

Rule of Law Toolkit

Chapter 4

Judicial Independence

Facilitator's Notes

Target Audience: High School Students; University Students; Law Students; New Lawyers
Estimated Time: 2.5 hour

Description of Section

Participants will be asked to think about judicial independence and its importance to the rule of law. The following major themes will be discussed:

- The importance of judicial independence;
- The two main types of judicial independence;
- The types of bodies that monitor the judiciary; and
- The importance of safeguarding judicial independence.

Key Learning Objectives

Participants will:

- Define the term “judicial independence.”
- Identify types of judicial independence.
- Understand the importance of the separation of powers and the role of the judiciary.

Glossary of Terms

- **Rule of Law:** A general legal concept according to which all laws and legal decisions are enforced applied equally to all persons, without any discrimination.
- **Decisional Independence:** A type of judicial independence that refers to the freedom of the judiciary to make court decisions based solely on the facts of the case before them, without influence or pressure from others, including members of the executive or legislative branches of government.
- **Institutional Independence:** A type of judicial independence that stresses that the judiciary should be entirely self-governing. It should have complete financial and administrative separation from the executive and legislative branches of government.

Handouts

Handout I: Background Paper on Judicial Independence

Handout II: Summary of the International & Regional Judicial Independence Legal Framework

Handout III: Beirut Declaration for Justice

Handouts should be provided to participants prior to meeting as a group. The Background Paper will not be discussed in detail, but will be used as a frame of reference for discussions and group activities.

Rule of Law Toolkit
Chapter 4
Judicial Independence

Rule of Law Toolkit

Chapter 4

Judicial Independence

Introductory Activity: Brainstorm the Characteristics of Judicial Independence

Explain the goals of the brainstorming session first: “The goal of our brainstorming session is to define judicial independence. What are the characteristics of judicial independence?” Divide participants into small groups.

Q: Ask the groups to imagine that they are nominating a judge for an award for professional excellence. Name the qualities and characteristics that this person should have.

Articulate this task in full to the group and then note it down briefly as a title on the blackboard or sheet of paper. Emphasize that after completing this discussion, each participant will have a chance to discuss any comments, and that the process of brainstorming is intended to generate as many ideas as possible, not to evaluate their quality. It is important to mention time limits, so that the groups know how long they have to accomplish the process. All ideas should be noted down in the same words as articulated by the participants.

After brainstorming, articulate and discuss each idea. If at some point the group stops generating new ideas, you may facilitate by adding recommendations or comments. As a group, the participants should vote on what they believe are the three most important characteristics of judicial independence.

Emphasize that both *decisional* and *institutional* independence is necessary in order for judges to successfully perform their jobs. Review these two terms as they are defined in the Glossary. At this time, briefly summarize the content of Handout I and ask students if there are any questions about the material.

Conclude the brainstorming session by asking participants to consider how judicial independence and the rule of law are related to each other.

Pose the following Question:

Which Rule of Law Elements are related to Judicial Independence?

Possible answers include: fairness; equality; protection of human rights; openness and transparency.

Rule of Law Toolkit

Chapter 4

Judicial Independence

Activity 1: Breaches of Judicial Independence

Step 1: After participants have brainstormed the characteristics of a “good and fair judge,” the facilitator should then ask them to consider the following scenarios. Read each scenario aloud to the group, and ask participants to state whether this scenario influences judicial independence and how the judge should react. Consider the qualities of high quality judges mentioned earlier. What should a judge do to avoid an ethical violation and remain independent?

Statement	Appropriate impact on a judge?
Criticism of a judge's decision in a newspaper editorial	A judge should not be swayed by popular opinion and must be willing to pass down an unpopular ruling.
The Minister of Justice removes a judge from his post	This undermines the institutional independence of the judiciary.
People picketing in front of the judge's house to protest a decision	A judge should not be swayed by popular opinion and must be willing to pass down an unpopular ruling.
A friend approaches a judge at a social gathering and comments on a case before the judge	A judge should not speak about matters before the court, nor should a judge allow others' comments to interfere with the facts of a case. Judges must remain unbiased.
A close relative approaches a judge at a social gathering and urges the judge to decide a pending case in a certain way	A judge should avoid any bias, as well as the <i>appearance</i> of bias. A judge should never allow family relationships to influence a decision. Judges should seek recusal from cases where their objectivity may reasonably be questioned.
The legislature passes a law saying that courts can no longer review certain laws	This undermines the institutional independence of the judiciary and poses a grave threat to one of the primary roles of judges.

