

《司法獨立與結社自由：準則與平衡》

公民黨呈交 2006 年 6 月 26 日立法會司法及法律事務委員會的意見書

背景

1. 公民黨於 2006 年 3 月 19 日，根據《公司條例》正式註冊成為有限公司。
公民黨的前身是《基本法》四十五條關注組四位立法會議員及大律師。
2. 5 月 3 日，《東周刊》聲稱獨家“披露”公民黨的“秘密黨員名單”。事實上黨員的名單從來不是“秘密”，因為正如公民黨向傳媒闡述，按照《公司條例》，公眾是有權查閱名單的。該篇報道尤特別渲染報道其中兩名大律師黨員，指稱這兩位黨員既同時分別受委任為暫委法官(Deputy Judge)和特委法官(Recorder)，便不應加入任何政黨，因為這將違反司法獨立和法官的公正性。
3. 司法機構曾就傳媒查詢發表聲明，指出按照《法官行為指引》，全職法官應避免加入任何政治組織，但《指引》並不適用於非全職法官，包括全職是執業律師或大律師的暫委法官和特委法官。
4. 《文匯報》分別在 5 月 6 日及 10 日刊登了兩篇文章，抨擊公民黨及該兩位黨員，並呼籲將《法官行為指引》有關全職法官的規定引用於非全職法官。
5. 民建聯的馬力議員和李國英議員，亦分別在立法會提出有關法官加入政治組

職的書面質詢及要求立法會司法及法律事務委員會討論有關問題。

6. 5月22日，公民黨的吳靄儀議員在《明報》刊登一篇題為「司法獨立與結社自由」的文章。
7. 此意見書旨在詳細闡釋上述文章提及的原則以及相關的文獻。由於有關的文獻繁多，不能盡錄，本文只引述其中具代表性的作論述。

法治與結社自由

8. 司法獨立及公正是法治的基石。結社自由，包括成立和加入政黨、工會及宗教組織的自由，是維護個人政治權利和自由的基本權利。

有關司法獨立及公正的國際原則

9. 國際間認可的司法獨立和公正的原則重申，法官享有與一般人相同的權利和自由，包括結社自由，只要法官不參與或不從事不恰當的活動，便符合司法獨立的原則，《班加羅爾司法行為原則》(**Bangalore Principles of Judicial Conduct**) 第4.6段訂明：

“法官與任何公民同樣享有表達、信仰、結社和集會的自由，但在行使這些權利時，法官的行為必須要維護司法職位的尊嚴和司法的公正無私以及司法獨立。”

The Statement of Principles of the Independence of the Judiciary
(“the Beijing Statement”北京宣言)第 8 段訂明：

“在符合其司法人員的情況下，法官與其他公民同樣享有表達、信仰、結社和集會的自由。”

聯合國宣布的《關於司法獨立的基本原則》(The Basic Principles on the Independence of the Judiciary endorsed by the United Nations General Assembly) 第 8 段訂明：

“根據《世界人權宣言》(**Universal Declaration of Human Rights**)，司法人員與其他公民同樣享有表達、信仰、結社和集會的自由，但在行使這些權利時，法官的行為必須維護司法職位的尊嚴和司法公正無私和司法獨立。”

10. 世界各地的司法區均奉行上述原則，在兩者之間，藉下述兩種分野取得適當平衡：

- (i) 維護政黨的參與但限制其政治活動，例如美國法官指引 **Code of Conduct for United States Judges** 的第 7 項準則，其中訂明：

“A. 法官不應：

- (1) 擔任任何政治組織的領導或黨內任何職銜；
- (2) 代表任何政治組織發表演說或參選，或公開支持或反對任何競逐某項公職的候選人；
- (3) 為任何政治組織籌募經費或募捐，或對其政治組織或候選人作任何捐贈，出席政治活動或為政治組織籌款晚宴或其他活動購買餐券或獎券等；

B. 法官如要參與黨內任何職位的初選或會員大會選舉，便應先辭去法官職務。

C. 除第 4 項準則規定的政治活動，法官不應從事任何其他政治活動。”

另一個例子是英國政制事務部（Department of Constitutional Affairs）網頁內的英國《法官－有關職外活動及利益的指引》（《Judges－guidance on outside activities and interests》）：

“一般原則－

法官必須保證當他們擔任全職司法工作時，他們的行為必須與其身為法官的權力及地位相稱。不可以任何身份參與任何會敗壞，或有理由令人相信會敗壞他們的司法獨立或公正的活動。在任何案件中，若出現任何

偏袒的嫌疑，法官必須遵從案例的指引，包括上訴庭有關 **Locabail** 的判例…

“政治或其他活動－

法官必須放棄參與任何不適當地佔用其時間的政治或其他活動。他們在參加與職務無關的活動時，須保持警惕，以免出現任何質疑其公正性的情況。法官在他們獲提名參與國會、蘇格蘭國會、威爾斯議會及歐洲議會的選舉或接受成為候選人時，必須向大法官呈辭。”

- (ii) 分開在獲得任命時必須斷絕其商業、專業及其他連繫的全職法官，與仍為全職大律師或執業律師的非全職法官：

《特委法官的聘任條件》訂明，特委法官不但毋須放棄政黨黨籍，且明文准許參與政治活動。唯一的限制是：

“特委法官如同時身兼國會議員、國會議員候選人或地區議員時，不得在其選區主持裁判職務。”

不少同時擁有大律師或執業律師資格的國會議員及地區議員，均不時受委任為特委法官。

《法官行為指引（草擬）》（**Draft Guide to Judicial Conduct, England and Wales**）認為法官一旦獲得任命，應放棄政黨黨籍。同時，該指引第 3.17 段說明這個做法不適用於「收費」（兼職）法官：

“禁止參與政黨政治活動的限制並不適用於這類法官，但他必須考慮這

些政治活動的性質及範圍會否在處理某宗案件時予人不公平的觀感。非全職法官在私人執業時亦可能與一些律師事務所、專業團體或其他團體有聯繫，而不適宜處理一宗與他們有關的案件。”

《香港特區法官行為指引》第 76 段訂明：

“法官應避免加入任何政治組織，或與之有聯繫，或參與政治活動，例如，法官應避免出席與政治有關的集會或示威活動。法官當然可自由行使選舉權利。”

