**Appendix II**

 **INTERNATIONAL STANDARDS OF JUDICIAL INDEPENDENCE**

**1. Mt Scopus International Standards of Judicial Independence, 2008 (as amended in 2011 and 2012 )**

**2. New Delhi Code of Minimum Standards of Judicial Independence, 1982**

**3. Montreal Declaration on The Independence of Justice 1983**

**International Association of Judicial Independence and World Peace**

**International Project of judicial independence**

1. **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 New Delhi Minimum Standards on Judicial independence 1982 and the *Montréal Universal Declaration on the Independence of Justice* 1983 drafted with the assistance of members of the International Project of Judicial independence of the International Association of Judicial Independence and World Peace and to 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*;; *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 *1998[[1]](#footnote-1) ,The Bangalore Principles of Judicial Conduct* November 2002,[[2]](#footnote-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. An independent and impartial[[3]](#footnote-3) judiciary is an institution of the highest value in every society[[4]](#footnote-4) and an essential pillar of liberty[[5]](#footnote-5) and the rule of law.
	2. The objectives and functions of the judiciary shall include:
		* 1. To resolve disputes and to administer the law impartially between persons and between persons and public authorities;
			2. To promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and
			3. To ensure that all people are able to live securely under the rule of law.[[6]](#footnote-6)
2. **THE JUDICIARY[[7]](#footnote-7) AND THE EXECUTIVE**
	1. The Judiciary as a whole shall be independent.
	2. Each judge shall enjoy both personal independence and substantive independence:[[8]](#footnote-8)
		1. Personal independence means that the terms and conditions of judicial service are adequately secured by law[[9]](#footnote-9) so as to ensure that individual judges are not subject to executive control; and
		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.
	3. The Judiciary as a whole shall[[10]](#footnote-10) enjoy collective independence and autonomy vis-à-vis the Executive.
	4. Judicial appointments and promotions by the Executive are not inconsistent with judicial independence as long as they are in accordance with Principles 4.
	5. No executive decree shall reverse specific court decisions, or change the composition of the court in order to affect its decision-making.[[11]](#footnote-11)
	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.
	7. The power to discipline or remove a judge must be vested in an institution which is independent of the Executive.
	8. The power of removal of a judge shall preferably be vested in a judicial tribunal.
	9. The Executive shall not have control over judicial functions.
	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.
	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.
	12. Judicial matters are exclusively within the responsibility of the Judiciary, both in central judicial administration and in court level judicial administration.
	13. The central responsibility for judicial administration shall preferably be vested in the Judiciary or jointly in the Judiciary and the Executive.
	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.
	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]](#footnote-12)
		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]](#footnote-13).
	16. Candidates for judicial office shall be individuals of integrity[[14]](#footnote-14) and ability, well- trained in the law. They shall have equality of access to judicial office.[[15]](#footnote-15)
	17. It is the duty of the state to provide adequate financial resources to allow for the due administration of justice.
	18. Division of work among judges should ordinarily be done under a predetermined plan, which can be changed in certain clearly defined circumstances.
		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 the chief justice the power to change the predetermined plan for sound reasons, preferably in consultation with the senior judges when practicable.
		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.
	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.
	20. Judicial salaries and pensions shall be adequate at all times, fixed by law, and should be periodically reviewed independently of Executive control
	21. The position of the judges, their independence, their security of tenure, and their adequate remuneration shall be entrenched constitutionally[[16]](#footnote-16) or secured by law.
	22. Judicial salaries, pensions, and benefits[[17]](#footnote-17) cannot be decreased during judges’ service except as a coherent part of an overall public economic measure.
	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.
	24. The power of pardon shall be exercised cautiously so as to avoid its use as an interference with judicial decision.
	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.
	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 JUDICIARY[[18]](#footnote-18) AND THE LEGISLATURE**
	1. The Legislature shall not pass legislation which reverses specific court decisions.
	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]](#footnote-19)
	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 comparable[[20]](#footnote-20) status.
	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]](#footnote-21)
	5. Part-time judges should be appointed only with proper safeguards secured by law.
	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]](#footnote-22)
4. **TERMS AND NATURE OF JUDICIAL APPOINTMENTS**
	1. The method of judicial selection shall safeguard against judicial appointments for improper motives[[23]](#footnote-23) and shall not threaten judicial independence.

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* 1. 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

* 1. 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.
		1. Retirement age shall not be reduced for existing judges.[[24]](#footnote-24)
	2. Promotion of judges shall[[25]](#footnote-25) be based on objective factors, in particular merit,[[26]](#footnote-26) integrity and experience.[[27]](#footnote-27)
	3. 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. 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]](#footnote-28)
	5. The institution of temporary judges should be avoided as far as possible except where there exists a long historic democratic tradition.
	6. Part-time judges should be appointed only with proper safeguards secured by law.
	7. The number of the members of the highest court should be fixed, with the exception of courts modeled after the courts of cassion, and in the case of all courts, should not be altered for improper motives.
1. **JUDICIAL REMOVAL AND DISCIPLINE**
	1. The proceedings for discipline and removal of judges[[29]](#footnote-29) shall be processed expeditiously and fairly[[30]](#footnote-30) and shall ensure fairness to the judge including adequate opportunity for hearing.
	2. With the exception of proceedings before the Legislature[[31]](#footnote-31), the procedure for discipline should be held *in camera*. The judge may however request that the hearing be held in public[[32]](#footnote-32) 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]](#footnote-33)
	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.
	4. All disciplinary, suspension and removal[[34]](#footnote-34) actions shall be based upon established standards of judicial conduct.[[35]](#footnote-35)
	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]](#footnote-36)
	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.
	7. The head of the court may legitimately have supervisory powers to control judges on administrative matters.
2. **THE MEDIA AND THE JUDICIARY**
	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 restrain in criticism of judicial decisions.[[37]](#footnote-37)
	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.
	3. The media should show responsibility and restraint in publications on pending cases where such publication may influence the outcome of the case.
	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]](#footnote-38)
3. **STANDARDS OF CONDUCT[[39]](#footnote-39)**
	1. Judges may not serve in Executive or Legislative functions, including as:
		1. Ministers of the government; or as
		2. Members of the Legislature or of municipal councils.
	2. Judges shall not hold positions in political parties.
	3. A judge, other than a temporary or part-time judge, may not practice law.
	4. A judge should refrain from business activities **and should avoid from engaging in** other **remunerative activity**,[[40]](#footnote-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 members[[41]](#footnote-41)**, or** that judge's **teaching at a university or a college**.
	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.
	6. Judges may be organized in associations designed for judges, for furthering their rights and interests as judges.
	7. Judges may take appropriate action to protect their judicial independence.[[42]](#footnote-42)
	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.
	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 justice [[43]](#footnote-43)

* 1. 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 judge should be taken by an authority which enjoys the same judicial independence as judges.[[44]](#footnote-44)
	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.

