# THE İSTANBUL DECLARATION ON TRANSPARENCY IN THE JUDICIAL PROCESS

## RESOURCE GUIDE AND EVALUATIVE FRAMEWORK


**ANKARA**
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# ACKNOWLEDGMENT

Transparency in the judicial process is of crucial importance in ensuring both public confidence in the judiciary and in strengthening judicial integrity. Article 11 of the UN Convention against Corruption imposes a duty on State Parties to take measures to strengthen judicial integrity and to prevent opportunities for corruption among members of the judiciary. The extent of transparency in the judicial process is also an indicator of the level of judicial accountability.

The importance of transparency in the judicial process that has been recognized since ancient times and been referred to from time to time in international human rights instruments, was addressed comprehensively for the first time in the Istanbul Declaration. Chief Justices and senior judges who represented different legal traditions and geographical regions from five continents and more than 50 countries contributed to its formulation with a great sense of responsibility and dedication.

The journey of the Istanbul Declaration was spread over more than 6 years and was concluded at the UN Economic and Social Council on 23 July 2019. That was an important milestone in terms of the legitimacy that all UN Member States accorded to national judiciaries by recognizing their responsibility to take collective action in resolving matters which are within the judicial sphere. That presents judiciaries across the globe with an exciting opportunity to collectively achieve the ideal of a fair and effective judiciary.

The Resource Guide which includes examples of best practices in different legal traditions and geographical regions of the world is an important work that will add depth and meaning to the principles in the Istanbul Declaration. This work will also make important contributions to the dissemination and correct understanding of the Declaration at the global level. The Evaluative Framework is a tool that allows judicial systems to make self-assessment in respect of transparency in the judicial process.

I would like to express my special thanks to Dr. Nihal Jayawickrama who led the development of the Istanbul Declaration and the preparation of the Resource Guide and the Evaluative Framework with his profound knowledge and experience.

The strong support to both the development of the Istanbul Declaration and preparation of the Resource Guide provided by Honorable Justice John Dowd K.C. (Australia), Honorable Judge Sandra Oxner (Canada), Honorable Justice Kashim Zannah (Nigeria), Honorable Justice Shiranee Tilakawardane (Sri Lanka) and Honorable Jeffrey A. Apperson (USA), will always be remembered with appreciation.

I would like to thank Deputy Secretary General Dr. Mustafa Saldırım who successfully managed the development of the Istanbul Declaration and its adoption at the United Nations Economic and Social Council on behalf of the Court of Cassation and participated in the preparation of the Resource Guide.

The Istanbul Declaration does not only create a sound basis for ensuring the transparency and accountability of a judiciary which has integrity and seeks to gain public trust, but also serves as a guide for the public to evaluate their own judicial systems in an objective manner.

I hope that the Resource Guide and Evaluative Framework will contribute to national and international efforts to ensure that the judiciary remains as one of the strongest guarantees of respect for human rights and the observance of the rule of law.

**Mehmet Akarca**

President of the Court of Cassation of Türkiye

# PREFACE

The Right to a Fair Trial was recognized in the 1948 Universal Declaration of Human Rights. In 1966, the International Covenant on Civil and Political Rights not only defined this right in greater detail, but also elevated it to the status of a treaty obligation. While different aspects of the right to a fair trial, such as the Duties and Rights of Prosecutors, the Role of Lawyers, and the Principles of Judicial Conduct, were addressed in several subsequent international instruments, no attempt was made, at any level, to comprehensively address another fundamental element of the judicial process, namely, the Principle of Transparency. Accordingly, in 2013, the Court of Cassation of the Republic of Türkiye and the United Nations Development Programme in Türkiye took the initiative to precisely do that.

## The Istanbul Declaration on Transparency in the Judicial Process

In November 2013, the Conference of Chief Justices and Senior Justices of the Asian Region, meeting in Istanbul, unanimously adopted the Istanbul Declaration on Transparency in the Judicial Process. That instrument, which contained fifteen principles designed to secure transparency in the judicial process, demonstrated that that concept means more than a trial held in public or televising court proceedings. The multi-faceted nature of the concept was expressed not only in the fifteen principles, but also in the commentary which accompanied each principle. In June 2016, the Chief Justices of the Balkan Republics, meeting in Bursa on the invitation of the Court of Cassation and UNDP, reviewed and endorsed the Declaration without amendment.

## Measures for the Effective Implementation of the Istanbul Declaration

In October 2017, an international expert group, convened in Ankara by the Court of Cassation and UNDP, developed a Draft Statement of Measures for the Effective Implementation of the Istanbul Declaration. These measures require action not only by the judiciary, but also by other agencies of the State including the legislature and the executive. In October 2018, the Conference of Chief Justices from North and South America, the Caribbean, Europe, Africa, Asia and the Pacific, meeting in Istanbul on the invitation of the President of the Court of Cassation of Türkiye and the UNDP Resident Representative in Türkiye, reviewed and adopted the Measures for the Effective Implementation of the Istanbul Declaration.

## The Resource Guide

This Resource Guide was prepared, on the invitation of the Court of Cassation and UNDP, based on material gathered by a small group of five international experts and one judge:

- The Hon. John Dowd K.C., former Judge of the Supreme Court of New South Wales, Australia.
- The Hon. Sandra Oxner, former Judge and founding President of the Commonwealth Judicial Education Institute, Canada.
- The Hon. Shiranee Tilakawardane, former Judge of the Supreme Court of Sri Lanka.
- The Hon. Kashim Zannah, Chief Justice of Borno State of Nigeria.
- The Hon. Jeffrey A. Apperson, Vice-President, National Center for State Courts, U.S.A.
- The Hon. Dr. Mustafa Saldırım, Deputy Secretary General of the Court of Cassation, Türkiye.

Relevant material was also drawn from the country presentations made by the following at the 4th International Summit of High Courts held in Istanbul in October 2018:

- The Hon. Gerhard Kuras, Head of the 8th Civil Chamber, Supreme Court of Austria.
- The Hon. Arun Mishra, Judge of the Supreme Court of India.
- The Hon. Peter Charleton, Judge of the Supreme Court of Ireland.

The purpose of this Resource Guide is to inform those engaged in reforming their judicial systems with the objective of strengthening transparency in the judicial process, of successful strategies developed in selected jurisdictions to achieve that objective. This Guide does not seek to cover every aspect of transparency identified in the Fifteen Principles in the Istanbul Declaration. Nor does it seek to record the manner in which the Istanbul Declaration has been implemented in any jurisdiction in the brief period since its adoption, except perhaps in Türkiye.

In the preparation of this Guide, reference was made to international and regional instruments, national laws, judicial decisions, and recommendations of judicial research institutions. They include the following sources:

***International Instruments***

The International Covenant on Civil and Political Rights (ICCPR)

The Human Rights Committee established under the ICCPR

***Regional organizations***

The African Commission on Human and Peoples' Rights

The Australian Institute of Judicial Administration

The Caribbean Court of Justice

The Consultative Council of European Judges

The European Court of Human Rights

The European Court of Justice

The European Commission for the Efficiency of Justice (CEPEJ)

The European Network of Councils for the Judiciary (ENCJ)

The Southern African Chief Justices Forum

***National laws and judicial decisions***

Australia, Austria, Bangladesh, Canada, Czech Republic, Denmark, Eastern Caribbean States:

(Antigua and Barbuda, Bahamas, Barbados, Jamaica, Saint Lucia, Trinidad and Tobago), Estonia, Hungary, India, Ireland, Italy, Israel, Kenya, Netherlands, New Zealand, Nigeria, Papua New Guinea, Poland, Saint Christopher, Nevis, and Anguilla, Slovak Republic, South Africa, Spain, Sri Lanka, Türkiye, United Kingdom, United States of America.

***The Evaluative Framework***

The Evaluative Framework contains questions which can be used to assess to what extent the Measures for the Effective Implementation of the Istanbul Declaration have been addressed. It is an effective tool for use not only by the judiciary, but also by other stakeholders including academics, the media, and civil society. By responding to the Framework, it should be possible to identify the areas that may require further attention or those that do not meet the accepted standards.

**Dr. Nihal Jayawickrama**
Lead Consultant

# THE HISTORICAL EVOLUTION OF TRANSPARENCY IN THE JUDICIAL PROCESS

The importance of transparency in the judicial process and its relationship to public trust in the judiciary has been accepted in different civilizations from ancient times to the present.

In around 328 – 322 BC, Aristotle stated that there were transparent and public procedures of drawing lots by using materials such as boxes, wooden sticks, paint, and acorns to ensure that a judge could not deal with a case he wanted, and no one could choose the judge he/she wanted to hear his/her case.[1] In addition, appeals against court decisions in accordance with the *Solon* laws were conducted publicly. Another practice in *Ancient Greece* was to choose several hundred judges from among the public to hear cases, depending on the complexity of the case. This method, which is a prototype of the jury system, was considered, among other reasons, as a measure for the prevention of corruption in courts.

It is generally accepted by *Islamic* jurists that a hearing that is not heard in public is dubious. Initially the *mosque* was chosen as a venue for the court. However, if a case is heard in another building, its door must be open. If he uses a house as the court, the *kadi* must keep the door of his house open.[2]

The principle of publicity was also implemented in *Ottoman* courts in accordance with *Islamic* law. The names of the parties to a case are written in the record books called "*sicill-i mahfuz"*. The names of witnesses and people consulted, such as experts, were also recorded.[3]

One of the methods that is used to ensure transparency in courts is the jury system. In AD VIII, King Ragnnar Ladbroke of *Denmark* established a jury system consisting of 12 people.[4]

In England, before King John accepted the Magna Carta in 1215, a defendant had to provide the names of 12 witnesses to testify to his innocence. Unlike in *Ancient Greece,* such persons did not possess the power to judge.

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[1] Aristotle: Constitution of the Athenians, (Tra. Ari Çokona), İstanbul 2018, pp.72-74.

[2] Tyan, Emile: Histoire de L'Organization Juridiciaire en Pays d'Islam, ze. ed. Leiden-Brill-1960, p.282 (Ortaylı, İlber : Osmanlı Devletinde Kadı, Ankara 2015, quoted from p.59).

[3] Tyan, p.216 (quoted from Ortaylı, p.60).

[4] Dmitriy Yu. Tumanova, Rinat R. Sakhapova, Damir I. Faizrahmanova and Robert R. Safin: The Origin of a Jury in Ancient Greece and England, (International Journal of Environmental & Science Education 2016, Vol. 11, No. 11, 4154-4163), s. 4159.

In England, the function of the judge and the function of the jury were separated at the beginning of the XVIth century, and it transformed into the present form of trial by jury during the period of King Edward III.[5]

Today, the concept of transparency in the judicial process is more comprehensive and richer in content than allowing people to observe the proceedings of a trial, or choosing members of the public to serve as jurors. However, one thing that has not changed, and perhaps will not change over time is *"the eternal and everlasting need for the transparency of the courts and their constant supervision and scrutiny by the public to ensure public trust in the judiciary."* This is expressed in the maxim that *"justice must not merely be done but must also be seen to be done"*.[6] Securing public trust through transparency in the judicial process is one of the main pillars that maintain the state and public order in societies that give importance to *the ideal of justice*.

## The global significance of the İstanbul Declaration

*The United Nations Basic Principles on the Independence of the Judiciary,* which was adopted by the UN General Assembly in 1985, were formulated to assist Member States in the task of securing and promoting the independence of the judiciary.

*The Bangalore Principles of Judicial Conduct,* and its *Commentary* and *Implementation Measures*, which identified the core judicial values, namely, Independence, Impartiality, Integrity, Propriety, Equality, Competence and Diligence, were endorsed by the United Nations Economic and Social Council as a further development complementing the UN Basic Principles on the Independence of the Judiciary, and establishing standards for ethical conduct of judges, and affording the judiciary a framework for regulating judicial conduct.

*The İstanbul Declaration,* and its *Implementation Measures,* identified the basic requirements to ensure justice and secure transparency in the judicial process. As with the Bangalore Principles, representatives of governments were not involved in the development and consultation processes of the Istanbul Declaration or its Implementation Measures. The Chief Justices and Senior Justices who participated in the development processes did so as the Heads of their respective Judiciaries, and not as Representatives of their Governments.

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[5] Dmitry Yu , 4158-4160.

[6] Bangalore Principles of Judicial Conduct, Value 3: Integrity, Application 3.2 .

## The UN Economic and Social Council

In July 2019, the Economic and Social Council of the United Nations, on the recommendation of the UN Commission on Crime Prevention and Criminal Justice, adopted Resolution 2019/22: "Enhancing transparency in the judicial process", in which it "invited Member States, consistent with their domestic legal frameworks and international obligations, to take into consideration all relevant good practices and documents, including the *Istanbul Declaration on Transparency in the Judicial Process*, when formulating their programmes and legislative reforms in the administration of justice".

## United Nations General Assembly Special Session 2021

Reference was made to *The Istanbul Declaration* in the Political Declaration of the UN General Assembly Special Session Against Corruption (UNGASS Political Declaration) for the first time.[7]

## The Kyoto Declaration

The 14th United Nations Congress on Crime Prevention and Criminal Justice held in Kyoto, Japan, in March 2021, recognized the *Istanbul Declaration on Transparency in the Judicial Process and the Measures for the Implementation of the Istanbul Declaration* (together with the Basic Principles on the Independence of the Judiciary, the Bangalore Principles of Judicial Conduct, the Basic Principles on the Role of Lawyers, and the Guidelines on the Role of Prosecutors) as being among the documents which should be taken into consideration to "ensure the integrity and impartiality of law enforcement and other institutions comprising the criminal justice system, as well as the independence of the judiciary, and ensure the fair, effective, accountable, transparent and appropriate administration and delivery of justice".[8]

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[7] UNGASS Political Declaration art. 27, p.9, citation 5
Access: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/138/82/PDF/N2113882.pdf?OpenElement

[8] The İstanbul Declaration provided a wide area of legitimacy to the work of judicial institutions at the regional and international level on the solution of problems regarding the administration of justice. This development is an important milestone in terms of global judiciary and it also created important opportunities for future studies. Deputy Secretary General of the Court of Cassation Dr. Mustafa Saldırım expressed the importance of the issue in terms of global judiciary in his speech addressed to the

representatives of States at the UN General Assembly on May 24, 2019 as follows "As we know, the responsibility of ensuring fair and efficient functioning of the judiciary belongs to the judiciary. The Chief Justices who came together from all around the world, developed the Istanbul Declaration with the sense of this responsibility. By adopting this resolution, CCPCJ has provided a strong support for the efforts of judges in ensuring proper functioning of the judiciary. This strong support will also contribute to the regionally and internationally ongoing dialogues among judges to become more productive …"

# THE RESOLUTION ADOPTED BY THE UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL ON 23 JULY 2019 IN NEW YORK

United Nations
**Economic and Social Council**

E/RES/2019/22

Dist: General

1 August 2019

**2019 session**

Agenda item 19 (c)

**Resolution adopted by the Economic and Social Council on 23 July 2019**

[*on the recommendation of the Commission on Crime Prevention and Criminal Justice (E/2019/30)*]

## 2019/22. Enhancing transparency in the judicial process

*The Economic and Social Council,*

*Recalling* the United Nations Convention against Corruption,[9] in particular article 11 thereof, which obliges States parties, in accordance with the fundamental principles of their legal systems and without prejudice to judicial independence, to take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary, and recalling also the United Nations Convention against Corruption: Implementation Guide and Evaluative Framework for Article 11, in which the importance of transparency in combating corruption in the judicial process is emphasized,

*Recalling also* the Charter of the United Nations, in which Member States affirmed, inter alia, their determination to establish conditions under which justice can be maintained and to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without discrimination of any kind,

[9] United Nations, *Treaty Series*, vol. 2349, No. 42146.

*Recalling further* all international principles, commitments and obligations of State parties relevant to transparency in the judicial process, including those contained in the Universal Declaration of Human Rights[10] and the International Covenant on Civil and Political Rights,[11] as well as in other relevant international instruments, taking into account also other relevant, internationally recognized documents,

*Recognizing that* certain members of society, such as children, victims of violence and individuals with special needs, are to be accorded additional protection and are more vulnerable when in contact with the criminal justice system,

*Recalling* General Assembly resolution 40/146 of 13 December 1985, in which the Assembly welcomed the Basic Principles on the Independence of the Judiciary,[12]

*Bearing in mind* the Bangalore Principles of Judicial Conduct,[13] in which the values of independence, impartiality, integrity, propriety, equality, competence and diligence in the exercise of the judicial office are emphasized, and taking note of the commentary thereon,

*Convinced* that a lack of independence, impartiality, integrity, propriety, equality, competence and diligence in the judicial process can undermine the rule of law, encourages corruption and adversely affects public confidence in the judicial system,

*Acknowledging* the variety of the legal frameworks of Member States, and recognizing the diversity of approaches to transparency in the judicial process, in line with the constitutional and legal traditions of Member States,

1. *Notes* the combined efforts of the chief justices and senior justices of 37 countries from all continents who have, over a period of six years, developed principles designed to achieve transparency in the judicial process, together with measures for the effective implementation of those principles, and also notes that **the Istanbul Declaration on Transparency**

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[10] General Assembly Resolution 217 A (III).

[11] See General Assembly Resolution 2200 A (XXI), annex.

[12] Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86. IV.1), chap.I, sect. D.2, annex.

[13] Resolution 2006/23, annex.

**in the Judicial Process and Measures for the Effective Implementation of the Istanbul Declaration**[14] are aimed at enhancing and strengthening public confidence in the right of the individual to a fair process by a competent, independent and impartial tribunal established by law;

2. *Requests* the United Nations Office on Drugs and Crime, within its mandate and existing resources, to continue to assist Member States, upon request, in their efforts aimed at reinforcing their judicial systems;

3. *Invites* Member States, consistent with their domestic legal frameworks and international obligations, to take into consideration all relevant good practices and documents, including **the Istanbul Declaration on Transparency in the Judicial Process,** when formulating their programmes and legislative reforms in the administration of justice;

4. *Invites* Member States and other donors to provide extrabudgetary resources for the purposes of the present resolution, in accordance with the rules and procedures of the United Nations.

*36th plenary meeting*

*23 July 2019*

[14] A/73/831-E/2019/56, annexes I and II.

# THE RESOLUTION ADOPTED BY THE UNITED NATIONS COMMISSION ON CRIME PREVENTION AND CRIMINAL JUSTICE ON 24 MAY 2019 IN VIENNA

United Nations
**Economic and Social Council**

E/CN.15/2019/L.12/Rev.1
Dist: Limited
23 May 2019

Orijinal: English

**Commission on Crime Prevention and Criminal Justice**

**Twenty-eighth session**
Vienna, 20–24 May 2019
Agenda item 6 (d)

**Integration and coordination of efforts by the United Nations Office on Drugs and Crime and by Member States in the field of crime prevention and criminal justice: other crime prevention and criminal justice matters**

## Türkiye: revised draft resolution

The Commission on Crime Prevention and Criminal Justice recommends to the Economic and Social Council the adoption of the following draft resolution:

## Enhancing transparency in the judicial process

*The Economic and Social Council,*

*Recalling* the United Nations against Corruption,[15] in particular its article 11, which obliges States parties, in accordance with the fundamental principles of their legal systems and without prejudice to judicial independence, to take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary, and recalling also the *United Nations Convention against Corruption: Implementation Guide and Evaluative Framework for Article 11,* in which the importance of transparency in combating corruption in the judicial process is emphasized,

[15] United Nations, Treaty Series, vol. 2349, No. 42146.

*Recalling also* the Charter of the United Nations, in which Member States affirmed, inter alia, their determination to establish conditions under which justice can be maintained and to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without discrimination of any kind,

*Recalling further* all international principles, commitments and obligations of State parties relevant to transparency in the judicial process, including those contained in the Universal Declaration of Human Rights[16] and the International Covenant on Civil and Political Rights[17], as well as in other relevant, internationally recognized documents,

*Recognizing* that certain members of society, such as children, victims of violence and individuals with special needs, are to be accorded additional protection and are more vulnerable when in contact with the criminal justice system,

*Recalling* General Assembly resolution 40/146 of 13 December 1985, in which the Assembly welcomed the Basic Principles on the Independence of the Judiciary,[18]

*Bearing in mind the* Bangalore Principles of Judicial Conduct,[19] in which the values of independence, impartiality, integrity, propriety, equality, competence and diligence in the exercise of the judicial office are emphasized, and taking note of the commentary thereon,

*Convinced* that a lack of independence, impartiality, integrity, propriety, equality, competence and diligence in the judicial process can undermine the rule of law and encourages corruption and adversely affects public confidence in the judicial system,

*Acknowledging* the variety of the legal frameworks of Member States, and recognizing the diversity of approaches to transparency in the judicial process, in line with the constitutional and legal traditions of Member States,

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[16] General Assembly resolution 217 A (III).

[17] General Assembly resolution 2200 A (XXI), annex.

[18] Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2, annex.

[19] E/CN.4/2003/65, annex; see also Economic and Social Council resolution 2006/23, annex.

1. *Notes* the combined efforts of the chief justices and senior justices of 37 countries that have, over a period of six years, developed principles designed to secure transparency in the judicial process, together with measures for the effective implementation of those principles, and also notes that **the Istanbul Declaration on Transparency in the Judicial Process and Measures for the Effective Implementation of the Istanbul Declaration**[20] are aimed at enhancing and strengthening public confidence in the right of the individual to a fair process by a competent, independent and impartial tribunal established by law;

2. *Requests* the United Nations Office on Drugs and Crime, within its mandate and existing resources, to continue to assist Member States, upon request, in their efforts aimed at reinforcing their judicial systems;

3. *Invites* Member States, consistent with their domestic legal frameworks and international obligations, to take into consideration all relevant good practices and documents, including **the Istanbul Declaration on Transparency in the Judicial Process,** when formulating their programmes and legislative reforms in the administration of justice;

4. *Invites* Member States and other donors to provide extrabudgetary resources for the purposes of the present resolution, in accordance with the rules and procedures of the United Nations.

[20] E/CN.15/2019/CRP.2.

# THE İSTANBUL DECLARATION ON TRANSPARENCY IN THE JUDICIAL PROCESS

**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 declares 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 principles and rights are also recognized or reflected in other international and regional human rights instruments and declarations, in domestic constitutional, statutory and common law, and in judicial conventions and traditions;

**WHEREAS** it is now universally accepted that the principle of transparency is a fundamental element of the judicial process in a State that upholds human rights and the rule of law;

**WHEREAS** THE CONFERENCE OF CHIEF JUSTICES AND SENIOR JUSTICES OF THE ASIAN REGION, MEETING IN ISTANBUL ON 20 and 21 NOVEMBER 2013, ON THE INVITATION OF THE CHIEF JUSTICE OF THE COURT OF CASSATION OF THE REPUBLIC OF TÜRKİYE AND THE UNITED NATIONS DEVELOPMENT PROGRAMME DEVELOPED AND ADOPTED FIFTEEN PRINCIPLES DESIGNED TO SECURE TRANSPARENCY IN THE JUDICAL PROCESS;

**WHEREAS** THE CONFERENCE OF CHIEF JUSTICES AND SENIOR JUSTICES OF THE BALKAN REGION, MEETING IN BURSA FROM 1 TO 4 JUNE 2016, ON THE INVITATION OF THE CHIEF JUSTICE OF THE COURT OF CASSATION OF THE REPUBLIC OF TÜRKİYE AND THE UNITED NATIONS DEVELOPMENT PROGRAMME REAFFIRMED THESE FIFTEEN PRINCIPLES;

**AND WHEREAS** THE CHIEF JUSTICES AND SENIOR JUSTICES OF THIRTY COUNTRIES OF NORTH AND SOUTH AMERICA, THE CARIBBEAN, EUROPE, AFRICA, ASIA AND THE PACIFIC,

REPRESENTING THE MAJOR LEGAL SYSTEMS OF THE WORLD, MEETING IN ISTANBUL ON 11 and 12 OCTOBER 2018, ON THE INVITATION OF THE CHIEF JUSTICE OF THE COURT OF CASSATION OF THE REPUBLIC OF TÜRKİYE AND THE UNITED NATIONS DEVELOPMENT PROGRAMME, HAVING REAFFIRMED THE FIFTEEN PRINCIPLES AND DEVELOPED AND ADOPTED MEASURES FOR THE EFFECTIVE IMPLEMENTATION OF THESE PRINCIPLES;

**NOW DECLARE** THE İSTANBUL DECLARATION ON TRANSPARENCY IN THE JUDICIAL PROCESS, AND THE MEASURES FOR THE EFFECTIVE IMPLEMENTATION OF THESE PRINCIPLES TO BE THE BASIS REQUIREMENTS TO ENSURE JUSTICE AND SECURE TRANSPARENCY IN THE JUDICIAL PROCESS.

*Principle 1*

**Judicial proceedings must, as a general rule, be conducted in public.**

The public access to court hearings is a fundamental requirement in a democratic society. The principle of public proceedings implies that citizens and media professionals should be allowed access to the court rooms in which judicial proceedings take place. The court should, therefore, ensure that the public and the media can attend court proceedings. For this purpose, information regarding the time and venue of hearings should be made available to the public. Adequate facilities should also be provided for the attendance of the public, within reasonable limits, taking into account the potential interest in the case and the nature of the hearing. Where legitimate grounds, as provided by the law, exist to exclude the public or the media from the whole or part of particular judicial proceedings,[21] the judge should ensure that the reasons for so doing are published.

