

Mt. Scopus Approved Revised International Standards of Judicial Independence

Approved March 19, 2008

Preamble

These Revised standards are approved in recognition of the need for the revision of the guidelines of general application to contribute to the independence and impartiality of the judiciary, with a view to ensuring the legitimacy and effectiveness of the judicial process;

*In formulating these standards due regard has been given to the IBA Minimum Standards on Judicial independence 1982 and the UN Basic Principles of Judicial Independence 1985 and the long series of sets of other international rules and standards relating to judicial independence and the right to a fair trial; and *The Burgh House Principles of Judicial Independence in International Law* (for the international judiciary). Inspiration has also been drawn from the *Tokyo Law Asia Principles*; the *Montréal Universal Declaration on the Independence of Justice*; *Council of Europe Statements on judicial independence* particularly Recommendation of the Committee of Ministers to Member States on the independence, efficiency and role of judges. Council of Europe 1998¹, *The Bangalore Principles of Judicial Conduct* November 2002,² and the *American Bar Association's* revision of its ethical standards for judges*

The Standards were drafted bearing in mind the special challenges facing the judiciary in view of the challenges and problems in both the national and international spheres.

An updated comprehensive revision of minimum standards for judicial independence is called for in order to give appropriate response to the developments and challenges regarding the position of courts and judges in contemporary society. This revision is important to enable the judiciary to play a role in the adequate protection of human rights and in the operation of an efficient and fair market economy with a human face in the era of globalisation.

The standards give due consideration particularly to the fact that that each jurisdiction and legal tradition has own characteristics that must be recognised .It is also recognized that in the international judiciary each court or tribunal has its unique features and functions and that in certain instances judges serve on a part-time basis or as *ad hoc* or *ad litem* judges.

A. NATIONAL JUDGES

1. THE SIGNIFICANCE OF THE INDEPENDENCE OF THE JUDICIARY

- 1.1. An independent and impartial³ judiciary is an institution of the highest value in every society⁴ and an essential pillar of liberty⁵ and the rule of law.

¹ <http://www.coe.int>

² adopted by *Judicial Group on Strengthening Judicial Integrity*, AJA, <http://www.ajs.org>

³ Stating this in the body of the standards themselves in addition to the preamble helps stress the section's importance and ensures that it is more easily referred to.

→ This is preferred to the first version as it describes exactly what elements are required in the Judiciary

→ Tokyo Law Asia Principles. Stating this in the body of the standards themselves rather than in a preamble helps stress the section's importance and ensures that it is more easily referred to.

- 1.2. The objectives and functions of the judiciary shall include:
 - 1.2.1.1. To resolve disputes and to administer the law impartially between persons and between persons and public authorities;
 - 1.2.1.2. To promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and
 - 1.2.1.3. To ensure that all people are able to live securely under the rule of law.⁶

2. THE JUDICIARY⁷ AND THE EXECUTIVE

- 2.1. The Judiciary as a whole shall be independent.
- 2.2. Each judge shall enjoy both personal independence and substantive independence:⁸
 - 2.2.1. Personal independence means that the terms and conditions of judicial service are adequately secured by law⁹ so as to ensure that individual judges are not subject to executive control; and
 - 2.2.2. Substantive independence means that in the discharge of his judicial function, a judge is subject to nothing but the law and the commands of his conscience.
- 2.3. The Judiciary as a whole shall¹⁰ enjoy collective independence and autonomy vis-à-vis the Executive.
- 2.4. Judicial appointments and promotions by the Executive are not inconsistent with judicial independence as long as they are in accordance with Principles 4.
- 2.5. No executive decree shall reverse specific court decisions, or change the composition of the court in order to affect its decision-making.¹¹
- 2.6. The Executive may only participate in the discipline of judges by referring complaints against judges, or by the initiation of disciplinary proceedings, but not by the adjudication of such matters.

⁵ Preamble, Montréal Declaration.

⁶ Montréal Declaration.

→ Recall competing values of judicial independence and judicial accountability: "As phrased by a Canadian judge, Mr. Justice Riddell, commenting on an arrangement of divisions of labour among the judges, 'Judges are the servants, not the masters of the people.' Servants are accountable, so are judges." From Shetreet, *Judicial Independence: The Contemporary Debate*, at 593, referring to *Davis Acetylene Gas Co. v. Morrison*, (1915) 34 O.L.R. 155, 23 D.L.R. 871 (C.A.).

⁷ The focus is really on the relationship with the judiciary as a whole, rather than with individual judges.

⁸ Although substantive independence warrants wide protection, it is not without boundaries. Judges must exercise their powers subject to the general limit of mutual respect between the various branches of the government and accepted lines of demarcation of their respective responsibilities. The mutual respect is expressed in judge-made rules, including the rule that courts will not engage in the adjudication of unjusticiable issues, such as political questions: Shetreet, *Judicial Independence: New Conceptual Dimensions and Contemporary Challenges*, in Shetreet and Descenes *Judicial Independence: The Contemporary Debate* at 635. (1985)

⁹ To clarify that these important conditions must be legally entrenched.

¹⁰ Adds mandatory language.

