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**FORMULATION AND APPLICATION OF UNITED NATIONS
STANDARDS AND NORMS IN CRIMINAL JUSTICE**

Guidelines on the independence of the judiciary

Note by the Secretariat

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INTRODUCTION

1. The Guidelines on the Independence of the Judiciary were formulated by the Committee on Crime Prevention and Control at its eighth session in pursuance of resolution 16 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. ^{1/} The Economic and Social Council subsequently approved decision 8/3 of the Committee by which the Interregional Preparatory Meeting on the Formulation and Application of United Nations Standards and Norms in Criminal Justice, which met at Varenna, Italy, from 24 to 28 September 1984, were invited to finalize the draft guidelines in co-operation with all parties concerned, and the Secretary-General was requested to submit the finalized text of the Guidelines to the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, for adoption.
2. The Interregional Preparatory Meeting recommended, for adoption by the Seventh United Nations Congress, a draft resolution on the independence of the judiciary to which the Guidelines were annexed (for the text, see annex I of the present report).
3. In order to assist the Congress in its deliberations, explanatory notes are presented below.

I. EXPLANATORY NOTES

A. Preamble

4. The basic principle, as expressed in the Preamble to the Guidelines, is that justice requires that everyone should be entitled to a fair and public hearing by a competent, independent and impartial tribunal, in accordance with the principles proclaimed in the Universal Declaration of Human Rights (article 10), the International Covenant on Civil and Political Rights (article 14) and other United Nations instruments. An independent judiciary is indispensable for the implementation of this right.

B. Section I: Independence of the judiciary

5. The Guidelines first deal with the concepts of the independence and the impartiality of the judiciary and with the principle of separation of judicial functions from other functions of government, notably the functions of the executive and the legislature. It is the duty of a judge to decide matters on the basis of facts and in accordance with the law. It is the duty of the other institutions of government to ensure that the judge is in a position to do so (Guidelines 1-9). In addition, Guideline 4 provides that any hierarchical organization of the judiciary, and any difference in grade or rank, should in no way interfere with the right of judges to act independently of their superiors. However, the head of the court may legitimately have supervisory functions on administrative matters.

6. In accordance with Guideline 10, a citizen shall have the right to be tried by the established ordinary courts of law, and shall not be brought before ad hoc tribunals. Derogations from this principle are admissible only under the strict conditions contained in Guidelines 11 and 12, which describe the impact of states of emergency, siege or exception on the continued existence of the established ordinary courts and on their jurisdiction. Experience shows that in times of war or national emergency, there is an

increased risk of abuses of power and of severe derogations from constitutionally or legally guaranteed freedoms and rights. Therefore, the Guidelines provide that no limits may be placed on the competence of the ordinary courts to inquire into criminal charges and allegations of ill-treatment of detainees and to review the legality of detention and detention orders. Finally, Guideline 13 defines the role and composition of military tribunals, where they exist.

C. Section II: Freedom of expression and association

7. Guidelines 14 and 15 stipulate that judges, like other citizens, are entitled to express their views freely and are allowed, but not obliged, to form and join professional associations or trade unions. Such associations may organize assemblies, conferences, or general or specialized meetings for the entire judiciary, or sections of it, and issue reports and communicate their views in an appropriate manner. Such opportunities for dialogue or consultations between judges can help to reinforce judicial independence. As regards the freedom of expression of judges, this right is, of course, subject to the limitations of professional secrecy, in accordance with Guidelines 30 and 31.

D. Section III: Qualifications, selection and training

8. Reference is made to such important issues as the necessary qualifications for appointment (Guidelines 16 and 17), safeguards to guard against the possibility of judicial appointments being made from improper motives (Guideline 18), and to the selection process, including the recommended composition of the relevant authorities or organs (Guideline 19).

9. Guidelines 16-19 take into account the fact that the structure of the legal profession, and the sources from which judges are taken within the legal profession, vary in different societies. In some countries, the judiciary is a career service, in others judges are chosen from the practising profession or elected by their fellow citizens. Therefore, in different societies, different procedures and safeguards may be seen as being of assistance in ensuring the proper appointment of judges.

10. With respect to the in-service training of judges, suggestions are made in Guideline 21 concerning opportunities to participate in national and international programmes with a view to assisting judges in keeping themselves informed of important developments, including social trends, new technologies and their legal consequences, studies into the causes of crime, sentencing policies and their effects, and international conventions and other instruments establishing international norms.