Step 2: Ask and discuss the following questions:

- What are the threats to judicial independence in your country? Do external persons or institutions attempt to influence judicial decision-making?
- Do you believe judges are influenced in this way?
- How does external influence, or the perception of external influence, impact public perception of the judiciary?

Rule of Law Toolkit

Chapter 4

Judicial Independence

Activity 2: How Judicial Decision-Making Can Be Influenced

Step 1. Divide the participants into four groups. Ask each group to review the 2 scenarios below. Use the questions to guide the group's discussions.

Scenario 1

Members of a political party place pictures of their party leader on the wall of the courthouse. There are currently no cases before the court involving members of the political party. The Chief Judge does not publicly endorse the party but chooses to do nothing about these pictures. The pictures remain on the wall.

1. What issues of judicial integrity and independence are raised in this scenario?
 - a. Would your response be different if there was currently a case before the court involving members of the political party?
 - b. Would your response be different if this was a poster of a local militia leader and members of the court had received death threats from the militia?
2. Would these posters have an impact on public perception of the judiciary? Is this a relevant consideration in deciding whether they should be removed?

Scenario 2

Party A sues Party B for breach of a contract. Party A claims that Party B agreed to sell to Party A office supplies for his business. Party A says that he went to Party B's store one afternoon, and they agreed on the terms of the contract – the price of the supplies and the time and place of delivery. Party B never delivered the supplies and now claims that there was never an agreement between them, only an informal negotiation that ended with Party A walking out of his store.

Party A claims that because he did not have the proper supplies to conduct his business, he suffered a severe loss of profits. Party A files a civil lawsuit against Party B, seeking monetary damages. The lawyers for the parties cannot agree on the facts of the case, so the case goes to trial before a judge. In his role as fact-finder, the judge will hear evidence from both parties and decide whether there was ever a legally binding agreement between them, and whether Party B owes any money to Party A.

During the trial, the attorney for Party A wants to call a witness from the store to testify. The attorney for Party B objects, saying the witness did not actually hear the conversation between

Rule of Law Toolkit

Chapter 4

Judicial Independence

Party A and Party B, and therefore the witness's testimony would be irrelevant. The judge issues a ruling in favor of Party B.

However, under the legal rules for admitting evidence at trial, this was a clear mistake by the judge. The rules say that in circumstances like these, Party A must be allowed to present his witness. So, after finishing that session in court, the attorney for Party A goes to the Minister of Justice and discusses the issue with him. The Minister calls the judge to his office and advises him to reverse the decision because it went against the legal rules for admitting evidence during a trial.

Question: What issues of judicial integrity and independence are raised in this scenario? Discuss.

Step 2: Ask each group to report on the discussion in their small group regarding the scenarios above.

Step 3: Refer to Handout III on the Beirut Declaration of Justice. The Declaration has 4 sections. Assign one section to each of the four groups to read and discuss.

Step 4: Ask each group to present information about the section of the Beirut Declaration they were assigned, and to then suggest mechanisms or rules that should be in place to implement the principles articulated in that section.

Step 5: To conclude the Activity, come together as a larger group and discuss the following Focus Questions.

Focus Questions:

- Why is judicial independence important?
- Is it important to support the authority and freedom of a judge to make a decision, even when his particular decision does not seem fair or just? What mechanisms exist within the judicial system to correct errors by judges?
- Why should partisan politics not be allowed to influence judges' decisions?

Step 6: Facilitator wraps up and summarizes the main principles discussed, emphasizing that an impartial judiciary needs to have both institutional *and* decision independence in order for the rule of law to prevail.

Rule of Law Toolkit Chapter 4 Judicial Independence

Handout I: Background Paper on Judicial Independence

Judicial independence has become internationally recognized as an important criterion by which countries can evaluate their progress achieving justice. In the Arab world, judicial independence is seen as one of the main pillars for achieving the rule of law and has become vital to protecting democratic systems.