¹¹ Montréal Declaration section 2.08.

- 2.7. The power to discipline or remove a judge must be vested in an institution which is independent of the Executive.
- 2.8. The power of removal of a judge shall preferably be vested in a judicial tribunal.
- 2.9. The Executive shall not have control over judicial functions.
- 2.10. Rules of procedure and practice shall be made by legislation or by the Judiciary in cooperation with the legal profession, subject to parliamentary approval.
- 2.11. The state shall have a duty to provide for the execution of judgments of the Court. The Judiciary shall exercise supervision over the execution process.
- 2.12. Judicial matters are exclusively within the responsibility of the Judiciary, both in central judicial administration and in court level judicial administration.
- 2.13. The central responsibility for judicial administration shall preferably be vested in the Judiciary or jointly in the Judiciary and the Executive.
- 2.14. The principle of democratic accountability should be respected and therefore it is legitimate for the legislature to play a role in judicial appointments and central administration of justice provided that due consideration is given to the principle of judicial independence.
- 2.15. The process and standards of judicial selection shall give due consideration to the principle of fair reflection by the judiciary of the society in all its aspects.¹²
 - 2.15.1. Taking into consideration the principle of fair reflection by the judiciary of the society in all its aspects, in the selection of judges, there shall be no discrimination on the grounds of race, colour, gender, language, religion, national or social origin, property, birth or status, subject however to citizenship requirements.¹³
- 2.16. Candidates for judicial office shall be individuals of integrity¹⁴ and ability, well- trained in the law. They shall have equality of access to judicial office.¹⁵
- 2.17. It is the duty of the state to provide adequate financial resources to allow for the due administration of justice.
- 2.18. Division of work among judges should ordinarily be done under a predetermined plan, which can be changed in certain clearly defined circumstances.
 - 2.18.1. In countries where the power of division of judicial work is vested in the chief justice, it is not considered inconsistent with judicial independence to accord to

¹² Montréal Declaration section 2.13. See also Shetreet, *Judicial Independence: The Contemporary Debate*, at 401.

¹³ Montréal Declaration

→ "Political opinion" is also taken from PH Lane, *Fragile Bastion: Constitutional Aspects of Judicial Independence* (judicial independence is composed of at least five aspects: (1) non-political appointments to a court; (2) guaranteed tenure and salary; (3) executive and legislative interference with court proceedings or office holders; (4) budgetary autonomy; (5) administrative autonomy.

¹⁴ Montréal Declaration section 2.11.

¹⁵ Exact wording of the Montréal Declaration, section 2.11.

the chief justice the power to change the predetermined plan for sound reasons, preferably in consultation with the senior judges when practicable.

- 2.18.2. Subject to 2.18.1, the exclusive responsibility for case assignment should be vested in a responsible judge, preferably the President of the Court.
- 2.19. The power to transfer a judge from one court to another shall be vested in a judicial authority according to grounds provided by law and preferably shall be subject to the judge's consent, such consent not to be unreasonably withheld.
- 2.20. Judicial salaries and pensions shall be adequate at all times, fixed by law, and should be periodically reviewed independently of Executive control
- 2.21. The position of the judges, their independence, their security of tenure, and their adequate remuneration shall be entrenched constitutionally¹⁶ or secured by law.
- 2.22. Judicial salaries, pensions, and benefits¹⁷ cannot be decreased during judges' service except as a coherent part of an overall public economic measure.
- 2.23. The Ministers of the government shall not exercise any form of pressure on judges, whether overt or covert, and shall not make statements which adversely affect the independence of individual judges, or of the Judiciary as a whole.
- 2.24. The power of pardon shall be exercised cautiously so as to avoid its use as an interference with judicial decision.
- 2.25. The Executive shall refrain from any act or omission which pre-empts the judicial resolution of a dispute, or frustrates the proper execution of a court judgment.
- 2.26. The Executive shall not have the power to close down, or suspend, or delay, the operation of the court system at any level.

3. THE JUDICIARY¹⁸ AND THE LEGISLATURE

- 3.1. The Legislature shall not pass legislation which reverses specific court decisions.
- 3.2. Legislation introducing changes in the terms and conditions of judicial service shall not be applied to judges holding office at the time of passing the legislation unless the changes improve the terms of service and are generally applied.¹⁹

¹⁶ UN Basic Principles.

→Change suggested in order to provide additional flexibility, and also to stress how this is an important enough issue to be constitutionally entrenched.

¹⁷ In the interests of completeness

¹⁸ The focus is really on the relationship with the judiciary as a whole, rather than with individual judges.

¹⁹ In order to prevent "rewarding" specific judges.

→The US Constitution's Compensation Clause guarantees federal judges a "Compensation, which shall not be diminished during their Continuance in Office." *U.S. Const.*, Art. III, §1.

→See *US v. Hatter* (99-1978) 532 U.S. 557 (2001) 203 F.3d 795: Congress is prohibited from singling out judges for specially unfavourable taxation treatment, although it is permitted to impose a "non-discriminatory tax laid generally" upon judges and other citizens.