E. Section IV: Functions, promotion and transfer

11. Among the issues dealt with in this Section are the assignment of functions to judges (Guideline 22), the way in which the promotion of judges should be effected (Guideline 23) and the grounds on which they may be transferred (Guideline 24).

12. Guideline 22 refers to the posting of judges and provides that the assignment of a judge to a post within the court to which he or she is appointed should be an internal administrative function to be carried out by the court itself. In fact, unless assignments are made by the court, there is a danger of erosion of judicial independence by outside interference. Moreover, it is vital that the courts do not make assignments as a result of bias or

prejudice or in response to external pressures. This does not exclude, however, the practice in some countries of requiring that assignments should be approved by a superior council of the magistrature or a similar body.

13. Guideline 23 on the promotion of judges is applicable only to those countries where a system has developed under which judges are encouraged to expect promotions to higher courts or promotions in rank. In every such system, the fundamental goal must be to promote those individuals who have best demonstrated the qualities mentioned in the Guidelines.

14. Guideline 24 seeks to ensure a judge's independence by providing safeguards against transfer without his or her consent. These safeguards are not intended, however, to interfere with sound administrative practices enumerated by law. Exceptions may be made, for example, where a judge in his or her early years is transferred from post to post to enrich judicial experience.

F. Section V: Tenure

15. Security of tenure and of emoluments is the subject of Guidelines 25-28. In principle, judges should be guaranteed tenure until they either decide voluntarily to resign, or reach the established age of retirement or, in the case of existence of a term of office, their term of office expires (Guideline 26). However, part-time or temporary appointments are a common practice in some legal systems, under certain conditions, which were duly taken into account in Guideline 27.

16. In accordance with Guideline 28, judges should receive remuneration for their services on a scale that is adequate and commensurate with their status. It is essential for the independence of the judiciary that salary and pension levels should be such that judges are not inclined to seek additional sources of income.

17. Finally, Guideline 29 refers to possible restrictions upon acceptance by retired judges of any assignment, office or position.

G. Section VI: Professional duties and immunities

18. Guidelines 30 and 31 deal with provisions on such significant items as professional secrecy and confidentiality. It is clear that if judges can be required to testify or otherwise disclose information about their deliberations, their independence may be threatened.

19. As regards immunity from legal action provided for in Guideline 32, this principle is without prejudice to the right that a person may have to claim compensation from the State for damages incurred as a consequence of negligence or abuse of authority by a court, and this right may be assured by an effective legal remedy.

20. As far as the physical protection of judges is concerned, Guideline 33 provides that it is the responsibility of the executive authorities to ensure the security and physical protection of members of the judiciary and their families, especially in the event of threats being made against them, so that judges are able to carry out their functions in the calmness and safety that are necessary for their independence.

H. Section VII: Disqualifications

21. Guidelines 34-36 indicate to what extent and under what conditions judges may be permitted to undertake non-judicial assignments or to engage in political or other extra-judicial activities. Judges should always behave in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

22. Guideline 37 relates to possible conflict of interests and incompatibility and the conditions under which judges may or should be excused or disqualified from sitting in any given case. Judges can and should decline to sit in cases where their independence may properly be called in question, whether or not so requested by one of the parties. In doubtful situations, the court or the chief justice, or the president of the supreme court, may decide upon such a request by the judge concerned. In some jurisdictions, there is an immediate right of appeal against a refusal by a judge to disqualify himself or herself.

I. Section VIII: Discipline and removal

23. Guidelines 38, 39, 41 and 42 give a general description of procedures and the nature and extent of sanctions that may be applicable in cases where judges fail to observe the impartiality and independence required in the performance of their functions. The possibility of disciplinary action does not imperil the independence of judges if certain guarantees are provided. As in any other proceedings, judges should be presumed innocent and the disciplinary proceedings should be fair and expeditious. The judge should have the right to be heard promptly and to be informed from the outset of any disciplinary complaint. The necessity of clearly establishing a judge's conduct is emphasized in Guideline 40. Possible measures to be applied should be commensurate with the ascertained behaviour, and may include a variety of options ranging from censure or reprimand to removal from office. The latter sanction should only be adopted when a judge has been found clearly unfit to carry out judicial functions (Guideline 43).

K. Section IX: Court administration

24. Guidelines 44-46 describe the role of the judiciary in the management of the courts. In many countries, the ministry of justice is responsible for some aspects of the administration of the courts such as presenting bills to the parliament on behalf of the judiciary. The Guidelines stipulate that the principle responsibility for court administration itself should vest in the judiciary. To ensure its independence, the judiciary should be provided with the means and resources necessary for the proper fulfilment of its judicial functions and, to this end, the Guidelines provide that adequate budgetary consideration should be given to ensure due administration of justice.