*Principle 2*

**The judicial system should ensure easy access to court premises and to information.**

Courthouses should, wherever possible, be located near public transportation hubs to ease the burden of travelling to and from the court. The judicial system should establish an information system and resource centre located in close proximity to the courts. In addition to easily readable signs, courthouse orientation guides, and court schedules, court personnel should be available at public relations desks. The court buildings should

[21] The requirement of a public hearing does not necessarily apply to all appellate proceedings which may take place on the basis of written presentations, or to pre-trial decisions. Article 14(1) of the International Covenant on Civil and Political Rights acknowledges that a court has the power to exclude all or part of the public for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice. Apart from such exceptional circumstances, a hearing must be open to the general public, including members of the media, and must not, for instance, be limited to a particular category of persons. Even in cases in which the public is excluded from the trial, the judgment, including the essential findings, evidence and legal reasoning must be made public, except where the interest of juvenile persons otherwise requires, or the proceedings concern matrimonial disputes or the guardianship of children.

provide adequate facilities for the public to complete forms and conduct negotiations, and amenities for special-need users such as children, victims and the disabled, as well as rooms for legal professional services. Court-users are entitled not only to timely and efficient services, but also to the highest standards of ethical conduct, professionalism and accountability from court personnel.

*Principle 3*

**The judiciary should facilitate access to the judicial system.**

The court should provide potential court users with standard, user-friendly forms and instructions, and furnish clear and accurate information on filing fees, court procedures, and hearing schedules. This information should also be disseminated via the internet. Where appropriate, the court should adopt the multi-door courthouse (MDR) concept to inform potential court users of the different doors that could lead to justice, of which litigation is only one, and to provide assistance with legal aid applications. It is the responsibility of the judiciary, where there is no sufficient legal aid publicly available, to consider initiatives such as encouraging *pro bono* representation of poor litigants by the legal profession, or appointing a "friend of the court" (*amici curiae*), or suggesting alternative dispute resolution. Permission may be granted by the court to appropriate nonqualified persons to represent parties before a court.

*Principle 4*

**The judiciary should provide court-users with translation and interpretation facilities, free of charge.**

The right of an accused person to be informed of the charge against him in a language which he understands is a fundamental human right. So too is the right to have the free assistance of an interpreter if he cannot understand or speak the language used in court. Indeed, the inability of any court-user to understand the languages used in court means the total lack of transparency in the proceedings as far as that person is concerned. A witness may not be able to testify, nor will it be possible in some circumstances to introduce a document in evidence, without interpretation or translation, as the case may be. It is, therefore, the responsibility of the judge or justice administration to ensure that facilities are available in court, as required, for both interpretation and translation.

*Principle 5*

**The judiciary should ensure transparency in the assignment of cases.**

Court systems vary in the procedures they utilize to assign cases to judges. In some countries, the head of the court is responsible for determining the distribution of cases. In others, case assignment is a function managed by court administrators rather than judges. A third option is the random assignment of cases, either manually or automated. Finally, case assignment may be based on informal criteria, such as long established court practices, or more formal rules and laws governing the court. Whichever model is adopted, the division of work among the judges of a court, including the distribution of cases, should ordinarily be performed under a predetermined, transparent arrangement provided by law or rules of court agreed by judges of the relevant court. Similarly, a case should not be withdrawn from a judge except for such reasons and in accordance with such procedures as are provided for by law or rules of court.

*Principle 6*

**The judiciary should ensure transparency in the delivery of justice.**

Integrating justice into society requires the judicial system to open up and learn to make itself known. Subject to judicial supervision, the public, the media and court-users should have reliable access to all information pertaining to judicial proceedings, both pending and concluded. Such access could be provided on a court website or through appropriate and accessible records. Such information should include reasoned judgments, pleadings, motions and evidence. Affidavits or like evidentiary documents that have not yet been admitted in evidence may be excluded. Access to court documents should not be limited to case-related material, but should also include court-related administrative information such as statistics on the caseload and case clearance rates, as well as budget-related data, e.g. collection of court fees and the use of budgetary allocations. Judges should disclose potential conflicts of interest.

*Principle 7*

**The judiciary should have supervisory powers over executive detention.**

To ensure that the judicial system is not subjected to unwarranted criticism for trial delays, the judiciary should be conferred by law the power to bring before court persons held in administrative or executive detention. Although this is primarily a human rights issue, it is also a way of ensuring transparency in the public perception of the administration of justice.

*Principle 8*

**The judiciary should ensure that judicial decisions of the superior/appellate courts are regularly published.**

Without reliable access to laws, jurisprudence and other primary legal sources, judges, lawyers, litigants including governments, are left without clear guidance on how the law should operate in any particular case or situation. The publication of judgments allows the public, the press, civil society organizations, lawyers, judges and legal scholars to scrutinize the actions of judges. Submitting judgments to public scrutiny through publication also regularizes the application of the law, and makes judicial decisions more predictable and consistent, thus improving the quality of justice. In judicial systems where higher court decisions are binding precedents, the publication and distribution of appellate and superior court decisions is crucial in ensuring that lower court judges and governments are following the law. Even in countries where higher court decisions are merely persuasive, it is still important to ensure that judges are interpreting the applicable statutes in a consistent manner. It is desirable to create publicly available databases that store the texts of court decisions and statutes, as well as scholarly articles from law reviews and legal journals.

*Principle 9*

**The judiciary should promote programmes to orientate students on the judicial process.**

The judiciary should promote and participate in school and university programmes aimed at developing an understanding, and thereby contributing to the transparency, of the judicial process. These may include visits to courts, classroom appearances by judges, role playing, the use of

audiovisual material, and the active teaching of judicial procedures. Such programmes will serve to avoid or correct ignorance and misapprehension about the judicial system and its operation.

*Principle 10*

**The judiciary should initiate and/or support outreach programmes designed to educate the public on the role of the justice system.**

Transparency involves more than simply providing access to court proceedings and information. To achieve transparency, information must also be disseminated in a format that is easily accessible for the intended audience – especially for court-users who do not have a legal background and may often have limited literacy. Publicising information about court operations and judicial programmes to increase the quality and efficiency of justice also has beneficial effects on public confidence in the judiciary.

Judicial outreach involves proactive measures by judges and direct interaction with the communities they serve. These may include town hall meetings, the production of radio and television programmes, and the dissemination of awareness-raising materials such as court user guides. These guides, in the form of short pamphlets, may provide basic information on arrest, detention and bail, criminal and civil procedures, and useful contacts for crime victims, witnesses and other users.

Such programmes of judicial outreach and education concerning court services and procedures are useful from the perspective of both the judiciary and the court users. They help to actively engage a court in a relationship with the community, and to demystify many of the complexities surrounding the operation of a legal system and the conduct of court proceedings. Thus, by educating and involving the public in the court's work through proactive judicial outreach and communication strategies, courts can increase public confidence and strengthen respect for the rule of law in their communities.

*Principle 11*

**The judiciary should afford access and appropriate assistance to the media to enable it to perform its legitimate function of informing the public about judicial proceedings, including decisions.**

It is the function and the duty of the media to gather and convey information to the public, and to report and comment, on the administration of justice, including cases, before, during and after trial, without violating the *sub judice* rule, the presumption of innocence, and the rights of parties to a dispute. This principle, which includes the freedom to decide which cases are to be brought to the attention of the public and how they are to be treated, and the right to criticize the organization and functioning of the justice system, should only be departed from to the extent set out in the International Covenant on Civil and Political Rights.

Media access to judicial proceedings is not a matter of simply opening doors to the courtroom and providing seats to journalists. Courts are not well served by inaccurate and sensationalist coverage of court proceedings. In fact, poor or biased media coverage can undermine public confidence in the judiciary and raise concerns with regard to judicial independence, impartiality and integrity. The training of journalists organized by, or in cooperation with, the courts can help reduce ineffective reporting. Such training should be designed to provide them with basic knowledge about court procedures and legal issues, and thus contribute to improving journalistic skills and ethics, and building trust between judges and journalists.

Engaging the media may also require that courts actively reach out to journalists by establishing press offices within each court, to facilitate media coverage of judicial proceedings. These offices could liase with media representatives, respond to and manage requests from journalists, issue press releases and generally provide accurate information about judicial decisions and legal issues. These offices could also provide schedules of upcoming cases, monitor the media for accurate reporting, and design media campaigns that promote public understanding of the judiciary.

*Principle 12*

**The judiciary should assess public satisfaction with the delivery of justice, and thereby seek to promote the quality of justice.**

There are a variety of tools for measuring the level of public satisfaction with the delivery of justice. Apart from being sensitive to contributions

from academia, the judiciary should encourage court user feedback. An effective and impartial complaint system, regular case audits, periodic surveys of court-users and other stakeholders, and discussions with court-user committees, are means of reviewing public satisfaction with the delivery of justice and identifying systemic weaknesses in the judicial process, especially any that may have created "gatekeepers" seeking gratifications. However, these exercises will be meaningless if lessons are not learnt and remedial action not taken. The publication of an annual report of its activities, including any difficulties encountered and action taken to improve the functioning of the justice system, is one measure to foster public confidence in the judiciary.

*Principle 13*

**There should be transparency in the appointment process of judges.**

It is generally agreed that transparency is required in the conditions for the selection of candidates for judicial office. In order to ensure transparency and accountability in the process, the appointment and selection criteria should be made accessible to the general public, including the qualities required from candidates for high judicial office. All judicial vacancies should be advertised in such a way as to invite applications by, or nominations of, suitable candidates for appointment. That will enable procedures for judicial appointment and promotion based on merit to be opened to a pool of candidates as diverse and reflective of society as a whole as possible. Publication of the list of vacant posts and the list of candidates for those posts will also permit public scrutiny of the appointment process.

While there is a diversity of methods by which judges assume office, recent international and regional initiatives are unanimous in their view that it is essential for the maintenance of the independence of the judiciary that the appointment and promotion of judges are not made by the legislature or the executive, but by an independent body such as a Council for the Judiciary, with the formal intervention of the Head of State in respect of higher appointments. Members of the judiciary and members of the community should each play appropriately defined roles in the selection of candidates suitable for judicial office. Its non-judge members may be selected from among outstanding jurists or citizens of acknowledged reputation and experience chosen by an appropriate appointment mechanism. A mixed composition avoids the perception of self-interest, self protection

and cronyism, and reflects the different viewpoints within society, thus providing the judiciary with an additional source of legitimacy.

*Principle 14*

**The judiciary should respond to complaints of unethical conduct of judges in a transparent manner.**

It is necessary that the judiciary should not only adopt a code of conduct, but that it should also ensure that such code is widely disseminated in the community. However, a code of judicial conduct will do little to improve judicial performance and enhance public confidence if it is not enforceable. Therefore, a mechanism in the form of a credible, independent Judicial Ethics Review Committee should be established to receive, inquire into, resolve and determine complaints of unethical conduct of members of the judiciary, where no provision exists for the reference of such complaints to a court. The committee so established should not be controlled by the judiciary, but must be one in which there is sufficient lay representation to attract the confidence of the community. Associating persons external to the judiciary (lawyers, academics and representatives of the community) in the monitoring of ethical principles will prevent a possible perception of self-interest and self-protection, and provide the essential element of transparency.

*Principle 15*

**There should be transparency in the disciplinary process of judges.**

The power to discipline or remove a judge from office should be vested in an independent body (or in the Council for the Judiciary responsible for the appointment of judges), which is composed of serving or retired judges but which should include in its membership persons other than judges, provided that such other persons are not members of the legislature or the executive. Where the Head of State or the legislature is vested with the power of removal of a judge, such power should be exercised only after a recommendation to that effect of this independent body. The final decision in any proceedings instituted against a judge involving a sanction against such judge, whether held in camera or in public, should be published. The complainant, if any, should be informed of the outcome of the investigation into his complaint.

# MEASURES FOR THE EFFECTIVE IMPLEMENTATION OF THE İSTANBUL DECLARATION

This Statement of Measures is offered as guidelines or benchmarks for the effective implementation of the *İstanbul Declaration on Transparency in the Judicial Process*. These Measures are required to be adopted by the Judiciary. However, some of the Measures may require resources which the Judiciary may not currently possess or may require further legislative or executive action for their effective implementation. Accordingly, the other agencies of the State should co-operate with the Judiciary, and actively assist the Judiciary, to ensure the full and expeditious implementation of these Measures.

## *Principle 1*

**Judicial proceedings must, as a general rule, be conducted in public.**

*Transparency in the judicial process being essential to secure and maintain public trust and confidence in the administration of justice, the judiciary should:*

1. Establish procedures and provide appropriate facilities to ensure that court proceedings are open to the public and the media.
2. Undertake measures to ensure that there is sufficient seating space in courtrooms for the public to attend and witness judicial proceedings.
3. Establish procedures to ensure that the public has access in advance to information of the time and venue of court hearings.
4. Provide access and appropriate facilities for the attendance of members of the media.
5. Establish uniform procedures requiring judges to deliver their judgments in a timely and open manner.
6. Ensure that exceptions to the public conduct of judicial proceedings shall only be as defined by law and not inconsistent with Article 14(1) of the International Covenant on Civil and Political Rights.

*Principle 2*

**The judicial system should ensure easy access to court premises and to information.**

*Physical access to justice being an essential component in promoting public trust and confidence in the administration of justice, the judiciary should:*

1. Wherever possible, and within the limits of resources, ensure that court facilities are located near public transportation hubs.
2. Support innovations in delivering court services such as mobile courts or night court programmes, telephone or video-conferencing, or the conducting of pre-trial hearings in online chat rooms, consideration being given to persons who are physically unable to travel to attend court proceedings or access court programs.
3. Install clear and easily identifiable signage providing directions to offices within the facility.
4. Establish information counters or customer service desks at the court entrance to provide information to court users.
5. Publicly and clearly post in the courthouse, schedules of hearing and proceedings and courtrooms.
6. Employ and retain court personnel who can speak the language of court users or, in the alternative, can readily obtain the assistance of interpreters.
7. Provide comfortable waiting areas for court users, including areas that offer appropriate security to witnesses, if needed.
8. Provide suitable facilities for the special needs of court users, such as children, victims of sexual violence or domestic violence, and special-needs users.
9. Maintain a safe, clean, convenient and user-friendly court premises.
10. Create a resource centre to provide single-window service delivery.
11. Publish in simple, clear and accessible formats user guides, posters and other informational material.

12. Institute and mandate management training programs for judges and court personnel.
13. Establish a public website containing information useful to court users such as court sitting times, courthouse guides and relevant case information.

*Principle 3*

**The judiciary should facilitate access to the judicial system.**

*Public and litigant understanding of the judicial process being an essential component of judicial transparency, accountability and the fair administration of justice, the judiciary should:*

1. Develop and implement standard, user-friendly forms and instructions.
2. Clearly and accurately publish information on matters such as filing fees, court procedures and hearing schedules; and if resources permit, disseminate such information via the Internet or automated telephone systems.
3. Implement systems that enable court users to download forms from the Internet and make online payments of court fees.
4. Implement systems that enable litigants and the public to obtain case information, including judgments, on a website.
5. Establish, or encourage the establishment of, an office of Public Defender whose intervention may be sought in respect of any criminal matter.
6. Require an attorney to provide *pro bono* services[22] to a litigant who is unable to afford legal representation in court.
7. Encourage the establishment of Legal Aid Clinics to provide legal services to indigent persons.
8. Implement a multi-door courthouse approach to dispute resolution that offers a variety of dispute resolution processes, including case evaluation, mediation, arbitration, conciliation and complex case management. These services should be provided by skilled, qualified,

[22] *Pro Bono i*s a Latin phrase for professional work provided without payment by an attorney.

experienced mediators, case evaluators and arbitrators, and made available before the filing of a law suit or at any other stage of litigation.

9. Establish an amicable dispute resolution centre that offers litigants a cost- effective alternative to the conventional means of resolving civil disputes, especially in matters such as inheritance, maintenance, custody and matrimonial disputes.
10. Enable parties to present evidence through electronic tools.
11. Permit, where circumstances warrant, an appropriate non-qualified person to assist a party in court.[23]

*Principle 4*

**The judiciary should provide court-users with translation and interpretation facilities, free of charge.**

*The ability to follow and understand the judicial proceedings in which a litigant is involved being an essential component of transparency of the judicial process, and trust in the fairness of judicial decisions, the judiciary should:*

1. Ensure that the parties before the court understand the language in which the proceedings will be conducted.
2. Provide the free assistance of an interpreter to a court user or a witness if he or she cannot understand or speak the language in which the proceedings will be conducted in court.

*Principle 5*

**The judiciary should ensure transparency in the assignment of cases.**

*Public confidence in the independence and impartiality of the judge being an essential component in securing and maintaining confidence in the administration of justice, the judiciary should:*

1. Establish by rules of court a predetermined objective and transparent system for allocating and assigning cases to judges of each court. Such system may be based upon alphabetical or chronological order or other random selection process that ensures objectivity in case assignments.

[23] A 'non-qualified' person is a person who is not qualified to practise law and may include a friend or relative who is willing to assist a party.

2. Ensure that a case is not withdrawn from a judge without valid reasons, such as serious illness or conflict of interest. Permissible reasons for withdrawal, and the procedure for withdrawal, should be provided by law or by rules of court.
3. Establish a system requiring a judge, at the time of his or her initial appointment, and thereafter annually, to declare to the court any affiliations, outside activities, and other non-financial interests, and identify any conflicts or potential conflicts of interest, for the purpose of assisting in, and facilitating, the allocation and assignment of cases.
4. Ensure that a judge discloses to the parties to a case and their legal representatives any real or potential conflicts of interest that might lead a reasonable person to question the judge's ability to be fair and objective in the matter before the court, and thereby provide the parties and their legal representatives an opportunity to request that the judge recuses himself or herself from the proceedings.

*Principle 6*

**The judiciary should ensure transparency in the delivery of justice.**

*The appearance and the actuality of transparency being essential in the performance of judicial functions and in the delivery of justice, the judiciary should:*

1. Require a judge to state in his or her judgment, in comprehensible language, the facts, law and legal reasoning that justifies the judge's decision.
2. Maintain a Registry that enables easy access to court records and quick retrieval of information.
3. Subject to privacy laws, establish systems that provide public access to information pertaining to judicial proceedings, both pending and concluded, including reasoned judgments, pleadings, motions and evidence, other than affidavits and like evidentiary documents that have not yet been admitted in evidence.
4. Regularly publish information regarding court caseload statistics and case clearance rates.
5. Ensure that information on budget-related data, such as collection of court fees and the use of budgetary allocations, are publicly available.

*Principle 7*

**The judiciary should have supervisory powers over executive detention.**

*The unlawful or inhumane incarceration of persons being contrary to the Rule of Law, the fair and open administration of justice, and the principle of due process of law, the judiciary should:*

1. Establish a system of structured prison visits by members of the judiciary to ensure the independent oversight of administrative or executive detention.[24]
2. Require that persons held in administrative or executive detention be brought before the court in a timely manner, and that the authorities be required to disclose to the court the reasons and the legal justification for such detention.
3. Order that persons held in administrative or executive detention be released if the authorities fail to provide adequate factual and legal justification for such detention.

*Principle 8*

**The judiciary should ensure that judicial decisions of the superior/ appellate courts are regularly published.**

*Consistency in the interpretation of the law and legal principles being an essential component in the fair administration of justice, the judiciary should:*

1. Establish procedures that enable court users to access relevant information, including new laws and the decisions of superior and appellate courts with greater ease, including by publishing such material on official websites.
2. Establish procedures for ensuring that judgments of superior and appellate courts are regularly published.
3. Establish a publicly available data base that stores the texts of court decisions and statutes, as well as scholarly articles from law reviews and legal journals.

[24] 'Administrative or executive detention' is the arrest and detention of an individual by the State without trial, usually under public security, immigration or mental health laws.

*Principle 9*

**The judiciary should promote programmes to orientate students on the judicial process.**

*Promoting and entrenching respect for the Rule of Law and the role of the judiciary being dependent upon a multi-generational understanding of important legal principles and individual rights, the judiciary should:*

1. Establish regular programs of student engagement that include organized student visits to courts, classroom appearances by judges, and the active teaching of judicial procedures in conjunction with the legal profession and tertiary educational institutions.

*Principle 10*

**The judiciary should initiate and/or support outreach programmes designed to educate the public on the role of the justice system.**

*Public confidence in the judicial system and in the moral authority and integrity of the judiciary being contingent on public understanding of the judicial process, the judiciary should:*

1. Establish civic outreach programs, including town hall meetings, that provide an opportunity for court users to interact with the judiciary on the problems they have experienced.[25]
2. Participate in radio and television programmes to disseminate information on the functioning of the judiciary, its civic role, and judicial processes.
3. Publish, including on the Internet, short, clearly worded and easily understandable pamphlets and other materials that provide basic information on arrest, detention and bail, criminal and civil procedures, and useful contacts for crime victims, witnesses and other users.

[25] A 'town hall meeting' is a meeting with members of the community, whether in the town hall or a school hall or other appropriate location.

*Principle 11*

**The judiciary should afford access and appropriate assistance to the media to enable it to perform its legitimate function of informing the public about judicial proceedings, including decisions.**

*The media being a primary source through which the public receives information and comments on the administration of justice, the judiciary should:*

1. Establish a press or public affairs office to facilitate media coverage of judicial proceedings by liaising with media representatives, responding to and managing requests from journalists, issuing press releases, and generally providing accurate information about judicial decisions and legal issues. This office should provide schedules of upcoming cases, assist the media in accurate reporting, and design media campaigns that promote public understanding about the judiciary.
2. Establish a program that builds trust between the media and the court by providing training of journalists that includes basic education on court structure, court procedures, methods of accessing court information, and legal issues.

*Principle 12*

**The judiciary should assess public satisfaction with the delivery of justice, and thereby seek to promote the quality of justice.**

*Continuing public confidence in the administration of justice being contingent on the quality of justice, the judiciary should:*

1. Establish a Public Complaints Committee in every court, comprising judges, attorneys and citizens, to receive, review and, where appropriate, refer to the relevant disciplinary body, court users' complaints against judicial officers or court personnel.
2. Install public complaints boxes in every court facility where the public can present even anonymous complaints about judicial officers, court personnel or court procedures.
3. Ensure that the Chief Judge and/or Registrar of every court adopts an "Open Door" policy for complaints.
4. Establish a regular performance evaluation of court personnel.

5. Establish a Court-User Committee in every court.
6. Establish a system to meet with, and conduct surveys of, court-users and other stakeholders, to identify systemic challenges or weaknesses.
7. Mandate that judges and court personnel conduct a regular case audit to ensure the timely disposition of cases.[26]
8. Establish a program through which judges and court personnel conduct regular reviews and analyses of court user complaints and develop responses to those complaints when warranted.
9. Implement a program of conducting court inspections without notice.
10. Encourage critical assessments of its performance by academia.
11. Formulate a comprehensive system-wide strategy designed to correct negative public perceptions and eliminate inefficiencies or other obstacles in the judicial process that lead to such perceptions.
12. Publish an annual report of its activities, including any difficulties encountered and measures taken to improve the functioning of the justice system.

*Principle 13*

**There should be transparency in the appointment process of judges.**

*Competent, independent and impartial judges being essential to establish and maintain the public's trust and confidence in the administration of justice, the judiciary should:*

1. Establish an independent body with broad professional and civic representation to receive and review applications and/or nominations for judicial office.
2. Require that all judicial vacancies, including for high judicial office, be advertised, with information on the qualities required from candidates for such offices.
3. Require publication of a list of vacant judicial offices, and the list of candidates who have applied or been nominated for such offices.

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[26] A 'case audit' is the examination of a case record by reference to the law relating to civil, criminal or appellate procedure, to identify the stage or stages of a proceeding where delay has occurred.

4. Promulgate procedures that ensure the public and the media have access to candidate interviews by the body responsible for appointing or nominating persons for judicial office.
5. Establish a merit-based recruitment and promotion process that reflects the diversity of society.
6. Promulgate procedures governing the transfer of judges for regular rotation or on an emergency basis.

*Principle 14*

**The judiciary should respond to complaints of unethical conduct of judges in a transparent manner.**

*A commitment to the core judicial values as enunciated in the Bangalore Principles of Judicial Conduct being an essential component in promoting public confidence in the administration of justice, the judiciary should:*

1. Develop and promulgate rules or standards of professional and ethical conduct for members of the judiciary, taking into consideration the Bangalore Principles of Judicial Conduct.
2. Ensure that each judge is provided with a written copy of such code and any related material, such as a commentary.
3. Disseminate the code of judicial conduct in the community through written publication or on the Internet.
4. Establish a mechanism or procedure by which individual judges may obtain advice on the propriety of proposed conduct.
5. Establish an independent mechanism or procedure, with sufficient lay representation, to receive and inquire into complaints of unethical conduct against members of the judiciary, and to take appropriate action, including, if warranted, reference to the independent disciplinary body.
6. Develop courses or modules on judicial ethics and as a mandatory requirement in the initial training for judges.
7. Promulgate procedures that require members of the judiciary to make regular declarations of their assets and liabilities.