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1. **SECURING IMPARTIALITY AND INDEPENDENCE[[45]](#footnote-45)**
	1. A judge[[46]](#footnote-46)shall enjoy immunity from legal actions in the exercise of official functions.[[47]](#footnote-47)
	2. A judge shall not sit in a case where there is a reasonable suspicion of bias or potential bias.[[48]](#footnote-48)
	3. A judge shall avoid any course of conduct which might give rise to an appearance of partiality.
	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, threats[[49]](#footnote-49) 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 judiciary [[50]](#footnote-50)

**9. THE INTERNAL INDEPENDENCE OF THE JUDICIARY**

* 1. In the decision-making process, a judge must be independent vis-à-vis his judicial colleagues and superiors.
	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]](#footnote-51)

**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**

* 1. The international courts and the judges shall exercise their functions free from direct or indirect interference or influence by any person or entity.
	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.
	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.
	4. Deliberations of the court shall remain confidential.
	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.
1. **NOMINATION, ELECTION AND APPOINTMENT**
	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.
	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.
	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.
	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.
	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.
2. **SECURITY OF TENURE**
	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.
	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.
3. **SERVICE AND REMUNERATION**
	1. Judges' essential conditions of service shall be enumerated in legally binding instruments.
	2. No adverse changes shall be introduced with regard to judges' remuneration and other essential conditions of service during their terms of office.
	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.
	4. Conditions of service should include adequate pension arrangements.
4. **PRIVILEGES AND IMMUNITIES**
	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.
	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.
	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.
	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.
5. **BUDGET**
	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.

1. **FREEDOM OF EXPRESSION AND ASSOCIATION**
	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.
	2. Judges shall maintain the confidentiality of deliberations, and shall not comment extra-judicially upon pending cases.
	3. Judges shall exercise appropriate restrain 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.
2. **EXTRA-JUDICIAL ACTIVITY**
	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.
	2. Judges shall not exercise any political function.
	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.
3. **PAST LINKS TO A CASE**
	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.
	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.
4. **PAST LINKS TO A PARTY**
	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.
5. **INTEREST IN THE OUTCOME OF A CASE**
	1. Judges shall not sit in any case in the outcome of which they hold any material personal, professional or financial interest.
	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.
	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.
6. **CONTACT WITH A PARTY**
	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.
	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.
7. **POST-SERVICE LIMITATIONS**
	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.
	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.
	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.
	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.
	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.
8. **DISCLOSURE**
	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.
	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.
9. **WAIVER**
	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.
10. **WITHDRAWAL OR DISQUALIFICATION**
	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.
11. **MISCONDUCT**
	1. Each court shall establish rules of procedure to address a specific complaint of misconduct or breach of duty on the party of a judge that may affect independence or impartiality.
	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.
	3. The governing instruments of the court shall provide for appropriate measures, including the removal from office of a judge.
	4. The outcome of any complaint shall be communicated to the complainant.
12. **AD HOC JUDGES**
	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.
	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.

**Amendments to The Mt Scopus International Standards of Judicial Independence**

**Approved in Vienna 21st May 2011**

**Add a paragraph in Section 1.3 as follows**

1.3 It is vital that supranational and international Tribunals respect the fundamental principles of the legal systems of the Member States and to that end acknowledge the collegiality of the traditions of the courts of both the municipal and extra municipal courts .

**Add to Section 7**

7.12. Except in cases of legitimate consultations a Judge shall not approach other judges not sitting with him on the same panel on pending cases.

**Add to section 4**

4.10. Legislatures should formulate special procedures for the appointment of Chief Justices and Presidents of courts.

**Add Section 9A**

**9A. ADMINISTRATIVE ADJUDICATORS**

Administrative adjudicatory officers

9A.1 Definitions

In this section the term administrative adjudicators means — Administrative officers exercising judicial functions in agencies but are not part of the regular court system.

9A.2. Except as provided below, the standards applicable to national judges shall apply to administrative adjudicators

9A.3. Administrative officers exercising judicial functions - hereinafter administrative adjudicators - may be appointed by the executive on merit according to the general principles in section 4.4 and section 4.5.

9A.4. Administrative adjudicators may be appointed for probationary periods provided the decision whether to make a permanent appointment is based on merit.

9A.5.Compensation of administrative adjudicators shall not be reduced except as part of a general economic measures applied to the country as a whole

9A.6. Administrative adjudicators may be removed only for good cause, to be specified by law, and only after a fair hearing.

9A.7. Administrative adjudicators shall not exercise or be assigned non-adjudicatory functions in the same or a related matter in which they perform adjudicatory functions.

9A.8. Decisions of administrative adjudicators , including factual findings and legal conclusions, shall be subject to review by the agency that administers the program under which the matter arises and also may be subject to judicial review according to law.

9A.9. The executive shall not interfere in the substantive decision-making of administrative adjudicators .

9A.10. Administrative adjudicators shall be subject to evaluation according to objective criteria that are related to promoting uniform decisional standards.

**Amendments to the Mt Scopus International Standards of judicial Independence Approved in Ghent 20 October 2012**

**Add Standard 9B**

**PUBLIC IQUIRIES BY JUDGES**

9B. If a serving member of the judiciary accepts appointment as a Commissioner of Inquiry on behalf of Government, he or she does so not in the capacity of a judge but as a public servant in public administration.

9B.1 While a serving judge conducts a public inquiry, in accordance with terms of reference stated by the Government, he must act impartially and independently of any party interested in the substance of the public inquiry.

9B.2 A serving judge who chairs a public inquiry is entitled to insist that all matters of the procedure in the conduct of the inquiry shall be at his complete discretion; in particular he or she may , according to the applicable law or standards , issue a warning letter to any interested party of any complaint that may appear in the Inquiry’s report to Government

9B.3 If an interested party responds to any such warning letter from the public inquiry, the judge will consider such response, and if necessary, indicate that it has been considered in the preparation of the final report to Government.

9B.4 Upon receiving a request to chair a commission of inquiry, a judge shall carefully consider all the ramifications of such appointment before giving consent to said appointment

9B.5 Judges who exercise other functions such as in alternative dispute resolution (ADR), in mediation or arbitration, shall act impartially and independently of any party to the relevant procedure.

**Amendment to The Mt Scopus International Standards of Judicial Independence**

**Add 1.4**

 **BUILDING AND MAINTAINING CULTURE OF JUDICIAL INDEPENDENCE**

1.4 Every society and all international bodies, tribunals and courts shall endeavour to build and maintain a culture of judicial independence[[52]](#footnote-52) that is essential for democracy, liberty , rule of law and human rights in domestic system of government and is a necessary foundation for world peace, orderly world trade, globalised markets and beneficial international investments .

1.4.1 The culture of judicial independence is created on five important and essential aspects: creating institutional structure, establishing constitutional infrastractures, introducing legislative provisions and constitutional safeguards, creating adjudicative arrangements and jurisprudence, and maintaining ethical traditions and code of judicial conduct.

1.4.2 The institutional structures regulate the matters relative to status of the judges and jurisdiction of the courts.

1.4.3 The constitutional infrastructure embodies in the constitution the main provisions of the protection of the judiciary as outlined in this standards.