- 3.3. In case of legislation reorganising or abolishing courts, judges serving in these courts shall not be affected, except for their transfer to another court of the same or materially comparable²⁰ status.
- 3.4. Everyone shall have the right to be tried expeditiously by the established ordinary courts or judicial tribunals under law, subject to review by the courts.²¹
- 3.5. Part-time judges should be appointed only with proper safeguards secured by law.
- 3.6. The Legislature may be vested with the powers of removal of judges, upon a recommendation of a judicial commission or pursuant to constitutional provisions or validly enacted legislation.²²

4. TERMS AND NATURE OF JUDICIAL APPOINTMENTS

- 4.1. The method of judicial selection shall safeguard against judicial appointments for improper motives²³ and shall not threaten judicial independence.
- 4.2.
 - a) The principle of democratic accountability should be respected and therefore it is legitimate for the Executive and the Legislature to play a role in judicial appointments provided that due consideration is given to the principle of Judicial Independence.
 - b) The recent trend of establishing judicial selection boards or commissions in which members or representatives of the Legislature, the Executive, the Judiciary and the legal profession take part, should be viewed favourably, provided that a proper balance is maintained in the composition of such boards or commissions of each of the branches of government
- 4.3. Judicial appointments should generally be for life, subject to removal for cause and compulsory retirement at an age fixed by law at the date of appointment.
 - 4.3.1. Retirement age shall not be reduced for existing judges.²⁴

→ See *United States v. Will*, 449 U.S. 200, 220-21 (1980): though Congress may not rescind a salary increase for judges once it has gone into effect - that would be a diminishment of compensation - Congress is under no constitutional obligation to grant salary increases.

→ See *Evans v. Gore*, 253 U.S. 245, 253 (1920): The imposition of a new federal tax that has the effect of reducing the judicial compensation of judges already in office is unconstitutional.

→ But see *O'Malley v. Woodrough*, 307 U.S. 277 (1939): an income tax levied against the judicial salary of judges who took office after the levy is in effect is constitutional, when the taxing measure is of general, non-discriminatory application to all earners of income.

²⁰ To provide for situations such as those that occurred in Ontario when the entire court structure was reorganized.

²¹ For a discussion of this issue, see Shetreet, *Judicial Independence: The Contemporary Debate*, at 616.

²² In order to try to prevent situations such as those that occurred in Ecuador in April 2007 when Congress removed all nine judges of the Constitutional Court in a retaliatory measure, contrary to the Ecuadorian constitution which provides that judges of the Constitutional Court can only be removed by impeachment: Human Rights Watch, *Ecuador: Removal of Judges Undermines Judicial Independence* (May 11, 2007).

²³ Montréal Declaration.

²⁴ See Shetreet, *Judicial Independence: New Conceptual Dimensions and Contemporary Challenges*, in Shetreet and Descenes *Judicial Independence: The Contemporary Debate*, at 607 (1985) reporting that in Bangladesh, in 1977 an ordinance was passed bringing down the retirement age from 65 to 62 years with immediate effect. This resulted in

- 4.4. Promotion of judges shall²⁵ be based on objective factors, in particular merit,²⁶ integrity and experience.²⁷
- 4.5. Judicial appointments and promotions shall be based on transparency of the procedures and standards and shall be based on professional qualifications, integrity, ability and efficiency.
- 4.6. Judges should not be appointed for probationary periods except in legal systems in which appointments of judges do not depend on having practical experience in the profession as a condition of appointment, and provided that permanent appointment will be granted on merit.²⁸
- 4.7. The institution of temporary judges should be avoided as far as possible except where there exists a long historic democratic tradition.
- 4.8. Part-time judges should be appointed only with proper safeguards secured by law.
- 4.9. The number of the members of the highest court should be fixed, with the exception of courts modeled after the courts of cassation, and in the case of all courts, should not be altered for improper motives.

5. JUDICIAL REMOVAL AND DISCIPLINE

- 5.1. The proceedings for discipline and removal of judges²⁹ shall be processed expeditiously and fairly³⁰ and shall ensure fairness to the judge including adequate opportunity for hearing.
- 5.2. With the exception of proceedings before the Legislature³¹, the procedure for discipline should be held *in camera*. The judge may however request that the hearing be held in public³² and such request should be respected, subject to expeditious, final and reasoned disposition of this request by the disciplinary tribunal. Judgments in disciplinary proceedings, whether held in camera or in public, may be published.³³
- 5.3. All of the grounds for the discipline, suspension and removal of judges shall be entrenched constitutionally or fixed by law and shall be clearly defined.

the retirement of two distinguished judges. This was in fact a legislative removal of these two judges though it was in theory a general statute.

²⁵ In order to make this mandatory.

²⁶ "Merit" is broader than "ability".

²⁷ UN Basic Principles.

→Montréal Declaration provides: "Promotion of a judge shall be based on an objective assessment of the candidate's integrity and independence of judgment, professional competence, experience, humanity and commitment to uphold the rule of law."