*Principle 15*

**There should be transparency in the disciplinary process of judges.**

*Closed or obscure judicial disciplinary proceedings being calculated to protect judges from accountability for their conduct, thus undermining public confidence in the integrity of the judicial process, the judiciary should:*

1. Define conduct that may give rise to disciplinary sanctions.
2. Institute and publish a procedure for making a complaint against a judge in respect of his or her professional capacity.
3. Establish an independent investigatory body, with lay participation, to receive complaints against a judge in his or her professional capacity; to investigate such complaints; and to determine what action, if any, is warranted, including reference to the independent disciplinary body.
4. Establish an independent disciplinary body, with lay participation, vested with the power of removal of judges. A judge subject to removal shall be entitled to full rights of defence before such body, including legal representation; an inquiry conducted by reference to established standards of judicial conduct; and the expeditious conclusion of such inquiry. In the event of a decision to remove a judge, the judge is entitled to appeal to an appropriate court or tribunal.
5. Establish procedures that ensure a complainant is kept informed of the progress of the investigation.
6. Ensure that the final decision in a disciplinary proceeding against a judge that results in a sanction is published or otherwise made public.

## EXPLANATORY NOTE

Transparency is a fundamental element of the judicial process. The Universal Declaration of Human Rights states that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. The International Covenant on Civil and Political Rights, while reaffirming the right to a fair and public hearing, recognizes that the press and public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic state, or when the interests of the private lives of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. The Covenant, however, states that every judgment rendered in a criminal case or in a suit at law shall be made public except where the interests of juvenile persons otherwise require, or the proceedings concern matrimonial disputes or the guardianship of children.

The principle of judicial independence articulated in the UN Basic Principles on the Independence of the Judiciary has now been complemented by the principle of judicial accountability enunciated in the Bangalore Principles of Judicial Conduct. The Magna Carta of Judges, which summarises and codifies the Opinions adopted by the Consultative Council of European Judges, emphasizes the importance of access to swift, efficient and affordable dispute resolution, and of reasoned decisions, pronounced in public within a reasonable time, based on fair and public hearing. The Conference of Presidents of European Supreme Courts meeting in Slovenia under the auspices of the Council of Europe formulated a statement on "The Supreme Court: Publicity, Visibility and Transparency". That statement recognized "the necessity to satisfy the expectations of contemporary society with regard to justice" and stressed the importance of courts "demonstrating their openness and sensitivity". The statement noted that judgments "based on clear and easily understandable reasoning" should be accessible to the general public; that there should be transparency in the nomination of judges; that the Supreme Court should "participate in the democratic debate in society with the aim of making better known the issues of justice in a state governed by the rule of law"; and underscored the relationship between the judiciary and the media as an important element in the educational role of the Supreme Court in a democracy.

In early 2013, noting that a fundamental element in the judicial process in a state that upholds human rights and the rule of law, namely, the principle of transparency, had yet to be addressed in a comprehensive manner, the

United Nations Development Programme in Türkiye, at the request of the Court of Cassation of Türkiye, commissioned the preparation of a draft statement on transparency in the judicial process. That draft, prepared by the Coordinator of the UN Judicial Integrity Group, was shared, in the first instance, with all the Heads of the Judiciaries of the Asian and Pacific Region, and was then revised in the light of comments and suggestions received from them.

**Conference of Chief Justices of the Asian-Pacific Region**

In November 2013, on the invitation of the President of the Court of Cassation of Türkiye and the Resident Representative of the United Nations Development Programme in Türkiye, the Chief Justices and/or senior Justices of the Supreme Courts of 12 countries of the Asian-Pacific region, together with the Heads of Chambers of the Court of Cassation of Türkiye, met at Ciragan Palace in Istanbul for a mutual exchange of experience and knowledge on best practices and lessons learned in securing transparency in the judicial process; to identify the essential elements of the multi-faceted concept of judicial transparency; and to consider the development of a detailed statement on transparency in the judicial process. Assisting them as Moderators were four experts drawn from three other countries of the region.

The participating Chief Justices and Justices were **Abdul Salam Azimi,** Chief Justice of the Supreme Court of Afghanistan; **Ramiz Rzayev,** Chief Justice of the Supreme Court of Azerbaijan; **Farid Madatli,** Head of International Relations, Supreme Court of Azerbaijan; **Hassan Arif Sheikh,** Judge of the Supreme Court of Bangladesh; **Konstantin Kublashvili,** President of the Supreme Court of Georgia; **Vasil Mshvenierdze,** Head of the Mtskheta Federal Court of Georgia; **Roki Panjaitan,** Judge of the Supreme Court of The Republic of Indonesia; **Feruza Zulumbekovna Djamasheva,** President of the Supreme Court of the Kyrgyz Republic; **Tun Arifin bin Zakaria,** President of the Federal Court of Malaysia; **Mohd Aizuddin bin Zolkeply,** Head of International Relations, Federal Court of Malaysia; **Gotovdorj Tsagaantsooj,** Vice-President of the Supreme Court of Mongolia; **Dolgorsuren Namjil,** Head of International Relations, Supreme Court of Mongolia; **Tha Htay,** President of the Supreme Court of Myanmar; **Damodar Prasad Sharma,** Judge of the Supreme Court of Nepal; **Bharat Bahadur,** Judge of the Supreme Court of Nepal; **Lohit Chandra Chah,** Judge of the Supreme Court of Nepal; **Kulratna Bhurtel,** Judge of the Supreme Court of Nepal; **Ramesh Prasad Rijal,** Judge of the Supreme Court of

Nepal; **Eakachai Chinnapongse,** Vice-President of the Supreme Court of Thailand; **Soopanit Chinnawat,** Judge of the Supreme Court of Thailand; **Supachart Thinpangnga,** Judge of the Supreme Court of Thailand; **Bui Ngoc Hoa,** Deputy Chief Justice of the Supreme People's Court of Vietnam; **Huu Quan Tran,** Chief Judge of the People's Court of Ha Nam Province, Vietnam; **Chu Trung Dung,** Head of International Cooperation, Supreme People's Court of Vietnam; and **Ha Tuan Hiep,** Head of International Relations, Supreme People's Court of Vietnam.

The experts who served as moderators were **Justice John Dowd,** Vice-President of the International Commission of Jurists, Geneva (Australia); **Malathi Das,** President of the Law Association for Asia and Pacific (Singapore); **Dato' Param Cumaraswamy,** Former UN Special Rapporteur on the Independence of Judges and Lawyers (Malaysia); and **Prof. Dr. Nihal Jayawickrama,** Coordinator of the UN Judicial Integrity Group (Sri Lanka).

Speaking at the opening session of the conference, the UN Special Rapporteur on the Independence of Judges and Lawyers, **Gabriela Knaul**, observed that a detailed statement on transparency in the judicial process, as the intended outcome of the conference, would be a valuable contribution to the reform initiatives embarked upon by several judiciaries throughout the world. At the end of the three-day conference, the participants adopted the ***İstanbul Declaration on Transparency in the Judicial Process***. It was the first comprehensive statement of principles relating to transparency in the administration of justice.

**Conference of Chief Justices of the Balkan Region**

In June 2016, at a three-day conference in Bursa, the capital of the former Ottoman Empire, the *İstanbul Declaration on Transparency in the Judicial Process* was submitted to, reviewed, and endorsed without amendment by the Chief Justices and Senior Justices of the Balkan Republics.

The participating Chief Justices and Justices were: **Xhezair Zaganjori,** Chief Justice of the Supreme Court of Albania; **Charalambos Macheras**, Judge of the Supreme Court of Greece; **Fejzullah Hasani**, President of the Supreme Court of Kosovo[27]; **Elena Gosheva**, President of the Constitutional Court of the Former Yugoslav Republic of Macedonia; and **Vesna Medenica,** President of the Supreme Court of Montenegro. Participants from the Republic of Türkiye included **İsmail Rüştü Cirit,**

[27] The reference to Kosovo shall be understood to be in the context of Security Council Resolution1244 (1999).

President of the Court of Cassation of Türkiye; **Zerrin Güngör**, President of the Council of State of Türkiye; **Abdullah Arslan,** President of the Military High Administrative Court of Türkiye; and **Ahmet Zeki Liman,** President of the Military Court of Cassation of Türkiye. The experts who served as moderators were **Dato' Param Cumaraswamy,** Former UN Special Rapporteur on the Independence of Judges and Lawyers (Malaysia); and **Nihal Jayawickrama,** Coordinator of the UN Judicial Integrity Group (Sri Lanka).

**International Expert Group Meeting**

In October 2017, an international expert group was convened in Ankara to develop a draft *Action Plan on the Implementation of the İstanbul Declaration on Transparency in the Judicial Process*. The experts who participated at that meeting included **Justice John Dowd** (Australia); **Justice Shiranee Tilakawardane** (Sri Lanka); **Justice Kashim Zannah** (Nigeria); **Jeffrey A. Apperson** (USA); **Michael Buenger** (USA); **Wojciech Postulski** (Poland); and **Nihal Jayawickrama,** (Sri Lanka). Representatives of the Court of Cassation included **İsmail Rüştü Cirit,** President of the Court of Cassation; **Justice Fahri Akçin**, **Justice Ahmet Er, Justice Seracettin Göktaş,** and Deputy Secretary-General, **Dr. Mustafa Saldırım**. Following that meeting, the draft Action Plan was further revised. The final draft version was introduced by **President Cirit** at the High-Level Opening Session of the Launch of the Global Judicial Integrity Network in Vienna in April 2018, and copies made available to all the participants.

**Final Conference of Chief Justices from North and South America, the Caribbean, Europe, Africa, Asia and the Pacific**

In October 2018, on the invitation of **İsmail Rüştü Cirit**, President of the Court of Cassation of Türkiye, and **Irena Vojackova-Sollorano**, UNDP Resident Representative in Türkiye, Chief Justices and Justices of thirty countries from five continents, together with the Heads of Chambers of the Court of Cassation of Türkiye and representatives of international, regional and national organizations, met in Istanbul to review and adopt the *Measures for the Effective Implementation of the İstanbul Declaration.*

The participating Chief Justices and Justices were: **Said Yousuf Halem**, Chief Justice of the Supreme Court of Afghanistan; **John Dowd**, Former Justice of the Supreme Court of New South Wales, Australia; **Gerhard Kuras**, Head of the 8th Civil Chamber of the Supreme Court of Austria; **Ramiz Rzayev**, President of the Supreme Court of Azerbaijan;

**Syed Mahmud Hossain**, Chief Justice of Bangladesh; **Md Zakir Hossain**, Senior District Judge of Bangladesh; **Ria Mortier**, Attorney General, Supreme Court of Belgium; **Kenneth A. Benjamin**, Chief Justice of the Supreme Court of Belize; **Sandra Oxner**, former Judge and Founding President, Commonwealth Judicial Education Institute, Canada; **Maricela Sosa Ravelo**, Vice President of the Supreme People's Court of Cuba; **Vasil Roinishvili**, Deputy Chairperson of the Supreme Court of Georgia; **Arun Kumar Mishra**, Justice of the Supreme Court of India; **Peter Charleton**, Justice of the Supreme Court of Ireland; **Madiyar Balken**, Judge of the Supreme Court of Kazakhstan; **Enock Chacha Mwita**, Justice of the Supreme Court of Kenya; **Melis Tagaev**, Chairman of the Issyk-Kul Regional Court of Kyrgyzstan; **Jean Daoud Fahed**, First President of the Court of Cassation of Lebanon; **Atartsetseg Lkhundev**, Justice of the Supreme Court of Mongolia; **Essaid Saadaoui**, President of the Chamber of Commerce, Court of Cassation of Morocco; **Malika Ibnou Zahir**, President of the Social Chamber, Court of Cassation of Morocco; **Myint Thein**, Judge of the High Court, Magwe Region, Myanmar; **Anil Kumar Sinha**, Justice of the Supreme Court of Nepal; **Kashim Zannah**, Chief Justice of Borno State of Nigeria; **Masoud Mohamed Alameri**, Chief Justice, Supreme Judiciary Council of Qatar; **Shiranee Tilakawardane**, Former Acting Chief Justice of the Supreme Court of Sri Lanka; **Haider Ahmad Daffalla**, Chief Justice of the Supreme Court of Sudan; **Mohamed Ahmed Ibrahim Hussein**, Justice of the Supreme Court of Sudan; **Badereldien Mohamed Ahmed Nimir**, Justice, Deputy Director of The Chief Justice's Office, Supreme Court of Sudan; **Gulzor Mukhabbat**, Judge of the Constitutional Court of Tajikistan; **Slaikate Wattanapan**, Vice President of the Supreme Court of Thailand; **Zerrin Güngör**, President of the Council of State of Türkiye; **Engin Yıldırım**, Vice President of the Constitutional Court of Türkiye; **Richard G. Stearns**, Member Judge, United States Judicial Conference Committee on International Judicial Relations; **Mumin Karimoviç Astanov**, Vice President of Administrative Affairs, Supreme Court of Uzbekistan; and **Maikel Jose Moreno Perez**, President of the Supreme Court of Justice of Venezuela.

The participating Chief Justices and Justices of the Court of Cassation of the Republic of Türkiye were: **İsmail Rüştü Cirit**, First President; **Mehmet Akarca**, Chief Public Prosecutor; **Abdulhalik Yıldız**, First Vice President; **Ahmet Özgan**, President of the 11th Civil Chamber; **Hüseyin Eken**, President of the 11th Criminal Chamber; **Erdoğan Buyurgan**,

President of the 5th Civil Chamber; **H.Nesrin Yılmazcan**, President of the 14th Civil Chamber, **Muammer Öztürk,** President of the 15th Civil Chamber; **Ömer Uğur Gençcan**, President of the 2nd Civil Chamber; **A.Şahabattin Sertkaya**, President of the 17th Civil Chamber; **Erkan Öztürk,** President of the 6th Criminal Chamber; **İbrahim Şahbaz,** President of the 4th Criminal Chamber; **Haydar Metiner**, President of the 8th Criminal Chamber; **Sadık Demircioğlu**, President of the 4th Civil Chamber; **Ramazan Özkepir,** President of the 19th Criminal Chamber; **Ali Seçkin Togay**, President of the 1st Civil Chamber; **İlmettin Köklü**, President of the 20th Criminal Chamber; **Mustafa Şahin,** President of the 1st Criminal Chamber; **Methiye Şebnem Günaydin**, President of the 3rd Criminal Chamber; **Hüsnü Uğurlu**, President of the 10th Criminal Chamber; **Mehmet Çamur,** President of the 9th Civil Chamber; **Fahri Akçin**, President of the 8th Civil Chamber; **Mete Duman**, President of the 3rd Civil Chamber; **Mehmet Berber**, President of the 15th Criminal Chamber; **Şakir Aktı**, President of the 5th Criminal Chamber; **Faruk Gök**, President of the 23rd Civil Chamber; **Burhan Karaloğlu**, President of the 9th Criminal Chamber; **Vuslat Dirim**, President of the 13th Criminal Chamber; **Ahmet Er**, President of the 12th Criminal Chamber; **Mustafa Kemal Semercioğlu**, President of the 17th Criminal Chamber; **Halil Özdemir,** President of the 10th Civil Chamber; **Seracettin Göktaş**, President of the 22nd Civil Chamber; **Eyup Yeşil**, President of the 16th Criminal Chamber; **Ali Selman Erkuş**, President of the 13th Civil Chamber; **Ayhan Tuncal**, President of the 12th Civil Chamber; **Mehmet Bülent Selçuk**, President of the 19th Civil Chamber; and **Haydar Sami Kuzu**, President of the 2nd Criminal Chamber.

Assisting the Chief Justices and Justices were: **Farid Madatli**, Head of International Relations, Supreme Court of Azerbaijan; **Luis Alberto Amoros Nunez**, Ambassador of Cuba; **Ahmad Alkuwari**, Deputy Secretary, Supreme Judiciary Council of Qatar; **Omar Ganim Mohamed**, Director of International Cooperation Unit, Supreme Judiciary Council of Qatar; **Mohammed Almalki**, Head of Coordination and Follow-up Section, Supreme Judiciary Council of Qatar; **Komtharnongchai Chiphairojn,** Deputy Secretary, Supreme Court of Thailand; **Jaiber Isaac Nunez Jimenez**, Legal Assistant to the President of the Supreme Court of Justice of Venezuela; and **Julio César Zamora**, Chief of the Information and Communication Office, Supreme Court of Justice of Venezuela.

Representatives of international, regional and national organizations included: **Nihal Jayawickrama**, Coordinator, UN Judicial Integrity Group; **Sophio Gelashvili**, Head of the Justice Sector Reform Unit of the

Council of Europe; **Michael Ingledow**, Head of the Council of Europe Programme Office in Ankara; **Liviana Zorzi**, Programme Analyst, Governance and Peace Building Team, UNDP Bangkok Regional Hub; and **Jeffrey Apperson**, Vice President, National Center for State Courts, USA.

Representatives of UNDP Türkiye included **Irena Vojackova-Sollorano**, Resident Representative; **Sukhrob Khojimatov**, Deputy Country Director; **Seher Alacaci**, Assistant Resident Representative (Programme); **Sezin Üskent**, Inclusive and Democratic Governance Portfolio Manager; and **Nazlı Ersoy,** Project Assistant.

The Project Team of the Court of Cassation of the Republic of Türkiye were **Dr. Mustafa Saldırım**, Project Manager, Judge, Deputy Secretary General; **Gülşah Sibel Akbulut**, Judge; **Gözde Hülagü**, Project Specialist; **Özlem Karaman**, Project Coordinator; **Seda Dural**, Project Assistant; **Cem Şenol**, Project Assistant; **Selma Dalkılıç**, Project Assistant; and **Nihal Eriş**, Project Assistant.

At the conference held at the CVK Park Bosphorus Hotel on 11-12 October 2018, the participants reviewed in detail in two simultaneous Round Table Meetings the following issues in the Draft Implementation Measures:

(i) Public proceedings, Access to court premises, Access to the judicial system, Interpretation facilities, Assignment of cases, Transparency in the delivery of justice, Executive detention, and Publishing of judgments (Principles 1 - 8).

(ii) Student engagement, Outreach programmes, Relations with the media, Assessing public satisfaction with the delivery of justice, Appointment of judges, Complaints against judges, Disciplinary proceedings (Principles 9 -15).

The amendments proposed by the participants were considered in plenary, and the final version of the Implementation Measures was presented by the Moderator, **Nihal Jayawickrama**, and was unanimously adopted by acclamation.

On the evening of 12 October 2018, at a ceremony held at Dolmabahce Palace, in the presence of **His Excellency Recep Tayyip Erdoğan,** President of the Republic of Türkiye, the *İstanbul Declaration on Transparency in the Judicial Process* and *Measures for the Effective Implementation of the İstanbul Declaration* were formally presented by **The Honourable İsmail Rüştü Cirit**, President of the Court of Cassation of the Republic of Türkiye.

**United Nations Commission on Crime Prevention and Criminal Justice (CCPCJ)**

In May 2019, the Twenty-eighth session of the United Nations Commission on Crime Prevention and Criminal Justice (CCPCJ) met in Vienna and unanimously recommended to the Economic and Social Council (ECOSOC) the adoption of a draft resolution sponsored by the Republic of Türkiye entitled "Enhancing transparency in the judicial process" (E/CN.15/2019/L.12/rEV.1). The draft resolution, inter alia:

(a) Noted the combined efforts of the chief justices and senior justices of 37 countries who have, over a period of six years, developed principles designed to achieve transparency in the judicial process, together with measures for the effective implementation of those principles;

(b) Noted that the Istanbul Declaration on Transparency in the Judicial Process and Measures for the Effective Implementation of the Istanbul Declaration are aimed at enhancing and strengthening public confidence in the right of the individual to a fair process by a competent, independent and impartial tribunal established by law; and

(c) Invited Member States, consistent with their domestic legal frameworks and international obligations, to take into consideration all relevant good practices and documents, including the Istanbul Declaration on Transparency in the Judicial Process, when formulating their programmes and legislative reforms in the administration of justice.

Participating in the two-week session of CCPCJ in Vienna, which included both formal and informal meetings, was the project team of the Ethics, Transparency and Trust Project of the Court of Cassation: **Dr. Mustafa Saldırım**, Deputy Secretary General of the Court of Cassation and Project Manager; **Gözde Hülagü**, Senior Project Expert; and **Nihal Eriş**, Project Expert; and officials of the Ministry of Foreign Affairs: **Ahmet Muhtar Gün**, Ambassador of the Permanent Mission of Türkiye to the United Nations Office in Vienna; **Cenk Ünal**, Deputy Ambassador; and **Hüseyin Hançer**, Counsellor.

**United Nations Economic and Social Council (ECOSOC)**

On 23 July 2019, the Economic and Social Council adopted resolution E/RES/2019/22, entitled "Enhancing transparency in the judicial process", without a vote.

# THE ISTANBUL DECLARATION – RESOURCE GUIDE

## *Principle 1*

## ***Judicial proceedings must, as a general rule, be conducted in public.***

### International Covenant on Civil and Political Rights

### Article 14

(i) All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order *(ordre public)* or national security in a democratic society, or when the interests of the private lives of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

See also: American Declaration of the Rights and Duties of Man, Art.26(2); European Convention for the Protection of Human Rights and Fundamental Freedoms, Art.6(1); American Convention on Human Rights, Art.8(1) and (5); African Charter on Human and Peoples' Rights, Arts. 7, 26.

### African Commission on Human and Peoples' Rights

The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa proclaimed by the African Commission on Human and Peoples' Rights provide that:

"In the determination of any criminal charge against a person, or of a person's rights and obligations, everyone shall be entitled to a fair and public hearing by a legally constituted competent, independent and impartial judicial body."

### Canada

The duty to hold a public hearing is imposed upon the State and is not dependent on any request by the interested parties that the hearing be made in public. Both domestic legislation and judicial practice must provide for the possibility of the public attending if members of the public so wish. The courts must make information on the time and venue of the oral hearings available to the public and provide adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, *inter alia,* the potential interest in the case and the duration of the oral hearing. The failure to make large courtrooms available does not constitute a violation of the right to a public hearing if, in fact, no interested member of the public is barred from attending an oral hearing. (*Re Vancouver Sun,* Supreme Court of Canada, [2005] 2 LRC 248.)

### Denmark

Article 65 of the Constitution of Denmark grants citizens a direct right to a public hearing in which public and oral court proceedings must be conducted to the 'widest possible' extent.

Denmark also practices the double-closed-door system where the decision to close the doors itself is made in a closed-door session. The closed-door system seeks to protect specified interests: These are the interest of an orderly trial (peace and order in the courtroom, equality of arms, fair trial without undue influence from the public); protection of public morals; state-related interests (e.g., state secrets); the interest of the parties involved (e.g., privacy, business secrets); public health and safety. The closed-door sessions are also practised in family courts and juvenile criminal proceedings where parties involved are of a young or tender age.

### European Court of Human Rights (ECtHR)

The European Court of Human Rights has emphasized that the holding of court hearings in public constitutes a fundamental principle enshrined in Article 6 §1 of the ECHR. By rendering the administration of justice transparent, publicity contributes to fulfilling the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention. According to the Court, the requirement to hold a public hearing is, however, subject to exceptions. Thus, it expressly permits the press and the public to be

excluded from all or part of a trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. Furthermore, it may on occasion be necessary under Article 6 to limit the open and public nature of proceedings in order, for example, to protect the safety or privacy of witnesses, or to promote the free exchange of information and opinion in the pursuit of justice. In any event, before excluding the public from criminal proceedings, the national court must make a specific finding that exclusion is necessary to protect a compelling public interest and must limit secrecy to the extent necessary to preserve that interest. It is relevant, when determining whether a decision to hold criminal proceedings in camera was compatible with the right to a public hearing under Article 6, whether public interest considerations were balanced with the need for openness, whether all evidence was disclosed to the defence and whether the proceedings as a whole were fair.[28]

According to the Court, the decision to conduct a closed hearing upon the request of one of the parties must be reasoned. If the disadvantages of conducting the hearing in public can be removed by other measures, these measures should be implemented first. For example, methods such as holding part of the hearings in a closed session, or only excluding certain people who may cause problems from the courtroom, should be considered.[29]

### Eastern Caribbean States

The Eastern Caribbean Supreme Court generally adheres to the common law principle of 'Open Court' which requires that court proceedings be open to the public and that publicity in respect of those proceedings remain largely uninhibited. There are no rules which regulate or restrict

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[28] See *Boshkoski v. North Macedonia*, no. 71034/13, § 39, 4 June 2020; *Artemov v. Russia*, no. 14945/03, § 102, 3 April 2014; *Welke and Białek v. Poland*, no. 15924/05, § 77, 1 March 2011; *Belashev v. Russia*, no. 28617/03, §§ 79-80 and 83, 4 December 2008; *Doorson v. the Netherlands*, 26 March 1996, § 70, Reports of Judgments and Decisions 1996-II; and *Jasper v. the United Kingdom* [GC], no. 27052/95, § 52, 16 February 2000.

[29] See Suslov and Batikyan v. Ukraine, no. 56540/14 *and* 57252/14, § 124-127, 16 December 2022.

the presence of media professionals in the courtrooms of the Eastern Caribbean Supreme Court. Generally, there are no limits on the number of persons permitted to be physically in attendance in courtrooms during court proceedings. However, because of the COVID-19 pandemic, the Eastern Caribbean Supreme Court has had to limit the number of persons permitted to be in attendance physically in accordance with the relevant social distancing protocols promulgated by the Government in each Member State and Territory. Remote hearings are conducted across the 9 Member States and Territories, particularly where court proceedings involve several parties.