 1.4.4 The legislative provisions offer detailed regulations of the basic constitutional principles of judicial independence and impartiality.

 1.4.5 The courts add to the constitutional infrastructure and the legislative provisions complimentary interpretations and jurisprudence on different aspects of the conduct of judges operation and courts.

1.4.6 The ethical traditions and code of judicial conduct cover the judge’s official and non-official spheres of activities, and shield the judge's substantive independence from dependencies, associations, and even less intensive involvements which might cast doubts on judicial neutrality.

**Appendix 1**

**Officers and Conferences of the International Project on Judicial Independence**

**General Coordinator, International Project on Judicial Independence**

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

**I Co-Chairs of the International Conference on Judicial Independence on International Law, Jerusalem, 26-27 June 2007**

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

**Professor James R. Crawford,**  Faculty of Law, University of Cambridge

 **II Officers of the International Conference on Judicial Independence for the Drafting of the International Standards of Judicial Independence, Zurich Area Conference, 30 November - 1 December 2007**

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**H.E. Markus Buechel,** Chair of the Local Organising Committee

**III Co-Chairs of the International Conference on Judicial Independence and the Constitutional Position of the Judiciary, Jerusalem, 18-20 March 2008**

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**IV. Co-Chairs of the International Conference on Judicial Independence: The Challenge of Implementing the International Standards, Krakow, November 2008**

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**Professor Dr. Fryderyk Zoll,** Faculty of Law, Jagelonian University, Krakow

**V. Co-Chairs of the International Conference on the The Culture of Judicial Independence: Conceptual Foundations and Practical Challenges, University of Cambridge. 14-16 August 2009**

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(For the international conferences of the Project in Cambridge, 2009, Salt Lake City 2010, Vienna 2011, Hong Kong March 2012 and Ghent October 2012 see additional Report)

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**Appendix 2**

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

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

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Davis Robinson, LeBoeuf, Lamb, Greene & MacRae,

Soli Sorabjee, Attorney General of India,

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

**Publications**

Shimon Shetreet and Christopher Forsyth, Editors,*The Culture of Judicial Independence: Conceptual Foundations and Practical Challenge*, Martinus Nijhoff, 2012

 **2. NEW DELHI CODE OF MINIMUM STANDARDS OF JUDICIAL INDEPENDENCE 1982**

The Jerusalem Approved Standards as adopted in the Plenary Session of the 19th IBA Biennial Conference held on Friday, 22nd October 1982, in New Delhi, India.

1. **Judges and the Executive**

1. (a) Individual judges should enjoy personal independence and substantive independence.

(b) Personal independence means that the terms and conditions of judicial service are adequately secured, so as to ensure that individual judges are not subject to executive control.

(c) 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 own conscience.

2. The judiciary as a whole should enjoy autonomy and collective independence vis-à-vis the Executive.

3. (a) Participation in judicial appointments and promotions by the Executive or Legislature is not inconsistent with judicial independence, provided that appointments and promotions of judges are vested in a judicial body, in which members of judiciary and the legal profession form a majority.

(b) Appointments and promotions by a non-judicial body will not be considered inconsistent with judicial independence in countries where, by long historic and democratic tradition, judicial appointments and promotion operate satisfactorily.

4. (a) The Executive may participate in the discipline of judges, only in referring complaints against judges, or in the initiation of disciplinary proceedings, but not the adjudication of such matters. The power to discipline or remove a judge must be vested in an institution which is independent of the Executive.

 (b) The power of removal of a judge should preferably be vested in a judicial tribunal.

(c) The Legislature may be vested with the powers of removal of judges, preferably upon a recommendation of a judicial commission.

 5. The Executive shall not have control over judicial functions.

 6. Rules of procedure and practice shall be made by legislation or by the Judiciary in cooperation with the legal profession, subject to parliamentary approval.

7. 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.

8. Judicial matters are exclusively within the responsibility of the *Judiciary,* both in central judicial administration and in court level judicial administration.

9. The central responsibility for judicial administration shall preferably be vested in the Judiciary or jointly in the Judiciary and the Executive.

10. It is the duty of the state to provide adequate financial resources to allow for the due administration of justice.

11.(a)Division of work among judges should ordinarily be done under a predetermined plan, which can be changed in certain clearly defined circumstances.

 (b) Countries where the power of judicial work is vested in the chief justice, it is not considered inconsistent with judicial independence to accord to the chief justice the power to change the predetermined plan for sound reasons, preferably in consultation with the senior judges when practicable.

 (c) Subject to the exclusive responsibility for case assignment should be vested in a responsible judge, preferably the President of the Court.

12. The power to transfer a judge from one court to another shall be vested in a judicial authority and preferably shall be subject to the judge's consent, such consent not to be unreasonably withheld.

13. Court services should be adequately financed by the relevant government.

14. Judicial salaries and pensions shall be adequate, and should be regularly adjusted to account for price increases independently of Executive control.

15. (a) The position of the judges, their independence, their security, and their adequate remuneration shall be secured by law.

(b) Judicial salaries cannot be decreased during the judges' service except as a coherent part of an overall public economic measure.

16. 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.

17. The power of pardon shall be exercised cautiously so as to avoid its use as an interference with judicial decision.

18. (a) 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.

 (a) The Executive shall have the power to close down, or suspend, the operation of the court system at any level.

**B. Judges and the Legislature**

19. The Legislature shall not pass legislation which retroactively reverses specific court decisions.

20. (a) Legislation introducing changes in the terms and conditions of judicial services shall not be applied to judges holding office at the time of passing the legislation, unless the changes improve the terms of service.

(b) Incase of legislation reorganizing courts, judges serving in these courts shall not be affected, except for their transfer to another court of the same status.

21. A citizen shall have the right to be tried by the ordinary courts of law, and shall not be tried before ad hoc tribunals.

C. **Terms and Nature of Judicial Appointments**

22. (a) 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.

(b) Retirement age shall not be reduced for existing judges.

23. (a) Judges should not be appointed for probationary periods except for in legal systems in which appointments of judges do not depend on having practical experience in the profession as a condition of appointment.

(b) The institution of temporary judges should be avoided as far as possible except where there exists a long historic democratic tradition.

24. The number of the members of the highest court should be rigid and should not be subject to change, except by legislation.

25. Part-time judges should be appointed only with proper safeguards.

26. Selection of judges shall be based on merit.

**D. Judicial Removal and Discipline**

27. The proceedings for discipline and removal of judges should ensure fairness to the judge, and adequate opportunity for hearing.

28. The procedure for discipline should be held in camera. The judge may however request that the hearing be held in public, subject to a 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.

29. (a) The grounds for removal of judges shall be fixed by law and shall be clearly defined.

(b) All disciplinary action shall be based upon standards of judicial conduct promulgated by law, or in established rules of court.

 30. A judge shall not be subject to removal unless, by reason of a criminal act or through-gross or repeated neglect or physical or mental incapacity, he has shown himself manifestly unfit to hold the position of judge.