Reaching a unified definition of judicial independence is complicated given the diversity of countries' political, legal, and cultural traditions. Generally speaking, the definition of judicial independence has two parts. *First*, judicial independence means that judges are insulated from external sources who may try to influence judges as they carry out their duties. This is known as **decisional independence**. *Second*, judicial independence means that the judiciary is not controlled by other branches of government. The judiciary has its own financial and administrative procedures, separate from those of the executive or legislative branches. This is known as **institutional independence** and is achieved through the separation of powers.¹

Accordingly, it is essential to make a distinction between judicial institutions and individual judges. Independence must be guaranteed for both. These two types of independence are inseparable and complement each other. The weakness of one of them will evidently lead to the weakness of the other.

These two types of independence are explained further below.

I. Decisional Independence

Decisional independence refers to “the ability of individual judges to render impartial decisions in individual cases without inappropriate outside interference.”² First, there must be laws and standards, such as those discussed in Handout II, which establishes the parameters for impartial decisions.

¹ *An Independent Judiciary: Report of the Commission on Separation of Powers and Judicial Independence*, (Washington, DC: American Bar Association, 1997): 9-14. For more information on institutional independence, see ACJLS White Paper, *Access to Justice and Legal Aid in the Arab World* (available upon request and online at the ACJLS website), and “What is Judicial Independence,” American Judicature Society 2009, available at http://www.ajs.org/cji/cji_whatjsi.asp

² *An Independent Judiciary: Report of the Commission on Separation of Powers and Judicial Independence*, 15.

Rule of Law Toolkit

Chapter 4

Judicial Independence

Decisional independence includes the “personal independence” of judges. Personal independence exists in judges’ immunity, education, awareness of their responsibilities and ability to courageously perform their duties without being affected by external factors.

Personal independence for judges exists in their freedom to deal with their personal thoughts and preferences without being pressured by colleagues, society, other authorities, and the temptations of life. Therefore, judges must be given guarantees to reinforce their sense of personal independence, including guarantees of physical safety and social and economic security.

Freedom of Expression and Association. There is a strong relationship between judges’ personal independence and freedom. Judges cannot be independent unless they have certain core freedoms, including freedom of expression and freedom of association. Judges must be able to enjoy freedom of expression, provided they do so in accordance with legal rules, such as rules that maintain the secrecy of their deliberative processes. Freedom of association must also be granted to judges. Scholarly or social forums should be available for judges without prejudice to their judicial posts. These forums should not be of a political or partisan nature.

Security of Tenure. One of the fundamental guarantees of judicial independence is security of tenure. The age of retirement for judges or the maximum limit for their term of office should be determined. A judge may also retire voluntarily after serving reasonable period of time in judicial office. There should also be a clear, objective and transparent mechanism for the selection, promotion and transfer of judges.

Securing judicial tenure is a crucial issue for the independence of the judiciary. When judges can be easily or arbitrarily removed from office, they become vulnerable to different types of pressure in fear of losing their position. Moreover, judges should not be appointed to non-judicial positions unless upon their approval, and they should not be transferred within the judicial system, unless for justified reasons and for a limited period of time.

Integrity. Integrity is the most commonly used word by the public to describe independent, transparent, immune, decent judges who resist temptations. Integrity of judges is closely associated with the integrity of judicial institutions, because judges of integrity cannot work in corrupt institutions. Personal integrity is closely associated with impartiality, which requires a judge to be un-swayed by personal preferences and refrain from seeking personal gains. It also requires a judge to avoid bias toward litigants and maintain absolute neutrality. In 638 A.D., the Caliphate Omar Bin Al Khattab, wrote in a letter to a Muslim Judge in Basra, Abu Mousa Al Asha’ri: “*Treat the people equally, in thy company, in thy presence and in thy decisions. The weak should not despair of your justice and the high placed should not have any hope of your favor*”.

Rule of Law Toolkit

Chapter 4

Judicial Independence

In order to guarantee personal integrity, there should be clear and binding rules that prevent judges from allowing personal relationships to affect their decisions, and also prevent conflict of interests between judges and litigants. Furthermore, personal integrity requires judges to refrain from business dealings and submit their financial disclosure.

Appropriate Disciplinary Mechanisms. To maintain the integrity of judicial institutions, actions that constitute judicial misconduct should be clearly and properly identified. In addition, the types of disciplinary penalties should be determined with precision, fairness and clarity. A system for processing disciplinary proceedings must be created.