²⁸ Scottish temporary judges cases *Starrs and Chalmers v .D. F. Linlithgow* 2000 S. L. 2 ; *Clancy v. Caird* 2000 Scottish Law Times ,The Bailiff Judicial Appointments (Scotland) Act 2000

²⁹ The UN Basic Principles adds "in his/her judicial and professional capacity." This wording was not added here to prevent personal suits being lodged against judges as a back-door method of interfering with their independence.

³⁰ UN Basic Principles.

³¹ Montréal Declaration section 2.36.

³² Montréal Declaration section 2.36.

³³ Montréal Declaration section 2.36.

- 5.4. All disciplinary, suspension and removal³⁴ actions shall be based upon established standards of judicial conduct.³⁵
- 5.5. A judge shall not be subject to removal, unless by reason of a criminal act or through gross or repeated neglect or serious infringements of disciplinary rules or physical or mental incapacity he has shown himself manifestly unfit to hold the position of judge. The grounds for removal shall be limited to reasons of medical incapacity or behaviour that renders the judge unfit to discharge their duties.³⁶
- 5.6. In systems where the power to discipline and remove judges is vested in an institution other than the Legislature, the tribunal for discipline and removal of judges shall be permanent, and be composed predominantly of members of the Judiciary.
- 5.7. The head of the court may legitimately have supervisory powers to control judges on administrative matters.

6. THE MEDIA AND THE JUDICIARY

- 6.1. It should be recognized that judicial independence does not render judges free from public accountability, however, the media and other institutions should show respect for judicial independence and exercise restraint in criticism of judicial decisions.³⁷
- 6.2. While recognising the general right of freedom of expression of all citizens, a judge should not interview directly with the general media. If a judge needs to respond to the media in regard to a media report or inquiry, it shall be done via a spokesperson assigned by the court or a judge specifically assigned by the court for this purpose. In exceptional circumstances a judge may respond directly to the media if that judge's direct response will prevent an irreparable damage.
- 6.3. The media should show responsibility and restraint in publications on pending cases where such publication may influence the outcome of the case.
- 6.4. A judge shall not knowingly, while a proceeding is, or could come before the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.³⁸

7. STANDARDS OF CONDUCT³⁹

³⁴ Inclusive.

³⁵ Montréal Declaration section 2.34. Broad.

³⁶ UN Basic Principles.

³⁷ See discussion by Julie Debeljak, *Judicial Conference of Australia, Uluru, April 2001: Judicial Independence: A Collection of Material for the Judicial Conference of Australia* regarding the consequences of inappropriate public criticism (it leaves judges having to choose between being silent leading to a potential decrease in public confidence in the judiciary, or else inappropriately being drawn into public criticism).

³⁸ Bangalore Principles

³⁹ Human Rights Watch, *Rigging the Rule of Law: Judicial Independence Under Siege in Venezuela*, Volume 16, No. 3(B) (June 2004) reporting some of allegations of judicial bias in Venezuela. For instance, Attorney General Isaías Rodríguez in May 2004 allegedly described how the country's top administrative court in the past established set fees for resolving different kinds of cases.

- 7.1. Judges may not serve in Executive or Legislative functions, including as:
 - 7.1.1. Ministers of the government; or as
 - 7.1.2. Members of the Legislature or of municipal councils.
- 7.2. Judges shall not hold positions in political parties.
- 7.3. A judge, other than a temporary or part-time judge, may not practice law.
- 7.4. A judge should refrain from business activities and should avoid from engaging in other remunerative activity,⁴⁰ that can affect the exercise of judicial functions or the image of the judge, except in respect of that judge's personal investments, ownership of property, the business activities or ownership of property of family members⁴¹, or that judge's teaching at a university or a college.
- 7.5. A judge should always behave in such a manner as to preserve the dignity of the office and the impartiality, integrity and independence of the Judiciary.
- 7.6. Judges may be organized in associations designed for judges, for furthering their rights and interests as judges.
- 7.7. Judges may take appropriate action to protect their judicial independence.⁴²
- 7.8. A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially.
- 7.9. Such proceedings include, but are not limited to, instances where
 - a) the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
 - b) the judge previously served as a lawyer or was a material witness in the matter in controversy; or
 - c) the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:
 Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice⁴³
- 7.10. A case should not be withdrawn from a particular judge without valid reasons, such as cases of serious illness or conflict of interest. Any such reasons and the procedures for such withdrawal should be provided for by law and may not be influenced by any interest of the government or administration. A decision to withdraw a case from a

⁴⁰ ABA Model Code of Judicial Conduct (February 2007), Canon 4, Article D(2).

⁴¹ ABA Model Code of Judicial Conduct (February 2007), Canon 4, Article D(2) discusses family.

⁴² This is how the section appears in the Montréal Declaration, section 2.09.

⁴³ Bangalore Principles

judge should be taken by an authority which enjoys the same judicial independence as judges.⁴⁴

- 7.11. Judges shall discourage *ex parte* communications from parties and except as provided by the rules of the court such communications shall be disclosed to the court and to the other party.