 31. 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 member of the Judiciary.

32. The head of the court may legitimately have supervisory powers to control judges on administrative matters.

E. **The Press, the Judiciary and the Courts**

33. It should be recognized that judicial independence does not render the judges free from public accountability, however, the press and other institutions should be aware of the potential conflict between judicial independence and excessive pressure on judges.

34. Subject to Standard 41, judges may write articles in the press, appear on television and give interviews to the press.

35. The press should show restraint in publications on pending eases where such publication may influence the outcome of the case.

F. **Standards of Conduct**

36. Judges may not, during their term of office, serve in Executive functions, such as ministers of the government, nor may they serve as members of the Legislature or of municipal councils, unless by long historical traditions these functions are combined.

37. Judges may serve as chairmen of committees of inquiry in cases where the process requires skill of fact-finding and evidence-taking.

38. Judges shall not hold positions in political parties.

39. A judge, other than a temporary judge, may not practice law during his term of office.

40. A judge should refrain from business activities, except his personal investments, or ownership of property.

41. A judge should always behave in such a manner as to preserve the dignity of his office and the impartiality and independence of the Judiciary.

 42. Judges may be organized in associations designed for judges, for furthering their rights and interests as judges.

 43. Judges may take collective action to protect, their judicial independence and to uphold their position.

 **G. Securing Impartiality and Independence**

 44. A judge shall enjoy immunity from legal actions, and the obligation to testify concerning -matters arising in the exercise of his official functions.

 45. A judge shall not sit in a case where there is a reasonable suspicion of bias or potential bias.

 46. A judge shall avoid any course of conduct which might give rise to an appearance of partiality.

H. **The Internal Independence of the Judiciary**

47. In the decision-making process, a judge must be independent vis-a-vis his judicial colleagues and superiors.

**APPENDIX
Text of Jerusalem Approved Standards which were Amended in *New Delhi***(Remaining Jerusalem Standards were approved without change.)

3. (a) Judicial appointments and promotions by the Executive are not inconsistent with judicial independence.

(b) Except for countries where by long historic and democratic tradition judicial appointments operate satisfactorily, judicial participation in the process of judicial appointments and promotions, whether by judicial commission or otherwise, is imperative for the maintenance of judicial independence.

15. The position of the judges, their independence, and their adequate remuneration shall be secured by law.

20. In case of legislation abolishing courts, judges serving in these courts shall
 not be affected, except for their transfer to another court of the same status.

28. The procedure for discipline should be in camera; however, judgments in disciplinary proceedings may be published.

44. A judge shall enjoy immunity from legal actions in the exercise of his official functions.

**Participants of the Project of Drafting of the New Delhi Code of Minimum Standards of Judicial Independence (1980-1982) and Montreal Declaration**

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1. **Montreal Declaration 1983**

 **UNIVERSAL DECLARATION ON THE INDEPENDENCE OF JUSTICE**

Unanimously adopted at the final plenary session of the First World Conference on the Independence of Justice held at Montreal (Quebec, Canada) on June 10th, 1983.

**Preamble**

Whereas justice constitutes oneof the essential pillars of liberty;

Whereas the free exercise of fundamental human rights as well as peace between nations can only be secured through respect for the rule of law;

Whereas States have long established courts and other institutions with a view to assuring that justice be duly administered in their respective territories;

Whereas the Charter of the United Nations has established the international Court of Justice as its principal judicial organ in order *to promote the peaceful* solution of disputes between States, in conformity with the principles of justice and international law;

Whereas the Statute of the International Court of Justice provides that the latter shall be composed of a body of independent judges, elected regardless of nationality, which as a whole shall be representative of the main forms of civilisation and of the principal legal systems of the world;

Whereas various Treaties have established other courts endowed with an international competence, which equally owe exclusive allegiance to the international legal order and benefit from representation of diverse legal systems;

Whereas the jusrisdiction vested in international courts shall be respected in order to facilitate the interpretation, application and progressive development of international law and the promotion of human rights;

Whereas national and international courts shall, *within the* sphere of their competence, cooperate in the achievement of the foregoing objectives;

Whereas all those institutions, national and international, must, within the scope of their competence, seek to promote the lofty objectives set out *in the* Charter of the United Nations, the Universal Declaration of Human Rights, the

 International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Optional Protocol to the latter Covenant and other pertinent international instruments, objectives *which* embrace the independence of the administration of the *justice;*

Whereas such independence must be guaranteed to international judges, national judges, lawyers, jurors and assessors;

Whereas the foundations of the independence of justice and the conditions of its exercise may benefit from restatement;

The World Conference of the Independence of Justice recommends to the United Nations on the consideration of this Declaration.

1. **International Judges**

**Definitions**

1.01 In this chapter:

a) "judges" means international judges and arbitrators;

b) "court" means an international court or tribunal of universal, regional, community or specialized competence.

**Independence**

1.02 The international status of judges shall require and assure their individual and collective independence and their impartial and conscientious exercise of their functions in the common interest. Accordingly,states shall respect the international character of the responsibilities of judges and shall not seek to influence them in the discharge of these responsibilities

1.03 Judges and courts shall be free in the performance of their duties to ensure that the Rule of Law is observed, and shall not admit influence from any government or any other authority external to their statutes and the interests of international justice.

1.04 When governing treaties give international courts the competence to determine their rules of procedure, such rules shall come into and remain in force upon adoption by the courts concerned.

1.05 Judges shall enjoy freedom of thought and, in the exercise of their duties, shall avoid being influenced by any considerations other than those of international justice.

The ethical standards required of national judges on the exercise of the judicial functions shall apply to judges of international courts.

1.07 The principles of judicial independence embodied in the Universal Declaration of Human Rights and other international instruments for the protection of human rights shall apply to judges.

1.08 Judges shall promote the principle of the due process of law as being an integral part of the independence of justice.

1.09 No reservation shall be made or admitted to treaty provisions relating to the fundamental principles of independence of the judiciary.

 1.10 Neither the accession of a state to the statute of a court nor the creation of new international courts shall affect the validity of these fundamental principles.

**Appointment**

1.11 Judges shall be nominated and appointed, or elected in accordance with governing constitutional and statutory provisions which shall, if possible, not confine the power of nomination to governments or make nomination dependent on nationality.

1.12 Only a jurist of recognized standing shall be appointed or elected to be a judge of an International court.

1.13 When the statute of a court provides that judges shall be appointed on the recommendation of a government, such appointment shall not be made in circumstances in which that government may subsequently exert any influence upon the judge.

**Compensation**

1.14 The terms of compensation and pension of judges shall be established and maintained so as to ensure their independence. Those terms shall take into account the recognized limitations upon their professional pursuits both during and after their tenure of office. which are defined either by their statute or recognized and accepted in practice.

**Immunities and Privileges**

1.15 Judges shall enjoy privileges and immunities, facilities and prerogatives, no less than those conferred upon chiefs of diplomatic missions under and recognized by the Vienna Convention on Diplomatic Relations. Only the nowt concerned may lift these immunities.