Individual citizens should also have the ability to file complaints against judges for their professional misconduct. However, disciplinary proceedings should be processed in accordance with a fully transparent mechanism. Also, decisions in disciplinary proceedings must be supported by reasons, and penalties should be commensurate with the type of judicial misconduct.

Generally, there are decisional independence is enforced through two mechanisms: (1) judicial monitoring and disciplinary bodies; and (2) civil lawsuits brought by citizens against the judiciary and, in rare instances, criminal lawsuits brought by the state against individual judges.

Regarding (1), generally three types of bodies are responsible for monitoring the judiciary and disciplining judges where necessary. These are:

A. The Higher Judicial Council. This is the highest body in the judicial system. It oversees judicial processes, judicial independence, court administration, and judicial appointments.

B. Judicial Inspection Commission. This commission monitors the judicial process and investigates complaints about judges, including those made by individual citizens. The Commission can refer complaints to a disciplinary council (see below) or dismiss the claims. Any citizen has the right to make a complaint against a judge.

C. Disciplinary Council. This is a disciplinary council for judges whose members are appointed by the higher judicial council. The council imposes penalties on judges who have been proven of wrongdoing. This council plays an important role in holding judges accountable, since the only other way a judge would be removed from his position would be through his own resignation. Judges who have been found guilty of wrongdoing by the council should have the right to appeal that decision within the council.

Regarding (2), civil and criminal lawsuits can help ensure judicial accountability. Depending on the facts of a case, a lawsuit may seek either:

Rule of Law Toolkit

Chapter 4

Judicial Independence

- a. To hold the state liable for wrongful conduct by the judicial branch of government; or
- b. To hold the judge criminally liable for illegal actions conducted while carrying out his official duties as a judge.

A senior judicial commission considers cases involving civil liability, which happen when a citizen files a case asking the court to hold the state responsible for a judge's wrongful actions.

In cases involving serious mistakes or improprieties by a judge, such as bribery or corruption, the state may accuse the judge with criminal wrongdoing. There must be special rules and procedures for bringing criminal charges against judges.

II. Institutional Independence

Separation of Powers. Institutional independence requires adherence to the doctrine of separation of powers, whereby the authority of the state is divided amongst the different branches of government.³ Often, a state will have a legislative, executive, and judicial branch. The legislative branch is vested with the power to make the law, the executive branch with the authority to enforce the law, and the judicial branch with the power to interpret the law. These powers should not be commingled, although some overlapping of powers is unavoidable. To help preserve the integrity and independence of each branch, each branch is responsible for monitoring the performance of other branches. This is known as a system of "checks and balances."

Separation of powers is assured through rules that preserve the independence of each branch of government. For instance, the executive branch is not permitted to discipline members of the judiciary. Instead, a separate judicial institution is created that is responsible for disciplining judges. This protects the judiciary from being influenced by the executive. Judges should only be influenced by their conscience, convictions and judgment.

Another example of a rule that protects separation of powers relates to financial compensation for members of the judiciary. To preserve the judiciary's institutional independence, the executive has no authority to decide judges' salaries or financial resources for the courts. This is necessary to ensure that the integrity of the judicial system will be preserved regardless of any differences or tensions that may arise in the relationship between the judiciary and the executive.

³ Id. at 25.

Rule of Law Toolkit

Chapter 4

Judicial Independence

Separation of powers is necessary to ensure the judicial system is remains independent, free from any control by other ruling powers. It helps ensure that that judiciary will not be influenced by partisan politics, and therefore enhances public trust in judicial rulings.

Integrity of Judicial Institutions. Judicial institutions must be based on a proper foundation. This requires appropriate legislation on accountability and combating corruption within judicial institutions. Enhancing judicial inspection reinforces the integrity of judicial institutions. Some of the ways through which judicial inspection can be enhanced include selecting competent judges, securing a sufficient number of judges, and providing judges with financial resources to prevent them from undertaking other activities.

Many countries around the world, including many Arab countries, paid special attention to the basic rules of judicial conduct through codes drafted by Judges themselves. Examples include the Bangalore Principles, Sharjah Code of Judicial conduct, Riyadh Code of Judicial Conduct, and Jordan's Judicial Code of Conduct. Teaching the basic principles of judicial conduct is recommended because it helps to shape the personality of a judge.