8. SECURING IMPARTIALITY AND INDEPENDENCE⁴⁵

- 8.1. A judge⁴⁶ shall enjoy immunity from legal actions in the exercise of his official functions.⁴⁷
- 8.2. A judge shall not sit in a case where there is a reasonable suspicion of bias or potential bias.⁴⁸
- 8.3. A judge shall avoid any course of conduct which might give rise to an appearance of partiality.
- 8.4. The state shall ensure that in the decision-making process, judges should be independent and be able to act without any restriction, improper influence, inducements, pressures, threats⁴⁹ or interferences, direct or indirect, from any quarter or for any reason. The law should provide for sanctions against persons seeking to influence judges in any such manner. Judges should have unfettered freedom to decide cases impartially, in accordance with their conscience and their interpretation of the facts, and in pursuance of the prevailing rules of the law. Judges should not be obliged to report on the merits of their cases to anyone outside the judiciary⁵⁰

9. THE INTERNAL INDEPENDENCE OF THE JUDICIARY

- 9.1 In the decision-making process, a judge must be independent vis-à-vis his judicial colleagues and superiors.
- 9.2 Any hierarchical organization of the judiciary and any difference in grade or rank shall in no way interfere with the right of judges to pronounce their judgments freely.⁵¹

⁴⁴ Recommendation No.R(94)12. of the committee of Ministers of the Council of Europe to Member States

⁴⁵ See Cyrus Das and K. Chandra, Editors, *Judges and Judicial Accountability*, Universal Law Publishing Company Ltd., Delhi.

⁴⁶ This does not exclude the possibility that the state may be liable for the gross negligence of a judicial officer.

⁴⁷ Consider a 1988 Italian law which was designed to, within certain limit, render judges accountable for damages caused by serious fault in the exercise of their functions: see Giovanni E. Longo, "The Human Right to an Independent Judiciary: International Norms and Denied application before a Domestic Jurisdiction," *St. John's Law Review* (Winter 1996).

⁴⁸ "It is most important that the judiciary be independent and be so perceived by the public. The judges must not have cause to fear that they will be prejudiced by their decisions or that the public would reasonably apprehend this to be the case": Howland, CJ, R. v. *Valente* 2 C.C.C. (3d) 417, at 423 (1983).

⁴⁹ Including physical threats to injure or to kill .

⁵⁰ Recommendation No.R(94)12 of the committee of Ministers of the Council of Europe to Member States

⁵¹ Montréal Declaration section 2.03.

B. INTERNATIONAL JUDGES

The following text on minimum standards for the independence of the international judiciary is based, with minor amendments, on the Burgh House Principles on the Independence of the International Judiciary which were formulated by the Study Group of the International Law Association on the Practice and Procedure of International Courts and Tribunals

10. INDEPENDENCE

- 10.1 The international courts and the judges shall exercise their functions free from direct or indirect interference or influence by any person or entity.
- 10.2 This freedom of the judges and courts shall apply both to the judicial process in pending cases, including the assignment of cases to particular judges, and to the operation of the court and its registry.
- 10.3 The court shall be free to determine the conditions for its international administration, including staff recruitment policy, information systems and allocation of budgetary expenditure.
- 10.4 Deliberations of the court shall remain confidential.
- 10.5 All Judges of international courts and tribunals shall adhere to the principle that a judges who are nationals of a member state of the organisation establishing the court or tribunal when exercising judicial discretion and function shall engage in fair and independent adjudication of the case and by no means in representation of the member state.

11 NOMINATION, ELECTION AND APPOINTMENT

- 11.1 In accordance with the governing instruments, judges shall be chosen from among persons of high moral character, integrity and conscientiousness who possess the appropriate professional qualifications, competence and experience required for the court concerned.
- 11.2 While procedures for nomination, election and appointment should consider fair representation of different geographic regions and the principal legal systems, as appropriate, as well as of female and male judges, appropriate personal and professional qualifications must be the overriding consideration in the nomination, election and appointment of judges.
- 11.3 Procedures for the nomination, election, and appointment of judges should be transparent and provide appropriate safeguards against nominations, elections and appointments motivated by improper considerations.
- 11.4 Information regarding the nomination, election and appointment process and information about candidates for judicial office should be made public, in due time and in an effective manner, by the international organisation or other body responsible for the nomination, election and appointment process.

- 11.5 For the promotion of the independence of judges it is preferable that appointment of judges to the international courts and tribunals shall be for one long term and shall not be open for re-election.

12 SECURITY OF TENURE

- 12.1 Judges shall have security of tenure in relations to their term of office. They may only be removed from office upon specified grounds and in accordance with appropriate procedures specified in advance.
- 12.2 The governing instruments of each court should provide for judges to be appointed for a minimum term to enable them to exercise their judicial functions in an independent manner.

13 SERVICE AND REMUNERATION

- 13.1 Judges' essential conditions of service shall be enumerated in legally binding instruments.
- 13.2 No adverse changes shall be introduced with regard to judges' remuneration and other essential conditions of service during their terms of office.
- 13.3 Judges should receive adequate remuneration which should be periodically adjusted in line with any increases in the cost of living at the seat of the court.
- 13.4 Conditions of service should include adequate pension arrangements.