25. Finally, Guideline 47 stipulates that the court itself should be responsible for assigning cases to individual judges or to sections of a court composed of several judges, in accordance with the law or rules of court. The exclusive responsibility for case assignments may be vested in a responsible judge, usually the president of the court. In some countries there is a right of appeal to the court as a whole where case assignments are made by the president or a senior judge of the court. In other countries, where judicial work is assigned by the chief justice, it is not considered inconsistent with judicial independence to accord to him or her the right to change the predetermined plan for division of work, for sound reasons, in consultation with the senior judges when practicable.

II. RELATED WORK OF THE HUMAN RIGHTS PROGRAMME OF THE UNITED NATIONS

26. The Congress may recall that the Sub-Commission on Prevention of Discrimination and Protection of Minorities entrusted a Special Rapporteur with the preparation of a study on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (E/CN.4/Sub.2/L.731, E/CN.4/Sub.2/481 and Add.1 and E/CN.4/Sub.2/1983/16), in accordance with Economic and Social Council decision 1980/124 and Sub-Commission decision 1982/1. The study under preparation is a comprehensive analysis comparing the current administration of justice in various countries, particularly from the viewpoint of equality,* based on the replies of Governments to a detailed questionnaire.

27. The Guidelines annexed hereto have a more limited approach: they make pragmatic suggestions for the day-to-day operation of the judiciary, with emphasis on criminal justice. Special attention is also given to the selection and training of judges and to ensuring just and effective judicial proceedings, with full respect for human rights. Thus, the study and the Guidelines complement each other in their aim of securing the independence and impartiality of the judiciary and of attaining justice and equality before the law for all.

Note

1/ Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, Venezuela, 25 August-5 September 1980 (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

*See also Study of Equality in the Administration of Justice (United Nations publication, Sales No. E.71.XIV.3).

Annex

DRAFT RESOLUTION ON THE INDEPENDENCE OF THE JUDICIARY

The Interregional Preparatory Meeting on the Formulation and Application of United Nations Standards and Norms in Criminal Justice, held at Varenna, Italy, from 24 to 28 September 1984, recommended the following resolution for adoption by the Seventh Congress:

"The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

"Recalling the Caracas Declaration, unanimously adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the General Assembly in its resolution 35/171 of 15 December 1980,

"Recalling also resolution 16 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, a/ in which the Congress called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges,

"Recalling further Economic and Social Council decision 1984/153 of 25 May 1984, in which the Council invited the interregional preparatory meeting on the formulation and application of United Nations standards and norms in criminal justice to finalize the draft guidelines on the independence of the judiciary formulated by the Committee on Crime Prevention and Control at its eighth session and invited the Secretary-General to submit the finalized text to the Seventh Congress for adoption,

"Taking note with appreciation of the work accomplished in pursuance of the mandates cited above by the Committee on Crime Prevention and Control and by the interregional preparatory meeting at Varenna, Italy,

"1. Adopts the guidelines on the independence of the judiciary as set out in the annex to the present resolution;

"2. Recommends the guidelines for national, regional and interregional action and implementation, taking into account the political, economic, social and cultural circumstances and traditions of each country;

"3. Invites Governments to apply the guidelines and to put them into practice by means of appropriate legislation and policy directives;

"4. Also invites the relevant authorities of Member States to bring the guidelines to the attention of judges, lawyers, members of the executive and the legislature and the public in general;

"5. Urges the regional commissions, the regional and international institutes in the field of crime prevention and the treatment of offenders, the specialized agencies and other entities within the United Nations system,

"a/ Report of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B.

other intergovernmental organizations concerned and non-governmental organizations having consultative status with the Economic and Social Council to become actively involved in the implementation of the guidelines;

"6. Calls upon the Committee on Crime Prevention and Control to consider, as a matter of priority, the necessary ways and means to ensure the effective implementation of the present resolution;

"7. Requests the Secretary-General to take steps, as appropriate, to ensure the widest possible dissemination of the guidelines, including the intensification of information activities in this field;

"8. Also requests the Secretary-General to prepare a report on the implementation of the guidelines for consideration by the General Assembly;

"9. Further requests the Secretary-General to assist Member States, at their request, in the implementation of the guidelines and to report on the matter regularly to the Committee on Crime Prevention and Control;

"10. Invites the Economic and Social Council and the General Assembly to consider the above issues, as a matter of priority.