In respect of proceedings in the District/Magistrate's Courts in some Eastern Caribbean States, such as Saint Lucia, the magistrate has the power pursuant to statute to hear proceedings in camera or to exclude a person from the courtroom.[30]

Commonwealth Caribbean Constitutions also enshrine the right to a public hearing, see for example:

1. Article 5(2) (f) (ii) of the Constitution of **Trinidad & Tobago** enshrines the right of a person charged with a criminal offence to a fair and public hearing by an independent and impartial tribunal.
2. Article 16(3) of the Constitution of **Jamaica** states that all proceedings of every court and proceedings relating to the determination of the existence or the extent of a person's civil rights or obligations before any court or other authority, including the announcement of the decision of the court or authority, shall be held in public.
3. Article 18(8) of the Constitution of **Barbados** states that, except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other tribunal, including the announcement of the decision of the court or other tribunal, shall be held in public.
4. Article 20(9) of the Constitution of **The Bahamas** provides that all proceedings instituted in any court for the determination of the existence

[30] See: section 49(3) of the recently enacted Domestic Violence Act of Saint Lucia, Act No. 11 of 2022; section 26(3) of the Domestic Violence Act 2015, Act No. 27 of 2015, Laws of Antigua and Barbuda; section 26(3) of the Domestic Violence Act, 2015, Act No. 7 of 2015, Laws of Saint Vincent and the Grenadines.

or extent of any civil right or obligation, including the announcement of the decision of the court, shall be held in public.

## Ireland

The Irish Constitution, in Article 34.1, states that "Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution and save in such special and limited cases as may be prescribed by law, shall be administered in public." One notable way in which the Irish courts have recently sought to increase the possibility for spectators to see justice being administered is through holding sittings of the Supreme Court in Limerick in the southwest of Ireland, in Cork in the south, and in Galway in the west of Ireland.

The Supreme Court has held that Article 34.1 was not respected in proceedings where there was an order prohibiting the media from contemporaneous reporting of the proceedings. Keane J held that the essence of Article 34.1 "would be eroded almost to vanishing point if the public had to depend on the account which might be transmitted to them by such people as happened to gain admission to the court room for the trial in question". (*Irish Times v. Murphy [1998] 1 IR 359, at 409).*

In 2017, cameras were permitted into the Supreme Court to film the delivery of judgments, with the Chief Justice expressing the hope that that would lead to a wider filming of court proceedings in the future. In the same year, the Disclosures Tribunal allowed the filming of the judge's opening address in which he pleaded for the public's help in the solution of the matters of public moment referred for judicial decision.

". . . The actual presence of the public is never necessary, but the administration of justice in public does require that the doors of the court must be open so that members of the general public may come and see for themselves that justice is done. It is in no way necessary that the members of the public to whom the courts are open should themselves have any particular interest in the cases or that they should have business in the courts. Justice is administered in public on behalf of all the inhabitants of the State." (Walsh J in *Re R Ltd*.)

"Justice is best served in an open court where the judicial process can be scrutinized. In a democratic society, justice must not only be done, but be seen to be done. Only in this way, can respect for the rule of law and public

confidence in the administration of justice, so essential to the workings of a democratic state, be maintained." (Hamilton CJ in *Irish Times Ltd v. Ireland)*.

"The courts are obliged to maintain open doors. Attendance by the public can be notional, in the sense that the court admits all comers subject to the proper running of any hearing, but experience indicates that it is rarely merely only a theoretical exercise. Members of the public can and do attend in court, witnesses from each side and their family members will be present and the press, radio, and television, take a professional interest in litigation, while reporting only a fraction of cases." (Charleton J in *MARA (Nigeria) v. Minister for Justice)*.

In some cases, it is not desirable to allow a trial to proceed in circumstances that allow open access to the public. Therefore, some exceptions to this general principle have been recognized. A few trials are conducted *in camera* for a variety of reasons, most commonly to protect the identity of parties involved in litigation. This concept is usually associated with family law proceedings.

Section 40(3) of the Civil Liability and Courts Act 2004, as amended by section 5 of the courts and Civil Law (Miscellaneous Provisions) Act 2013, allows solicitors and barristers, and other persons approved by the Minister of Justice, to attend family proceedings on the strict condition that the anonymity of the parties involved is protected in any documentation or correspondence that results from their attendance. The categories of persons permitted to attend by the Minister include family mediators, persons engaged in family law research, and persons engaged by the Courts Service to prepare court reports of proceedings.

There have been other circumstances in which legislation has identified a need for proceedings to be held *in camera*. These include the protection of business secrets and confidential information[31] and proceedings involving professional discipline[32]. There are also several exceptions in the field of criminal law. For example, a court is empowered to exclude the general public from any hearing which is "in the opinion of the court of an indecent or obscene nature"[33]. A judge is also required in all trials of sexual offences

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[31] Companies Act 2014, s.212(9); Bankruptcy Act 1988, s.51(2).

[32] Nurses Act 1985, s.44(2); Medical Practitioners Act 1978, s.51(2); Teaching Council Act 2001, s.47(2).

[33] Criminal Justice Act 1951, ss.20(3), 20(4).

to exclude all persons except officers of the court from the hearing but is required to pronounce the verdict in public.[34]

### The Netherlands

Due to the COVID-19 situation, and the request made by the Dutch government that public officers should work from home as far as possible, tele-hearing and video-conferencing began to be used as a temporary measure.

### Nigeria

Article 36(4) of the Constitution of the Federal Republic of Nigeria provides that:

"Whenever any person is charged with a criminal offence, he shall, unless the unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal:

Provided that -

(a) a court or such a tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice;

(b) if in any proceedings before a court or such a tribunal, a Minister of the Government of the Federation or a commissioner of the government of a State satisfies the court or tribunal that it would not be in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to that matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter.

### South Africa

Article 34 of the Constitution of the Republic of South Africa 1996 provides that:

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[34] Criminal Law (Rape) Act 1981, s.6.

### 34. Access to courts

Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

**Türkiye**

Article 141 of the Constitution of the Republic of Türkiye, under the title "Publicity of Hearings and the Necessity of Justification for Verdicts", provides that "Court hearings shall be open to the public. It may be decided to conduct all or a part of a hearing in a closed session, but only in cases where absolutely necessitated by public morals or public security. Special provisions regarding the trial of minors shall be laid down in the law…"

Article 28 of the Code of Civil Procedure, under the title "Principle of Publicity", provides that:

(1) Hearings and notification of judgments shall be conducted in public.

(2) It may be decided upon the request of the relevant person, or ex officio by the court, to conduct all or a part of the hearings in a closed session, but only in cases where it is absolutely necessary in the interests of public morals or public security, or the high interest of relevant people in a legal proceeding that is worth to be protected.

(3) A confidentiality request of a party is reviewed and concluded in a closed session. The judge will explain the reasons for the decision.

Article 182 of the Code of Criminal Procedure, under the title "Publicity of the Hearing", provides that:

(1) The hearing shall be open to everyone.

(2) It may be decided by the court that all or a part of a hearing shall be conducted in a closed session if absolutely necessitated by public morals or public security.

(3) The reasoned decision about conducting the hearing in a closed session and the judgment will be announced in an open session.

In a closed session, the court may allow certain people to be present. In such an event, the people so allowed are warned against disclosing the reasons that require the hearing to be conducted in a closed session, and

this is recorded in the minutes. The content of proceedings held in a closed session is not allowed to be published by any means of communication.

If the content of a public hearing has the nature of undermining the national security, public morals, or the dignity, honour, and rights of people, or to provoke crime; the court shall prohibit the publication of the content of the hearing partially or fully to the extent that is necessary and announce its decision in a public hearing (Article 187 of the Code of Criminal Procedure).

The General Assembly of Criminal Chambers of the Court of Cassation explains the importance of the principle of publicity in its decisions as follows:

"The principle of publicity is developed in terms of judicial proceedings and it is an integral part of democratic regimes since it contributes to prohibiting the confidential trials of people, supervising the judicial proceedings to be in line with the law, ensuring fair trial and building trust in courts.[35]"

**United States of America**

The right of public access to judicial proceedings has an independent basis in common law as well as in the United States Constitution. The Sixth Amendment to the Constitution guarantees the right to a public trial. State courts generally provide a constitutional right of public access to judicial proceedings based on state constitutions. Federal courts have upheld this right of access as well. The right of public access is limited by specific exceptions focused around protecting the court's interests or parties' privacy. Both civil and criminal cases have a general right of public access.

[35] The General Assembly of Criminal Chambers of the Court of Cassation, 12.06.2018, E.2017/6625, K.2018/275; The General Assembly of Criminal Chambers of the Court of Cassation, 13.10.2015, E.2015/6-221, K.2015/310.

*Principle 2*

***The judicial system should ensure easy access to court premises and to information.***

## Canada

In February 2022, several amendments were proposed to the Criminal Code and the Identification of Criminals Act to facilitate swifter delivery and efficiency of justice in the Canadian criminal courts against the background of the Covid-19 pandemic. The proposed amendments were focused on increasing the flexibility of courts in the operation of proceedings and issuing of orders without compromising the rights and freedoms of litigants and public safety. They also offered sustainable alternatives for those living in remote communities. The recommendations are as follows;

### 1. Remote appearances for accused individuals

Provide clear mechanisms to allow accused persons or offenders to appear remotely by videoconference or audio-conference in most criminal proceedings, with discretionary consent of the court and other appropriate safeguards.

### 2. Remote participation for jury selection proceedings

Allow video-conference participation by prospective jurors in the jury selection process under certain circumstances, with the consent of the parties, at the discretion of the court and with other appropriate safeguards.

### 3. Use of technology for jury selection

Allow for prospective jurors in the jury selection process to be drawn using technology.

### 4. Judicial case management rules for unrepresented persons

Allow courts to make judicial case management rules that permit court personnel to deal with administrative matters relating to proceedings with unrepresented accused persons.

### 5. Telewarrant process

Revise the existing telewarrant process to allow peace officers to remotely apply for a wider range of investigative orders.

### Eastern Caribbean States

The Eastern Caribbean Supreme Court recently published a revised Code of Judicial Conduct which governs among other matters the professional behaviour of judicial officers including Registrars in relation to court users. While there is no code of conduct which governs the professional behaviour of other court personnel, there are Staff Rules which govern the behaviour of staff of the Court's Headquarters. Staff of the Court's Headquarters also have a Social Media Policy which regulates their use of social media. Court personnel at the High Court offices are employed by the Government of the relevant Member State or Territory and are therefore governed by the applicable Public Service Regulations.

### European Commission for the Efficiency of Justice (CEPEJ)

In many countries the geographical location of the court may be very important due to the need to provide access to justice at a local level. Transport needs and the availability of modern means of communication impact on the public's ability to access justice. Where there is a requirement that a party has to appear physically in court the accessibility of the office is critical. It would be unreasonable to expect a party to travel for an excessive period of time. A standard should be established for reasonableness of the travelling time required.

Having to report to a court for a hearing set early in the morning for an elderly person, or for someone who does not have a car, yet in the absence of adequate means of transport for those who need to travel from another city are all problematic situations that may infringe on the right of equal access to justice.

### India

Courts in several States in India have established **Nyaya SevaSadan** (Legal Service Centres). These provide night shelters for poor litigants. Ramps and other facilities are provided for disabled persons. The Supreme Court of India has established a creche facility, as well as a separate Bar Room for women lawyers.

### Nigeria

The National Judicial Council has formulated the following Access to Justice Policy:

### 3. Access to Justice Policy

**3.1** In order to enhance access to justice, more courts should be built especially at lower level, so that justice is brought to the doorsteps of all citizenry.

**3.2** More Judges should also be appointed to man all the courts with adequate supporting staff.

**3.3** The courts should be well maintained and comfortable, and the welfare of all Judicial Officers and Staff should be enhanced.

**3.4** The training of all manpower is necessary and must be undertaken where necessary.

**3.5** All courts should promote the use of Information and Communication Technology (ICT).

**3.6** The courts should have updated and easily accessible laws and procedure rules.

**3.7** Alternate dispute resolution (ADR) should be adopted by all courts.

**3.8** Immediate implementation of, and compliance with, the Administration of Criminal Justice Act.

**3.9** Every Judiciary in Nigeria should establish a Public Enlightenment unit to enlighten the public on the workings of the Judiciary.

**3.10** Where the survey of the Judicial Systems reveals problems encountered by the system, such as;

- Insufficient budgetary allocation to the Judiciary causing inadequacy of resources,
- Sub-standard court houses and accommodation for the Judges,
- Absence of legal officers to assist Judges,

the Council would undertake the responsibility of bringing these to the notice of the other arms of government and request change.

**3.11** Bold procedural reforms to promote expedition in civil litigation and criminal trials in every Judiciary will be a priority. To this end the Chief Justice of Nigeria may commission the Law Reform Commission to initiate legislation to promote bureaucratic efficiency of the court and remove procedural obstacles to expedition in civil cases and criminal trials.

### Nigerian Court User Guides

See:

https://www.unodc.org/documents/nigeria/publications/courtusersguides/Court_User_Guide_Basic_Civil_Procedure_No_5_PRINT.pdf

### Principles on Excellence in High Courts of Appeal[36]

Principle 7: The physical and technical infrastructure and effective transaction processes of the high courts of appeal are essential elements for the timely and accurate performance of judicial duties.

The judiciary should increase public confidence in the administration of justice by providing safe, clean, convenient and user-friendly court buildings. Issues related to the infrastructure of the courts such as adequate hearing and negotiation halls, easy access to the building, secure areas, secure archiving of case files, and efficient physical conditions for employees affect the reliable, fast and efficient delivery of the judicial service. At the same time, necessary and appropriate usage opportunities should be provided for those with special needs such as nursing mothers and disabled people in the building. High Courts of Appeal are responsible for accurately disclosing information related to litigation expenses, court procedures and hearing schedules to the citizens. In addition to the effective conclusion of the cases, the quality of the decisions, their timely writing and the predictability of the processing times are among the issues that need to be taken care of.

All processes should be supervised by using modern technological facilities and reported to the relevant authorities and authorities in the court.

### The Russian Federation

The Presidium of the Supreme Court of the Russian Federation and the Presidium of the Council of Judges of the Russian Federation adopted the following, among other measures consequent to Covid-19[37]:

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[36] The views of the chief justices and prosecutor generals from three continents and 13 countries and different legal traditions on "excellence in high courts of appeal" are summarized within the framework of those principles. (The Court of Cassation Conference Hall, Ankara/Türkiye, September 2, 2021, https://www.Yargitay.gov.tr/kategori/ 121/mahkeme-mukemmeliyeti - Access: 6.1.2023)

[37] (http://www.vsrf.ru/en/about/covid19/ - Access:02.01.2023); (http://www.vsrf.ru/press_center/news/28836/ - Access:02.01.2023).

1. The personal reception of citizens in courts shall be halted. It is recommended to submit documents through the electronic Internet systems of the courts or through the postal service.
2. The timely reception, processing and registration of documents submitted to the courts through the postal service and in electronic form, shall be ensured.
3. It is recommended to consider the cases and materials of urgent nature, in particular those regarding the protection of constitutional rights of citizens to freedom and personal inviolability, protection of health and property; regarding selection, prolongation, cancellation or alteration of a measure of pre-trial restriction; regarding the protection of interests of an underage person or a person recognised as legally incapable in the stipulated manner, where her/his statutory representative refuses to consent to medical intervention necessary to save that person's life; administrative offences stipulated in Parts 3–5 of Article 29.6 of the Code of the Russian Federation on Administrative Offences[38]; severe disciplinary offences committed during the disciplinary arrest of military personnel; cases in which all the participants have filed motions for consideration of the case in their absence, unless their participation during the consideration of the case is obligatory.
4. Taking into account the facts of the case, the opinions of the participants of proceedings and the conditions of the high-alert regime, the court may decide to consider a case that is not indicated in Item 3 of this Ruling at its own discretion.
5. The courts shall initiate the consideration of cases using video-conferencing systems, where they have the technical capacity to do so.

**Türkiye**

There is a room for breastfeeding and childcare for mothers at the Court of Cassation. Also, there are service points such as banks, restaurants and post offices in order to meet the basic needs of court users.

In accordance with the principle of the "single window", at the front office in the Court of Cassation building, lawyers and the parties to a case can

[38] Cases on various offences related to the holding of elections and referendums, as well as cases on offences punished by administrative arrest or deportation for natural persons, temporary suspension of activities for legal persons – *translator's note.*

examine the files both in the Court of Cassation chambers and in the Chief Public Prosecutor's Office by making an appointment on the phone. They can obtain copies of the documents in the file under the supervision of the officer on payment of a fee. In addition, there is a service point that is operated by the Bar Association where lawyers can obtain the support they need in their professional work at the Court of Cassation.

To provide the highest standards of ethical, professional, and accountable judicial service, the Court of Cassation undertook a comprehensive ethics reform programme in 2017. Consequently, three separate ethical codes were developed: The Court of Cassation Code of Judicial Conduct for bench members and rapporteur judges of the Court of Cassation; The Court of Cassation Code of Conduct for Public Prosecutors; and The Court of Cassation Code of Conduct for Staff. Although these principles are independent from each other, there is a connection between them in terms of interpretation and implementation.

A Judicial Ethics Advisory Committee of the Court of Cassation was established. The recommendations that are provided by the Committee, upon request, serve as a valuable guide not only for personnel in the Court of Cassation, but also for others concerned with the administration of justice.

There is a technical infrastructure that allows remote hearings to be conducted both in the Court of Cassation and in the Courts of First Instance and Regional Appellate Courts. Through this system, which is called SEGBİS, parties and their lawyers can participate in the hearings remotely. This system proved particularly useful in ensuring access to justice during the Covid-19 pandemic. It is also possible to conduct hearings remotely by using technical facilities under certain conditions as provided for in Article 149 of the Code of Civil Procedure - "Conducting a hearing through transmission of audio and video signals", and in Article 3(c) and 14 of the Regulation on the Use of Audio and Video Information System in Criminal Procedure.

Through the SEGBIS system referred to above, audio-visual interviews (on the principle of face-to-face) are conducted in courtrooms and penitentiary institutions, and these interviews are recorded. SEGBİS began to be used in criminal courts for the first time in 2012, and 2,375,000 interviews were conducted until 2023.

In accordance with the Presidency Circular No. 2020/4 on Additional Measures for Public Employees within the scope of Covid-19, which

was published in the Official Gazette of 22.03.2020, Rapporteur Judges of the Court of Cassation were permitted flexible working methods, to be determined by the relevant Heads of Chambers, to enable then to work from home by using UYAP (National Judiciary Informatics System) facilities.

The decision No. 2020/51 of the General Assembly of the Council of Judges and Prosecutors dated 30/03/2020, within the scope of Covid-19, authorized:

(a) Hearings to be conducted by listening to the detainee and his or her lawyer through the application of the SEGBIS system in cases where the evaluation of detention is obligatory according to the Code of Criminal Procedure.

(b) Objections to detention, and appeals to judges for suspension of execution, and deliberations thereon, to be made through the application of the UYAP facilities (online).

**United States of America**

In the context of the Covid-19 pandemic, the State of **Arizona** adopted the Expanded Use of Text Messaging Communications and Online Queuing Apps.

These innovations were introduced to send reminders to litigants regarding court hearing dates, financial payment options, failure to pay, and failure to appear. The courts were also recommended to adopt alternative hearing arrangements (e.g., video hearings, telephonic hearings, rescheduled hearings, etc.). These new measures saw a reduction in failure to appear and failure to pay rates. The mobile-based customer queueing system also ensured public safety and adherence to health guidelines while still ensuring that court operations were executed efficiently. The system provided basic facility capacity counting, with data to show how long wait times are. The enterprise solution procured includes significant functionality for the courts, including:

- Multiple locations – allowing courts to create and manage multiple waitlists
- Message clients – Allows courts to directly send SMS/Emails
- Team notifications – Send SMS/Emails to team on guest updates
- Dashboard of status use and client information

*Principle 3*
***The judiciary should facilitate access to the judicial system.***

## Bangladesh

The Bangladesh Legal Aid and Services Trust identified that citizens living in poverty suffered the disadvantages of not having access to legal resources and services due to a lack of facilities and awareness. Working together with Legal Aid Committees (LAC) and establishing strong public-private partnerships for referrals and case coordination, the Trust was able to empower and educate beneficiaries from low-income groups, with a focus on women and community and local government committees.

Awareness and education programs were executed using innovative and creative methods to better communicate and relate to communities. Some of their activities included the following;

- Facilitating awareness meetings and capacity building for targeted communities, in collaboration with Legal Aid Committees and partner organizations, on rights, remedies and accessing available services, and with a focus on gender equality and addressing practical barriers to access to justice, such as costs, mobility or associated stigma. These meetings were held bi-monthly.
- Developing a legal education on rights, remedies and accessing available services focusing on family law, land law, violence against women, violence against children and criminal law. Mediation programs were held to develop skilled mediators within the community and workshops centered around the issues concerning the delivery of justice were coordinated together with the participation of judges and lawyers.
- Raising public awareness on rights, remedies, and accessing available services of Legal Aid Committee members and targeted communities through the distribution of posters, leaflets, books, and stickers, as well as through social media, Rights Awareness Fairs, and street dramas.
- Developing collaborative approaches with relevant stakeholders including project staff, partner organizations, Legal Aid Committees, lawyers, civil society members, and members of the judiciary for the provision of legal and other services through facilitating the formation and/or operational functions of Legal Aid Committees.

### Consultative Council of European Judges[39]

States should provide dissemination of suitable information on the functioning of the judicial system:

- Nature of proceedings available.
- Duration of proceedings in the average and in the various courts.
- Costs and risks involved in case of wrongful use of legal channels.
- Alternative methods of settling disputes offered to parties.
- Landmark decisions delivered by the courts.

In particular:

- Citizens' guides should be made available.
- Courts themselves should participate in disseminating the information.
- Education programmes should include a description of the judicial system and should offer visits to courts.

Simplified and standardized formats for the legal documents needed to initiate and proceed with court actions should be adopted, at least for some sectors of litigation.

A legal aid system should be organized by the State to enable everyone to enjoy access to justice, covering not only court costs but also legal advice as to the wisdom or the necessity of bringing an action. It should not be reserved for the neediest persons but should also be available, at least in part, to those whose average income does not enable them to bear the cost of an action unaided. The Judge should be able to take part in decisions concerning the grant of aid, making sure that the obligation of the objective impartiality is respected. Legal aid ought to be financed by a public authority, and covered by a special budget, so that the corresponding expenses are not charged to the operating budget of the courts.

It is necessary to encourage the development of ADR schemes and to increase public awareness of their existence, the way they operate and their cost. Legal aid should be available for ADR as it is for standard court proceedings. Although, unlike ADR in civil matters, criminal mediation is not useful to alleviate the current workload of the court system, it may have a preventive effect in respect of future crimes.

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[39] Opinion No.6 (2004).

## India

In India, the rule of *locus standi* has been liberalized and **Public Interest Litigation** (PIL) has been devised as a tool to reach out to people. Any person or group may approach the court seeking a legal remedy where the public interest is at stake. Even letters and e-mails addressed to the court are taken up as PIL and heard. There is a Letter Petition Cell consisting of Judges in the Supreme Court which scrutinizes letters as per the guidelines. The appropriate letters are taken up for hearing by the Supreme Court. These have related to bonded labourers, neglected children, non-payment of minimum wages to workers, exploitation of workers at workplaces, petitions from jail complaining harassment, matters related to speedy trial, police harassment, other social evils, environmental issues, riots victims, family pensions, etc.

The concept of **Lok-Adalats** has been devised enabling various categories of cases including accidental claims and family disputes to be settled. Millions of cases are decided every year in Lok-Adalats by the consent of the parties. Thus, people become a part of the actual dispensation of justice by settling cases amicably, thereby avoiding the proverbial delay and the cost of litigation. Many matrimonial cases succeed by way of mediation. This alternative dispute resolution mechanism has been successfully implemented through the statutory framework provided under section 89 of the Code of Civil Procedure, the provisions of the Legal Services Authorities Act 1987 and the Arbitration and Conciliation Act 1996.

Under the **Legal Services Authorities Act**, an effective network of legal services has been created at the grassroots level throughout the country. There are National level, State level, and District level authorities and Para Legal Volunteers at the village level. They help the needy and poor in filing litigation by making them aware of their rights. The expenses, in the event of litigation, are borne by the State, especially for people belonging to the marginalized sections of society.

Websites of High Courts, District Courts, and Subordinate Courts, SMS alerts, and the Interactive Voice Recognition System (IVRS) have been introduced to inform the status of cases. In many courts, the number of cases of a particular Advocate that are listed on a particular day is conveyed by sending an SMS. If any matter had been dismissed for default of appearance, that too is conveyed. Mobile technology has been successfully used. The utilization of internet banking, and credit and debit cards for

payment of court fees is permitted. The maximum use of the e-banking system is also being promoted.

Video conferencing and teleshopping are now playing a prominent role in the contemporary world. A link between prison and courts has been established. Cases are being heard using a video conferencing facility.

**Nigeria**

The National Judicial Policy stipulates enhancement of access by the provision of sufficient number of courts and personnel and leveraging appropriate procedures and technology.[40]

**Websites** have enabled court users to access relevant information, including new laws, with greater ease. Legal speeches from the different States that are posted on the websites provide detailed information about the judiciary. Court users can download court forms from the internet and make online payment of court fees. Case lists and judgments of courts are also made accessible through the websites.[41]

**Radio and TV programmes** have been extremely effective in enabling the dissemination of information about the functioning of the judicial sector and the courts.