14 PRIVILEGES AND IMMUNITIES

- 14.1 Judges shall enjoy immunities equivalent to full diplomatic immunities, and in particular shall enjoy immunities from all claims arising from the exercise of their judicial functions.
- 14.2 The court alone shall be competent to waive the immunity of judges; it should waive immunity in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the exercise of the judicial function.
- 14.3 Documents and papers of the courts, judges and registry, in so far as they relate to the business of the court, shall be inviolable.
- 14.4 The state in which an international court has its seat shall take the necessary measures to protect the security of the judges and their families, and to protect them from adverse measures related to the exercise of their judicial function.

15 BUDGET

- 15.1 States, parties and international organisations shall provide adequate resources, including facilities and levels of staffing, to enable courts and the judges to perform their functions effectively.

16 FREEDOM OF EXPRESSION AND ASSOCIATION

- 16.1 Judges shall enjoy freedom of expression and association. These freedoms must be exercised in a manner that is compatible with the judicial function and that may not affect or reasonably appear to affect judicial independence or impartiality.
- 16.2 Judges shall maintain the confidentiality of deliberations, and shall not comment extra-judicially upon pending cases.
- 16.3 Judges shall exercise appropriate restraint in commenting extra-judicially upon judgements and procedures of their own and other courts and may upon any legislation, drafts, proposals or subject-matter likely to come before their court.

17 EXTRA-JUDICIAL ACTIVITY

- 17.1 Judges shall not engage in any extra-judicial activity that is incompatible with their judicial function or the efficient and timely functioning of the court of which they are members, or that may affect or may reasonably appear to affect their independence or impartiality.
- 17.2 Judges shall not exercise any political function.
- 17.3 Each court should establish an appropriate mechanism to give guidance to judges in relation to extra-judicial activities, and to ensure that appropriate means exist for parties to proceedings to raise any concerns.

18 PAST LINKS TO A CASE

- 18.1 Judges shall not serve in a case in which they have previously served as agent, counsel, advisor, advocate, expert or in any other capacity for one of the parties, or as a member of a national or international court or other dispute settlement body which has considered the subject matter of the dispute or in a case where they had previously commented or expressed an opinion concerning the subject matter in a manner that is likely to affect or may reasonably appear to affect their independence or impartiality.
- 18.2 Judges shall not serve in a case with the subject matter of which they had other forms of association that may affect or may reasonably appear to affect their independence or impartiality.

19 PAST LINKS TO A PARTY

- 19.1 Judges shall not sit in any case involving a party for whom they have served as agent, counsel, advisor, advocate or expert within the previous three years or such other period as the court may establish within its rules; or with whom they have had any other significant professional or personal link within the previous three years or such other period as the court may establish within its rules.

20 INTEREST IN THE OUTCOME OF A CASE

- 20.1 Judges shall not sit in any case in the outcome of which they hold any material personal, professional or financial interest.
- 20.2 Judges shall not sit in any case in the outcome of which other persons or entities closely related to them hold a material, personal, professional or financial interest.
- 20.3 Judges must not accept any undisclosed payment from a party to the proceedings or any payment whatsoever on account of a judge's participation in the proceedings.

21 CONTACT WITH A PARTY

- 21.1 Judges shall exercise appropriate caution in their personal contacts with parties, agents, counsel, advocates, advisors, and other persons and entities associated with a pending case. Any such contacts should be conducted in a manner that is compatible with the judicial function and that may not affect or reasonably appear to affect the judge's independence and impartiality.
- 21.2 Judges shall discourage *ex parte* communications from parties and except as provided by the rules of the court such communications shall be disclosed to the court and to the other party.

22 POST-SERVICE LIMITATIONS

- 22.1 Judges shall not serve in a case with the subject-matter of which they have had any other form of association that may affect or may reasonably appear to affect their independence or impartiality.
- 22.2 Judges shall not seek or accept, while they are in office, any future employment, appointment or benefit, from a party to a case on which they sat or from any entity related to such a party that may affect or may reasonably appear to affect their independence or impartiality.
- 22.3 Former judges shall not, except as permitted by rules of the court, act in any capacity in relations to any case on which they sat during their judicial term of office.
- 22.4 Former judges shall not act as agent, counsel, advisor or advocate in any proceedings before the court on which they previously served for a period of three years after they have left office or such other period as the court may establish and publish.

- 22.5 Former judges should exercise appropriate caution as regards the acceptance of any employment, appointment or benefit, in particular from a party to a case on which they sat or from any entity related to such a party.

23 DISCLOSURE

- 23.1 Judges shall disclose to the court and, as appropriate, to the parties of the proceedings any circumstances which come to their notice at any time by virtue of which any of Principles 16 to 22 apply.
- 23.2 Each court shall establish appropriate procedures to enable judges to disclose to the court and, as appropriate, to the parties to the proceedings matters that may affect or may reasonably appear to affect their independence or impartiality in relations to any particular case.

24 WAIVER

- 24.1 Notwithstanding Principles 16 to 22, judges shall not be prevented from sitting in a case where they have made appropriate disclosure of any facts bringing any of those Principles into operation, where the court expresses no objections and the parties give their express and informed consent to the judge acting.