1.16 Judges shall not be liable for acts done in their official capacity.

1.17 a) In view of the importance of secrecy of judicial deliberations to the integrity and independence of the judicial process, judges shall respect secrecy in, and in relation to their judicial deliberations;

b) States and other external authorities shall respect and protect the secrecy and confidentiality of the courts' deliberations at all stages.

**Discipline and Removal**

1.18 All measures of discipline and removal relating to judges shall be governed exclusively by the statutes and rules of their courts, and be within their jurisdiction.

1.19 Judges shall not bc removed from office, except by u decision of the other members of the court and in accordance with its statute.

**Judges Ad Hoc and Arbitrators**

1.20 Unless reference to the context necessarily makes it inapplicable or inappropriate, the foregoing articles shall apply to judges ad hoc and to arbitrators in public international arbitrations.

2. **National Judges**

**Objectives and Functions**

 2.01 The objectives and functions of the judiciary shall include:

1. to administer the law impartially between citizen and citizen, and between citizen and state;
2. to promote, within the proper limits of the judicial function, the observance and the attainment of human rights;
3. to ensure that all peoples are able to live securely under the rule of law.

**Independence**

2.02 Judges individually shall be free, and it shall be their duty, to decide matters before them impartially, in accordance with their assessment of the facts and their understanding of the law without any restrictions, influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

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

2.04 The judiciary shall be independent of the Executive and Legislative.

2.05 The judiciary shall have jurisdiction, directly or by way or review, over all issues of a judicial nature.

2.06 a) No ad hoc tribunals shall be established;

b) 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;

c) Some derogations may be admitted in times of grave public emergency which threatens the life of the nation but only under conditions prescribed by law, and only to the extent strictly consistent with internationally recognised minimum standards and subject to review by the courts;

1. in such times of emergency

I. Civilians charged with criminal offences of any kind shall be tried by ordinary civilian courts, expanded where necessary by additional competent civilian judges;

II. Detention of persons administratively without charge shall be subject to review by ordinary courts by way of habeas corpus or similar procedures, so as to insure that the detention is lawful, as well as to inquire into any allegationsof ill-treatment;

1. The jurisdiction of military tribunals shall he confined to military offences committed by military personnel. There shall always be right of appeal from such tribunals to a legally qualified appellate court. Neither shall this power shall be exercised so as to interfere with judicial process.
2. The Executive shall not have control over judicial functions.
3. The Executive shall not have the power to close down or suspend the operation of the courts.
4. The Executive shall refrain from any act or omission which preempts the judicial resolution of a dispute or frustrates the proper execution of a court decision.

2.08 No legislation or executive decree shall attempt retroactively, to reverse specific court decisions, nor to change the composition of the court to affect its decision-making.

2.09 Judges may take collective action to protect their judicial independence.

 2.10 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. Subject to this principle, judges shall be entitled to freedom of belief, expression, association and assembly.

**Qualifications, Selections and Training**

2.11 candidates for judicial office shall be individuals of integrity and ability, well‑trained in the law. They shall have equality of access to judicial office.

2.12 In. the selection of judges, there shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or status, subject however to citizenship requirements.

2.13 The process and standards of judicial selection shall give due consideration to
ensuring a fair reflection by the judiciary of the society in all its aspects.

2.14 a) There is no single proper method of judicial selection provided it safeguards against judicial appointments for improper motives.

b) Participation in judicial appointments by the Executive or Legislature is consistent with judicial independence, so long as appointments of judges are made in consultation with members of the judiciary and the legal profession or by a body in which members of the judiciary and the legal profession participate.

2.15 Continuing education shall be available to judges.

**Posting, Promotion and Transfer**

2.16 The-assignment of a judge, to a post within the court to which he is appointed
is an internal administrative function to be carried out by the judiciary.

(Explanatory Note: Unless assignments are made by the court, there is a danger of erosion of judicial independence by outside interference. It is vital that the court not make assignments as a result of any bias or prejudice or in response to external pressures. These comments are not intended to exclude the practice in some countries of requiring that assignments be approved by a Superior Council of the judiciary or similar body.)

2.17 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. Article 2.14 shall apply to promotions.

2.18 Except pursuant to a system of regular rotation, judges shall not be transferred from one jurisdiction or function to another without their consent, but such consent shall not be unreasonably withheld.

[Explanatory Note: Unless this principle is accepted, transfer can be used to punish an independent and courageous judge, and to deter others from following his example. This principle is not intended to interfere with sound administrative practices enumerated in the law. Thus exceptions may be made, for example, where a judge in his early years is transferred from post to post to enrich his judicial experience.]

**Tenure**

2.19 a) The term of office of the judges, their independence, security, adequate remuneration and conditions of service shall be secured by law and shall not be altered to their detriment.

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

2.20 The appointment of temporary judges and the appointment of judges for probationary periods is inconsistent with judicial independence. Where such appointments exist, they shall be phased out gradually.

[Explanatory Note: This text is not intended to exclude part-time judges. Where such practice exists, proper safeguards shall be laid down to ensure impartiality and avoid conflict of interests. Nor is this text intended to exclude probationary periods for judges after their initial appointment, in countries which have a career judiciary, such as in civil law countries.]

2.21 a) During their terms of office, judges shall receive salaries and after retirement, they shall receive pensions.

1. The salaries and pensions of judges shall be adequate, commensurate with the status, dignity and responsibility of their office, and be regularly adjusted to account fully for price increases.
2. Judicial salaries shall not be decreased during the judges' term of office, except as a coherent part of an overall public economic measure.

2.22 Retirement age shall not be altered for judges in office without their consent.

2.23 The executive authorities shall, at all times, ensure the security and physical protection of judges and their families.

**Immunities and Privileges**

2.24 Judges shall enjoy immunity from suit, or harassment, for acts and omissions in their official capacity.

2.25 a) Judges shall be bound by professional secrecy in relation to their deliberations, and to confidential information acquired in the course of their duties other tan in public proceedings.

b) Judges shall not be required to testify on such matters.

**Disqualifications**

2.26 Judges may not serve in an executive or a legislative capacity unless it is clear that these functions are combined, without compromising judicial independence.

2.27 Judges may not serve as chairmen or members of committees of inquiry, except in cases where judicial skills are required.

2.28 Judges shall not be active members of, or hold positions in, political parties.

[Explanatory Note: This text is not intended to permit membership of judges in political parties in countries where under law or practice such is excluded, but to lay down standards limiting the scope of judicial involvement in countries where such membership is permissible.]

2.29 Judges may not practice law. [Explanatory Note: See note 2.20.]

2.30 Judges shall refrain from business activities, except as incidental to their personal investments or their ownership of property.

2.31 A judge shall not sit in a case where a reasonable apprehension of bias on his part may arise.

**Discipline and Removal**

2.32 A complaint against a judge shall be processed expeditiously and fairly under an appropriate practice, and the judge shall have the opportunity to comment on the complaint at the initial stage. The examination of the complaint at its initial stage shall be kept confidential, unless otherwise requested by the judge.