《法官行為指引》並不引用於非全職法官。

全職法官與兼職法官的分別

11. 永久性、全職的法官與暫委、兼職的法官有實在的區別。英國《法官－有關職外活動及利益的指引》（《**Judges – guidance on outside activities and interests**》）內有關「終止專業及商業連繫」（**termination of professional and business contacts**）的一段指出：

“全職法官的委任，用意是這是他所餘的工作生命的職業。法官明白一旦獲得委任，日後委任終止時，他們不會重操大律師或執業律師的業務。”

此等法官享有終身保障，同時亦須辭退任何商業董事職銜，限制其非商業董

事的活動，終止所有專業及商業連繫，以及永不能再從提供辯護服務或任何法律意見以換取任何形式的報酬。然而這些限制並不適用於只是暫時委任的兼職法官。兼職法官除了必須謹慎地履其行之外，他們仍可繼續私人執業、保持商業連繫和政黨黨籍，以及參與政治活動。

12. 香港現行的制度，暫委法官是一次過為期四星期的任命。而特委法官的任期則為三年，可再續約三年，其間他將會被隨時徵召擔任法官四星期。香港特別行政區政府司法機構的聲明指出《法官行為指引》並不適用於特委和暫委法官，這點與上述的各項原則和做法相符。

防範實在或可能存在的偏頗的法律

13. 審理一宗案件的法官，無論是全職或非全職法官，都受到公認的原則約束，令公眾得到公平審訊的權利受到充分的保障：

- 每位法官在接受委任時宣誓，只會根據他對案情和對法理的真誠理解，獨立無私地行使法官職能，不受任何直接或間接的、出自任何來源或基於任何理由的外來的影響、引誘、壓力、威脅或干預；
- 法官必須依從有關實際、推定或表面偏頗的法律規則：聆訊中任何一方如有理由認為某位法官存有偏頗或利益衝突，就有權要求撤換法官；如法官錯誤地拒絕要求，他所作的判決將會被上級法院駁回。

14. 在某一宗聆訊中假如某位法官因為身為政黨黨員的關係而影響或被合理地視為影響其判案的公正，又或該位法官的家庭成員的黨員身分會影響或被合理地視為會影響其判案的公正，該位法官便應迴避處理該聆訊，而聆訊的任何一方亦有權要求撤換該法官。這要求並非只限於政黨黨籍，而是任何可能被視為會影響該法官判案的公正的會籍或聯繫都必須這樣處理。
15. 法律給予法官須如何處理實際、推斷及表面偏頗的指引非常周密和全面，而且適用於所有法官。

結社自由及香港的政治發展

16. 《公民權利和政治權利國際公約》第 22 條規定，結社自由不受限制，「除非依照法律規定，而且是民主社會為維護國家安全或公共安寧、公共秩序、維持公共衛生或風化、或保障他人權利自由所必要之外，不得限制這些權利的行使」。這項規定，在《基本法》第 27 條及第 39 條，及《香港人權法案條例》第 18 條之下受到保障。限制非全職法官加入政黨，是不合理和不必要的，而且可能違反《公民權利和政治權利國際公約》及《基本法》。
17. 現階段香港的政黨發展，對推動基本法第 45 條及第 48 條所規定的普選非常重要。限制結社自由將窒礙政黨的發展，亦削弱了法律界的結社自由；因為司法人員及暫委法官的人選經常從法律界選拔。

- 18.** 同時，香港的實況是，根本沒有一個政黨是執政黨或反對黨。實際上，政黨只是一個像工會、專業及商業團體或組織那樣，為區議會或立法會，提供候選人的組織而已。

二〇〇六年六月五日

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**THE BANGALORE PRINCIPLES
OF JUDICIAL CONDUCT**

2002

*(The Bangalore Draft Code of Judicial Conduct 2001
adopted by the Judicial Group on Strengthening Judicial Integrity,
as revised at the Round Table Meeting of Chief Justices
held at the Peace Palace, The Hague, November 25-26, 2002)*

Preamble

WHEREAS the *Universal Declaration of Human Rights* recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge.

WHEREAS the *International Covenant on Civil and Political Rights* guarantees that all persons shall be equal before the courts, and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law.

WHEREAS the foregoing fundamental principles and rights are also recognized or reflected in regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions.

WHEREAS the importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice.

WHEREAS a competent, independent and impartial judiciary is likewise essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law.

WHEREAS public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society.

WHEREAS it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.

WHEREAS the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country.

AND WHEREAS the *United Nations Basic Principles on the Independence of the Judiciary* are designed to secure and promote the independence of the judiciary, and are addressed primarily to States.

THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.

Value 1:
INDEPENDENCE

Principle:

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Application:

- 1.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.
- 1.2 A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.
- 1.3 A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.
- 1.4 In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.
- 1.5 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.
- 1.6 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

Value 2:
IMPARTIALITY

Principle:

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

Application:

- 2.1 A judge shall perform his or her judicial duties without favour, bias or prejudice.
- 2.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

- 2.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.
- 2.4 A judge shall not knowingly, while a proceeding is before, 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.
- 2.5 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. Such proceedings include, but are not limited to, instances where
- 2.5.1 the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
 - 2.5.2 the judge previously served as a lawyer or was a material witness in the matter in controversy; or
 - 2.5.3 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.

Value 3:
INTEGRITY

Principle:

Integrity is essential to the proper discharge of the judicial office.

Application:

- 3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.
- 3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

Value 4:
PROPRIETY

Principle:

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

Application:

- 4.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
- 4.2. As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.
- 4.3. A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.
- 4.4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.
- 4.5 A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.
- 4.6 A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.
- 4.7 A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.
- 4.8 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.
- 4.9 A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.
- 4.10 Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.
- 4.11 Subject to the proper performance of judicial duties, a judge may:
 - 4.11.1 write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
 - 4.11.2 appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;
 - 4.11.3 serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not

inconsistent with the perceived impartiality and political neutrality of a judge;
or

4.11.4 engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.

- 4.12 A judge shall not practise law whilst the holder of judicial office.
- 4.13 A judge may form or join associations of judges or participate in other organisations representing the interests of judges.
- 4.14 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.
- 4.15 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.
- 4.16 Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

Value 5:
EQUALITY

Principle:

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

Application:

- 5.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").
- 5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.
- 5.3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

- 5.4 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.
- 5.5 A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

Value 6:
COMPETENCE AND DILIGENCE

Principle:

Competence and diligence are prerequisites to the due performance of judicial office.