25 WITHDRAWAL OR DISQUALIFICATION

- 25.1 Each court shall establish rules of procedure to enable the determination whether judges are prevented from sitting in a particular case as a result of the application of these Principles or for reasons of incapacity. Such procedures shall be available to a judge, the court, or any party to the proceedings.

26 MISCONDUCT

- 26.1 Each court shall establish rules of procedure to address a specific complaint of misconduct or breach of duty on the part of a judge that may affect independence or impartiality.
- 26.2 Such a complaint may, if clearly unfounded, be resolved on a summary basis. IN any case where the court determines that more detailed investigation is required, the rules shall establish adequate safeguards to protect the judges' rights and interests and to ensure appropriate confidentiality of the proceedings.
- 26.3 The governing instruments of the court shall provide for appropriate measures, including the removal from office of a judge.
- 26.4 The outcome of any complaint shall be communicated to the complainant.

27 AD HOC JUDGES

- 27.1 An *ad hoc* judge in an international court or tribunal must act conscientiously and independently in the adjudication of the case to which that judge was assigned to sit.
- 27.2 The restrictions and provisions applicable to full-time international judges regarding past links, extra-judicial activities, post-service limitations, and security of tenure shall not apply to *ad hoc* judges.

Appendix 1

Officers and Conferences of the International project on judicial independence

I General Coordinator, International Project on Judicial Independence

Professor Shimon Shetreet ,Director, Sacher Institute of Comparative Law , and Greenblatt Professor of Public and International Law , Hebrew University of Jerusalem,

II Co Chairs of the international conference on Judicial Independence in International Law Jerusalem 26-27 June 2007

Professor Shimon Shetreet , Director, Sacher Institute of Comparative Law , and Greenblatt Professor of Public and International Law , Hebrew University of Jerusalem,
Professor James R. Crawford , Faculty of Law, University of Cambridge

III Officers of the international conference on Judicial Independence for the Drafting of the International Standards of Judicial Independence Zurich Area Conference 30 November -1st of December 2007

Professor Shimon Shetreet , **Co Chair of the Conference** .Director, Sacher Institute of Comparative Law , and Greenblatt Professor of Public and International Law , Hebrew University of Jerusalem,

Professor Christopher F Forsyth, **Co Chair of the Conference** Director Centre of Public Law, Faculty of Law, University of Cambridge

Professor Marcel Storme , Emeritus Professor , Ghent University, Past President of the World Association of Procedural Law , Leader of the Discussions

HE Markus Buechel ,Chair of the Local Organising Committee

IV Co Chairs of the international conference on Judicial Independence and the Constitutional Position of the Judiciary Jerusalem 18-20 2008

Professor Shimon Shetreet , **Co Chair of the Conference** .Director, Sacher Institute of Comparative Law , and Greenblatt Professor of Public and International Law , Hebrew University of Jerusalem,

Professor Christopher F Forsyth, **Co Chair of the Conference** Director Centre of Public Law, Faculty of Law
University of Cambridge

V. Co Chairs of the international conference on Judicial Independence and the Constitutional Position of the Judiciary Krakow November 2008

Professor Shimon Shetreet , **Co Chair of the Conference** .Director, Sacher Institute of Comparative Law , and Greenblatt Professor of Public and International Law , Hebrew University of Jerusalem,

Prof. Dr. Fryderyk Zoll, Faculty of Law ,Jagelonian University ,Krakow

VI. Co Chairs of the international conference on the Challenges of the Standards of Judicial Independence , Switzerland August 2009

Professor Shimon Shetreet , Co Chair of the Conference .Director, Sacher Institute of Comparative Law , and Greenblatt Professor of Public and International Law , Hebrew University of Jerusalem,

Professor Bernhard Ehrenzeller , Co Chair of the Conference ,Universität St.Gallen,

Professor Daniel Thurer, Co Chair of the Conference ,Universität Zürich

VII. Members of the Consultation Group of the International Project of Judicial Independence

Dr Cyrus Das, Former President of the Bar of Malaysia

Dr. Anat Scolnicov, Deputy Director, Centere of Public Law, University of Cambridge

Prof. Dr. Fryderyk Zoll, Faculty of Law ,Jagelonian University ,Krakow

Prof. Yuval Shany, Faculty of Law, Hebrew University of Jerusalem

H.E. Advocate Markus Buechel, Senior Lawyer, Liechtenstein

Justice Tassaduq Hussain Jillani, Judge of the Supreme Court of Pakistan

Prof. Yitzhak Hadari, Tel Aviv University, Natanya College Law

Professor Maimon Schwarzschild, Faculty of Law, University of San Diego

Professor Ada Pellegrini Grinover, Brazil

Professor Albert Chen, Professor of Law ,Hong Kong University

Professor Andrey J. Zoll, Former President of Constitutional Court of Poland

Professor Anton Cooray, The School of Law, City University of Hong Kong

Professor Bernhard Ehrenzeller , Universität St.Gallen

Professor Bryant G. Garth, American Bar Foundation

Professor Chandra R De Silva, Dean, College of Arts and Letters at Old Dominion University

Professor Christopher F Forsyth, Director Centre of Public Law, Faculty of Law
University of Cambridge