2.33 a) The proceedings for judicial removal or discipline, when such are initiated, shall be held before a court or a board predominantly composed of members of the judiciary and selected- by. the judiciary.

b) However, the power of removal may be vested in the Legislature by Impeachment or joint address, prèfèrably upon a recommendation of a court or board as referred to in 2.33(a).

(Explanatory Note: in countries where the legal profession plays an indispensable role in maintaining the rule of law and judicial independence, it is recommended that members of the legal profession participate in the selection of the members of the court or board, and be included as members thereof.

2.34 All disciplinary action shall be based upon established standards of judicial conduct.

2.35 The proceedings for discipline of judges shall ensure fairness to the judge and the opportunity of a full hearing. Hearings on discipline and removal shall be held in camera. The judge may, however, request that the hearing be held in public, subject to a 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.

2.37 With the exception of proceedings before the Legislature or in connection with them, the decision of a disciplinary Tribunal shall be subject to appeal to a court.

2.38 A judge shall not be subject to removal except on proved grounds of incapacity or misbehaviour, rendering him unfit to continue in office.

2.39 In the event that a court is abolished, judges serving in this court shall not be affected, except for their transfer to another court of the same status.

**Court Administration**

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

2.41 It shall be a priority of the highest order, 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 efficiency, judicial and administrative personnel, and operating budgets.

2.42 The budget of the court shall be prepared by the competent authority in collaboration with the judiciary. The judiciary shall submit their estimate of the budget requirements to the appropriate authority.

2.43 The judiciary shall alone be responsible for assigning cases to individual judges or to sections of a court composed of several judges, in accordance with law or rules of court.

2.44 The head of the court may exercise supervisory powers over judges on administrative matters.

**Miscellaneous**

2.45 A judge shall ensure the fair conduct of the trial and inquire fully into any allegation made of a violation of the rights of a party or of a witness, including allegations of ill-treatment.

2.46 Judges shall accord respect to the members of the Bar.

2.47 The state shall ensure the due and proper execution of orders and judgments of the courts; but supervision over the execution of orders and judgments process shall be vested in the judiciary.

2.48 Judges shall keep themselves informed about international conventions and other instruments establishing human rights' norms, and shall seek to implement them as far as feasible, within the limits set by their national constitutions and laws.

2.49 The provisions of Chapter II: National Judges, shall apply to all persons exercising judicial functions, including arbitrators and public prosecutors, unless reference to the context necessarily makes them inapplicable or inappropriate.

 3. **Lawyers**

**Definitions**

3.01 In this chapter:

1. "lawyer" means a person ***qualified and*** authorized to practice before the courts, and to advise and represent his clients in legal matters;
2. "Bar association" means the recognized professional association to which lawyers within a given jurisdiction belong.

**General Principles**

3.02 The legal profession is one of the institutions referred to in the preamble to this declaration. Its independence constitutes an essential guarantee for the promotion and protection of human rights.

3.03 There shall be a fair and equitable system of administration of justice, which guarantees the independence of lawyers in the discharge of their professional duties without any restrictions, influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

3.04 All persons shall have effective access to legal services provided by an independent lawyer, to protect and establish their economic, social and cultural, as well as civil and political rights.

**Legal Education and Entry into the Legal Profession**

3.05 Legal education shall be open to all persons with requisite qualifications, and no one shall be denied such opportunity by reason of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or status.

3.06 Legal education shall be designed to promote in the public interest, in addition to technical competence, awareness of the ideals and ethical duties of the lawyer, and of human rights and fundamental freedoms *recognized* by national And international law.

3.07 Programmes of legal education shall have regard to the social responsibilities of the lawyer, including cooperation in providing legal services to the poor and the promotion and defence of economic, social and cultural *rights* in the process of development.

3.0.8. Every person having the necessary integrity, good character and qualifications

In law shall be entitled to become a lawyer, and to continue in practice without discrimination for having been convicted of an offence for exercising his internationally recognized civil or political rights.

**Education of the Public Concerning the Law**

3.09 It shall be the responsibility of the lawyer to educate the members of the public about the principles of the rule of law, the importance of the independence of the judiciary and of the legal profession and to inform them about their rights and duties, and the relevant and available remedies.

**Rights and Duties of Lawyers**

3.10 The duties of *a* lawyer towards his client include: a) advising the client as to his legal rights and obligations; b) taking legal action to protect him and his interests; and, where required, c) representing him before courts, tribunals or administrative authorities.

3.11 The lawyer, in discharging his duties, shall at all times act freely, diligently and fearlessly in accordance with the wishes of his client and subject to the established rules, standards and ethics of his profession without any inhibition or pressure from the authorities or the public.

3.12 Every person and group of persons is entitled to call upon the assistance of a lawyer to defend his or its interests or cause within the law, and it is the duty of the lawyer to do so to the best of his ability. Consequently the lawyer is not to be identified by the authorities or the public with his client or his client's cause, however popular or unpopular it may be.

3.13 No lawyer shall suffer or be threatened with penal, civil, administrative, economic or other sanctions by reason of his having advised or represented any client or client's cause.

3.14 No court or administrative authoirty shall refuse to recognize the right of a lawyer to appear before it for his client.

3.15 It is the duty of a lawyer to show proper respect towards the judiciary. He shall have the right to raise an objection to the participation or continued participation of a judge in a particular case, or to the conduct of a trial or hearing.

3.16 If any proceedings are taken against a lawyer for failing to show proper respect towards a court, no sanction against him shall be imposed by a judge who participated in the proceedings which gave rise to the charge against the lawyer.

3.17 Save as provided in these principles, a lawyer Shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings, or in his professional appearances before a court, tribunal or other legal or administrative authority.

3.18 The independence of lawyers, in dealing with persons deprived of their liberty; shall be guaranteed so as to ensure that they have free and fair legal assistance. Safeguards shall be built to avoid any possible suggestions of collusion, arrangement or dependence between the lawyer who acts for them and the authorities.

3.19 Lawyers shall have all such other facilities and privileges as are necessary to fulfill their professional responsibilities effectively, including**:** a) absolute confidentiality of the lawyer-client relationship: b) the right *to travel end to* consult with their clients freely, both within their own country and abroad; c) the right freely to seek, to receive and, subject to the rules of their profession, to impart information and ideas relating to their professional *work;* d) the right to accept or refuse a client or a brief.

3.20 Lawyers shall enjoy freedom of belief, expression, association and assembly; and in particular they shall have the right to: a) take part in public discussion of matters concerning the law and the administration of justice. b) join freely local, national and international organizations c) propose and recommend well-considered law reforms in the public interest and inform the public about such matters, and d) take full and active part in the political, social and cultural life of their country.

3.21 Rules and regulations governing the fees and remunerations of lawyers shall be designed to ensure that they earn a lair and adequate income, and legal services are made available to the public on reasonable terms.