"Annex

"GUIDELINES ON THE INDEPENDENCE OF THE JUDICIARY

"Preamble

"Whereas in the Charter of the United Nations the peoples of the world affirm their determination to establish conditions under which justice can be maintained and to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,

"Whereas the Universal Declaration of Human Rights enshrines the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

"Whereas the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights both guarantee the exercise of those rights,

"Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

"Whereas the organization and administration of justice in every country should be inspired by those principles and efforts should be undertaken to translate them fully into reality,

"Whereas rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles in a pragmatic way on a day-to-day basis,

"Whereas judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens,

"Whereas the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by its resolution 16, called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

"Whereas it is, therefore, appropriate that consideration be first given to the role of judges in relation to the system of justice and to the importance of their selection, training and conduct,

"The following guidelines, formulated to assist Member States in their task of securing and promoting the independence of the judiciary, with emphasis on criminal justice, should be implemented by Governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general. The guidelines have been formulated principally with professional judges in mind, but they apply equally, as appropriate, to lay judges, where they exist.

"I. INDEPENDENCE OF THE JUDICIARY

"1. Judges shall exercise their functions independently of the executive, the legislature, political parties, the military and all other organizations and institutions.

"2. Judges 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 quarters or for any reason.

"3. It is the duty of the institutions of Government to respect and observe the independence of the judiciary and to ensure that the judiciary occupies, and is seen to occupy, a position in society that enables it to maintain its dignity and standing and to perform its proper functions.

"4. In the decision-making process, judges shall exercise their functions independently of their superiors and judicial colleagues.

"5. Judicial decisions by the courts shall not be subjected to revision by the executive.

"6. The judiciary shall have jurisdiction, directly or by way of review, over all issues of a judicial nature that are within its competence. Courts shall have exclusive authority to decide whether an issue submitted for their decision is within their competence.

"7. No power shall be exercised to:

"(a) Interfere with the judicial process;

"(b) Assume control over judicial functions;

"(c) Close down or suspend the operation of the courts or change the composition of a court to affect the decision of a particular case.

"8. The executive shall:

"(a) Refrain from any act or omission that would prevent, prejudice or influence the judicial resolution of a dispute;

"(b) Ensure the proper execution of orders and judgements of the court.

"9. Recourse to the courts over the execution of court orders and judgements shall be possible and the State shall ensure their due and proper execution.

"10. The State shall ensure that everyone shall have the right to be tried in a fair and expeditious manner by the established ordinary courts or judicial tribunals.

"11. No special or ad hoc tribunals shall be established to displace the jurisdiction properly belonging to the courts, except that some derogations may be permitted in times of grave public emergencies threatening the life of the nation and only to the extent strictly required by the exigencies of the situation. Such derogations shall be reviewable by the courts and may be made only under conditions prescribed by law and in keeping with internationally recognized standards.

"12. In such times of emergency:

"(a) Civilians charged with criminal offences of any kind shall continue to be tried by the competent civilian judges following established procedures;

"(b) Courts shall retain their jurisdiction to review the legality of detentions and detention orders and to enquire into any allegations of ill-treatment.

"13. The jurisdiction of military tribunals, where they exist, shall be confined to military offences committed by military personnel. These tribunals shall as far as possible be so composed as to include persons with legal training. There shall be a right of appeal to an appellate court, which shall be so composed as to include persons with legal training and judicial experience.

"II. FREEDOM OF EXPRESSION AND ASSOCIATION

"14. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly. Judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

"15. Judges shall be free to form and join associations of judges to represent their interests, to promote their professional training and to protect their judicial independence.

"III. QUALIFICATIONS, SELECTION AND TRAINING

"16. Candidates for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law.

"17. In the selection of judges, there shall be no discrimination on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement that a candidate for judicial office must be a national of the country concerned shall not be considered discriminatory.

"18. The law shall provide safeguards against judicial appointments for improper motives.

"19. (a) Where judges are appointed, appointments shall be made either by the judiciary or by the executive and/or the legislature, preferably in consultation with members of the judiciary or by a body in which members of the judiciary participate;

"(b) Where judges are elected, the electoral system shall not impair their impartiality and independence.

"20. Upon taking office, it is appropriate that judges swear an oath or make a solemn declaration to the effect that they will fulfil the duties of their office faithfully, honestly and to the best of their ability without fear or favour and uphold the professional standards of the judiciary.