Professor Daniel Thurer, Universität Zürich

Professor David Feldman, Chairman of the Faculty Board of Law, Faculty of Law
University of Cambridge

Professor Asher Maoz, Tel-Aviv University, Faculty of Law

Professor Dr. Burkhardt Hess , University of Heidelberg

Prof Yoav Dotan , Dean Faculty of Law Hebrew University

Dr. Tomer Braude, Faculty of Law Hebrew University

Professor Dr. Francisco Ramos Mendez , Univ of Barcelona

Professor Dr. Paul Oberhammer , Universität Zürich

Professor Dr. Winfried Brugger , Universitat Heidelberg

Professor Frank Bates, School of Law, University of Newcastle Australia

Paul Morris, Barrister York UK

Prof. Sir Louis Blom Cooper, UK

Professor Federico Carpi , President of the World -Association of Procedural Law

Professor Garry D. Watson, Osgoode Hall Law School, York University

Professor Gary J Simson, Dean, Case Western Reserve University

Prof Joseph Weiler , New York University

Professor Walter Habscheid, Prof Emeritus, University of Zurich

Professor Hans Walter Fasching , Austria

Professor Hiram Chodosh, Dean, S.J. College of Law, the University of Utah
Professor Hoong Phun (HP) LEE, Deputy Dean, Faculty of Law, Monash University
Professor James Nemeth, Eotvos Lorand University, Hungary
Professor James R Crawford, Faculty of Law, University of Cambridge
Professor John Anthony Jolowicz, Trinity College, University of Cambridge
Professor John Bell, Faculty of Law, University of Cambridge
Professor Jonathan Entin, Case Western Reserve University School of Law
Professor Keith Uff, Executive Secretary General, International Association of Procedural Law,
Professor, Faculty of Law, University of Birmingham
Professor KK Venogopal, Senior Advocate of the Supreme Court India
Professor Konstantinos D. Kerameus, University of Athens Greece
Professor Marcel Storme, Ghent University, Past President of the World Association of
Procedural Law
Professor Martin Friedland, Faculty of Law, University of Toronto
Professor Masahisa Deguchi, Faculty of Law, Ritsumeikan University
Professor Michel Rosenfeld, Benjamin N. Cardozo School of Law, Yeshiva University
Professor Moshe Hirsh, Faculty of Law, Hebrew University of Jerusalem
Professor Neil H. Andrews, University of Cambridge, Clare College,
Professor Neil James Williams, University of Melbourne,
Professor Nikolas Klamaris, University of Athens
Professor Oscar G. Chase, New York University School of Law
Professor Pelayia Yessiou-Faltsi, Faculty of Law, Aristotle University of Thessaloniki
Professor Per Henrik Lindblom, Faculty of Law, Uppsala University Juridicum
Professor Peter Gilles, Institut für Rechtsvergleichung Johann Wolfgang
Goethe Universität
Professor Peter Gottwald, Universität Regensburg, Secretary General World association of
procedural Law
Prof John Anthony Jolowicz University of Cambridge
Professor Roger Perrot, Université de Paris
Professor Ruth Lapidot, Faculty of Law Hebrew University of Jerusalem
Professor Sean McConville, Professor of Law and Professorial Research Fellow
School of Law Queen Mary College, University of London
Professor Shimon Shetreet, Director, Sacher Institute of Comparative Law
Hebrew University of Jerusalem
Professor Stephen Goldstein, Emeritus Professor, Hebrew University of Jerusalem
Professor Stephen Marks, Francois-Xavier Bagnoud Professor of Health and Human Rights
Department of Population and International Health Harvard School of Public Health.
Professor Vernon Bogdanor, Oxford University
Professor Walter H. Rechberger, University of Vienna
Professor Walther J. Habscheid, Emeritus Professor, University of Geneva and University of
Zurich
Professor Yasuhei Taniguchi Tokyo Japan
Professor Yoav Dotan, Dean Faculty of Law Hebrew University of Jerusalem
Professor Zhivko Stalev, Bulgaria

Appendix 2

International Law Association Study Group on the Practice and Procedure of International Courts and Tribunals on the Independence of International Judges

Co-Chairs

Philippe Sands, Professor of Law, University College London; Co-Director, Project on International Courts and Tribunals

Campbell McLachlan, Professor, Deputy Dean, School of Law, Victoria University of Wellington

Members

Laurence Boisson de Chazournes, Professor of International Law, University of Geneva

Rodman Bundy, Frere Cholmeley Eversheds, Paris ,

James Crawford, Whewell Professor of International Law, Cambridge University,

Hans van Houtte, Professor of International Law, Katholieke Universiteit Leuven,

Mojtaba Kazazi, United Nations Compensation Commission ,

Francisco Orrego Vicuna, Professor of International Law, University of Chile ,

Alain Pellet, Professor of International Law, Université Paris X Nanterre

Davis Robinson, LeBoeuf, Lamb, Greene & MacRae,

Soli Sorabjee, Attorney General of India,

Margrete Stevens, Senior Counsel, International Centre for Settlement of Investment Disputes