Reasons Why Judicial Independence is Important

Judicial independence is especially important for the following reasons:

(1) An independent, just, and effective judiciary is a **protector of human rights**. It is charged with ensuring the interests of litigants and guaranteeing their freedoms, rights, and property. This cannot be achieved without a judiciary capable of applying the law objectively, regardless of who the parties are or what the political outcome of any decision may be.

(2) An independent judiciary **contributes to achieving good governance** by applying the law equally to all members of society, including the governing elite. The judiciary is responsible for providing a “check” on the other branches of government, by reviewing situations where members of the executive or legislative branches of government may have overstepped their authority or exceeded the powers given to them by the constitution. Only a judiciary that is independent can effectively monitor and prevent such unlawful uses of power.

(3) An independent judiciary is needed to promote the rule of law. If the public suspects that politicians in other branches of government control the judiciary, public respect for courts and judges will diminish. If the public does not have **confidence in the judiciary**, judicial rulings will not be respected.

(4) In addition to the above, judicial independence contributes **to expediting economic growth and development**. States that enjoy effective implementation of the law attract foreign

Rule of Law Toolkit
Chapter 4
Judicial Independence

investment and business opportunities. Businesses are reluctant to operate in a country if there is inconsistent enforcement of contracts and the law. This is why judicial independence has been adopted by the World Bank and other international development institutions as an indicator of a country's potential for economic growth.

Rule of Law Toolkit Chapter 4 Judicial Independence

Handout II: Summary of the International & Regional Judicial Independence Legal Framework

Many international and regional conventions support judicial independence as a main pillar of good governance. These include the Bangalore Principles on Judicial Ethics, the Cairo Declaration, and the Beirut Declaration, all of which emphasize the independence of the judiciary as an important tool for eliminating abuses of power and promoting human rights through fair trial principles.

International Standards

Below are some important international and regional agreements that encourage, and in some cases, require countries to respect and promote judicial independence.

According to the *Universal Declaration of Human Rights*, every human being has a right to live in a society where there is an *independent* judiciary. Article 10 of the Declaration states: “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.”

Article 14 of the *International Convention on Civil and Political Rights* states that everyone who is charged with a criminal act is entitled, as a matter of right, to have a “fair and public hearing by a competent, independent and impartial tribunal established by law.”

The United Nations Basic Principles on the Independence of the Judiciary and the Bangalore Principles provide more detailed definitions of judicial independence:

The United Nations Basic Principles on the Independence of the Judiciary, adopted in 1985, vests judges with the authority to act, free from pressures and threats, adequately paid and equipped to carry out their duties. The Principles address the following six topics: independence of the judiciary; freedom of expression and association; qualifications, selection and training; conditions of service and tenure; professional secrecy and immunity; and discipline, suspension and removal. While this document does not carry the force of law, it offers a model for governments and lawmakers, who are encouraged to integrate them into their national legislative frameworks, including their national constitutions. Many countries have formally adopted the Principles and report regularly to the UN on their successes and challenges in fulfilling the

Rule of Law Toolkit

Chapter 4

Judicial Independence

Principles. Countries may also seek assistance from the UN on how to educate members of the judiciary, or monitor judicial independence.⁴

The Bangalore Principles on Judicial Conduct was created by the Judicial Group for the Strengthening of Judicial Integrity and finalized in 2003. The Bangalore Principles were intended to complement the UN Principles discussed above, and UN member states were encouraged to adopt the Bangalore Principles.⁵ The Bangalore Principles set forth six standards for the judiciary: independence, impartiality; integrity, propriety, equality, and competence and diligence. In particular, the independence principle states that “judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.”⁶ The principle requires judiciaries to have both decisional and institutional independence: “[J]udges must be independent from extraneous influences, inducements, pressures, threats or interference direct or indirect, from any source, society and the parties in disputes before the judge, inappropriate connections with and influence by the other branches of government, and from judicial colleagues with respect to the judges decisions that are to be made independently.”⁷ The Bangalore document also requires national judiciaries to adopt mechanisms, if not already in place, to implement these principles.

Regional Standards

The *Beirut Declaration for Justice* resulted from the First Arab Conference on Justice, sponsored by the Arab Center for the Independence of the Judiciary and the Legal Profession, held in Beirut, Lebanon in June 1999. The objective of the conference was to adopt a document that set forth the situation of the judiciary in the Arab region, in order to identify challenges and solutions for promoting judicial independence throughout the region. The Beirut Declaration recommends that participating countries create safeguards for preserving judicial independence, through transparent judicial election and appointment systems, high standards of judicial qualification, and the development of judicial training institutes.