**Court user guides**, posters, and other printed materials have provided the public with the basic information necessary to understand the judicial process, how to access the judicial system, and to know their rights within it.

The **Multi-Door Courthouse** is a court-annexed programme that offers a variety of alternative dispute resolution processes. The multi-door refers to the various options that are available. These include case evaluation, mediation, arbitration, conciliation, and complex case management. These services are usually provided by skilled, experienced mediators, case evaluators and arbitrators, and are available before the filing of a lawsuit or at any stage of litigation. The multi-door courthouse provides potential litigants and their attorneys with effective alternatives for resolving disputes or grievances, whether it be family or business, and whether it relates to commercial, employment, banking, maritime or energy issues. Even when ADR mechanisms do not produce an immediate settlement, they help to clarify or narrow the scope of the dispute. They also offer

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[40] https://njc.gov.ng/national-judicial-policy

[41] A 360 Degree Review – Ten years of Justice Sector Reform in Nigeria, UNODC 2009.

greater procedural flexibility by taking account of non-legal human factors such as an interest in preserving a relationship or acknowledging the hurt caused by the dispute to both parties. Since resort to ADR mechanisms is a mutual decision, there is also a greater willingness by the parties to abide by the terms of settlement. The multi-door courthouse also benefits considerably from the presence of the ADR judge whose role is to endorse the settlement between the parties as a consent judgment.

The **Amicable Settlement Corridor** is a court related dispute resolution centre that offers litigants a cost-effective alternative to the conventional means of resolving civil disputes. It provides four doors or options which may be utilized to resolve a dispute, namely, Early Neutral Evaluation, Mediation, Arbitration and Sulhu. The Sulhu door is intended to take account of local values, practices, and belief in the resolution of disputes relating to matters such as inheritance, maintenance, custody, and marriage.

The Office of the **Public Defender** has been extremely effective in enhancing access to justice, especially since its intervention may be sought in respect of any criminal matter.

**Pro-bono services** provide extremely effective broad-based support for access to justice. The decision of the Nigerian Bar Association to make the offering of pro-bono services as a requirement for attaining the rank of Senior Advocate of Nigeria has generally enhanced the quality of the services provided.

**Legal Aid Clinics** are coordinated by branches of the Nigerian Bar Association with the assistance of young lawyers or law students, especially those undergoing national service. These clinics are in touch with the grassroots and, therefore, have a broader reach. They are also inexpensive. Consequently, they have expanded access to justice by the provision of more legal services to the indigent.

### Principles on Excellence in High Courts of Appeal[42]

Principle 9: Cost-effective judicial service, along with other requirements for access to justice, is a key element in maintaining public confidence in the judiciary.

Access to fast, effective and affordable dispute resolution and reasoned decisions based on a fair and public hearing and publicly rendered within a

[42] See footnote No.11

reasonable time contribute to increasing public confidence in the judiciary. In each country, the costs of litigation should be determined by the joint work of high courts of appeal, courts of first instance and other justice actors, and clear and appropriate policies should be established to provide cost-effective judicial services to the public.

Cost-effective, physically accessible systems should be developed in which citizens can easily carry out their transactions. Providing incentive services to court users with disabilities, providing translation services to parties who do not speak the language of the court and legal aid to litigants in need of legal assistance, offering alternative dispute resolution suggestions, providing accessible services to the entire public, both physically and online is a requirement for the court.

**Spain**

The Supreme Court of Spain uses a digital tool called Lexnet to communicate with parties involved in litigation. This same tool can be used by parties if they want to recuse a judge.

**Türkiye**

In respect of **civil cases**, persons who are partially or completely incapable of paying the costs of proceedings can benefit from **legal aid**. Associations and foundations that provide services to the public can also benefit, provided they are unable to meet the costs either partially or fully.[43] The legal aid decision includes the following expenses:

a) Temporary exemption from all expenses regarding proceedings and execution proceedings.

b) Exemption from providing guarantee for the expenses regarding proceedings and execution proceedings.

c) Payment of advance by the State for all expenses that must be made during litigation and execution proceedings.

d) Providing a lawyer if the case should be followed up with a lawyer, provided that the payment will be made later.

The court may also give a decision of partial legal aid. Legal aid continues

[43] Code of Civil Procedure Art.334/1-2.

until the finalization of the verdict.[44] During the application to legal remedies, the request for legal aid is made to the regional court of appeal or the Court of Cassation.[45]

In respect of **criminal cases**, when the victim or the person who is affected by crime participates in the case, he or she may request the **assignment of a lawyer** by the bar association in offences of sexual assault, sexual abuse of children or stalking as well as the offences of intentional injury, torture or torment against women and offences that require a prison sentence of more than five years. In case the victim or the person who is affected by crime is a child, deaf and dumb or mentally ill so that he/she is unable to defend himself, an assignment is made by the court without request.[46] While taking the statement or questioning of the suspect or the defendant, they are informed that they have the right to choose a lawyer and they can benefit from their legal assistance and they can be present while taking the statement or questioning. If they are not in a condition to choose a lawyer and they want to benefit from the help of a lawyer, a lawyer is appointed by the bar association.[47]

**UYAP** is an integrated information system that connects all judicial units from the first instance courts to the high courts, as well as the central and provincial units of the Ministry of Justice with which users can log in with their e-signatures or passwords, and exchange data with other public institutions and organizations through external integrations. Units in the UYAP Informatics System are: Central and Provincial Organization of the Ministry of Justice, Penitentiary Institutions; Civil, Criminal and Administrative Courts; Forensic Medicine Units; Public Prosecutor's Offices; Probation Units; Enforcement-Bankruptcy Offices; High Courts.

In the UYAP environment, parties and lawyers can conduct all proceedings that they can physically do in courthouses, including filing a case, viewing the documents in the case file, and sending documents or petitions, and they can confirm the accuracy of the documents they have physically. Courts can access the documents they require from public institutions such as the Civil Registry, Directorate of Land Registry, and the General Directorate of Security, and can add these documents to the file. Additionally, parties and

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[44] Code of Civil Procedure Art.335.
[45] Code of Civil Procedure Art.336/3.
[46] Code of Criminal Procedure Art.239.
[47] Code of Criminal Procedure Art.147/1-c.

lawyers are informed via SMS regarding the important stages of their cases such as the hearing date, judgment date, etc.

As required by the multi-door courthouse system, mediation in terms of civil cases and conciliation in terms of criminal cases are available in Türkiye. In addition, the "Türkiye International Dispute Resolution Center" at the Court of Cassation serves to create knowledge on alternative dispute resolution methods, organizes scientific meetings such as seminars, symposia, and training programs, and develops cooperation with relevant institutions and organizations functioning in the country and abroad.

**United States of America**

A rule adopted by the Washington State Court seeks to facilitate access to administrative records consistent with the principle of open administration of justice, as provided in article I, section 10 of the Washington State Constitution. However, only material relevant to a decision or other conduct of a judge or the judiciary is subject to a presumption of public access. *Bennett v. Smith Bundy Berman Britton, PS*, 291 P.3d 886, 891 (Wash. 2013).

The US Supreme Court has held that the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal submissions by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.[48] It is now established beyond doubt that prisoners have a constitutional right of access to the courts ... [and that such access must be] adequate, effective, and meaningful.[49]

The constitutional right of access to the courts is a well-established facilitative right "designed to ensure that a citizen has the opportunity to exercise his or her legal rights to present a cognizable claim to the appropriate court and, if that claim is meritorious, to have the court make a determination to that effect and order the appropriate relief.[50]"

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[48] *Bounds v. Smith*, 430 U.S. 817 (1977), *abrogated by Lewis v. Casey*, 518 U.S. 343 (1996).

[49] *Wilson v. Comm'r of Correction*, 932 A.2d 481, 492 (Conn. App. Ct. 2007).

[50] *Musso-Escude v. Edwards*, 4 P.3d 151, 154 (Wash. Ct. App. 2000).

*Principle 4*

***The judiciary should provide court-users with translation and interpretation facilities, free of charge.***

## International Covenant on Civil and Political Rights

### Article 14

(1) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court.

See also: European Convention on Human Rights and Fundamental Freedoms, Art.6(3) (e); American Convention on Human Rights, Art.8(2) (a).[51]

## European Court of Human Rights

Under paragraph 3 (a) of Article 6 of the Convention, any person charged with a criminal offence has the right "to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him". Whilst this provision does not specify that the relevant information should be given in writing or translated in written form for a foreign defendant, it does point to the need for special attention to be paid to the notification of the "accusation" to the defendant. An indictment plays a crucial role in the criminal process, in that it is from the moment of its service that the defendant is formally put on notice of the factual and legal basis of the charges against him. A defendant not familiar with the language used by the court may be at a practical disadvantage if the indictment is not translated into a language which he understands.[52]

In addition, paragraph 3 (e) of Article 6 states that every defendant has the right to the free assistance of an interpreter. That right applies not only to oral statements made at the trial hearing but also to documentary material

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[51] For the judicial application of this right, see Nihal Jayawickrama, "The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence", Cambridge University Press, 2nd Ed., 2017, pp 613-616.

[52] Vizgirda v. Slovenia**,** *no. 59868/08, p.75;* Hermi v. Italy, no. 18114/02, p.68; Sejdovic *v. Italy*, no. 56581/00, p.89; Kamasinski *v. Austria, no.* 9783/82 p.79.

and the pre-trial proceedings. This means that an accused who cannot understand or speak the language used in court has the right to the free assistance of an interpreter for the translation or interpretation of all those documents or statements in the proceedings instituted against him which it is necessary for him to understand or to have rendered into the court's language in order to have the benefit of a fair trial.[53]

However, paragraph 3 (e) does not go so far as to require a written translation of all items of written evidence or official documents in the procedure. In that connection, it should be noted that the text of the relevant provisions refers to an "interpreter", not a "translator". This suggests that oral linguistic assistance may satisfy the requirements of the Convention. The fact remains, however, that the interpretation assistance provided should be such as to enable the defendant to have knowledge of the case against him and to defend himself, notably by being able to put before the court his version of the events.[54]

The Court notes in this connection that the obligation of the competent authorities is not limited to the appointment of an interpreter but, if they are put on notice in the particular circumstances, may also extend to a degree of subsequent control over the adequacy of the interpretation.[55]

**Eastern Caribbean States**

There are provisions in the Constitutions of the nine Member States and Territories under the jurisdiction of the Eastern Caribbean Supreme Court which govern the provision of interpreters to aid court users whose primary language is different from the language of the court. These facilities however are limited to benefit defendants in criminal cases.[56] Article 8(2)(f) of the Constitution of Saint Lucia provides that: 'Every person who is charged with a criminal offence…shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge…". The cost related to the services of an interpreter are borne by the State.

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[53] Vizgirda v. Slovenia**,** *no. 59868/08, p.75;* Hermi v. Italy, no. 18114/02, p.69; *Luedicke, Belkacem and Koç v. Germany no. 6210/73, 6877/75, 7132/75*, p.48.

[54] Vizgirda v. Slovenia**,** *no. 59868/08, p.78;* Hermi v. Italy, no. 18114/02, p.70; Kamasinski *v. Austria, no.* 9783/82 p.74.

[55] Kamasinski *v. Austria, no.* 9783/82 p.74.

[56] See, for example, Article 15(2) of the Constitution of Antigua and Barbuda 1981.

Rule 5.3 of the Caribbean Court of Justice Original Jurisdiction Rules 2021 provides that where one of the parties is a Member State in which the first language is not English, or a national of such a Member State, that party shall be entitled to conduct their case at any oral hearing in the first language of that Member State and the Registrar shall arrange for an interpreter to attend the oral hearing in order to enable it to be conducted both in English and in the first language of that Member State. Witnesses may also give evidence in another language with interpretation assistance.

In the Appellate Jurisdiction of the Caribbean Court of Justice, the Registrar may make arrangements for interpretations or verification of translations into English as the Court may require in connection with proceedings before the Court. The costs of interpretation for a party or witness at an oral hearing are borne by the Court.

**Nigeria**

Assistance of an interpreter is a constitutional right in criminal trials. Article 36 (6) provides that "Every person who is charged with a criminal offence shall be entitled to:

(e) have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence."

**Slovakia**

The website of the Ministry of Justice translator database provides information about 824 court translators and 901 court interpreters; it is available in Slovak only. The translator database is maintained by the Ministry of Justice of the Slovak Republic and provides free access to and retrieval of information about court translators and interpreters.

**South Africa**

Article 35 of the Constitution requires an accused person "to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language".

**Türkiye**

The right of access to a court is an element of the right to legal remedies that is guaranteed under Article 36 of the Constitution. If the defendant or the victim does not speak Turkish to the extent that is required for him/

her to express himself/herself, the public prosecutor's office assigns an interpreter whose expenses are paid by the state at the prosecution stage.[57]

In civil cases, a witness is heard through an interpreter if he or she does not know Turkish. If a witness who is deaf or dumb can read and write, the questions are provided in written form and the answers are requested in writing. If he/she cannot read and write, the judge listens to him/her through an expert who understands sign language.[58] Persons who are entitled to legal aid are also exempt from the expenses of interpretation.

**United States of America**

In the United States, the *Federal Rules of Civil/Criminal Procedure* authorize federal judges to appoint language interpreters, requiring them to be paid by federal funds. State courts must also provide and pay for interpreters in cases where there are language barriers as to not deprive court users of their legal rights. Interpreters for the courts are required to satisfy oral proficiency examinations and be certified. It has been held that the authority to appoint interpreters extends beyond language interpreters and applies to interpreters for witnesses or parties with physical and mental disabilities.[59] Since the interpreter is the conduit from the witness to the trier-of-fact, interpretation should be word-for-word rather than summarized, no conversation between the witness and the interpreter, with no significant differences in the length of dialogue of the witness and the interpreter, and no bias or interest in the proceedings.[60]

[57] Code of Criminal Procedure Art.202/1-3.
[58] Code of Civil Procedure Art.263.
[59] *People v. Miller*, 530 N.Y.S.2d 490, 492 (City Ct. 1988).
[60] *In re Yovanny L.*, 931 N.Y.S.2d 485, 488 (Fam. Ct. 2011).

## *Principle 5*
## *The judiciary should ensure transparency in the assignment of cases.*

### United Nations Basic Principles on the Independence of the Judiciary

Article 14: "The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration".

### The European Network of Councils for the Judiciary (ENCJ)[61]

The ENCJ has developed Minimum Judicial Standards to be observed in the allocation of cases, which it considers to be crucial for guaranteeing the independence and impartiality of the judiciary. These eleven standards are:

1. All cases should be allocated on a basis that is compatible with Article 6 of the European Convention on Human Rights.

2. There should be an established method of allocation of cases. The method of allocation should be made available to the public. This method of allocation may be governed by statute, regulation or judicial or administrative practice.

3. The method for the allocation of cases should ensure the fair and time efficient administration of Justice, and the enhancing of public confidence.

4. The following principles and criteria to be applied in the allocating of cases should be taken into account in all established methods of allocation, including administrative or electronic allocation, and allocation by a senior judge, Presiding Judge or President of a Court.

5. The principles and criteria to be considered in the methodology for allocating cases should be objective and include:

i. The right to a fair trial
ii. The independence of the judiciary
iii. The legality of the procedure
iv. The nature and complexity of the case
v. The competence, experience, and specialism of the Judge
vi. The availability and/or competence of the Judge
vii. The impartiality of the Judge

[61] ENCJ Report 2013-2014.

viii. The public perception of the independence and impartiality of the allocation.

6. When considering complexity, it may be defined as including some or all of the following factors:

i. The number of parties or defendants

ii. The number of witnesses

iii. The value of the issue in question

iv. The number of pages of the papers in the case

v. The extent of the dispute of facts

vi. The legal issue involved

vii. The number of expert witnesses

viii. The estimated length of the trial

ix. The interest of the media or public or profile of the case in so far as it impacts upon the logistics of the case.

7. The method of allocation should be applied uniformly according to the criteria in paragraph (5); differences in the application of the principles and criteria may be required due to the nature of the jurisdiction, the size of the Court, the level of the Court and the judicial district where the case is heard.

i. Is the method of allocation being applied uniformly?

ii. What are the differences and are they justified or necessary?

8. Allocation should be the responsibility of the President, Senior Judge of the Court, or a Court Board, but the practical arrangements for the allocation of cases can be delegated to either another judge or a civil servant authorized for the purpose of the allocation of cases.

i. Who bears the responsibility for the allocation of cases?

ii. Can the practical arrangements for allocation be delegated?

9. The motivation/reasoning for any derogation from the established method of allocation should be recorded.

i. Is the motivation/reasoning for any derogation recorded?

10. The method for the allocation of cases should comply with the principles

and criteria set out herein whether the Judge is sitting alone or as part of a panel. When Judges sit as a panel it is the combined composition of the panel that should comply with the principles and criteria.

i. Does the method of allocation apply to both a single Judge and a panel of Judges?

11. The parties to a case are entitled to be informed about the allocation of the case at a time prior to the start of the hearing/consideration of the case that is reasonable taking into account the nature and complexity of the case, and the time by which the party has to exercise any right to challenge the allocation of the case to the specific Judge/Judges. This may be done in writing, electronically, or by the publishing of a Court list or any other means.

i. Are the parties entitled to be informed about the allocation of case prior to the start of the hearing/consideration of the case?

**Eastern Caribbean States**

At the High Court level of the Eastern Caribbean Supreme Court, cases are assigned by the Registrar to judges randomly. However, consideration is invariably given by the Registrar to each judge's existing caseload. At the Court of Appeal level of the Court, the Chief Justice who is also the President of the Court of Appeal is responsible for assigning cases to justices of appeal, whether it be for sitting as a single judge or as part of a three-member panel of the Court. In assigning cases, consideration is given by the Chief Justice to, among other matters, the nature of the appeal or application and whether a judge may have expertise in the area of law concerned. Interlocutory applications at the Court of Appeal are usually heard by a single judge in chambers monthly in accordance with a roster prepared by the Chief Registrar and approved by the Chief Justice.

The Eastern Caribbean Supreme Court Code of Judicial Conduct provides guidance on instances where a judicial officer should disqualify himself or herself in a proceeding in which his or her impartiality might reasonably be questioned. Where such circumstances exist, the judicial officer may either withdraw from the proceedings, or instead of withdrawing, disclose on the record the basis of such disqualification. If, based on such disclosure, the parties, independently of the judicial officer's participation, agree in writing or on the record that the judicial officer may participate or continue to participate in the proceedings, then the judicial officer may continue to

do so. Nonetheless, judicial officers are advised to avoid presiding over proceedings where there is a conflict or a potential conflict of interest.

In the Caribbean Court of Justice, matters filed with the Court are randomly rotated between two standing judicial panels, headed by the two most senior judges respectively. All Constitutional and Original Jurisdiction matters are sent to a third panel headed by the President. If a judge has a conflict of interest or if the Registry is aware that a judge has such a conflict the judge will be recused. The Deputy Registrar will then assign the case to avoid any conflict of interest. Additionally, a judge can request to be recused from a matter where he notices a potential conflict of interest. The Code of Judicial Conduct also guides judges in their activities, including requiring them to avoid conflict of interest or its appearance.

**Italy**

Case assignment may be based on subject-matter, random selection or according to geographical criteria. In the Italian administrative courts, a new case assignment system was introduced where assignment was made by the head of court. Case allocation was first done by subject-matter, followed by judges having to choose from lots drawn at random. Other aspects that may affect case allocation include a judge's specialization or judicial continuity in dealing with a case.

**Nigeria**

The assignment of cases is guided by predetermined in-house rules to avoid lack of transparency in the assignment of cases to a particular Judge or Judges.[62]

**Türkiye**

The Court of Cassation determines its division of work through its own bodies. The draft division of work among the chambers is prepared by the Board of Presidents of the Court of Cassation and approved by the Grand General Assembly of the Court of Cassation which all members attend. The decision regarding the division of work is published in the Official Gazette. The chamber president decides to which judge and member the files in the chamber will be assigned. According to the Court of Cassation Code of Judicial Conduct, "The president of a chamber shall take necessary

[62] https://njc.gov.ng/national-judicial-policy 6.8

measures to fairly assign the case files among bench members or rapporteur judges."

In practice, the assignment of files is made according to the field of expertise of the judges. Also, determining the deliberation agenda is the power that belongs to the chamber president.

Procedures of recusal from a case are regulated by law. The power of giving a final decision about disputes regarding duties and division of work and assigning another chamber in case a chamber cannot deal with a case within its field of duty because of actual or legal impossibility belongs to the Board of Presidents. Presidents and bench members of chambers or general assemblies can be recused. The requests concerning the recusal are reviewed by the relevant chamber or general assemblies without the participation of the recused president or bench member.

The files are assigned according to pre-determined and announced fields of expertise in courts of first instance and regional appellate courts. Assignment of cases to courts that have the same field of expertise is done through UYAP electronic system. Procedures of recusal are regulated clearly by law.[63]

**United States of America**

In the United States, both federal and state courts engage in a variety of practices for assigning cases and managing their docket. Some assign cases randomly, others by seniority, and others by assignment by the chief justice. Most state courts use some variation of random procedure to distribute cases evenly.

[63] A judge's inability to deal with a civil case and his or her recusal are regulated in Articles 34-35 of the Code of Civil Procedure, a judge's inability to deal with a criminal case and his or her recusal are regulated in Articles 22-32 of the Code of Criminal Procedure.

*Principle 6*
***The judiciary should ensure transparency in the delivery of justice.***

## Austria

The Legal Information System, an internet-based database, is open to the public. It is not only a computer-assisted information system on Austrian statutes, but it also includes the full text of all decisions given by the Supreme Court at least since 1980. However, the most innovative and beneficial part of this system is the electronic collection of short summaries of the legal reasoning of Supreme Court decisions since 1945. The collection of these summaries is the result of the analyses of court decisions by the Research and Documentation Office of the Supreme Court. Young judges who are temporarily assigned to this office extract from the decisions the sentences containing the main legal reasoning – the legal essence. This is then reviewed by the presiding judge of the relevant panel. The summaries – which are called "Rechtssatze" – are entered into virtual file cards which are indexed by the relevant statutory provisions. In every new decision, the Judges compare the main legal reasoning with the already existing files. In case of similarities, dissents or confirmations, Judges of the Research and Documentation Office add a short statement to the existing file. If there are substantially new arguments, they create a new file.

These short-files – there are now more than 130,000 – are very important for the legal practice. They ensure the full transparency of the case law of the Supreme Court. Therefore, it is very easy for anyone to check whether the Court decides in accordance with its precedents or not, and it is also very often possible to predict the outcome of pending legal proceedings, at least as far as questions of law are concerned. The website with the database is open to the public without any fees. It has about 100 million hits every year. The Research and Documentation Office does not only analyze national decisions but also the most relevant decisions of the European Court of Human Rights (ECtHR). Therefore, the database also ensures that national decisions are in accordance with the case law of the ECtHR.

Another tool employed in Austria is to open courts and the process of decision shaping to the interested public. One way this is being done is by integrating lay judges. Austria has had a long tradition of such lay judges in labour cases. For example, panels are composed of one professional judge – who is the presiding judge – and two lay judges. At the Courts of appeal and at the Supreme court, the panels consist of two lay judges and three

professional judges, the latter being in a majority. Lay judges enrich the decision making with their experience from their workplace and help to make decisions more acceptable to the parties. It has been observed that lay judges have a very high standard of impartiality.[64]

### Eastern Caribbean States

There is a common law duty for judges to give reasons as a function of due process and fairness.[65]

However, the extent of the duty depends on the subject matter before the judge. If there is a straightforward factual dispute where resolution is simple, the judge can give his or her decision with very brief reasons. Where the dispute involves more complexity, the judge must enter into the issues canvassed and give his or her reasoning in respect of the issue(s). In respect of civil appeals, the Eastern Caribbean Supreme Court, Court of Appeal Rules, section 21(2) provides that if no written decision is given by a judge in the court below, the judge shall communicate his or her reasons for judgment in writing to the Registrar. While the duty to give reasons exists, there is no duty on judges to address within their decisions, every argument presented by counsel.[66]

Decisions of the Eastern Caribbean Supreme Court (ECSC) may be given both in writing and orally by the judges. In the case of oral judgments/ decisions given, the court records these by way of digests which are published on the ECSC's website.

The published Annual Reports of the Caribbean Court of Justice indicate the court's budgetary allocations as well as providing information on court fees that have been collected over the previous year.

### European Court of Human Rights

The public proceedings of the Court are filmed and placed on its website. Proceedings held in the morning are available for viewing by 2.30 p.m., while afternoon hearings are available at the end of the day, barring technical difficulties.

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[64] Hon. Gerhard Kuras, Judge of the Supreme Court of Austria.

[65] See: *English v Emery Reimbold & Strick Ltd* [2002] EWCA Civ 605; *Flannery v Halifax Estate Agencies*; [1999] EWCA Civ 811.

[66] See *Eagil Trust Co Ltd v PigottBrown and another* [1985] 3 All ER 119.

### India

From 2018, the Supreme Court of India has permitted the live transmission on television to the public at large

Judgments are delivered in open court. They are reasoned and are uploaded online on the same day.