Application:

- 6.1 The judicial duties of a judge take precedence over all other activities.
- 6.2 A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.
- 6.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.
- 6.4 A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.
- 6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.
- 6.6 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.
- 6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

IMPLEMENTATION

By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

DEFINITIONS

In this statement of principles, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

"Court staff" includes the personal staff of the judge including law clerks.

"Judge" means any person exercising judicial power, however designated.

"Judge's family" includes a judge's spouse, son, daughter, son-in-law, daughter-in-law, and any other close relative or person who is a companion or employee of the judge and who lives in the judge's household.

"Judge's spouse" includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.

Explanatory Note

1. At its first meeting held in Vienna in April 2000 on the invitation of the United Nations Centre for International Crime Prevention, and in conjunction with the 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Judicial Group on Strengthening Judicial Integrity (comprising Chief Justice Latifur Rahman of Bangladesh, Chief Justice Bhaskar Rao of Karnataka State in India, Justice Govind Bahadur Shrestha of Nepal, Chief Justice Uwais of Nigeria, Deputy Vice-President Langa of the Constitutional Court of South Africa, Chief Justice Nyalali of Tanzania, and Justice Odoki of Uganda, meeting under the chairmanship of Judge Christopher Weeramantry, Vice-President of the International Court of Justice, with Justice Michael Kirby of the High Court of Australia as rapporteur, and with the participation of Dato' Param Cumaraswamy, UN Special Rapporteur on the Independence of Judges and Lawyers) recognized the need for a code against which the conduct of judicial officers may be measured. Accordingly, the Judicial Group requested that codes of judicial conduct which had been adopted in some jurisdictions be analyzed, and a report be prepared by the Co-ordinator of the Judicial Integrity Programme, Dr Nihal Jayawickrama, concerning: (a) the core considerations which recur in such codes; and (b) the optional or additional considerations which occur in some, but not all, such codes and which may or may not be suitable for adoption in particular countries.

2. In preparing a draft code of judicial conduct in accordance with the directions set out above, reference was made to several existing codes and international instruments including, in particular, the following:

- (a) The Code of Judicial Conduct adopted by the House of Delegates of the American Bar Association, August 1972.
- (b) Declaration of Principles of Judicial Independence issued by the Chief Justices of the Australian States and Territories, April 1997.
- (c) Code of Conduct for the Judges of the Supreme Court of Bangladesh, prescribed by the Supreme Judicial Council in the exercise of power under Article 96(4)(a) of the Constitution of the People's Republic of Bangladesh, May 2000.
- (d) Ethical Principles for Judges, drafted with the cooperation of the Canadian Judges Conference and endorsed by the Canadian Judicial Council, 1998.
- (e) The European Charter on the Statute for Judges, Council of Europe, July 1998.
- (f) The Idaho Code of Judicial Conduct 1976.
- (g) Restatement of Values of Judicial Life adopted by the Chief Justices Conference of India, 1999.
- (h) The Iowa Code of Judicial Conduct.
- (i) Code of Conduct for Judicial Officers of Kenya, July 1999.
- (j) The Judges' Code of Ethics of Malaysia, prescribed by the Yang di-Pertuan Agong on the recommendation of the Chief Justice, the President of the Court of Appeal and the Chief Judges of the High Courts, in the exercise of powers conferred by Article 125(3A) of the Federal Constitution of Malaysia, 1994.
- (k) The Code of Conduct for Magistrates in Namibia.
- (l) Rules Governing Judicial Conduct, New York State, USA.
- (m) Code of Conduct for Judicial Officers of the Federal Republic of Nigeria.
- (n) Code of Conduct to be observed by Judges of the Supreme Court and of the High Courts of Pakistan.
- (o) The Code of Judicial Conduct of the Philippines, September 1989.

- (p) The Canons of Judicial Ethics of the Philippines, proposed by the Philippines Bar Association, approved by the Judges of First Instance of Manila, and adopted for the guidance of and observance by the judges under the administrative supervision of the Supreme Court, including municipal judges and city judges.
- (q) Yandina Statement: Principles of Independence of the Judiciary in Solomon Islands, November 2000.
- (r) Guidelines for Judges of South Africa, issued by the Chief Justice, the President of the Constitutional Court, and the Presidents of High Courts, the Labour Appeal Court, and the Land Claims Court, March 2000.
- (s) Code of Conduct for Judicial Officers of Tanzania, adopted by the Judges and Magistrates Conference, 1984.
- (t) The Texas Code of Judicial Conduct
- (u) Code of Conduct for Judges, Magistrates and Other Judicial Officers of Uganda, adopted by the Judges of the Supreme Court and the High Court, July 1989.
- (v) The Code of Conduct of the Judicial Conference of the United States.
- (w) The Canons of Judicial Conduct for the Commonwealth of Virginia, adopted and promulgated by the Supreme Court of Virginia, 1998.
- (x) The Code of Judicial Conduct adopted by the Supreme Court of the State of Washington, USA, October 1995.
- (y) The Judicial (Code of Conduct) Act, enacted by the Parliament of Zambia, December 1999.
- (z) Draft Principles on the Independence of the Judiciary ("Siracusa Principles"), prepared by a committee of experts convened by the International Association of Penal Law, the International Commission of Jurists, and the Centre for the Independence of Judges and Lawyers, 1981.
- (aa) Minimum Standards of Judicial Independence adopted by the International Bar Association, 1982.
- (bb) United Nations Basic Principles on the Independence of the Judiciary, endorsed by the UN General Assembly, 1985.
- (cc) Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration") prepared by Mr L.V. Singhvi, UN Special Rapporteur on the Study on the Independence of the Judiciary, 1989.
- (dd) The Beijing Statement of Principles of the Independence of the Judiciary in the Lawasia Region, adopted by the 6th Conference of Chief Justices, August 1997.
- (ee) The Latimer House Guidelines for the Commonwealth on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights to ensure the effective implementation of the Harare Principles, 1998.
- (ff) The Policy Framework for Preventing and Eliminating Corruption and Ensuring the Impartiality of the Judicial System, adopted by the expert group convened by the Centre for the Independence of Judges and Lawyers, February 2000.