The Declaration also advocates that states adopt judicial review, so that judges can issue rulings on the constitutionality of laws passed by other branches of government. It also advocates safeguards for protecting the rights of people accused of crimes, ensuring fair trials, and

⁴ *United Nations Basic Principles on the Independence of the Judiciary* (1985), Office of the United Nations High Commissioner for Human Rights, available at <http://www2.ohchr.org/english/law/indjudiciary.htm>.

⁵ *The Bangalore Principles of Judicial Conduct, revised 2002*, available at <http://www.ichrp.org/files/papers/83/120B>

[_The_Bangalore_Principles_of_Judicial_Conduct_Cumaraswamy_Param_2005.pdf](#)

⁶ *The Bangalore Principles of Judicial Conduct*, Value 1

⁷ *The Bangalore Principles of Judicial Conduct*, 1.1-1.4.

Rule of Law Toolkit

Chapter 4

Judicial Independence

preventing discrimination against women in the field of the judiciary. Lastly, the Declaration calls on Arab countries to participate more in the International Criminal Court.

The *Cairo Declarations on Judicial Independence* came out of the Second Arab Justice Conference, “Supporting and Advancing Judicial Independence,” held in Cairo, Egypt in February 2003. This conference was sponsored by the United Nations and the Arab Center for the Independence of the Judiciary. This conference was held as a follow-up to the first conference, to establish more methods for implementing the Beirut Declaration.⁸ The Cairo Declaration calls on governments to reaffirm their commitment to the separation of powers, adopt judicial reform commissions, support regional judicial and civil society networks, and ensure financial independence mechanisms for the judiciary. It calls on countries to reform certain institutional processes, including processes relating to the appointment, promotion, and discipline of judges, to make them more transparent and objective. It also calls on each country to create a Judicial Code of Ethics.⁹

Other regions of the world have similar judicial independence standards. Examples include the European Charter on the Statute for Judges, the Beijing Statement of Principles of the Independence of the Judiciary in the Law Association for Asia and the Pacific region, and the Caracas Declarations of the Ibero-American Summit of Presidents of the Supreme Justice Tribunals and Courts. All of the regional documents express similar principles, indicating a universal understanding that judicial independence is a goal all countries should strive for.

⁸ Nathan J. Brown, “The Second Justice Conference: Towards Supporting and Promoting the Independence of the Judiciary,” International Foundation for Electoral Systems, Feb. 2003, http://www.ifes.org/publication/62b615e9b996af0078ffb200178f211a/Cairo_Conference_Report_EN.pdf.

⁹ Jordan’s Judicial Council approved a judicial code of conduct in 2005, Palestine’s Judiciary in 2006, Bahrain’s Supreme Judicial Council approved a Code of Conduct for Judges and Members of the Public Prosecution in 2007, and Morocco’s Judiciary in 2009. In 2007, regional Arab delegations approved the “Riyadh Statement on Ethics and Conduct of Arab Judges” and the “Sharqa Statement on Judicial Ethics and Conduct”.

Rule of Law Toolkit Chapter 4 Judicial Independence

Handout III: Beirut Declaration for Justice

The following is excerpted directly from the Beirut Declaration for Justice¹⁰

First: Safeguards for the Judiciary

1. To include the UN Basic Principles on the Independence of the Judiciary into Arab constitutions and laws, and in particular, to penalize any interference in the work of the judiciary.
2. The state shall guarantee an independent budget for the judiciary, including all its branches and institutions. This budget shall be included as one item into the state budget, and shall be determined upon the advice of the higher judicial councils within the judicial bodies.
3. The executive power shall not intervene in the activities of judicial inspection in any form, nor shall it breach the independence of the judiciary through orders or circulars.
4. The public prosecution shall be considered a branch of the judiciary. The authority undertaking this prosecution shall be separate from those of investigation and referral.
5. Judges shall have immunity associated with their jobs. Except in cases of illegal acts no judicial measures shall be taken unless upon permission issued by the highest council.
6. Lawsuits shall not be transferred from the judges reviewing them unless for reasons related to incompetence.
7. It is important to reform the administrative structure and other work mechanisms pertaining to the work of judges, and to facilitate the means for an efficient administration of justice.
8. To link the work of the judiciary with a democratic environment on the basis that democracy is the approach for a more effective management of justice.