### Türkiye

The Court of Cassation publishes an activity report that includes information regarding the use of the budget and the data on the performance of the court.[67] Also, annual statistics, financial status, and expectations report, and reports regarding the classification of budget incomes and expenses are regularly shared with the public every year on the website.

A guide titled "Court of Cassation Guide for Writing Reasoned Decisions" consisting of 564 pages has been prepared and is in use. This Guide seeks to strengthen transparency and accountability.

### United States of America

In the United States, 28 U.S.C. § 455 directs judges to recuse themselves in specified situations, including financial conflicts of interest and in any situation where their impartiality might be reasonably questioned. The Model Code of Judicial Conduct (CJC) mandates that judges must take great care to avoid even the appearance of impropriety.

Transparency can take different forms. Event transparency refers to what goes on in the courtroom. Courts are typically open to the public, and this creates greater accountability. Decisional transparency refers to how judges make their determinations. Judges take great care to explain the rationale behind their decisions. Operational transparency goes to how well judges do their jobs. Finally, institutional transparency refers to the court system's daily administration, and how organized and well-maintained it is.

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[67] https://www.yargitay.gov.tr/documents/ek1-1661150760.pdf - Access: 7.1.2023.

*Principle 7*

***The judiciary should have supervisory powers over executive detention.***

**International Covenant on Civil and Political Rights (ICCPR)**

**Article 9**

(1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

(2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

(3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other office authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any stage of the judicial proceedings, and should occasion arise, for execution of the judgment.

(4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

(5) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

(6) No one shall be imprisoned on the ground of inability to fulfil a contractual obligation.

For similar provisions, see American Declaration on the Rights and Duties of Man, Art.1, 25; European Convention for the Protection of Human Rights and Fundamental Freedoms, Art.5; American Convention on Human Rights, Art.7; African Charter on Human and Peoples' Rights, Art.6.

### International Covenant on Civil and Political Rights – Human Rights Committee

Preventive Detention (sometimes known as security detention, administrative detention, or internment) which is not resorted to in contemplation of prosecution presents severe risks of arbitrary deprivation of liberty. Such detention will normally amount to arbitrary detention. If under the most exceptional circumstances a present, direct, and imperative threat is invoked to justify the detention of a person considered to present such a threat, the burden of proof lies on the State to show that the individual poses such a threat and that it cannot be addressed by alternative measures. This burden increases with the length of the detention. The State also needs to ensure that detention does not last longer than absolutely necessary, that the overall length of possible detention is limited and that it fully respects the guarantees provided in ICCPR 9 in all cases. Prompt and regular review by a court or other tribunal possessing the same attributes of independence and impartiality as the judiciary is a necessary guarantee for these conditions, as is access to independent legal advice, preferably selected by the detainee, and disclosure to the detainee of, at least, the essence of the evidence on which the decision is taken. *(Human Rights Committee, General Comment 35)*.

### Eastern Caribbean States

The Constitutions of the nine Member States and Territories all provide that each person has the right not to be deprived of personal liberty. A person who has been arrested or detained is required to be brought "promptly" before the court. While there is no express provision within the Constitutions of the Member States, a person arrested or detained may apply for a Writ of *Habeas Corpus*.

There is no requirement that members of the Judiciary should engage in prison visits as a function of their oversight powers. However, judicial officers assigned to the Criminal Division of the High Court do conduct prison visits from time to time where appropriate.

### India

A detenue has the right of judicial review. A case of detention is dealt with by the court on a priority basis.

Where a person is detained by order of the executive, the detaining authority is required, as soon as practicable after the detention, to communicate to the detainee the grounds on which the detention has been made and to afford the detainee the earliest opportunity of making a representation against that order. These are the barest minimum safeguards which must be observed before an executive authority can be permitted to preventively detain a person and thereby drown his right of personal liberty in the name of public good and social security.[68]

The "grounds" for executive detention, which must be furnished to the detainee, mean "all the basic facts and materials which have been taken into account by the detaining authority in making the order of detention and on which, therefore, the order of detention is based.[69]"

### Israel

Persons held in executive detention – even during a massive military operation against terror facilities and infrastructures – are entitled to at least a minimum standard of detention conditions. Since they have not been brought to trial or convicted, they enjoy the presumption of innocence. Although preventive detention denies them their liberty, it does not strip them of their humanity. The balance between an individual's rights on the one hand and national security on the other, as well as the fundamental idea of human dignity, requires that detainees be treated humanely and in recognition of their human dignity.[70]

### St. Christopher, Nevis and Anguilla

Where a person detained by executive order was informed that he had been "concerned in acts prejudicial to the public safety and public order", the Court held that these grounds were "vague, roving or exploratory" and were therefore insufficient.[71]

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[68] (*Khudiram Das v. State of West Bengal, Supreme Court of India*, AIR 1975 SC 550).

[69] (*Khudiram Das v. State of West Bengal,* Supreme Court of India, AIR 1975 SC 550, per Bhagwati J.).

[70] *(Zonenstein v. The Chief Military Advocate*, High Court of Justice of Israel, (2002) 3 Bulletin on Constitutional Case Law, 460).

[71] *Herbert v. Phillips and Sealey,* Court of Appeal of the West Indies Associated States on appeal from St.Christopher, Nevis and Anguilla, (1967) 10 WIR 435.

### Türkiye

According to Article 19 of the Constitution, everyone has the right to personal liberty and security. No one shall be deprived of his/her liberty except in the following cases where procedure and conditions are prescribed by law: Execution of sentences restricting liberty and the implementation of security measures decided by courts; arrest or detention of an individual in line with a court ruling or an obligation upon him designated by law; execution of an order for the purpose of the educational supervision of a minor, or for bringing him/her before the competent authority; execution of measures taken in conformity with the relevant provisions of law for the treatment, education or rehabilitation of a person of unsound mind, an alcoholic, drug addict, vagrant, or a person spreading contagious diseases to be carried out in institutions when such persons constitute a danger to the public; arrest or detention of a person who enters or attempts to enter illegally into the country or for whom a deportation or extradition order has been issued. Persons whose liberties are restricted for any reason are entitled to apply to the competent judicial authority for speedy conclusion of proceedings regarding their situation and for their immediate release if the restriction imposed upon them is not lawful.

### United States of America

The United States Constitution includes the fundamental right of *Habeas Corpus*, a procedure that grants the right to the protection of individual freedom against unlawful and indefinite imprisonment. In response to the terrorist attacks of September 11th, 2001, the Executive ordered the detention of hundreds of individuals at Guantanamo Bay detention camp. Post-9/11 executive detention cases have prompted federal courts to reinforce their powers of judicial review and emphasize their jurisdiction over executive detention. This area of the law has undergone substantial changes since the terrorist attacks of 11 September 2001. Courts have rejected executive branch decisions based on absolute secrecy or multiple levels of hearsay, while affirming determinations that satisfy minimal standards of reliability.

In *Boumediene v. Bush*, the Court restored the detainees' access to *habeas corpus*, rejecting for the first time in history the collaborative judgment of the executive and legislative branches exercised in connection with military operations. As a result, the Court elevated the judiciary to a preeminent role in reviewing military detention operations and assumed exclusive jurisdiction and control over *habeas corpus* cases brought by two-hundred-

plus Guantanamo detainees. A second set of cases provides overwhelming recognition that decisions of the Executive during war concerning the status of persons, their seizure and detention, their rights, their treatment, and the seizure of property are judicially reviewable and that the judiciary, despite provisional characterizations by the executive, will identify, clarify, and apply relevant customary and treaty-based international law.[72]

The Third Circuit panel reaffirmed that the application of the exclusionary rule "is grounded in, the continuing exercise of pragmatic judicial supervision of the law enforcement activities of the executive branch.[73]"

[72] Jordan J. Paust, INTERNATIONAL CRIMES WITHIN THE WHITE HOUSE, 10 N.Y. City L. Rev. 339, 347 (2007).

[73] *United States v. Fraguela-Casanova*, 858 F. Supp. 2d 432, 451 (M.D. Pa. 2012); *United States v. Mosley*, 454 F.3d 249, 261 n. 19 (3d Cir.2006).

*Principle 8*

***The judiciary should ensure that judicial decisions of the superior/ appellate courts are regularly published.***

**Czech Republic, Estonia, Hungary**

The translation of judgments into other languages enhances accessibility for foreign users or for users from another linguistic region. Accordingly, several European countries have taken the initiative to translate selected judgements depending on the nature and level of their importance. For instance, the Supreme Court of the Czech Republic and Estonia translated their most important judgments and extracts from judgments to be published in the international pages of their website, and the Curia of Hungary published English summaries of important judgments. The costs of these translations are all covered by the Court Budget.

**European Court of Human Rights and the Court of Justice**

The system followed by the European Court of Human Rights and the Court of Justice allows the full version of the judgment to be accessible to the public. However, anonymization is allowed upon reasoned requests by parties or if the president decides on confidentiality through their own motion. Anonymization may be allowed on the grounds of morals, public order, or national security in a democratic society, the interests of juveniles, the protection of the private life of the parties or of any person concerned, or special circumstances where publicity would prejudice the interests of justice.

**India**

Judgments delivered in written form are made available online on the Supreme Court and High Court websites on the same day they are delivered. The Supreme Court and High Courts print their own judgments in Supreme Court Reports and Indian Law Reports respectively as early as possible.

**Lithuania**

In the Supreme Court of Lithuania, the assistant of a judge will overlook the anonymization of judgments using a software tool that locates personal data that enables the identification of a person which is then anonymized.

### Nigeria

All courts provide copies of decisions to Law Reporters who regularly publish them.

### Poland

Parties can access case information themselves through an internal database called "Supremus", an electronic register of cases. A part of this system is available to the public and published on the website of the Supreme Court as an E-Case. The information available to the public range from the number of the case, dates and numbers of the judgments issued by the lower instance courts, the department of the Supreme Court to which the case has been assigned, information on the date of the hearing, information about whether or not the proceedings before the Supreme Court have been completed, information about the outcome of the case and, generally, the judgment of the Supreme Court.

### Spain

In Spain, anonymization is the responsibility of the Judicial Documentation Centre which handles data processing for the court. In most cases, any information that would enable the identification of the person involved is anonymized. This includes sensitive information such as business secrets, information regarding health status, and bank account numbers. Usually, the full version of the judgment should be published. As such, anonymization is done for certain cases or to facilitate legal research.

### Türkiye

The Court of Cassation publishes two journals, namely, The Journal of the Court of Cassation Decisions and The Journal of the Court of Cassation. The first is a journal in which precedent decisions of the Court of Cassation are published monthly. In the second journal, academic articles are published quarterly. In addition to these two journals, the Court of Cassation makes all its decisions accessible to the public free of charge through its website.

"The Court of Cassation Case Law Center (YİM)"[74] was established with the aim of enabling the accessing of the decisions of the Court of Cassation more easily and quicker. In this informatics system, which is designed for

[74] yargitayictihatmerkezi@gov.tr

use by different target groups such as judges of the Court of Cassation, other judges and the general public, the decisions of the Court of Cassation will be classified according to the tag information, concepts, provisions of the legislation and the level of importance, and they will be published with their summaries by anonymization.

**United States of America**

The constitutional provision that judicial opinions or decisions shall be free for publication by any person, manifests intent that neither the legislature, nor the court, may unreasonably curtail or restrict access by all persons to judicial opinions and decisions.[75] Accordingly, the judiciary has the duty of publishing and disseminating its decisions. Not only should a judge perform unhesitatingly the "duty to decide all cases within his jurisdiction that are brought before him/her, including controversial cases that arouse the most intense feelings in the litigants," he/she must be unhampered in the publication of his/her decisions in those cases.[76]

Since federal case law has recognized that there is a constitutional right of public access to court records of both civil and criminal judicial proceedings, the courts have established stringent requirements that must be met before the public may be denied access to judicial records: the sealing of documents must be "strictly and inescapably necessary" to protect a compelling interest such as a criminal defendant's right to a fair trial as held in *Associated Press v. U.S. District Court for C.D.*[77], quoting *United States v. Brooklier.*[78] Thus, the party seeking nondisclosure must establish the existence of:

- "a substantial probability" of "irreparable damage" to a compelling government interest if the documents are unsealed;
- a "substantial probability" that alternatives to nondisclosure cannot adequately protect the government interest; and
- a "substantial probability" that nondisclosure will be "effective in protecting against the perceived harm.

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[75] *New York Post Corp. v. Leibowitz,* 143 N.E.2d 256 (N.Y. 1957).
[76] *Lowenschuss v. W. Pub. Co.,* 542 F.2d 180, 185 (3d Cir. 1976).
[77] 705 F.2d 1143 (9th Cir. 1983).
[78] 685 F.2d 1162 (9th Cir. 1982).

*Principle 9*

***The judiciary should promote programmes to orientate students on the judicial process.***

## Austria

Austria has opened the process of judicial decision shaping by strengthening contact with universities – law schools – and by taking into account relevant legal literature. Judges have observed that this improves the acceptance of court decisions in many ways. The academic world of universities has the resources to place the relevant provisions of law in a systematic context and to understand the law as a cohesive whole. This helps to interpret law. Quoting legal literature also improves the acceptance of decisions in the academic world. Law professors are important stakeholders in the public discussion of difficult court decisions. As academic "experts" they are also shaping the perception of judgments in public media.

Another form of cooperation with universities also provides young academics access to the Supreme Court. They do some research on questions of general importance in specific cases. This helps the Court in its research and helps the universities to concentrate their research on problems of practical relevance. It also gives young academics insight into the Court.[79]

## Consultative Council of European Judges[80]

It is the state's important duty to provide everyone, while at school or university, with civic instruction in which a significant amount of attention is given to the justice system. Relevant school and university education programmes should include a description of the judicial system, visits to courts, and active teaching of judicial procedures. Courts and associations of judges can in this respect co-operate with schools, universities, and other educational agencies, making the judge's specific insight available in teaching programmes and public debate.

## Eastern Caribbean States

Prior to the Covid-19 pandemic, guided Court tours were conducted with students from secondary and tertiary institutions. Currently, in-person tours are restricted but virtual tours of the Courtroom are accessible on the website. The CCJ Academy of Law is the educational arm of the Court which

[79] Hon. Gerhard Kuras, Judge of the Supreme Court of Austria.
[80] Opinion No.7 (2005).

develops, coordinates, and facilitates seminars, workshops, exchanges, and special lectures geared toward providing informative and innovative perspectives on the rules and the roles of law, particularly International Law, examining court administration and encouraging best practices in the judicial administration of justice. Some of these activities are conducted by Judges of the Court. There are also unplanned requests for Judges of the Court to present papers, give lectures and deliver presentations to bar associations, law associations, media associations and tertiary institutions.

**India**

Law students are able to work with Judges for a specified period to learn how the judiciary functions. They may be required to prepare the notes of the cases listed for hearing. Moot Court competitions are held, and Judges deliver lectures in universities. Young lawyers are engaged as Law Clerks in the Supreme Court and High Courts. They assist the Judges in research work, preparation of the briefs and notes about the cases which are listed for hearing. They also attend the Court hearing and are paid adequately for that.

**Nigeria**

All courts collaborate with the Nigerian Law School and Universities to foster understanding of the judicial process.[81]

**Türkiye**

The Court of Cassation collaborates with universities in the training of future lawyers. Visits by students of law faculties to the Court constitutes one of the programs. During these visits, the students are introduced to the history, function, and duties of the Court and the questions of the participants are answered. After that session, the students are taken on a tour of the Court of Cassation building.

According to the protocols made with universities, students who meet the necessary conditions are able to do internships at the Court of Cassation.

In addition to student visits and internships, "The Court of Cassation Judicial Ethics Law Clinic" is conducted every year for students. In this program, students who are successful in the "judicial ethics" courses in the law faculties receive theoretical and practical training, and those

[81] https://www.lawschoollagos.org/wp-content/uploads/2017/09/EXTERNSHIP-HANDBOOK-FOR-STUDENTS.pdf

who successfully complete their training are entitled to be registered in the Registry of the Court as "ethics facilitators". They thereafter take responsibility by conducting pre-structured practical studies with their peers. During all these activities, bench members of the Court of Cassation, rapporteur judges, public prosecutors and staff of the Court of Cassation who are ethics trainers participate.

**United States of America**

The Courts in the Classroom is a web-based project that unites educators and the courts to teach California's youth about the role of the judicial branch in American democracy. The project uses digital tools, storylines and themes presented in different subject areas that expand on the concepts and application of law, rights and responsibilities that interrelate in the system of democracy.

Another initiative, launched in 2009 was iCivics[82], the nation's premier non-profit civic education provider of high-quality, non-partisan, engaging, and free resources. It was designed to teach middle and high school students and reaches more than 9 million students annually. It allows both educators and students themselves to register and receive access to learning resources which include an online library, educational games and competitions to encourage and engage young learners.

Another digital based educational platform is https://lawforkids.org/. America's first stand-alone website, "Law for Kids.org" was created by the Arizona Foundation for Legal Services and Education with the specific goal of educating youth, their parents, communities, and schools to increase their knowledge about youth laws and to encourage law-abiding behavior.

***Tennessee State Courts***

The Supreme Court Advancing Legal Education for Students (The Scales Project) was established by that Court in 1995 and is designed to educate high school students about the legal system and court processes. 36,000 Tennessee students and 540 high schools have participated so far.

The Supreme Court travels to several different locations throughout the State each year and holds court in local communities (and allows students to hear oral arguments for an actual Supreme Court case).

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[82] https://www.icivics.org/

### *Wisconsin District Court*

Kids, Courts, and Citizenship (KCC) is a program for Milwaukee students with the purpose of introducing students to the work and different roles in the federal District Court. The activities include Spring/Fall visits to courthouses, judges on school visits, career panels, guest speakers, etc.

*Principle 10*

***The judiciary should initiate and/or support outreach programmes designed to educate the public on the role of the justice system.***

## Nigeria

*"Every Judiciary in Nigeria should establish a Public Enlightenment unit to enlighten the public on the workings of the Judiciary.[83]"*

Town Hall Meetings have been extremely effective in providing an opportunity for court users to interact with the Judiciary on the problems that they have experienced. Stakeholders have been able to express their concerns and discuss issues that could lead to improved service delivery. These meetings have also helped to demystify the courts and the judicial system and generally enhance public confidence in the Judiciary. A suggestion that these meetings be segregated to allow female participants to feel more comfortable in expressing their views was not generally favoured since experience had demonstrated that women had no inhibitions in discussing even offences such as rape, and that in any event it was desirable that men be present in order that they might appreciate such issues.[84]

## United States of America

In the United States, each jurisdiction provides information about court operations, such as court rules, employment opportunities, court self-help and informational pamphlets, accessible on the court website. In recent years, national judicial groups such as the Conference of Chief Justices and the Conference of State Court Administrators have called on courts to adopt a range of technological tools to keep their court systems available to the public.

Law Day is celebrated annually on May 1st and throughout the month of May to educate the public on the legal profession and justice system. Since its establishment in 1958 by President Dwight D. Eisenhower, Law Day has provided an opportunity to help students and the public understand the role of law in everyday life through programs and activities conducted by schools, courts, bar associations and civic groups. Each year, the American Bar Association and the United States Government select a special theme

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[83] https://njc.gov.ng/national-judicial-policy *3.9*

[84] "A 360 Degree Review" – Ten years of Justice Sector Reform in Nigeria, UNODC, 2009.

and a unique campaign to raise awareness of a key part of the law. A variety of programs and activities are conducted by state courts, schools, bar associations and civic groups to celebrate the rule of law.

***Washington state***

In 2019, the USA-Pierce County Superior Court in Washington state formulated a strategic plan to build public trust and confidence in the judiciary through a community outreach program. The plan included the following strategies:

- Establish a court speaker's bureau for education and public relations targeting the schools, service organizations, and other community groups within the community.
- Collaborate with educational institutions, legal services providers, bar associations, and organizations that promote excellence in the judicial system to enhance community awareness of the Court, to expand existing programs (such as mock trials and a Judge in the classroom) and develop new outreach programs.
- Actively inform the public about the role of the judiciary in society.
- Regularly update the Court's brochure and web site.
- Design and implement an activity in conjunction with Law Day.
- Design and implement a community service activity.
- Improve jury orientation, including brochure, script, feedback by e-mail, and an updated video.
- Send letters to educators, libraries, and service clubs, enclosing videos and offering opportunities for judges to speak to their group.

*Principle 11*

***The judiciary should afford access and appropriate assistance to the media to enable it to perform its legitimate function of informing the public about judicial proceedings, including decisions.***

**Consultative Council of European Judges**[85]

The importance of assigning courts' spokespeople as well as encouraging the establishment of press and communication services at the Council of Europe standards is emphasized.[86]

It is necessary to encourage the setting up of reception and information services in courts under the supervision of the judges to help the media to get to understand the workings of the justice system better by:

- Communicating summaries of court decisions to the media
- Providing the media with factual information about court decisions
- Liaising with the media in relation to hearings in cases of particular public interest
- Providing factual clarification or correction with regard to cases reported in the media.

All information provided to the media by the courts should be communicated in a transparent and non-discriminatory manner.

An efficient mechanism should be set up, which could take the form of an independent body to deal with problems caused by media accounts of a court case or difficulties encountered by a journalist in the accomplishment of his/her information task, to make general recommendations to prevent the occurrence of any problems observed.

**European Network of Councils for the Judiciary**

***Recommendations for Press Judges:***

***Justice Society and the Media Report 2011-2012***

A Press Judge operates as a spokesperson and communication advisors. Several of the recommendations put forward included the following points:

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[85] Opinion No.7 (2005).
[86] Recommendation CM/REC(2010)12, § 19.

1. A Press Judge should have a deep knowledge and understanding of the judicial system and good communication and social skills to interact with the public in an understandable manner.

2. The Press Judges and communication advisors should operate at a national level as well as at a local (and in some countries) regional level. These Press Judges should be judges who are serving at the level of the court and in the jurisdiction which is relevant to the press inquiry to be dealt with.

3. The Press Judge should be appointed by the President of the relevant court or area in which the Press Judge operated – and the Press Judge should be answerable to the appointing Judge.

4. There should be basic guidelines as to the functions and role of a Press Judge, including rules as to whose initiative the Press Judge should act on and any system for coordinating such action. The guidelines should outline the relationship between Press Judges, press officers and communications advisors as per national press codes and national standards of judicial ethics.

5. There should be training available to aid the Press Judge in the work required.

6. A Press Judge's responsibilities should include the following:

- Inform and instruct the press in law and procedure.
- Explain the nature and effect of judgments and rulings to the public – this can also include involvement in legal education of the basics of constitutional and substantive law.
- To further the interest of justice in promoting transparency and understanding of the public in the court system and the Judiciary.
- To work with press officers and communication advisers in discharging their functions and monitor contact with the press and media.
- To follow and react to media through websites and other social media.
- To develop contacts with the media as well as appropriate professional bodies, specialists, and academic institutions.

**Eastern Caribbean States**

In the Eastern Caribbean Supreme Court, the Information Services Manager and two members of his staff are tasked with relating with the

public and media on matters concerning the Court. They are responsible for regularly updating the Court's website with press releases of notable events, judicial decisions and publications concerning the Court. Furthermore, the directory found on the Court's website contains the contact information (inclusive of telephone numbers and email addresses) of the court offices for all 9 Organization of Eastern Caribbean States (OECS) Member States and Territories where members of the media and the public may make enquiries.

**Ireland**

The place of the media within the constitutional framework as defined by Article 34.1 was explained by the Supreme Court.

"It follows that Article 34.1 requires that proceedings in court be open to the public and this entails the attendance of print and broadcast media as part of the scrutiny which judicial conduct and judicial decisions are subject to in a democratic society. The media are entitled to issue, and perform a public service in circulating, fair and accurate reports of litigation."[87]

Under the Data Protection Act 2018, journalists are entitled to clear and uncontested access to court documents.

**The Netherlands**

By 2005, every court in the Netherlands had a Press Judge who undertook the role of spokesperson on behalf of the Judiciary. Although this is conventionally the responsibility of the president of the court, Press Judges are appointed at the district and appeals court levels and provide information and communicate with the media about individual cases being handled by the court in addition to their own judicial work.

Several skills and qualifications are needed to be selected to the position of Press Judge. These include a good camera presence and the ability to write about matters of law in terms that are easily understood by lay people. Additionally, the Council for the Judiciary coordinates special training courses for these judges, including on-camera training.

All Press Judges hold a biannual meeting to discuss their experiences with the media during the previous six months. They review issues and new developments concerning public interest and violations of litigants'/witness

[87] *MARA (Nigeria) v. Minister for Justice* [2014] IESC 71, at [29].

privacy. This exchange of experience and brainstorming also assists in the review and development of guidelines for dealing with the media.

Every court in the Netherlands has a pressroom, with telephone and internet connections, where journalists can work during the intermissions between court proceedings.

**Nigeria**

Dedicated Press Liaison Officers and regular press statements are a norm in courts and judicial institutions.

**Türkiye**

A "Press and Public Relations Office" was established at the Court of Cassation in 2021, and the Secretary General was designated as the spokesperson. The "Court of Cassation Communication Strategy" that was developed during the establishment of the office guides the work of the office.