At its second meeting held in Bangalore in February 2001, the Judicial Group (comprising Chief Justice Mainur Reza Chowdhury of Bangladesh, Justice Claire L'Heureux Dube of Canada, Chief Justice Reddi of Karnataka State in India, Chief Justice Upadhyay of Nepal, Chief Justice Uwais of Nigeria, Deputy Chief Justice Langa of South Africa, Chief Justice Silva of Sri Lanka, Chief Justice Samatta of Tanzania, and Chief Justice Odoki of Uganda, meeting under the chairmanship of Judge Weeramantry, with Justice Kirby as rapporteur, and with the participation of the UN Special Rapporteur and Justice Bhagwati, Chairman of the UN Human Rights Committee, representing the UN High Commissioner for Human Rights) proceeding by

way of examination of the draft placed before it, identified the core values, formulated the relevant principles, and agreed on the Bangalore Draft Code of Judicial Conduct. The Judicial Group recognized, however, that since the Bangalore Draft had been developed by judges drawn principally from common law countries, it was essential that it be scrutinized by judges of other legal traditions to enable it to assume the status of a duly authenticated international code of judicial conduct.

The Bangalore Draft was widely disseminated among judges of both common law and civil law systems and discussed at several judicial conferences. In June 2002, it was reviewed by the Working Party of the Consultative Council of European Judges (CCJE-GT), comprising Vice-President Reissner of the Austrian Association of Judges, Judge Fremr of the High Court in the Czech Republic, President Lacabarats of the Cour d'Appel de Paris in France, Judge Mallmann of the Federal Administrative Court of Germany, Magistrate Sabato of Italy, Judge Virgilijus of the Lithuanian Court of Appeal, Premier Conseiller Wiwinius of the Cour d'Appel of Luxembourg, Juge Conseiller Afonso of the Court of Appeal of Portugal, Justice Ogrizek of the Supreme Court of Slovenia, President Hirschfeldt of the Svea Court of Appeal in Sweden, and Lord Justice Mance of the United Kingdom. On the initiative of the American Bar Association, the Bangalore Draft was translated into the national languages, and reviewed by judges, of the Central and Eastern European countries; in particular, of Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo, Romania, Serbia and Slovakia.

The Bangalore Draft was revised in the light of the comments received from CCJE-GT and others referred to above; Opinion no.1 (2001) of CCJE on standards concerning the independence of the judiciary; the draft Opinion of CCJE on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality; and by reference to more recent codes of judicial conduct including the Guide to Judicial Conduct published by the Council of Chief Justices of Australia in June 2002, the Model Rules of Conduct for Judges of the Baltic States, the Code of Judicial Ethics for Judges of the People's Republic of China, and the Code of Judicial Ethics of the Macedonian Judges Association.

The revised Bangalore Draft was placed before a Round-Table Meeting of Chief Justices (or their representatives) from the civil law system, held in the Peace Palace in The Hague, Netherlands, in November 2002, with Judge Weeramantry presiding. Those participating were Judge Vladimir de Freitas of the Federal Court of Appeal of Brazil, Chief Justice Iva Brozova of the Supreme Court of the Czech Republic, Chief Justice Mohammad Fathy Naguib of the Supreme Constitutional Court of Egypt, Conseillere Christine Chanut of the Cour de Cassation of France, President Genaro David Gongora Pimentel of the Suprema Corte de Justicia de la Nacion of Mexico, President Mario Mangaze of the Supreme Court of Mozambique, President Pim Haak of the Hoge Raad der Nederlanden, Justice Trond Dolva of the Supreme Court of Norway, and Chief Justice Hilario Davide of the Supreme Court of the Philippines. Also participating in one session were the following Judges of the International Court of Justice: Judge Ranjeva (Madagascar), Judge Herczegh (Hungary), Judge Fleischhauer (Germany), Judge Koroma (Sierra Leone), Judge Higgins (United Kingdom), Judge Rezek (Brazil), Judge Elaraby (Egypt), and Ad-Hoc Judge Frank (USA). The UN Special Rapporteur was in attendance. The "Bangalore Principles of Judicial Conduct" was the product of this meeting.

Preamble and Beijing Statement
PREAMBLE TO STATEMENT OF PRINCIPLES
OF THE INDEPENDENCE OF THE JUDICIARY

Beijing, 19 August, 1995

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

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

Whereas the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights* both guarantee the exercise of those rights, and in addition the *Covenant on Civil and Political Rights* further guarantees the right to be tried without undue delay,

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

Whereas rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles,

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

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

Whereas the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, at its meeting in Milan, Italy, from 26 August to 6 September 1985, adopted the *Basic Principles on the Independence of the Judiciary* by consensus,

Whereas the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders recommended the *Basic Principles on the Independence of the Judiciary* for national, regional and interregional action and implementation, taking into

account the political, economic, social and cultural circumstances and traditions of each country,

Whereas on 17-18 July 1982 the LAWASIA Human Rights Standing Committee met in Tokyo, Japan and in consultation with members of the Judiciary formulated a *Statement of Principles of the Independence of the Judiciary in the LAWASIA Region* ("the Tokyo Principles") in the context of the history and culture of the region,

Whereas the 5th Conference of Chief Justices of Asia and the Pacific at Colombo, Sri Lanka on 13-15 September 1993 recognised that it was desirable to revise the *Tokyo Principles* in the light of subsequent developments with a view to adopting a clear statement of principles of the independence of the Judiciary, and considered a first draft of a *Revised Statement of Principles of the Independence of the Judiciary* and requested the Acting Chairman of the Judicial Section of LAWASIA to prepare a second draft of the *Revised Statement* taking into account the views expressed at the 5th Conference of Chief Justices and comments and suggestions to be made by the Chief Justices or their representatives, and

Noting that the 6th Conference of Chief Justices of Asia and the Pacific is being held in Beijing in conjunction with the 14th Conference of LAWASIA, the primary object of which is:

"To promote the administration of justice, the protection of human rights and the maintenance of the rule of law within the region."

The 6th Conference of Chief Justices of Asia and the Pacific:

Adopts the *Statement of Principles of the Independence of the Judiciary* contained in the annex to this resolution to be known as the *Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region*.

