>Council of Constitutional Inquiry</td>
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<tr>
<td>EPRDF</td>
<td>Ethiopian People’s Revolutionary Democratic Front</td>
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<tr>
<td>FJAC</td>
<td>Federal Judicial Administrative Council</td>
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<tr>
<td>FJOPTC</td>
<td>Federal Justice Organ Professionals Training Centre</td>
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<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
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<tr>
<td>HoF</td>
<td>House of Federation</td>
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<td>HoPR</td>
<td>House of People’s Representatives</td>
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<tr>
<td>HDI</td>
<td>Human Development Index</td>
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<td>IT</td>
<td>Information Technology</td>
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<td>JAC</td>
<td>Judicial Administrative Councils</td>
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<td>JLSRI</td>
<td>Justice and Legal System Research Institute</td>
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<td>JSRP</td>
<td>Justice System Reform Program</td>
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<tr>
<td>MoCB</td>
<td>Ministry of Capacity Building</td>
</tr>
<tr>
<td>MoJ</td>
<td>Ministry of Justice</td>
</tr>
<tr>
<td>NJI</td>
<td>National Judicial Institute (Canada)</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
</tr>
<tr>
<td>PASDEP</td>
<td>Plan for Accelerated and Sustained Development to End Poverty</td>
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<tr>
<td>PSCAP</td>
<td>Public Sector Capacity Building Action Plan</td>
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<tr>
<td>SNNPR</td>
<td>Southern Nations, Nationalities and People’s Region</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
</tr>
</tbody>
</table>
Appendix B

COURTS, INSTITUTIONS AND OTHER BODIES CONSULTED

Addis Ababa City Courts
Amhara Region Justice Bureau
Amhara Region Supreme Court
Awassa City Courts
Bahir Dar City Woreda Court
Benishangul-Gumuz Assosa Woreda Court
Benishangul-Gumuz Bombase Woreda Court
Benishangul-Gumuz High Court
Benishangul-Gumuz Justice Bureau
Benishangul-Gumuz Supreme Court
Central Zone-Mekele High Court
Ethiopian Arbitration and Conciliation Centre
Ethiopian Women Lawyers Association
Federal Court of First Instance
Federal High Court
Federal Justice and Legal System Research Institute
Federal Justice Organ Professional Training Centre
Federal Ministry of Capacity Building
Federal Ministry of Justice
Federal Supreme Court of Ethiopia
Gonder City Woreda Court
Harari Region First Instance Court
Harari Region High Court
Harari Region Justice Bureau
Harari Region Supreme Court
Harari Region Women’s Bureau
North Gonder High Court
Oromia Region Supreme Court
Sidama Zone High Court
Southern Nations, Nationalities and People’s Region High Court
Southern Nations, Nationalities and People’s Region Lawyers Association
Southern Nations, Nationalities and People’s Region Supreme Court
Tigray Region Supreme Court
West Gojjam High Court
West Shoa Zone High Court
Wolaita Zone High Court
Woqro Woreda Court
HARARI REGION COURTS QUESTIONNAIRE

As part of the Justice System Reform Program, the government of Ethiopia and the Federal Supreme Court of Ethiopia have asked Canada to conduct an assessment of the independence, transparency and accountability of the judiciary, to propose an action plan, and to suggest an approach to judicial performance evaluation.

In the context of this study, we have conducted interviews with presidents of the Harar courts and with several judges. It was suggested that to get an accurate and complete picture of the situation, we should seek the views of all the judges of Harar courts through a questionnaire. Thank you very much for your participation. All questionnaires will be anonymous and treated confidentially. Only the aggregated results will be published in the study.

Andrée Delagrange
National Judicial Institute

Background
- Court / courts in which you are serving / have served?
- Your age?
- How long have you been a judge?
- What level of legal qualifications did you have on appointment?
- Have you upgraded your qualifications after becoming a judge? Please give details.

Training Needs
- When you were appointed a judge, did you feel you had the requisite legal knowledge and judicial skills to do a good anything, what were you missing?
- Given the opportunity, would you want to upgrade your legal qualifications? Please give details.
- Have you received in-service training (usually for short periods) since you were appointed a judge? (Please give details.) What training was most useful to you as a judge?
- What training would be the most useful for you at this point?
  - Areas of law (procedure, Criminal Code, etc.). Please give details.
  - Judicial skills (judgment writing, courtroom management, interrogating witnesses, weighing evidence, judicial behaviour, etc.). Please give details.
  - Judicial ethics, judicial behaviour
Salaries and benefits

- Do you feel the current salary range and benefits for judges is adequate to attract and retain good judges, and commensurate with the responsibilities of the job?

Judges’ selection and appointment process

- In your view, is the current process to select and appoint judges sufficiently transparent and objective? If not, how it could be improved?
- Does it result in the appointment of the best candidates to the court? If not, please provide reasons.

Promotion /Evaluation of judges’ performance

- You are no doubt aware of the draft criteria for the promotion of judges in the Harari region. Do you think the application of these criteria will result in fair and transparent promotions?
  - Do you have any concerns about the proposed criteria?
  - There are draft criteria for evaluating judges’ performance. Are the criteria the right criteria for accountability?
- Is the proposed process fair and transparent enough?
- Does it respect the principle of judicial independence?
- Who / what sources should contribute to judges’ performance evaluation?
  - The President of the court only?
  - The presiding judge of the bench?
  - Colleagues of the court?
  - Prosecutors and lawyers?
  - The general public through their comments and complaints?

Improper Interference

- Were you ever offered a bribe directly or indirectly by a litigant to influence the outcome of a case before you? How did you deal with the situation?
- Did you ever experience direct or indirect attempts by the officials in the Executive to influence the outcome of a case? If yes, please give details.
- Did you ever experience pressure from colleagues, or from the President or Vice-President of your court or of another court to influence the outcome of a case before you? If yes, please give details.
Other

• In your view, what other measures should be put in place to improve accountability, transparency and independence of the courts, and to lead to improved public perceptions of the courts?
• Do you have any other concerns about your duties as a judge or about your career?
• Any other comment you would like to make?