"21. Judges shall be given opportunities to enhance their knowledge of law and related subjects, for example by:

"(a) Facilitating the exchange of information, experience and expertise in the administration of justice;

"(b) Providing courses in social and behavioural sciences and in judicial administration;

"(c) Organizing seminars concerning national and international experiences, including those of the United Nations, in the areas of administration of justice and human rights and the relevant international conventions, instruments, guidelines and standards in these fields;

"(d) Making use of other national and international programmes, as appropriate, to improve the information available to judges, particularly those programmes provided by the United Nations regional institutes.

"IV. FUNCTIONS, PROMOTION AND TRANSFER

"22. The assignment of functions to judges within the court to which they belong is an internal matter of judicial administration.

"23. Promotion of judges shall be based on an objective assessment of the candidates' integrity and independence of judgement, professional competence, experience and commitment to uphold the rule of law and shall be free from improper motives.

"24. Except pursuant to a system or an accepted policy of regular rotation, judges shall not be transferred from one jurisdiction to another without their consent, but such consent shall not be unreasonably withheld. No transfer shall be made from improper motives.

"V. TENURE

"25. The term of office of judges, their independence, security, adequate remuneration, conditions of service and the age of retirement shall be secured by law.

"26. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

"27. The appointment of temporary judges and the appointment of judges for a probationary period jeopardize judicial independence and shall, therefore, be avoided, except for:

"(a) Part-time or temporary judges, when needed, provided that proper safeguards are laid down to ensure impartiality and to avoid conflict of interest;

"(b) Probationary judges for certain periods after their initial appointment in countries with a career judiciary, such as civil-law countries.

"28. Salaries and pensions of judges shall be adequate and commensurate with the status, dignity and responsibility of their office.

"29. After retirement a judge shall not engage in any activity that might bring the judicial office into disrepute.

"VI. PROFESSIONAL DUTIES AND IMMUNITIES

"30. Judges shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings.

"31. Judges shall not be compelled to testify on matters that have come to their knowledge in their official capacity.

"32. Without prejudice to any disciplinary procedure, judges shall enjoy personal immunity from civil suits in court for acts done in their judicial capacity.

"33. The executive authorities shall, if necessary, ensure the security and physical protection of judges and their families.

"VII. DISQUALIFICATIONS

"34. Judges may not serve in an executive or a legislative capacity unless these functions are exercised without compromising their judicial independence in any way.

"35. While in office, judges shall not practise law in a private capacity. This shall not apply to lawyers who sit only on a part-time basis to fulfil judicial functions.

"36. Judges shall refrain from activities that may cast a reasonable doubt on their independence and integrity.

"37. Judges shall abstain from sitting in any proceedings where they have a conflict of interest or where they may on other reasonable grounds appear to be biased.

"VIII. DISCIPLINE AND REMOVAL

"38. A charge or complaint made against a judge in his judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the opportunity of a full hearing and of commenting on the subject matter from its initial stage. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

"39. Proceedings for removal or discipline of judges shall be held before a board wholly or predominantly composed of members of the judiciary or of members selected by the judiciary. The power of removal may be vested instead in the legislature or another constitutional body which shall act, as far as possible, upon a recommendation of the board referred to in the preceding sentence.

"40. All disciplinary or removal proceedings shall be based upon established standards of judicial conduct.

"41. Decisions in disciplinary or removal proceedings, whether held in camera or in public, may be published. If the judge concerned so requests, the decision shall be published.

"42. Decisions in disciplinary or removal proceedings should be subject to appropriate arrangements for an independent review. This may not apply to decisions of the highest court and those of the legislature in impeachment proceedings.

"43. Judges shall be subject to removal only for reasons of incapacity or misbehaviour rendering them unfit to continue in office.

"IX. COURT ADMINISTRATION

"44. The main responsibility for court administration shall vest in the judiciary.

"45. It shall be a priority for the State to provide adequate resources to allow for the due administration of justice, including physical facilities appropriate for the maintenance of judicial independence, dignity and effectiveness; judicial and administrative personnel; and operating budgets.

"46. The budget of the courts shall be prepared by the competent authority in close co-operation with the administrative organs of the judiciary. They shall play an active role in the process and submit their estimate of the budget requirements to the appropriate authority.

"47. The division of work between judges and case assignment shall be made by the judiciary under a predetermined plan, which may be changed only in certain circumstances clearly defined in advance."

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