ANNEX BEIJING STATEMENT OF PRINCIPLES OF THE INDEPENDENCE OF THE JUDICIARY IN THE LAWASIA REGION

Judicial Independence

1. The Judiciary is an institution of the highest value in every society.
2. The Universal Declaration of Human Rights (Art. 10) and the International Covenant on Civil and Political Rights (Art. 14(1)) proclaim that everyone should be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

An independent Judiciary is indispensable to the implementation of this right.

3. Independence of the Judiciary requires that;

(a) the Judiciary shall decide matters before it in accordance with its impartial assessment of the facts and its understanding of the law without improper influences, direct or indirect, from any source; and (b) the Judiciary has jurisdiction, directly or by way of review, over all issues of a justiciable nature.

4. The maintenance of the independence of the Judiciary is essential to the attainment of its objectives and the proper performance of its functions in a free society observing the Rule of Law. It is essential that such independence be guaranteed by the State and enshrined in the Constitution or the law.

5. It is the duty of the Judiciary to respect and observe the proper objectives and functions of the other institutions of government. It is the duty of those institutions to respect and observe the proper objectives and functions of the Judiciary.

6. In the decision-making process, any hierarchical organisation of the Judiciary and any difference in grade or rank shall in no way interfere with the duty of the judge exercising jurisdiction individually or judges acting collectively to pronounce judgment in accordance with article 3 (a). The Judiciary, on its part, individually and collectively, shall exercise its functions in accordance with the Constitution and the law.

7. Judges shall uphold the integrity and independence of the Judiciary by avoiding impropriety and the appearance of impropriety in all their activities.

8. To the extent consistent with their duties as members of the Judiciary, judges, like other citizens, are entitled to freedom of expression, belief, association and assembly.

9. Judges shall be free subject to any applicable law to form and join an association of judges to represent their interests and promote their professional training and to take such other action to protect their independence as may be appropriate.

Objectives of the Judiciary

10. The objectives and functions of the Judiciary include the following:

(a) to ensure that all persons are able to live securely under the Rule of Law; (b) to promote, within the proper limits of the judicial function, the observance and the attainment of

human rights; and(c) to administerthe law impartially among persons and between persons andthe State.

Appointment of Judges

11. To enable the Judiciary to achieve its objectives and perform its functions, it is essential that judges be chosen on the basis of proven competence, integrity and independence.

12. The mode of appointment of judges must be such as will ensure the appointment of persons who are best qualified for judicial office. It must provide safeguards against improper influences being taken into account so that only persons of competence, integrity and independence are appointed.

13. In the selection judges there must be no discrimination against a person on the basis of race, colour, gender, religion, political or other opinion, national or social origin, marital status, sexual orientation, property, birth or status, except that a requirement that a candidate for judicial office must be a national of the country concerned shall not be considered discriminatory.

14. The structure of the legal profession, and the sources from which judges are drawn within the legal profession, differ in different societies. In some societies, the Judiciary is a career service; in other, judges are chosen from the practising profession. Therefore, it is accepted that in different societies, different procedures and safeguards may be adopted to ensure the proper appointment of judges.

15. In some societies, the appointment of judges, by, with the consent of, or after consultation with a Judicial Services Commission has been seen as a means of ensuring that those chosen as judges are appropriate for the purpose. Where a Judicial Services Commission is adopted, it should include representatives of the higher Judiciary and the independent legal profession as a means of ensuring that judicial competence, integrity and independence are maintained.

16. In the absence of a Judicial Services Commission, the procedures for appointment of judges should be clearly defined and formalised and information about them should be available to the public.

17. Promotion of judges must be based on an objective assessment of factors such as competence, integrity, independence and experience.

Tenure

18. Judges must have security of tenure.
19. It is recognised that, in some countries, the tenure of judges is subject to confirmation from time to time by vote of the people or other formal procedure.
20. However, it is recommended that all judges exercising the same Jurisdiction be appointed for a period to expire upon the attainment of a particular age.
21. A judge's tenure must not be altered to the disadvantage of the judge during her or his term of office.
22. Judges should be subject to removal from office only for proved incapacity, conviction of a crime, or conduct which makes the judge unfit to be a judge.
23. It is recognised that, by reason of differences in history and culture, the procedures adopted for the removal of judges may differ in different societies. Removal by parliamentary procedures has traditionally been adopted in some societies. In other societies, that procedure is unsuitable: it is not appropriate for dealing with some grounds for removal; it is rarely if ever used; and its use other than for the most serious of reasons is apt to lead to misuse.
24. Where parliamentary procedures or procedures for the removal of a judge by vote of the people do not apply, procedures for the removal of judges must be under the control of the judiciary.
25. Where parliamentary procedures or procedures for the removal of a judge by vote of the people do not apply and it is proposed to take steps to secure the removal of a judge, there should, in the first instance, be an examination of the reasons suggested for the removal, for the purpose of determining whether formal proceedings should be commenced. Formal proceedings should be commenced only if the preliminary examination indicates that there are adequate reasons for taking them.
26. In any event, the judge who is sought to be removed must have the right to a fair hearing.
27. All disciplinary, suspension or removal proceedings must be determined in accordance with established standards of judicial conduct.

28. Judgments in disciplinary proceedings, whether held *in camera* or in public, should be published.

29. The abolition of the court of which a judge is a member must not be accepted as a reason or an occasion for the removal of a judge. Where a court is abolished or restructured, all existing members of the court must be reappointed to its replacement or appointed to another judicial office of equivalent status and tenure. Members of the court for whom no alternative position can be found must be fully compensated.

30. Judges must not be transferred by the Executive from one Jurisdiction or function to another without their consent, but when a transfer is in pursuance of a uniform policy formulated by the Executive after due consultation with the Judiciary, such consent shall not be unreasonably withheld by an individual judge.

Judicial Conditions

31. Judges must receive adequate remuneration and be given appropriate terms and conditions of service. The remuneration and conditions of service of judges should not be altered to their disadvantage during their term of office, except as part of a uniform public economic measure to which the judges of a relevant court, or a majority of them, have agreed.

32. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

Jurisdiction

33. The Judiciary must have jurisdiction over all issues of a justiciable nature and exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.

34. The jurisdiction of the highest court in a society should not be limited or restricted without the consent of the members of the court.

Judicial Administration

35. The assignment of cases to judges is a matter of judicial administration over which ultimate control must belong to the chief judicial officer of the relevant court.