The Duties of the "Press and Public Relations Office" were identified in the document of establishment as follows:

1. Organizing press conferences in order to make annual assessments by the President of the Court of Cassation at the end of January each year.
2. Preparing a "Court of Cassation Guideline for the Press" to determine the rules for relations with the press.
3. Taking all the necessary steps including written and oral notifications in order to correct inaccurate news and comments.
4. Organizing press campaigns to help the public to better understand the judiciary.
5. Preparing press bulletins, including summaries of decisions after the chambers and general assemblies of the Court of Cassation have rendered their decisions in cases that attract public interest.
6. Organizing training programmes for members of the press in order to prevent the Court of Cassation from being subjected to sensational or fake news.
7. Organizing programmes for building trust between the press and the judiciary by providing training to members of the press that include the

fundamental information about the court structure, judicial procedures, methods of accessing court information and legal issues.

8. Taking necessary actions to facilitate media coverage of judicial proceedings and liaising with media representatives.

**United States of America**

Since the media is a significant tool in enabling the public to learn more about the judiciary, helping reporters understand court processes is one way to improve the public understanding of the justice system. The Administrative Office of the United States Federal Courts has published numerous guides on their website to assist the media/public in their interactions with the court. The United States Courts website has published a journalist's guide, detailing the rules for media access (court documents, interviews, courthouse security, courtroom access, closed sessions, off-limit areas, recording and broadcasting, electronic devices) to assist representatives of the media in covering the courts and to improve their courtroom experiences. The Administrative Office of the United States Federal Courts has also published "A Journalist's Guide to the Federal Courts" to provide reporters/journalists with basic knowledge about court procedures. The guide sets out the basic structure of the courts, procedural steps in criminal/civil cases, and who can be contacted to answer questions about the court process.

Federal courts have public information officers (PIOs) who interact with the media daily.

The Office of Public Affairs is the principal point of contact for the United States Department of Justice with the media. That Office is responsible for ensuring that the public is informed about the Department's activities by issuing news releases, responding to queries, arranging interviews, and conducting news conferences with the media.

*Principle 12*

***The judiciary should assess public satisfaction with the delivery of justice, and thereby seek to promote the quality of justice.***

**The Netherlands**

Every year the Judiciary publishes annual reports consisting of data that informs the public of the management of the judiciary. This includes the number of completed cases, duration of cases, disciplinary measures, complaints, and requests for recusal. Every four years the Judiciary commissions a review of the "visitation committee". The committee consists both of judges and members of civil society who are mandated to evaluate the quality of justice. A report would ordinarily focus on modernization, HR policy and financial management. Additionally, every 3 years, a court user survey is performed to assess the quality of justice at the courts according to parties and professionals such as public prosecutors, lawyers.

**Nigeria**

The National Judicial Policy mandates an Annual Judicial System Audit and Survey of effectiveness and efficiency of the Judicial System, particularly:

- The duration of cases will be constantly tracked, and explanation demanded routinely for delay in disposition of cases.
- There will be in every Court a public complaints and public information desk to receive complaints from the public on inefficiency and transparency of the system, other than regarding quality and merits of judgments, and to give information to the litigants concerning the status of their cases.
- **Public Complaints Committees** provide an opportunity for court users to channel their complaint against judicial officers and court staff and contribute towards reducing corruption in the judiciary. The placing of complaint boxes in every courthouse has been very effective since complaints are dealt with regularly and errant officers are disciplined.
- **Court-User Surveys** have been effective in identifying the weaknesses in the judicial process. The results have been useful for both policy makers and researchers.
- **Ad-hoc inspections** of court registries have been effective in assessing the actual state of the infrastructure and staff strengths. Scheduled inspections are unlikely to reveal the true situation.

### Principles on Excellence in High Courts of Appeal[88]

Principle 8: The High Court of Appeal management should consider the views, needs and expectations of internal and external stakeholders.

Strong and effective communication with court users is important. It is necessary to establish systems to receive feedback from them and to process this feedback. The understanding of court activities by all court users, including litigants, public outreach programs and media relations affect public trust in the judiciary.

Developing an effective and efficient communication network with court users and benefiting from the opinions, suggestions and other information from these networks increases the quality of the judicial service. In this context, the importance of developing innovative measures should always be considered.

The satisfaction of court users should be measured regularly, a satisfaction survey should be applied to lawyers and litigants, and their results should be used to increase service quality. Sharing the survey results with the public is a factor that strengthens the trust in the judiciary.

### Sri Lanka

A survey of court users and stakeholders was conducted in Sri Lanka by the Marga Institute (the Sri Lanka Centre for Development Studies) on the invitation of the Judicial Integrity Group. The main purpose of the survey was to assess the degree to which the people of Sri Lanka considered the judicial system of the country to be worthy of their trust and respect.

- An Exit Poll covered 50 judicial stations representative of all the judicial zones of Sri Lanka. 10 of the 13 remand prisons in the country were also surveyed by field investigators. The field survey brought in 1006 returns from civil litigants, virtual complainants, and remand prisoners. Of 17,120 remand prisoners in the Island, 432 were interviewed.
- A Direct Mail Survey was conducted during which the opinions of Judges, Lawyers, Court Staff, and Legal Officers in the corporate

[88] The views of the chief justices and prosecutor generals from three continents and 13 countries and different legal traditions on "excellence in high courts of appeal" are summarized within the framework of those principles (The Court Of Cassation Conference Hall, Ankara/Türkiye, September 2, 2021, https://www.Yargitay.gov.tr/kategori/ 121/mahkeme-mukemmeliyeti - Access: 6.1.2023).

sector were canvassed. Questionnaires were dispatched to 1415 members of the Court Staff, 278 Judges (including retired Judges), 4565 Lawyers and 30 Legal Officers in the corporate sector. The postal survey brought in 1789 returns.

The survey returns indicated widespread dissatisfaction with the judicial system. The allegations ranged from partiality and inefficiency to incompetence and dishonesty. The lack of language skills in English was claimed to be preventing young legal professionals from accessing not only legal literature from abroad but even the Sri Lankan law reports from early 20th century.[89]

**United Kingdom**

In 2007, the Ministry of Justice concluded a comprehensive year-long survey of user satisfaction in courts in England and Wales. It attempted to gauge user satisfaction more accurately by conducting in-person surveys of randomly selected court users as they exited the courthouse. These surveys were conducted at every courthouse in the entire lower court system in England and Wales, with a total of around 5000 users surveyed. The Ministry decided that in-person surveys would be more effective in fixing several methodological problems and achieving a broader survey pool than the previous postal and handout surveys that had returned less diverse results. The new surveys were uniform in content, making the information more easily comparable and useful for analysis. The number of interviewees could also be controlled, whereas postal and handout surveys had poor turnout from local populations.

The survey queried users as to their level of satisfaction with various aspects of court services, staff, proceedings, and public awareness. The data was analyzed to determine user satisfaction with both individual courts and groups of courts located in a certain region or for a certain type of proceedings, and to determine what factors contributed the most to satisfaction or dissatisfaction of court users. This information was particularly useful in identifying weaknesses among courts and types of proceedings. Respondents' demographic information was also analyzed to determine if any particular races, genders or other groups were experiencing lower satisfaction than others with the courts.

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[89] A System Under Siege – An Inquiry into the Judicial System of Si Lanka, Marga Institute, September 2002.

The survey results were used to analyze weaknesses in the administration of court services, as they relate to how court users are treated before and during their interaction with the courts. Many users described their desire to have more information before they arrived at the courthouse. Results were specific as to the stage of court proceedings and user complaints, thus allowing the courts to analyze and react to the complaints on a specific level. By assessing user satisfaction through these surveys, the courts were able to assess public confidence in the courts, and to adjust their procedures, information services and amenities according to survey data.[90]

**Türkiye**

The Court of Cassation conducts internal and external stakeholder surveys in order to identify methods of increasing the satisfaction levels of its own employees and court users. In 2019, a survey was conducted of 2000 lawyers across the country in groups determined by taking into consideration seniority, age, gender, graduate studies and the bar associations in which they are registered. The survey was conducted in cooperation with the Union of Turkish Bar Associations and local bar associations.

Satisfaction surveys are conducted among court users at irregular intervals and especially during crowded times such as hearing days.

The Court of Cassation developed and implemented in 2022 a satisfaction survey consisting of 77 questions in 10 main areas in accordance with the Principles of Excellence in High Courts of Appeal. Data were received regarding the areas that needed improvement in the Court of Cassation.

**United States of America**

The Administrative Office of the United States Courts regularly surveys court operations and judicial workloads and assesses operational effectiveness. The Administrative Office reports to the Judicial Conference Committee on Audits and Administrative Office Accountability on all recent financial audits, program reviews, special investigations, and prosecution referrals. The Federal Judicial Center and the Administrative Office also offer training for chief judges and unit executives on their management and oversight responsibilities.

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[90] UNODC, Resource Guide on Strengthening Judicial Integrity and Capacity, 2011, pp.98-99.

*Principle 13*

***There should be transparency in the appointment process of judges.***

**Australia**

In Australia, the processes for the appointment and removal of federal judicial officers are governed by section 72(i) and section 72(ii) of the Constitution, respectively. The Justices of the High Court and of the other courts created by the Parliament:

(i) are appointed by the Governor General-in-Council.

(ii) shall not be removed except by the Governor-General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity.

In terms of appointment regulations, the appointee must be younger than seventy years of age and must have been a legal practitioner for no less than five years. In practice, the Commonwealth Attorney General will often seek approval from the Prime Minister or Cabinet and sometimes each State's Attorney General before providing a recommendation to the Governor General-in-Council.

***The Northern Territory***

In the Northern Territory, when the Attorney General seeks to appoint a Judge of the Supreme Court, an Advisory Panel will be constituted. The role of the Advisory Panel is to recommend to the Attorney General no less than two people suitable for appointment. There is no requirement for the Panel to advertise for expressions of interest. The Panel consists of the following members:

- A former Judge of the Supreme Court of the Northern Territory, or a former Judge of the Supreme Court of a State or Territory or of the Federal Court, who preferably has had experience in the Northern Territory,
- Solicitor-General for the Northern Territory, and
- CEO of the Department of the Attorney General and Justice.

The Advisory Panel will consult the Chief Justice, President of the Northern Territory Bar Association, and President of the Law Society of the Northern Territory. The President of the Northern Territory Bar Association and President of the Law Society of the Northern Territory should both consult

senior members of the legal profession before their own consultation with the Panel. The Advisory Panel's recommendation will be provided to Cabinet for their consideration. The Attorney General and members of Cabinet may consult with other parties regarding the Panel's recommendation.

***Queensland***

In Queensland, the Judicial Appointments Advisory Panel presents the Attorney General and Minister for Justice with a list of qualified candidates for appointment. The Panel will consist of the chairperson, President of the Bar Association of Queensland, President of the Queensland Law Society, and up to two lawyers who represent community views and offer experience with the judicial system useful in the selection process. Any individual qualified for appointment can submit a formal Expression of Interest. Appointments are based on merit. The Panel's processes are self-determined, but generally include:

- Consideration and assessment of all eligible candidates,
- Consultation with appropriate external sources, and
- A short list of up to eight suitable candidates.

There is informal custom in place in which prior to an appointment, the Attorney General will consult key stakeholders such as respected figures in the legal profession.

***South Australia***

In South Australia, judicial officers are appointed by the Governor of South Australia on the recommendation of the Attorney General. The selection criteria focus on intellectual capacity, personal qualities, an ability to understand and deal fairly, efficiency, and competency in information technology. The eligibility requirements for the Magistrate position include:

- 5 years of experience as a legal practitioner,
- A current CV,
- An application letter addressing the above selection criteria,
- A criminal history check,
- Submission of a declaration of understanding, and
- The names of three referees.

***Tasmania***

In Tasmania, for judicial appointment, the Attorney General will place public advertisements in three Tasmanian daily newspapers, one national

newspaper, and on the Department of Justice website in search for expressions of interest. Expressions of interest are directed to the Secretary of the Justice Department and include a CV as well as the names of three professional referees.

The Attorney General will constitute an assessment panel whose members vary depending on the position being filled. For a Supreme Court vacancy, the panel consists of a representative of a professional legal body chosen by the Attorney General, another nominee of the Attorney General, and the Secretary of the Department of Justice or their nominee. For a Magistrates Court vacancy, the panel consists of the Chief Magistrate or their nominee, the Secretary of the Department of Justice or their nominee, and the Attorney General's nominee.

The assessment panel may consult third parties regarding a candidate's suitability as they so choose. Applicants will either be recommended as suitable or unsuitable for appointment, with a corresponding statement of reasons being provided to the Attorney General. The selection criteria are as follows:

- Experience as a legal practitioner,
- Critical thinking skills,
- Oral and verbal communication skills,
- Court management skills and ability to perform under pressure,
- Capability "of making fair, balanced and consistent decisions according to law without undue delay,"
- Personal quality (maturity, patience, integrity), and
- Commitment to "the proper administration of justice and continuous improvement in court practice."

The Attorney General can confidentially consult with whoever they so choose regarding the panel's recommendations. When the Attorney General has chosen a preferred candidate, the Executive Director of the Law Society of Tasmania, President of the Tasmanian Bar Association and Chair of the Legal Profession Board will be contacted to confidentially seek their opinion. After Cabinet's consideration, the Attorney General will recommend an appointment to the Governor-in-Council, after which the appointment can be announced.

***Victoria***

Judicial officers in Victoria are appointed by the Governor-in-Council on

the recommendation of the Attorney General. The appointment process is controlled by the Department of Justice and Community Safety. All candidates must submit an expression of interest. Candidates are considered based on the following qualities:

- Knowledge and technical skill
- Communication and authority
- Decision making
- Professionalism and integrity
- Efficiency, and
- Leadership and management.

***Western Australia***

In Western Australia, the Attorney General will place public advertisements seeking expressions of interest and nominations for judicial appointments. The Attorney General should, at the very least, consult with the following individuals:

(i) The current Chief Justice (or equivalent) of the Court or jurisdiction to which the appointment is to be made

(ii) The President of the Western Australian Bar Association

(iii) The President of the Law Society of Western Australia

(iv) The President of Women Lawyers of Western Australia Inc, and

(v) The President of the Criminal Lawyers Association.

The Attorney General should set up a selection panel comprised of:

(a) The head of the court or jurisdiction to which the appointment is being made (or their nominee)

(b) A retired senior judicial officer or officers of the State, and

(c) A senior official from the Department of the Attorney General.

The selection panel should base their shortlist of suitable candidates on the legal knowledge and experience, professional qualities, and personal qualities of the candidates. From this shortlist, the Attorney General is expected to seek approval of the appointee from Cabinet.

The **Australasian Institute of Judicial Administration**'s suggested criteria for appointment specifically assess:

- Intellectual capacity,
- Personal qualities,

- An ability to understand and deal fairly,
- Authority and communication skills,
- Efficiency, and
- Leadership and management skills.

**Caribbean Court of Justice**

The Regional Judicial and Legal Services Commission (RJLSC) is responsible for making appointments to the office of Judge of the Caribbean Court of Justice, other than that of President. Interviews for the office of the President are conducted by the RJLSC. Appointments are made by a process that is transparent, competitive and merit based.

The RJLSC comprises:

(a) President of the CCJ

(b) Two persons nominated jointly by the Organization of the Commonwealth Caribbean Bar Association (OCCBA) and the Organization of Eastern Caribbean States (OECS) Bar Association

(c) One chairman of the Judicial Services Commission of a selected Contracting Party, selected in rotation in the English alphabetical order for a period of three years

(d) The Chairman of a Public Service Commission of a Contracting Party selected in rotation in the reverse English alphabetical order for a period of three years

(e) Two persons from civil society nominated jointly by the Secretary-General of the Caribbean Community and the Director-General of the OECS for a period of three years following consultations with regional non-governmental organizations

(f) Two distinguished jurists nominated jointly by the Dean of the Faculty of Law of the University of the West Indies, the Deans of the Faculties of Law of any of the Contracting Parties and the Chairman of the Council of Legal Education and

(g) Two persons nominated jointly by the Bar or Law Association of the Contracting Parties.

Judicial vacancies are advertised via public print and through recruitment agencies throughout the Commonwealth.

### Consultative Council of European Judges[91]

It is essential for the maintenance of the independence of the judiciary that the appointment and promotion of judges are independent and are not made by the legislature or the executive but are preferably made by the Council for the Judiciary.[92]

While it is widely accepted that appointment and promotion can be made by an official act of the Head of State, yet given the importance of judges in society and in order to emphasize the fundamental nature of their function, Heads of State must be bound by the proposal from the Council for the Judiciary. This body cannot just be consulted for an opinion on an appointment proposal prepared in advance by the executive, since the very fact that the proposal stems from a political authority may have a negative impact on the judge's image of independence, irrespective of the personal qualities of the candidate proposed.

Although this appointment and promotion system is essential, it is not sufficient. There must be total transparency in the conditions for the selection of candidates, so that judges and society itself are able to ascertain that an appointment is made exclusively on a candidate's merit and based on his/her qualifications, abilities, integrity, sense of independence, impartiality and efficiency. Therefore, it is essential that, in conformity with the practice in certain States, the appointment and selection criteria be made accessible to the general public by every Council for the Judiciary. The Council for the Judiciary shall also ensure, in fulfilling its role in relation

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[91] Opinion No.10 (2007).

[92] The CCEJ recommended that the Council for the Judiciary should have a mixed composition with a substantial majority of judges or be exclusively composed of judges. Members, whether judges or not, should be selected on the basis of their competence, experience, understanding of judicial life, capacity for discussion, and culture of independence. They should not be active politicians or members of the executive or the legislature. Judge members should be elected by their peers, without any interference from political authorities or judicial hierarchies, through methods guaranteeing the widest representation of the judiciary, while a few may be ex-officio. The non-judge members may be selected from among outstanding jurists, university professors, or citizens of acknowledged status, including persons experienced in areas outside the legal field such as management, finances, IT and social sciences. The selection of non-judge members, with or without a legal experience, should be entrusted to non-political authorities; if they are however elected by the Parliament, they should not be members of Parliament, should be elected by a qualified majority necessitating significant opposition support, and should be persons affording, in the overall composition of the Council for the judiciary, a diverse representation of society.

to the court administration and training in particular, that procedures for judicial appointment and promotion based on merit are opened to a pool of candidates as diverse and reflective of society as a whole as possible.

In addition, where more senior posts are concerned, particularly that of a head of jurisdiction, general profiles containing the specificities of the posts concerned and the qualities required from candidates should be officially disseminated by the Council for the Judiciary in order to provide transparency and accountability over the choice made by the appointing authority. The choice should be based exclusively on a candidate's merits rather than or more subjective reasons, such as personal, political or an association/trade union interests.

**India**

The Supreme Court Collegium is the highest judicial body in the country responsible for the appointment of Judges to the Supreme Court and the appointment and transfer of Judges in the High Courts across the country. In 2017, the Supreme Court decided to publicize the minutes of the meetings of the Collegium on its website.

**Kenya**

The interviews are conducted in public.[93]

**The Lilongwe Principles and Guidelines on the Selection and Appointment of Judicial Officers**

In 2018, the Southern African Chief Justices' Forum adopted the Lilongwe Principles and Guidelines with the aim of improving both the institutional and decisional independence of judiciaries.

The Lilongwe Guidelines include 15 principles to guide the selection and appointment of judicial officers which include the following-

1. The principle of transparency should permeate every stage of the selection and appointment process. This definition of transparency extends to making appointment processes and advertisements known to the public while maintaining publicity throughout the process so as to maintain openness.
2. The selection and appointment authority should be independent and

[93] https://www.jsc.go.ke/wp-content/uploads/2020/04/Judicial_Service_Act_2011.pdf particularly the First Schedule to the Act.

impartial – the guidelines recommend a broad-based selection and appointment body, comprising around 33% judicial officers, as well as members of the legal profession, teachers of law, and lay persons.

3. The process for the selection and appointment of judicial officers shall be fair. The system should be based on merit and not seniority
4. Judicial appointees should exceed minimum standards of competency, diligence, and ethics.
5. Appointments of candidates should be made according to merit.
6. The appointment process should ensure stakeholder engagement at all relevant stages of the process.
7. Objective criteria for the selection of judicial officers should be pre-set by the selection and appointment authority, publicly advertised, and should not be altered during that process.
8. The judicial bench should reflect the diversity of society in all respects, and the selection and appointment authorities may actively prioritize the recruitment of appointable candidates who enhance the diversity of the bench.
9. Candidates shall be sourced according to a consistent and transparent process – it is recommended that candidates should present their curriculum vitae together with documentation containing sufficient detail on the following:
   - health status,
   - publications,
   - employment history,
   - business interests,
   - previous political involvement including membership of political parties,
   - potential conflicts of interest; and
   - disclosure of anything which if discovered after appointment may cause the judiciary embarrassment or bring the judiciary into disrepute.
10. Shortlisting criteria, including how and by whom the shortlisting is done, shall be known prior to the sourcing of candidates.
11. Candidates shortlisted for interview shall be vetted and stakeholders invited to comment on the candidate's suitability for appointment prior to interview. – The Guidelines recommend a vetting procedure that is objective, factual and fair. Anonymous comments on candidates'

suitability may be entertained if they have some foundation taking into account the gravity of the complaint, the credibility of the source, and the reasons for confidentiality. Candidates shall be made aware of adverse comments arising out of the vetting process and stakeholder comment.

12. Interviews should be held for the selection of candidates for appointment to judicial office.
13. The final selection (decision) to recommend for appointment shall be fair, objective and based on weighing the suitability of the candidate for appointment against the criteria set for that appointment. – An emerging best practice is for the development of a ranking and scoring process for assessing candidates. The selection and appointment authority are encouraged to meet before the interview process to decide mathematical weightings of the various criteria according to the needs of the position for appointment, and the needs of the judiciary as a whole. This creates substantive reasons for their recommendations.
14. Formal appointment shall be made constitutionally and lawfully.
15. Provision shall be made for judicial officers to assume office timeously once appointed.

**Nigeria**

Appointments are by the President and State Governors on the recommendation of the National Judicial Council with the approval of the legislature for the heads of the Superior Courts and Justice of the Supreme Court.

The Rules of Procedure for the appointments are published by the National Judicial Council.[94]

**South Africa**

South Africa conducts public interviews, but the power to appoint the Chief Justice and Deputy Chief Justice of the Constitutional Court and the President and Deputy President of the Supreme Court, is vested in the President of the Republic. Section 174 of the Constitution requires him to only "consult" the Judicial Service Commission and the Opposition parties. Other Judges are appointed by the President from a list submitted by the Judicial Service Commission.

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[94] https://njc.gov.ng/procedural-rules
https://njc.gov.ng/press-release

*Principle 14*

***The judiciary should respond to complaints of unethical conduct of judges in a transparent manner.***

## Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct

### 1. Formulation of a Statement of Principles of Judicial Conduct

1.1 The judiciary should adopt a statement of principles of judicial conduct, taking into consideration the Bangalore Principles of Judicial Conduct.

1.2 The judiciary should ensure that such statement of principles of judicial conduct is disseminated among judges and in the community.

1.3 The judiciary should ensure that judicial ethics, based on such statement of principles of judicial conduct, are an integral element in the initial and continuing training of judges.

### 2. Application and Enforcement of Principles of Judicial Conduct

2.1 The judiciary should consider establishing a judicial ethics advisory committee of sitting and/or retired judges to advise its members on the propriety of their contemplated or proposed future conduct.[95]

2.2 The judiciary should consider establishing a credible, independent judicial ethics review committee to receive, inquire into, resolve and determine complaints of unethical conduct of members of

[95] In many jurisdictions in which such committees have been established a judge may request an advisory opinion about the propriety of his or her own conduct. The committee may also issue opinions on its own initiative on matters of interest to the judiciary. Opinions address contemplated or proposed future conduct and not past or current conduct unless such conduct relates to future conduct or is continuing. Formal opinions set forth the facts upon which the opinion is based and provide advice only with regard to those facts. They cite the rules, cases and other authorities that bear upon the advice rendered and quote the applicable principles of judicial conduct. The original formal opinion is sent to the person requesting the opinion, while an edited version that omits the names of persons, courts, places and any other information that might tend to identify the person making the request is sent to the judiciary, bar associations and law school libraries. All opinions are advisory only, and are not binding, but compliance with an advisory opinion may be considered to be evidence of good faith.

the judiciary, where no provision exists for the reference of such complaints to a court. The committee may consist of a majority of judges but should preferably include sufficient lay representation to attract the confidence of the community. The committee should ensure, in accordance with law, that protection is accorded to complainants and witnesses, and that due process is secured to the judge against whom a complaint is made, with confidentiality in the preliminary stages of an inquiry if that is requested by the judge. To enable the committee to confer such privilege upon witnesses, etc., it may be necessary for the law to afford absolute or qualified privilege to the proceedings of the committee. The committee may refer sufficiently serious complaints to the body responsible for exercising disciplinary control over the judge.[96]

**Committee of Ministers of the Council of Europe[97]**

Judges should be guided in their activities by ethical principles of professional conduct. These principles not only include duties that may be sanctioned by disciplinary measures, but offer guidance to judges on how to conduct themselves. These principles should be laid down in codes of judicial ethics which should inspire public confidence in judges and the judiciary. Judges should play a leading role in the development of such codes. Judges should be able to seek advice on ethics from a body within the judiciary.