¹⁰ “Beirut Declaration on Justice. Recommendations from the First Conference on Justice.” The Arab Center for the Independence of the Judiciary and the Legal Profession, June 14-16, 1999 <http://www.undp-pogar.org/activities/justice/beirut.pdf>

Rule of Law Toolkit

Chapter 4

Judicial Independence

9. Lawsuits shall be distributed among judges of various courts through their general assemblies or according to their internal regulations in case such assemblies do not exist. Such distribution shall be made in a manner that guarantees the non-intervention of the executive.
10. Judges shall freely practice freedom of assembly in order to represent their different interests. In this regard, they shall have the right to establish an organization to protect their interests and guarantee their constant promotion.

Second: Electing and Appointing Judges

11. The election of judges shall be free of discrimination on basis of race, color, sex, faith, language, national origin, social status, birth, property, political belonging, or any other consideration. Particularly when electing judges, the principle of equal opportunity must be followed to guarantee that all applicants for a judicial position are objectively assessed.
12. Assuming the position of judge shall be possible, without discrimination, for all those who meet the requirements. The appointment of judges shall be made through the higher councils of the concerned judicial bodies.
13. No judges shall be appointed by virtue of temporary contracts. They cannot be disciplined unless by boards made from their bodies, provided that the decisions made by such boards shall not have immunity against being challenged, unless the highest council of the concerned judicial body makes the decision.
14. The law shall stipulate the rules for appointing, delegating, transferring, promoting, and disciplining judges, as well as for all other matters related to their affairs, particularly those concerning their livelihood while in office and in retirement. The aim of this is to guarantee in all cases their independence from the executive.
15. A percentage of no less than 25 per cent of vacant judicial posts shall be allocated to lawyers and those working in legal issues, provided that the appointment is made by the highest judicial boards in the concerned judicial bodies.

Third: Qualification and Training of Judges

16. The state shall endeavor, through specialized centers and institutes, to provide judges with an effective legal training in order to prepare them adequately to assume judicial

Rule of Law Toolkit

Chapter 4

Judicial Independence

posts. All aspects of the study and training programs shall be subject to the supervision of the judiciary. In the professional preparation of judges, the following principles shall be observed:

- A. To activate the Arab convention issued in Amman pertaining to the cooperation in the professional qualification of judges, and to reinforce the role of non-governmental organizations to secure their support for qualification programs and to serve as intellectual entities for judges, particularly in the field of human rights.
 - B. These qualification programs shall focus on legal and professional training, as well as personal growth. The qualification programs shall particularly focus on managing and facilitating the role of the defense.
 - C. To develop national institutions specializing in qualifying judges, whether by developing courses or financial and information resources supported by modern technological systems, in such a way that would guarantee the modernization of the judiciary, change educational courses in the faculties of law and develop infrastructure for the legal profession.
17. To support continuous judicial education in developing an in-depth understanding of constitutional provisions in a way that would guarantee constitutional legitimacy, the structure of which is connected with the intelligent understanding of human rights.
 18. To urge the judicial authorities to constantly refer to international human rights treaties ratified by states, as being part of the states legal structure and a framework of the values which societies should adopt and try to implement.
 19. To make the exchange of legal expertise between judges and lawyers, supporting human rights and freedoms, a firm methodology of Arab states, and a planned attitude of their legal systems in order to guarantee the objectiveness of their application and their consistence with modern concepts of advanced countries.
 20. To develop educational law courses in Arab countries that will give special consideration to human rights and freedoms and constitutional legitimacy, and affirm solidarity with efforts made by the United Nations in this regard.

Fourth: Judicial Review on Constitutionality of Laws

21. States with no system for judicial review on the constitutionality of laws shall adopt such a system, whether through establishing a supreme constitutional court for this purpose, or

Rule of Law Toolkit
Chapter 4
Judicial Independence

establishing constitutional councils to assume this task, provided that they are made of members of judicial bodies, lawyers, and law professors, and in a way that would guarantee the independence of such a court or council and secure the soundness of practicing its constitutional responsibility. All members of such a court or council shall be appointed without the intervention of the executive. The right of individuals to bring a constitutional lawsuit by means of original claim shall be guaranteed.