36. The principal responsibility for court administration, including appointment, supervision and disciplinary control of administrative personnel and support staff must vest in the Judiciary, or in a body in which the Judiciary is represented and has an effective role.

37. The budget of the courts should be prepared by the courts or a competent authority in collaboration with the Judiciary having regard to the needs of judicial independence and administration. The amount allotted should be sufficient to enable each court to function without an excessive workload.

Relationship with the Executive

38. Executive powers which may affect judges in their office, their remuneration or conditions or their resources, must not be used so as to threaten or bring pressure upon a particular judge or judges.

39. Inducements or benefits should not be offered to or accepted by judges if they affect, or might affect, the performance of their judicial functions.

40. The Executive authorities must at all times ensure the security and physical protection of judges and their families.

Resources

41. It is essential that judges be provided with the resources necessary to enable them to perform their functions.

42. Where economic constraints make it difficult to allocate to the court system facilities and resources which judges consider adequate to enable them to perform their functions, the essential maintenance of the Rule of Law and the protection of human rights nevertheless require that the needs of the judiciary and the court system be accorded a high level of priority in the allocation of resources.

Emergency

43. Some derogations from judicial independence may be permitted in times of grave public emergency which threaten the life of the society but only for the period of time strictly required by the exigencies of the situation and under conditions prescribed by law, only to the extent strictly consistent with internationally recognised minimum standards and subject to review by the courts. In such times of emergency the State shall endeavour to provide that civilians charged with criminal offences of any kind shall be tried by

ordinary civilian courts and detention of persons administratively without charge shall be subject to review by courts or other independent authority by way of *habeas corpus* or similar procedures.

44. The jurisdiction of military tribunals must be confined to military offences. There must always be a right of appeal from such tribunals to a legally qualified appellate court or tribunal or other remedy by way of an application for annulment.

It is the conclusion of the Chief Justices and other judges of Asia and the Pacific listed below that these represent the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the Judiciary.

The Hon Sir Gerard Brennan AC KBE Chief Justice of Australia

The Hon Mr Justice A. T. M. Afzal Chief Justice of Bangladesh

HE Mr Wang Jingrong Vice-President Supreme People's Court of the People's Republic of China (Representing HE President Ren Jianxin, President of the Supreme People's Court)

The Hon Sir Ti Liang Yang Chief Justice of Hong Kong

The Hon Shri Justice S. C. Agrawal Justice of the Supreme Court of India (Representing The Hon Mr Justice A. M. Ahmadi, Chief Justice of India)

The Hon Justice S. H. Soerjono Chief Justice of Indonesia

The Hon Yun Kwan Chief Justice of the Republic of Korea

The Hon D. Dembereltseren Chief Justice of Mongolia

The Hon U Aung Toe Chief Justice of the Supreme Court of The Union of Myanmar (Burma)

The Rt Hon Mr Justice Biswanath Upadhyaya Chief Justice of Nepal

Monsieur Le Premier Président Olivier Aimot Premier Président of the Court of Appeal of New Caledonia

The Rt Hon Sir Thomas Eichelbaum GBE Chief Justice of New Zealand

The Hon Mr Justice Sajjad Ali Shah Chief Justice of Pakistan

The Hon Sir Arnold K. Amet Chief Justice of Papua New Guinea

The Hon Andres R. Narvasa Chief Justice of the Philippines

The Hon Justice Yong Pung How Chief Justice of Singapore

The Hon Mr Justice P. R. P. Perera Justice of the Supreme Court of Sri Lanka
(Representing The Hon Mr Justice G. P. S. De Silva, Chief Justice of Sri Lanka)

The Hon Charles Vaudin D'Imecourt Chief Justice of Vanuatu

The Hon Mr Justice Pham Hung Chief Justice of Vietnam

Tiavaasue Falefatu Maka Sapolu Chief Justice of Western Samoa

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Basic Principles on the Independence of the Judiciary

Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

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

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

Whereas the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights both guarantee the exercise of those rights, and in addition, the Covenant on Civil and Political Rights further guarantees the right to be tried without undue delay,

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

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

Whereas rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles,

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

Whereas the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by its resolution 16, called upon the Committee on

Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

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

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

Independence of the judiciary

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.

5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.

6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

Freedom of expression and association

8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, 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.

9. Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.

Qualifications, selection and training

10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

Conditions of service and tenure

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

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

13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.

14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration. Professional secrecy and immunity

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.

16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

Discipline, suspension and removal

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

Judges - guidance on outside activities & interests

- Termination of professional and business contacts
- Membership of local Law Societies
- Lecturing, participation in conferences etc
- Writing books and articles
- Misuse of office, etc
- General principles
- Financial interests
- Non-commercial directorships
- Charitable activities
- Political or other activities

General principles

Judges must ensure that while holding full-time judicial office they conduct themselves in a manner consistent with the authority and standing of a judge. They must not, in any capacity, engage in any activity which might undermine, or be reasonably thought to undermine, their judicial independence or impartiality. If in any case any question of bias arises, judges should follow the guidance in the decided cases, including the Court of Appeal judgment in *Locabail*. Judges may not undertake any other remunerated employment, nor receive or retain any fee or emolument in any circumstances save for royalties earned as an author. They may not undertake any task or engage in any activity which in any way limits their ability to discharge their judicial duties to the full. They should so conduct their private affairs as to minimise the possibility of conflict or embarrassment. If any doubt arises on the application of these principles, a judge should seek guidance from a senior colleague or Head of Division or the Lord Chancellor or his/her Permanent Secretary.

The following paragraphs provide further guidance on types of interest or activity which are most likely to occur. The guidance is not designed to be exhaustive. If a judge has any doubt about his/her particular interests or the propriety of a particular undertaking, the Lord Chancellor will always be ready to advise him/her.

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Financial interests

There is normally no objection to a judge holding shares in commercial companies. However, there is a long-standing rule that no judge should hold a commercial directorship. This applies to a directorship in any organisation whose primary purpose is profit-related. It applies whether the directorship is in a public or a private company, and whether or not it is remunerated. Any person holding such a directorship is therefore expected to resign from it on appointment to judicial office.

The only exception to this rule is that a judge may take part in the management of family assets, including land or family businesses, and may hold a directorship in a private company for this purpose or in a company formed for the management of flats of which he/she is a tenant. However, caution should be exercised even where companies are solely owned by the judge and his/her family.