**Legal Services for the Poor**

3.22 It is a necessary corollary of the concept of an independent bar, that its members shall make their services available to all sectors of society, so that no one may be denied justice, and shall promote the causeof justice by protecting the human rights, economic, social and cultural, as well as civil and political, of individuals and groups.

3.23 Governments shall be responsible for providing sufficient funding for legal service programmes for the poor.

3.24 Lawyers engaged in legal service programmes and organizations, which are financed wholly:, or in part, from public funds, shall receive adequate remuneration and enjoy full guarantees of their professional independence in particular by:

- the direction of such programmes or organizations being entrusted to an independent board, composed mainly or entirely of members of the profession, with full control over its policies, budget and staff;

- recognition that, in serving the cause of justice, the lawyer primary duty is towards his client,: whom he must advise and represent in conformity with his professional conscience *and* judgment.

**The Bar Association**

3.25 There shall be established in each jurisdiction one or more independent and self-governing associations of lawyers recognized in law, whose council or other executive body shall be freely elected by all the members without interference of any kind by any other body or *person.* This shall be without prejudice to their right to form or join, in addition, other professional associations of lawyers and jurists.

3.26 In order to enjoy the right of audience before the courts, all lawyers shall be members of the appropriate Bar Association.

**Function of the Bar Association**

3.27The functions of a Bar Association in ensuring the independence of the legal profession shall be inter alia:

1. to promote and uphold the cause of justice, without fear or favour;
2. to maintain the honour, dignity, integrity, competence, ethics, standards of conduct and discipline of the profession;
3. to defend the role of lawyers in .society and preserve the independence of the profession;
4. to protect and defend the dignity and independence of the judiciary;
5. to promote the free and equal access of the public to the system of justice, including the provision of legal aid: and advice;
6. to promote the right of everyone to a fair and public hearing before a competent, independent and impartial tribunal, and in accordance with proper procedures in all matters;
7. to promote and support law reform, and to comment upon and promote public discussion on the substance, interpretation and application of existing and proposed legislation;
8. to promote a high standard of legal education as a prerequisite for entry into the profession;
9. to ensure that there is free access to the profession for all persons having the requisite professional competence and good character, without discrimination of any kind, and to give *assistance* to new entrants into the profession;
10. to promote the welfare of members of the profession and render assistance to a member of his family in appropriate cases;

k) to affiliate with, and participate in, the activities of international organizations of lawyers.

3.28 Where a person involved in litigation wishes to engage a lawyer from another country to act with a local lawyer, the Bar Association shall cooperate in assisting the foreign lawyer to obtain the necessary right of audience.

3.29 To enable the Bar Association to fulfill its function of *preserving* the independence of lawyers, it shall be informed immediately of the reason and legal basis for the arrest or detention of any lawyer; and for the same purpose the association shall have prior notice for: t) any search of his person or property, ii) any seizure of documents in his possessions, and iii) any decision to .take or calling into question the integrity of a lawyer. In such cases, the Bar Association shall be entitled to be represented by its president or nominee, to follow the proceedings, and in particular to ensure that- professional secrecy is safeguarded.

**Disciplinary Proceedings**

 3.30 The Bar Association shall freely establish and enforce, in accordance with the law, a code of professional conduct of lawyers.

3.31. The Bar Association shall have exclusive *competence* to initiate and conduct disciplinary proceedings *against lawyers on its own* initiative or at the request *of a litigant. Although no court* or public authority shall itself take disciplinary proceedings against a lawyer, it may report a case to the Bar Association with a view to its initiating disciplinary proceedings.

3.32 Disciplinary proceedings shall be conducted in the first instance by a disciplinary committee established by the Bar Association.

3.33 An appeal shall lie from a decision of the disciplinary committee to an appropriate appellate body.

3.34Disciplinary proceedings shall be conducted with full observance of the requirements of fair and proper procedure, in the light of the principles expressed in this declaration.

IV. **Jurors**

**Selection of Prospective Jurors**

4.01 The opportunity for jury service shall be extended without distinction of any kind by reason of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or status, subject however to citizenship requirements.

4.02 The names of prospective jurors shall be drawn from a jury source list compiled from one or more regularly maintained lists of persons residing in the court's jurisdiction.

4.03 The jury source list shall be representative, and shall be as inclusive of the adult population in the jurisdiction, as is feasible.

4.04 The Court shall periodically review the jury source list for its representativeness and inclusiveness. Should the Court determine that improvement is needed in the representativeness or inclusiveness of the jury source list, appropriate corrective action shall be taken.

4.05 Random selection procedures shall be used at all stages throughout the jury selection process except as provided herein.

4.06 The frequency and the length of time that persons are called upon to perform jury service and to be available therefor, shall be the minimum, consistent with the needs of justice.

4.07 All automatic excuses or exemptions from jury service shall be eliminated.

4.08 Eligible persons who are summoned may be excused from jury service only for valid reason by the court, or with its authorization.

**Selection of a Particular Jury**

4.09 Examination of prospective jurors determining whether to remove shall be limited to matters relevant to a juror for cause, and to exercising peremptory challenges.

4.10 If the judge determines during the examination of prospective jurors, that an individual is unable or unwilling to hear the particular *ease* at issue fairly and impartially, the individual shall be removed from the paneL Such a determination may be made on notion of a party or on the judge's own initiative.

4.11 In jurisdictions where peremptory challenges are permitted, their number and the procedure for exercising them shall be uniform for the same type of case.

4.12 Peremptory challenges shall be limited to a number no larger than necessary, to provide reasonable assurance of obtaining an unbiased jury.

**Administration of the Jury System**

4.13 The responsibility for administration of the jury system shall be under the control of the judiciary.

4.14 The notice summoning a person to jury service shall be in writing, easily understandable, and delivered sufficiently in advance.

4.15 Courts shall employ the services of prospective jurors, so as to achieve the best possible use of them with a minimum of inconvenience.

4.16 Courts shall provide adequate protection for jurors from threat and intimidation.

4.17 Courts shall provide an adequate and suitable environment for jurors, and jury facilities shall be arranged to minimize contact between jurors and parties, counsel and the public.

4.18 Persons called for jury service shall receive a reasonable allowance.

4.19 Employers shall be prohibited from penalizing employees who are called for jury service.

**Jury Consideration and Deliberations**

4.20 Procedures shall be provided to prevent a trial from being terminated because of unforeseen circumstances which would reduce the number of jurors.

4.21 Courts shall provide some form of orientation or instruction to persons called for jury service, to increase prospective jurors understanding of the judicial system, and prepare them to serve competently as jurors.

4.22 In simple language the trial judge shall: i) directly following empanelment of the jury, give preliminary explanations of the jury's role and of trial procedures; ii) prior to commencement of deliberations, direct the jury on the law.

4.23 A jury's deliberations shall be held in secrecy. Jurors shall not make public, reasons for their decisions.

4.24 a) A jury shall be sequestered only for the purpose of insulating its members from improper imformation or influence.

b) Standard procedures shall be promulgated to make certain that the inconvenience and discomfort of the sequestered jurors are minimized.

V. **Assessors**

**Status**

5.01 In defining assessor, the following shall be considered: In general, on certain judicial, quasi-judicial bodies or administrative tribunals, the assessor sits with a judge, magistrate or other jurist, to assist him in his duties. In most cases he is a person who does not necessarily have legal training, but who has some specific professional qualification or socio-economic expertise, that pertains to the subject-matter under consideration.

5.02 In some cases, the assessor shares with his legally-trained colleague, responsibility for the decision to be rendered: this then becomes a multi­disciplinary judicial or quasi-judicial body.

**Appointment**

5.03 Unless he is selected by the parties unanimously, the assessor shall be appointed by a neutral authority not involved in the dispute.

5.04 Unless agreed upon by the parties or provided by law, the assessor shall be paid
according to the decision of a neutral authority not involved in the dispute.

5.05 The assessor shall be selected for reasons of integrity and competence especially relevant to the matter to be considered by him.

5.06 The assessor shall enjoy a tenure which *guarantees* his independence; if he serves on a permanent basis he shall be guaranteed security, adequate remuneration and conditions of service.

5.07 Before commencing his duties, the assessor shall take an oath or affirmation of office.

**Exercise of Mandate**

5.08 In the decision-making process, the assessor shall be free from any order or instruction by the authority which has appointed him, by the parties or by the professional associations to which he belongs.

5.09 The assessor shall have the right to participate in the decision with complete freedom and independence in the area of his jurisdiction.

5.10 The assessor shall behave in such a manner as will maintain the dignity of his position and the impartiality and independence of justice.

5.11 The assessor shall not sit in a case where a reasonable apprehension of bias on his part may arise.

5.12 The. assessor shall be free to withdraw for generally accepted reasons.

**Powers and Immunity**

5.13 The assessor shall be vested with the authority, immunity and powers necessary to carry out his duties.

5.14 The assessor shall not be sued or harassed for acts and omissions in his official capacity.

**Dismissal**

5.15 The assessor shall not be dismissed in the course of his mandate except for incapacity or misbehaviour.

**Officers of the Montreal Conference**

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**Chairman of the Conference**

Chief Justice Jules Deschens, Chief Justice of Quebec

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**Commissions of Montreal Conference**

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​Commission of International Judges
Chairs: Judge Oxner and Batonnier Pettiti

​

​Commission of National Judges
Chairs: Justice Gonthier and Professor Shimon Shetreet

​

​Commission of Lawyers
Chairs: Bttonier Louis Phillippe de Grandpre, and Debo Akande

​

​Commission of the Jury
Chairs: Chief Justice William Sinclair and Mr. James Parkison

​

​Commission of the Assessors
Chairs: Judge Guerin and Judge Poirier

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1. <http://www.coe.int> [↑](#footnote-ref-1)
2. adopted by *Judicial Group on Strengthening Judicial Integrity*, AJA, <http://www.ajs.org> [↑](#footnote-ref-2)
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 [↑](#footnote-ref-3)
4. 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. [↑](#footnote-ref-4)
5. Preamble, Montréal Declaration. [↑](#footnote-ref-5)
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.). [↑](#footnote-ref-6)
7. The focus is really on the relationship with the judiciary as a whole, rather than with individual judges. [↑](#footnote-ref-7)
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 ) [↑](#footnote-ref-8)
9. To clarify that these important conditions must be legally entrenched. [↑](#footnote-ref-9)
10. Adds mandatory language. [↑](#footnote-ref-10)
11. Montréal Declaration section 2.08. [↑](#footnote-ref-11)
12. Montréal Declaration section 2.13. See also Shetreet, *Judicial Independence: The Contemporary Debate*, at 401. [↑](#footnote-ref-12)
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. [↑](#footnote-ref-13)
14. Montréal Declaration section 2.11. [↑](#footnote-ref-14)
15. Exact wording of the Montréal Declaration, section 2.11. [↑](#footnote-ref-15)
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. [↑](#footnote-ref-16)
17. In the interests of completeness [↑](#footnote-ref-17)
18. The focus is really on the relationship with the judiciary as a whole, rather than with individual judges. [↑](#footnote-ref-18)
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.

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. [↑](#footnote-ref-19)
20. To provide for situations such as those that occurred in Ontario when the entire court structure was reorganized. [↑](#footnote-ref-20)
21. For a discussion of this issue, see Shetreet, *Judicial Independence: The Contemporary Debate*, at 616. [↑](#footnote-ref-21)
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). [↑](#footnote-ref-22)
23. Montréal Declaration. [↑](#footnote-ref-23)
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 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. [↑](#footnote-ref-24)
25. In order to make this mandatory. [↑](#footnote-ref-25)
26. "Merit" is broader than "ability". [↑](#footnote-ref-26)
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." [↑](#footnote-ref-27)
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 [↑](#footnote-ref-28)
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. [↑](#footnote-ref-29)
30. UN Basic Principles. [↑](#footnote-ref-30)
31. Montréal Declaration section 2.36. [↑](#footnote-ref-31)
32. Montréal Declaration section 2.36. [↑](#footnote-ref-32)
33. Montréal Declaration section 2.36. [↑](#footnote-ref-33)
34. Inclusive. [↑](#footnote-ref-34)
35. Montréal Declaration section 2.34. Broad. [↑](#footnote-ref-35)
36. UN Basic Principles. [↑](#footnote-ref-36)
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). [↑](#footnote-ref-37)
38. Bangalore Principles [↑](#footnote-ref-38)
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. [↑](#footnote-ref-39)
40. ABA Model Code of Judicial Conduct (February 2007), Canon 4, Article D(2). [↑](#footnote-ref-40)
41. ABA Model Code of Judicial Conduct (February 2007), Canon 4, Article D(2) discusses family. [↑](#footnote-ref-41)
42. This is how the section appears in the Montréal Declaration, section 2.09. [↑](#footnote-ref-42)
43. Bangalore Principles [↑](#footnote-ref-43)
44. Recommendation No.R(94)12). of the committee of Ministers of the Council of Europe to Memner States [↑](#footnote-ref-44)
45. See Cyrus Das and K. Chandra, Editors, *Judges and Judicial Accountability*, Universal Law Publishing Company Ltd., Delhi. [↑](#footnote-ref-45)
46. This does not exclude the possibility that the state may be liable for the gross negligence of a judicial officer. [↑](#footnote-ref-46)
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). [↑](#footnote-ref-47)
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). [↑](#footnote-ref-48)
49. Including physical threats to injure or to kill . [↑](#footnote-ref-49)
50. Recommendation No.R(94)12 of the committee of Ministers of the Council of Europe to Memner States [↑](#footnote-ref-50)
51. Montréal Declaration section 2.03. [↑](#footnote-ref-51)
52. S. Shetreet and C. Forsyth (eds.), The Culture of Judicial Independence: Conceptual Foundations and Practical Challenges*,*(Martinus Nijhoff (Publishers, 2012), particularly pp. 17-68.

, [↑](#footnote-ref-52)