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Non-commercial directorships

A judge may continue to hold directorships which relate to organisations whose primary purpose is not profit-related, and whose activities are of an uncontroversial character.

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Charitable activities

If a judge is involved in charitable activities, including holding the directorship of a charity, he/she should be on his/her guard against circumstances arising which might be seen to cast doubt on his/her judicial impartiality or conflict with his/her judicial office.

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Political or other activities

A judge must expect to forgo any kind of political activity and also any other activity which could make undue demands on his/her time. He/she should be on his/her guard against circumstances arising in which his/her involvement in any outside activity might be

seen to cast doubt on his/her judicial impartiality or conflict with his/her judicial office. A judge is also expected to submit his or her resignation to the Lord Chancellor in the event of nomination or adoption as a prospective candidate for election to Parliament, or to the Scottish Parliament, the Welsh Assembly or the European Parliament.

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Termination of professional and business contacts

A judge is expected to terminate all professional and business contacts with his/her former partners and clients and to sever professional connections with his/her former chambers or firm on taking up judicial office save to the extent that such contact is necessary for practical purposes such as the receipt of outstanding fees etc. A judge should also retire from the office of Trustee, where such an appointment arose from a professional or business relationship, if this is likely to be seen to cast doubt on his/her judicial impartiality or conflict with his/her judicial office. In addition, no judge while holding full time judicial office may maintain an office or make use of office facilities in the premises of the partnership, firm or chambers with which he/she was formerly connected and he/she should also bear in mind the need for discretion in the number and frequency of visits he/she makes there even where these are of a social or personal nature.

Appointments to judicial office are intended to be for the remainder of a person's professional life. Judges who accept appointment do so on the understanding that following the termination of their appointment they will not return to private practice as a barrister or a solicitor, and will not:

- a. provide services, on whatever basis, as an advocate (whether by way of oral submissions or written submissions) in any court or tribunal in England and Wales;
- b. in return for remuneration of any kind, offer or provide legal advice to any person.

For the avoidance of doubt, former judges may provide services as an independent arbitrator/mediator and may receive remuneration for lectures, talks or articles. In cases of any doubt, the advice of the Lord Chancellor or his/her Permanent Secretary should be sought before undertaking any services.

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Membership of local Law Societies

Where members of the judiciary are members of local Law Societies, the possibility can arise of embarrassment, or risk of criticism. These possibilities are the greater where they are active members or office-holders of the Society and plainly greater still in smaller towns and cities. Without therefore necessarily precluding a judge's membership of such a Society (particularly where it may be of long standing and have given rise to no difficulty), attention should be drawn to the risks. It is suggested that a judge should accept an invitation to join or continue only if on consideration he/she is quite satisfied that it would not lead to difficulties. In future when a judge joins a local Law Society, the Lord Chancellor considers it should be on the understanding that he/she cannot take an active part in its functions. However, if a judge has taken and still does take an active part in a local Law Society, and no difficulties have arisen, the Lord Chancellor would not wish him/her to stand down but will leave the matter to his/her discretion.

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Lecturing, participation in conferences etc

There is in principle no objection to members of the judiciary speaking on technical legal matters, which are unlikely to be controversial, at lectures and conferences or seminars organised by the Bar or The Law Society, or by academic or other similar non-profit making organisations. Lectures and seminars which deal with matters of more general public interest may, however, raise wider issues of policy, sometimes not immediately apparent. Judges will therefore wish to be cautious about speaking at these. Depending on circumstances, it could also be inappropriate for a judge to accept an invitation to deliver a public lecture or participate in a conference or seminar run by a commercial undertaking.

The Lord Chancellor regards it as inappropriate for a judge to receive a fee personally for giving a lecture. However, where a judge gives a lecture for a commercial undertaking there is no objection, if he/she considers that it would be appropriate, to his/her requesting that any fee otherwise payable be paid to a charity of his/her choice. To avoid any liability for tax, a judge should try to ensure that payment is made direct to the charity. Where this is not possible, eg accounting reasons, and the charity would otherwise lose out, a judge may accept the payment himself/herself, provided that he/she is prepared to pay the tax on that sum and make the payment directly to the charity himself/herself. There is no

objection to a judge accepting reimbursement of the cost of any necessary travel and accommodation necessitated by attending a suitable lecture, conference or seminar.

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Writing books and articles

It is a long-established tradition that the writing of books and articles and the editing of legal textbooks are not incompatible with holding judicial office and there is no objection to the acceptance of royalties or fees for doing so. Legal and technical books and articles do not normally give rise to difficulties but it may sometimes be advisable for a judge to avoid writing on a subject of wider or more general public interest.

Generally, however, the editorship of a journal is considered incompatible with judicial office, since this involves a regular commitment. Furthermore, journals provide platforms for opinions and, as such, they represent a potential source of avoidable conflict. Editorship of journals should therefore normally be resigned on appointment. If a judge believes he/she has a case for exemption from this rule, he/she should consult the Lord Chancellor or his/her Permanent Secretary before his/her appointment.

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Misuse of office, etc

A judge should avoid any action which involves, or may be seen as involving, the exploitation or misuse of his/her judicial position or title for private purposes, e.g. in connection with local planning issues. Members of the judiciary are reminded that the facilities provided at public expense including those for dispatch of correspondence and stationery are provided for use in carrying out official duties and are not intended for personal use/correspondence.

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The United Nations INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Article 22

12. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
13. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
14. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

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3 IMPARTIALITY

- 3.1 A judge should strive to ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants, in the impartiality of the judge and of the judiciary.
- 3.2 Because the judge's primary task and responsibility is to discharge the duties of office, it follows that a judge should, so far as is reasonable, avoid extrajudicial activities that are likely to cause the judge to have to refrain from sitting on a case because of a reasonable apprehension of bias or because of a conflict of interest that would arise from the activity.
- 3.3 A specific application of that principle is that a judge must forego any kind of political activity and on appointment sever all ties with political parties. An appearance of continuing ties such as might occur by attendance at political gatherings, political fundraising events or through contribution to a political party, should be avoided. The need for

abstinence also involves not participating in public demonstrations which, by associating the judge with a political viewpoint or cause, may diminish his authority as a judge and create in subsequent cases a perception of bias. Where a close member of a judge's family is politically active, the judge needs to bear in mind the possibility that, in some proceedings, that political activity might raise concerns about the judge's own impartiality and detachment from the political process.

- 3.4 Another application of the principle, though one difficult to define and apply in specific situations, is the expression of views out of court that would give rise to issues of perceived bias or pre-judgment in cases that later come before the judge. This question is considered in more detail in Section 8.2.
- 3.5 The question whether an appearance of bias or possible conflict of interest is sufficient to disqualify a judge from hearing a case is the subject of Strasbourg, English and Welsh, and Commonwealth jurisprudence which will guide

judges in specific situations and any attempt to summarise, or comment in detail, would be unhelpful and inappropriate. Recent English cases include *Locobail (UK) Ltd v Bayfield Properties Ltd* [2002] QB 451, *R v Bow Street Magistrates ex parte Pinochet (No.2)* [2000] 1 AC 119, *Re Medicaments and Related Classes of Goods (No.2)*[2001] 1 WLR 700, *M v Islington LBC* [2002] 1 FLR 95 and *Lawal v Northern Spirit Ltd* [2003] UKHL 35.

- 3.6 Circumstances will vary infinitely and guidelines can do no more than seek to assist the judge in the judgment to be made, which involves, by virtue of the authorities, considering the perception the fair-minded and informed observer would have. While the purpose of the guidance is to express general principles, it has been thought appropriate to provide some detail upon issues it is known or believed in practice to cause problems for judges, including fee-paid judges, for example, under the heading personal relationships and perceived bias, Section 7 below.

- 3.7** The guidance applies to fee-paid as well as full-time and part-time judges. Issues specific to fee-paid judges are considered in paragraphs 3.15 to 3.18 below.
- 3.8** If a judge, or to the knowledge of the judge, a member of the judge's family (family as defined below in the *Bangalore* principles) has any significant financial interest in the outcome of the case that will plainly disqualify.
- 3.9** Such an interest may arise without the judge having an interest in the case to be tried if the case is to decide a point of law which may affect the judge in his personal capacity. In taking the decision whether to hear the case, the judge should have regard, in relation to the point of law, to the nature and extent of his or her interest, and the effect of the decision on others with whom he or she has a relationship, actual or foreseeable. (As to the judge's position as a taxpayer see Section 14 of the Supreme Court Act 1981).

3.10 If a judge is known to hold strong views on topics relevant to issues in the case, by reason of public statements or other expression of opinion on such topics, possible disqualification of the judge may have to be addressed, whether or not the matter is raised by the parties. The risk will arise if a judge has taken part publicly in a controversial or political discussion. It will seldom, if ever, arise from what a judge has said in other cases.

3.11 Judges should, however, be careful to avoid giving encouragement to attempts by a party to use procedures for disqualification illegitimately. If the mere making of an insubstantial objection were sufficient to lead a judge to decline to hear a case, parties would be encouraged to attempt to influence the composition of the bench or to cause delay and the burden on colleagues would increase. A previous finding or previous findings by the judge against a party, including findings on credibility, will rarely provide a ground for disqualification. The possibility that the judge's comments in an earlier case, particularly if offered gratuitously,

might reasonably be perceived as personal animosity, cannot be excluded but the possibility should occur, and is likely to occur, only very rarely.

- 3.12 If circumstances which may give rise to a suggestion of bias, or appearance of bias, are present so that they are to be disclosed to the parties, that should be done well before the hearing, if possible. Case management procedures will often enable this to be achieved. Disclosure, if followed by recusal, on the day of the hearing will almost certainly involve additional costs for the parties and will frequently cause listing difficulties. It must, however, be acknowledged that listing arrangements in many courts will be such that advance notification may often not be possible and disclosure only on the day of the hearing will be appropriate and sometimes inevitable. The judge should bear in mind the difficult position in which parties, and their advisers, are placed by disclosure on the day of hearing, when making a decision whether to proceed.

3.13 Disclosure should of course be to all parties and, save when the issue has been resolved by correspondence before the hearing, discussion between the judge and the parties as to what procedure to follow should normally be in open court, unless the case itself is to be heard in chambers. The consent of the parties is a relevant and important factor but the judge should avoid putting them in a position in which it might appear that their consent is sought to cure a ground of disqualification. Even where the parties consent to the judge sitting, if the judge, on balance, considers that recusal is the proper course, the judge should so act. Conversely, there are likely to be cases in which the judge has thought it appropriate to bring the circumstances to the attention of the parties but, having considered any submissions, is entitled to and may rightly decide to proceed notwithstanding the lack of consent.

3.14 A judge is entitled to keep in mind his general duty to try the cases in his or her list and the listing burden and delay which may be occasioned by a

recusal. Moreover, it must be recognised that the urgency of the situation may be such that a hearing is required in the interests of justice notwithstanding the existence of arguable grounds in favour of disqualification.

Fee-paid judges

3.15 As their terms of appointment provide, fee-paid judges are expected to refrain from any activity, political or otherwise, which could conflict with their judicial office or be seen to compromise their impartiality.

3.16 A fee-paid judge has the same general obligation to maintain the status and dignity of the office of judge and to be alert to the possibility that outside activities, including political activities, may create a perception of bias when dealing with particular cases. Judgment is required in striking a balance between maintaining that status and dignity and the reasonable requirements of a legal practice or, in the case of lay fee-paid judges, the reasonable requirements of other employment and activities.

3.17 The fee-paid judge has additional factors to consider when making a decision as to recusal. The ban on party political activity does not apply to that judge who must therefore consider whether the nature and extent of the political activity would create a perception of unfairness in the particular case. The fee-paid judge may also, by virtue of professional practice, have links with chambers, professional firms and other parties which make it inappropriate for him or her to hear a case involving them or their clients.

3.18 The link need not be that of lawyer and client; a solicitor deputy district judge, for example, might not consider it appropriate to sit in judgment in cases involving a firm in professional competition with that fee-paid judge in the same district. By way of a further example, a fee-paid judge who is a barrister may have concerns about a member of his or her chambers who has entered into a conditional fee arrangement appearing before him or her. At many venues, the risk of recusal in civil proceedings is such that it is undesirable for a fee-

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paid judge to sit in the place of his or her legal practice.