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[96] In many jurisdictions in which such committees have been established, complaints into pending cases are not entertained, unless it is a complaint of undue delay. A complaint is required to be in writing and signed, and include the name of the judge, a detailed description of the alleged unethical conduct, the names of any witnesses, and the complainant's address and telephone number. The judge is not notified of a complaint unless the committee determines that an ethics violation may have occurred. The identity of the person making the complaint is not disclosed to the judge unless the complainant consents. It may be necessary, however, for a complainant to testify as a witness in the event of a hearing. All matters before the committee are confidential. If it is determined that there may have been an ethics violation, the committee usually handles the matter informally by some form of counselling with the judge. If the committee issues a formal charge against the judge, it may conduct a hearing and, if it finds the charge to be well-founded, may reprimand the judge privately, or place the judge on a period of supervision subject to terms and conditions. Charges that the committee deems sufficiently serious to require the retirement, public censure or removal of the judge are referred to the body responsible for exercising disciplinary control over the judge.

[97] Recommendation CM/Rec(2010)12, art 72-74.

### European Court of Human Rights (ECtHR)

The Court, having regard to Rules 3, 4 and 28 of the Rules of Court, adopt Resolution on Judicial Ethics. This text, which applies to serving members of the Court as well as, where relevant, former and *ad hoc* judges, sets down a series of principles that judges should observe. In case of doubt as to application of these principles in a given situation, a judge may seek the advice of the President of the Court. The President may consult the Bureau if necessary. The President shall report annually to the Plenary Court on the application of these principles.

### Australia

In Australia, in respect of federal courts, legislation has codified the previously informal process of complaint handling by the heads of jurisdiction.

The **Complaints Act 2012** formalizes the existing protocol for complaints to be handled by the head of jurisdiction and aims to support them by providing them the option of establishing a conduct committee in pursuing their investigation.

The **Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012** similarly allows for a conduct commission to be established in light of complaints made against judicial officers, to assist Parliament in its investigation and subsequent decision with regard to removal.

Neither of these Acts apply to the High Court. It has been recommended by the Legal and Constitutional Affairs References Committee that, "the High Court of Australia adopt a written complaint handling policy and make it publicly available, including on its website…"

#### *New South Wales*

In New South Wales, the Judicial Officers Act 1986 provides for an independent body, the Judicial Commission, to receive complaints from the public about the behaviour of judicial officers. Once a complaint has been received it will be referred to either the relevant Head of jurisdiction or to the Conduct Division, or it will be summarily dismissed. If referred to the Conduct Division, it will then be examined and investigated by a panel of two judicial officers (one of whom may be a retired judicial officer) and one of the two community representatives nominated by the government. If a complaint is found by the panel to be either wholly or partially substantiated

and that removal should be considered by Parliament, the Conduct Division must report its opinion to the Governor, and subsequently to the Minister who will lay the report before both Houses of Parliament. The judge may then be removed by the Governor on a decision of both Houses of Parliament.

***Northern Territory***

In the Northern Territory, a complaint against a judge is directed to the Judicial Commission. The Commission has jurisdiction over complaints regarding:

- Unreasonable delay of a decision,
- Inappropriate comments in court,
- Health issues that affect ability to perform official functions, and
- Bullying or sexual harassment.

The Commission may either dismiss the complaint, refer it to the relevant head of jurisdiction with its recommendations, or establish an Investigation Panel for further action.

***Queensland***

In Queensland, the Magistrates Complaints Policy covers judicial conduct and delays in the delivery of reserved judgements. A complaint may be made either by post or email. The policy ensures that members of the public have easy access to information concerning how and where to make a complaint. Complaints are required to be handled in a timely and fair manner.

***South Australia***

In South Australia, the Judicial Conduct Commissioner appointed under the Judicial Conduct Commissioner Act 2015 is an independent official tasked with receiving complaints about the conduct of judicial officers. A complaint can be lodged regarding:

- Any act or omission of the judicial officer, whether occurring in the course of carrying out functions as a judicial officer or not
- Any act or omission of the judicial officer, whether resulting from an illness or incapacity or not, or
- Any act of victimization by the judicial officer.

A complaint should not be lodged merely because of dissatisfaction with a final verdict. A complaint may be made in writing either via an online complaint form or a physical copy of the form. Anyone can make a complaint unless he/she has been declared a vexatious litigant. After a preliminary review by the Commissioner, the complaint may be dismissed, referred to the relevant jurisdiction head, the Office of Public Integrity, the Attorney-General, or, in the most severe instances, Parliament.

### Papua New Guinea

Papua New Guinea has a Judiciary Complaints Committee (JCC) which receives, assesses, and investigates complaints against members of the judiciary (both judicial and non-judicial) and make recommendations to the appropriate authorities within the Judiciary for appropriate action. Complaints may be made regarding unprofessional, unethical or improper conduct of the officer of the judiciary amounting to a breach of the Judicial Code of Conduct, reckless or negligent performance of duties, misbehaviour including acts of insubordination, criminal activity, or any other conduct of an improper, unethical or unprofessional nature.

Once the complaint is received by the Executive Officer, the JCC notifies the complainant of its receipt and advises on the next step. The Executive Officer may then either reject the complaint or refer it onto the JCC to decide whether it should be investigated. The JCC will conduct a preliminary assessment and will either dismiss the complaint or investigate further. An investigation of a complaint involves interactions with, and obtaining statements from, witnesses, obtaining relevant materials, and in the compilation of a report to the JCC. The JCC then considers the matter in light of the report and either dismisses the complaint or refers it to the "appropriate authority" who may take appropriate disciplinary action. These authorities include the Chief Justice, Judges, Secretary NJSS (National Judicial Staff Services), Registrars, and Police.

### Principles on Excellence in High Courts of Appeal[98]

**Principle 1:** The ethical values adopted by the High Courts of Appeal should guide judges in the administration of justice.

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[98] Opinions and different legal traditions of Chief Justices and Chief Prosecutors from three continents and 13 countries regarding the Principles on Excellence in High Court of Appeal are summarized within the framework of these principles (Conference Hall of the Court of Cassation, Ankara/Türkiye, 2 September 2021, https://www.Yargitay.gov.tr/kategori/ 121/mahkememukemmeliyeti - Access: 6.1.2023)

All judicial systems should develop and enforce professional and ethical codes of conduct or standards for members of the judiciary. Complying fully with ethical values and disseminating these values in all parts of the society is a fundamental element that will increase the public trust in the judicial system and judicial quality.

**United Kingdom**

The Judicial Conduct Investigations Office (JCIO) is an independent statutory body that supports the Lord Chancellor and Lord Chief Justice in investigating allegations of judicial misconduct. The office has been in operation Since 2013, and the JCIO has dealt with over 10,000 complaints. If a complainant is dissatisfied with how investigations and complaints were handled by the JCIO, the Judicial Appointments and Conduct Ombudsman will investigate the mishandled case. However, the office has identified several drawbacks in the system such as lengthy, drawn-out investigations and the need to create more openness and facilitate better public understanding of disciplinary decisions.

Accordingly, a series of proposals were introduced in 2022 which emphasized the need for an expedited procedure for less serious cases, a lay majority on disciplinary tribunals, and the publication, for longer periods, of more detailed statements about judicial misconduct.

The above requirements were reflected in the proposals below:

- Proposal 4: Introduction of an expedited procedure for lower-level cases in which the facts are agreed. An expedited process was recommended for cases without any dispute as to the facts and where the JCIO would be satisfied that there would be an agreement between the Lord Chancellor and Lord Chief Justice on the occurrence of the misconduct and that any sanctions would not exceed a formal warning.
- Proposal 6: The rules should make clear that complaints that do not satisfy the criteria for a complaint must be rejected. Communicating clear rules and criteria in such a manner would enhance efficiency and reduce the wastage of time and resources.
- Proposal 7: The rule which sets the time limit for making a complaint: "A complaint must be made within three months of the latest event or matter complained of" should be amended to: "A complaint must be made within three months of the matter complained of". The

JCIO would have to exercise discretion in the acceptance of certain complaints brought forward after three months as some complaints may be the result of the cumulative effects of behaviour over time.

- Proposal 35: Disciplinary statements should contain more detail and officeholders should be able to comment on the proposed wording of statements. This proposal was introduced to increase transparency in the complaint procedure. The disciplinary statement remains the only published record of the outcome of a judicial disciplinary (misconduct) case. As such it provides an important source of information for both the judiciary and the public.

**Türkiye**

The Court of Cassation developed the "Court of Cassation Code of Judicial Conduct" and "Code of Conduct for Public Prosecutors" based on the Bangalore Principles of Judicial Conduct and the Budapest Principles.[99] The "Court of Cassation Code of Conduct for Staff" was prepared as a unique text consistent with the codes of conduct that were adopted for judges and public prosecutors by using these two texts. These three texts are called "Court of Cassation Codes of Conduct". Therefore, an ethics system that does not exclude any public officer at the Court of Cassation is implemented. Facilitator and participant training programmes for judges, public prosecutors and staff are conducted regularly.

Part Three of the Court of Cassation Code of Judicial Conduct establishes the Judicial Ethics Advisory Committee. The Committee provides advisory opinions to judges and public prosecutors on ethical issues. To ensure transparency and accountability, an academician who is not a Court of Cassation staff is a member of the Committee. To ensure gender equality, at least two members of the Committee are female bench members of the Court of Cassation. Since the Committee provides opinions on the ethical behaviour of public prosecutors, one member of the Committee is a public prosecutor. Two rapporteur judges of the Court of Cassation are also members of the Committee. Seven of the eleven members of the Committee who are bench members of the Court of Cassation are elected by the Grand General Assembly of the Court of Cassation. The academician is elected by the other members of the

[99] European Guidelines on Ethics and Conduct for Public Prosecutors was adopted at the European Conference of Prosecutors on 31 May 2005.

Committee. Therefore, the Committee is completely independent of the administrative and disciplinary bodies.[100]

**United States of America**

Each of the 50 states has established a judicial ethics/conduct commission charged with receiving, investigating, and resolving complaints against judicial officers to help foster public confidence in the judiciary and its self-policing system. Judicial conduct commission membership is often made up of a combination of judges, lawyers, and members of the public.

Each of the fifty states (beginning with California in 1960) has established a judicial ethics/conduct authority or commission charged with investigating and prosecuting complaints against judicial officers to help maintain/restore public confidence in the judiciary.

The judicial conduct membership has been established by a provision in the state constitution in twenty-eight states, by a statute in sixteen states, and by rule of court in seven. Judicial conduct commission membership ranges from twenty-eight members (Ohio) to five members (Montana), although most commissions have between seven and eleven members. Commission members are usually judges, lawyers, and members of the public (citizen members who are neither lawyers nor judges). In many states, the members of the public are appointed by the governor, the attorney members by the state bar, and the judicial members by the supreme court.

The Judicial Conduct and Disability Act of 1980 allows any individual to file a complaint against a federal judge.
The Judicial Conference of the United States, the policy-making body of the federal courts, adopted transparency measures that automate access to judges' financial disclosure records. In an effort to increase transparency and public access without compromising safety, the Judicial Conference has authorized the online release of certified financial disclosure reports for judges in a way that will allow immediate access to the reports without endangering filers or their families.

[100] For the legislation regarding the Committee and the decisions of the Committee see-chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.yargitay.gov.tr/documents/ek-1706686144.pdf - Access: 14.1.2023.

*Principle 15*

***There should be transparency in the disciplinary process of judges.***

## Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct

### 15. Discipline of Judges

15.1 Disciplinary proceedings against a judge may be commenced only for serious misconduct.[101] The law applicable to judges may define, as far as possible in specific terms, conduct that may give rise to disciplinary sanctions as well as the procedures to be followed.

15.2 A person who alleges that he or she has suffered a wrong by reason of a judge's serious misconduct should have the right to complain to the person or body responsible for initiating disciplinary action.

15.3 A specific body or person should be established by law with responsibility for receiving complaints, for obtaining the response of the judge and for considering in the light of such response whether or not there is a sufficient case against the judge to call for the initiation of disciplinary action. In the event of such a conclusion, the body or person should refer the matter to the disciplinary authority.[102]

15.4 The power to discipline a judge should be vested in an authority or tribunal which is independent of the legislature and executive, and which is composed of serving or retired judges but which may include in its membership persons other than judges, provided that such other persons are not members of the legislature or the executive.

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[101] Conduct that gives rise to disciplinary sanctions must be distinguished from a failure to observe professional standards. Professional standards represent best practice, which judges should aim to develop and towards which all judges should aspire. They should not be equated with conduct justifying disciplinary proceedings. However, the breach of professional standards may be of considerable relevance, where such breach is alleged to constitute conduct sufficient to justify and require disciplinary sanction.

[102] Unless there is such a filter, judges could find themselves facing disciplinary proceedings brought at the instance of disappointed litigants.

15.5 All disciplinary proceedings should be determined by reference to established standards of judicial conduct, and in accordance with a procedure guaranteeing full rights of defence.

15.6 There should be an appeal from the disciplinary authority to a court.

15.7 The final decision in any proceedings instituted against a judge involving a sanction against such judge, whether held in camera or in public, should be published.

15.8 Each jurisdiction should identify the sanctions permissible under its own disciplinary system, and ensure that such sanctions are, both in accordance with principle and in application, proportionate.

**16. Removal of Judges from Office**

16.1 A judge may be removed from office only for proved incapacity, conviction of a serious crime, gross incompetence, or conduct that is manifestly contrary to the independence, impartiality and integrity of the judiciary.

16.2 Where the legislature is vested with the power of removal of a judge, such power should be exercised only after a recommendation to that effect of the independent authority vested with power to discipline judges.

16.3 The abolition of a court of which a judge is a member should not be accepted as a reason or an occasion for the removal of the judge. Where a court is abolished or restructured, all existing members of that court should be re-appointed to its replacement or appointed to another judicial office of equivalent status and tenure. Where there is no such judicial office of equivalent status or tenure, the judge concerned should be provided with full compensation for loss of office.

**Ireland**

Article 35.4.1 of the Irish Constitution provides that "A judge of the Supreme Court, the Court of Appeal or the High Court shall not be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by Dail Eireann and by Seanad Eireann calling for his removal." That guarantee has been extended by legislation to judges of the Circuit Court and District Court.

### New Zealand

Established by the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 ('The Act'), New Zealand has a Judicial Conduct Commission which consists of a Commissioner and a Deputy, as well as a Judicial Conduct Panel. The Panel is appointed by the Attorney-General in serious cases where a panel is deemed necessary, such as in circumstances where a Judge's conduct may warrant consideration of removal. The Panel would draw two members from the ranks of Judges or retired Judges, or one of the two may be a senior lawyer. The law requires that the Panel should be held in public, although exceptions are made for hearings to be held in private to protect the privacy of the complainant, the Judge, or the public interest. When a complaint is received by the Commissioner, a preliminary examination will be conducted, with the Commissioner making inquiries and looking at any relevant court documents. Following the preliminary examination, the Commissioner will either recommend the Attorney-General to appoint a Judicial Conduct Panel to inquire into the matter, refer the complaint to the relevant Head of Bench (head of jurisdiction), dismiss the complaint, or decide to take no further action. If the matter is referred to the Judicial Conduct Panel, it may recommend the removal of the Judge, which the Attorney-General must agree or disagree with. If the decision is agreed with, it will be referred to Parliament which may recommend to the Governor-General that the Judge be removed from office.

# THE ISTANBUL DECLARATION EVALUATIVE FRAMEWORK

| **Principle 1: Judicial Proceedings must, as a general rule, be conducted in public.** | **Yes** | **No** |
|---|---|---|
| • Is the right of the public to access judicial proceedings recognized by legislation or the constitution? | | |
| • Are any restrictions placed on the right of the media to attend and report on judicial proceedings? | | |
| • Have measures been taken to ensure that there is sufficient seating space and other appropriate facilities in courtrooms for the public? | | |
| • Are adequate facilities provided for the attendance of members of media? | | |
| • Is information of the time and venue of judicial proceedings made available in advance to the public? | | |
| • Does the court publicize its cause list or schedule of cases in advance? | | |
| • Are the grounds on which the public and/or the media may legitimately be excluded from access to the whole or part of judicial proceedings provided for by law? | | |
| • Is the judge required to publicly state the reasons for any such exclusion? | | |

| **Principle 2: The judicial system should ensure easy access to court premises and to information.** | **Yes** | **No** |
|---|---|---|
| • Is the availability of public transportation considered when establishing a courthouse? | | |
| • Have facilities such as mobile courts or video conferencing been introduced to meet the needs of persons who are physically unable to attend court proceedings? | | |
| • Have information counters or customer service desks been installed in courthouses? | | |
| • Are schedules of hearings clearly posted at the court entrance? | | |
| • Are user guides, posters, and other informational material available in simple, clear, and accessible formats? | | |
| • Has a resource centre been established to provide single-window service delivery? | | |
| • Have steps been taken to ensure that court personnel can speak the language of court-users? | | |
| • Are comfortable waiting areas provided for court users, and appropriate security for witnesses? | | |
| • Are suitable facilities available for special-need court users such as children, victims of sexual violence or domestic violence, and special-need users? | | |
| • Is there a management training programme for judges and court personnel? | | |
| • Is there a public website containing information useful to court users such as court sitting times, courthouse guides and relevant case information? | | |

| **Principle 3: The judiciary should facilitate access to the judicial system.** | **Yes** | **No** |
|---|---|---|
| • Do the courts provide potential court users with standard, user-friendly forms? | | |
| • Are court users able to download forms from the internet and make online payment of court fees? | | |
| • Has the office of Public Defender, whose intervention may be sought in respect of any criminal matter, been established? | | |
| • Is the court able to require an attorney to provide pro bono services to a litigant who is unable to afford legal representation in court? | | |
| • Does the court appoint "a friend of the court" (amici curiae) when a litigant is unrepresented by counsel? | | |
| • When circumstances warrant, will a court permit an appropriate legally unqualified person to assist a litigant in court? | | |
| • Are Legal Aid Clinics available to provide legal services to indigent litigants? | | |
| • Is a multi-door courthouse approach implemented by offering alternate dispute resolution processes, such as mediation, arbitration, conciliation, etc.? | | |

| **Principle 4: The judiciary should provide court-users with translation and interpretation facilities, free of charge.** | **Yes** | **No** |
|---|---|---|
| • Does a court ensure at the commencement of proceedings that the parties understand the language in which the proceedings will be conduct? | | |
| • Does the court provide the free assistance of an interpreter if a court user, or a witness, does not understand the language in which proceedings will be conducted? | | |
| • Does the court provide facilities for the translation of relevant documents? Is that service free? | | |

| **Principle 5: The judiciary should ensure transparency in the assignment of cases.** | **Yes** | **No** |
|---|---|---|
| • Has a system been established by law or rules of court for allocating and assigning cases to judges that is predetermined and both objective and transparent? | | |
| • Is such system based on alphabetical or chronological or other random selection basis? | | |
| • Is such system made known to lawyers and other court users? | | |
| • Are any other factors taken into consideration in the allocation of cases to judges? | | |
| • Does the law or rules of court prescribe the reasons and procedure (other than illness or conflict of interest) for the withdrawal of a case from a judge? Will such reasons be notified to the parties? | | |
| • Has a system been established to require a judge, at the time of his initial appointment and thereafter annually, to declare to the court any affiliations, outside activities and other non-financial interests? | | |
| • Has a system been established to ensure that a judge discloses to the parties to a case, and their legal representatives, any real or potential conflicts of interest that might lead a reasonable person to question the judge's ability to be fair and objective in the matter before court? | | |

| **Principle 6: The judiciary should ensure transparency in the delivery of justice.** | **Yes** | **No** |
|---|---|---|
| • Are judgments delivered in public? | | |
| • Is a judge required to state in his/her judgment the facts, the law, and the legal reasoning that justifies the decision? | | |
| • Has a system been established to provide easy access to information relating to judicial proceedings, both pending and concluded, including judgments, pleadings, motions, and evidence? | | |
| • Does the system recognize the right of an individual to access information relating to judicial proceedings other than evidentiary documents that have not yet been admitted in evidence? | | |
| • Is the judiciary required to regularly publish information regarding court caseload statistics and case clearance rates? | | |
| • Is the judiciary required to make publicly available information on budget-related data, such as collection of court fees and use of budgetary allocation? | | |

| **Principle 7: The judiciary should have supervisory powers over executive detention.** | **Yes** | **No** |
|---|---|---|
| • Is there a system of structured prison visits by judges to ensure the independent oversight of administrative or executive detention? | | |
| • Are persons subjected to administrative or executive detention brought before a judge? | | |
| • Are the authorities required to disclose to a court the reasons and the legal justification for the administrative or executive detention of a person? | | |
| • Is a court entitled to order the release of a person held in administrative or executive detention if the authorities fail to provide adequate factual and legal justification for such detention? | | |
| • Is the writ of *habeas corpus* available in respect of persons subjected to administrative or executive detention? | | |

| **Principle 8: The judiciary should ensure that judicial decisions of the superior/appellate courts are regularly published.** | **Yes** | **No** |
|---|---|---|
| • Are the decisions and judgments of the superior/ appellate courts published regularly on an official website to enable court users to access such material? | | |
| • Are the judgments of the superior/appellate courts published regularly in law reports that are available to the legal profession and law schools? | | |
| • Are scholarly articles from law reviews and law journals published on a publicly available data base? | | |
| • Are law schools encouraged to review and critique the decisions and judgments of the superior/appellate courts and to publish such reviews and critiques? | | |
| • Are new laws published regularly on an official website? | | |

| **Principle 9: The judiciary should promote programmes to orientate students on the judicial process.** | **Yes** | **No** |
|---|---|---|
| • Are there regular organized student visits to courts? | | |
| • Are there internship programmes to enable students, whether at secondary or tertiary levels, to familiarize themselves with the functioning of the courts? | | |
| • Do judges participate in classroom appearances or in the active teaching of judicial procedures? | | |

| **Principle 10: The judiciary should initiate and/or support outreach programmes designed to educate the public on the role of the justice system.** | **Yes** | **No** |
|---|---|---|
| • Does the judiciary interact with court users to discuss and resolve problems they may have experienced? | | |
| • Does the judiciary hold town hall meetings with the community? | | |
| • Does the judiciary participate in radio and television programmes to disseminate information on the functioning of the judiciary, its civic role and judicial processes? | | |
| • Does the judiciary disseminate awareness-raising material such as short pamphlets that provide basic and useful information on civil and criminal procedures, and on matters such as arrest, detention, and bail? | | |

| **Principle 11: The judiciary should afford access and appropriate assistance to the media to enable it to perform its legitimate function of informing the public about judicial proceedings, including decisions.** | **Yes** | **No** |
|---|---|---|
| • Are press offices established in the courts to facilitate accurate media coverage of judicial proceedings? | | |
| • Do court personnel assist the media in accurate reporting by providing information about judicial decisions and legal issues? | | |
| • Has the judiciary taken the initiative to ensure that journalists are provided with training that includes basic knowledge about court structure, court procedures, methods of accessing court information, and legal issues? | | |

| **Principle 12: The judiciary should assess public satisfaction with the delivery of justice, and thereby seek to promote the quality of justice.** | **Yes** | **No** |
|---|---|---|
| • Have Public Complaints Committees been established in courts, comprising judges, attorneys, and citizens? | | |
| • Have Public Complaints Boxes been installed in the courts? | | |
| • Is the "Open Door" policy for complaints adopted in courts to enable court users to access the Chief Judge and/or the Registrar? | | |
| • Are Court User Committees established in the courts? | | |
| • Do judges and court personnel conduct regular reviews and analyses of court user complaints, and develop responses when warranted? | | |
| • Is performance evaluation of court personnel undertaken on a regular basis? | | |
| • Do judges and court personnel conduct regular case audits to ensure the timely disposition of cases? | | |
| • Are court inspections conducted regularly on an unscheduled basis? | | |
| • Are surveys of court-users and other stakeholders conducted on a regular basis to identify systemic challenges or weaknesses? | | |
| • Does the judiciary actively encourage critical assessments of its performance by academics? | | |
| • Does the judiciary publish an annual report of its activities, identifying difficulties encountered and measures taken to improve the functioning of the judicial system? | | |

| **Principle 13: There should be transparency in the appointment of judges.** | **Yes** | **No** |
|---|---|---|
| • Has a merit-based recruitment and promotion process that reflects the diversity of society been established? | | |
| • Are judicial vacancies advertised with information on the qualities, qualifications, and experience required from candidates? | | |
| • Is the list of vacant judicial offices, and the list of candidates who have applied or been nominated for such offices, published? | | |
| • Is there an independent body established for the purpose of appointing, or nominating persons for appointing, to judicial office? | | |
| • How, and by whom, are the members of such body selected and appointed? | | |
| • Is civil society or the community represented on such body? | | |
| • Do the public and the media have access to candidate interviews by the appointing or the nominating body? | | |

| **Principle 14: The judiciary should respond to complaints of unethical conduct of judges in a transparent manner.** | **Yes** | **No** |
|---|---|---|
| • Has the judiciary developed and promulgated rules or standards of professional and ethical conduct of judges? | | |
| • Does the code of conduct take into consideration the Bangalore Principles of Judicial Conduct? | | |
| • Has each judge been provided with a copy of such Code together with related material such as a Commentary? | | |
| • Has the Code of Judicial Conduct been disseminated in the community or otherwise made publicly available? | | |
| • Has a mechanism or procedure been established for individual judges to obtain advice on the propriety of proposed action? | | |
| • Have courses or modules on judicial ethics been developed for use in the initial training of judges? | | |
| • Are judges required to make regular declarations of their assets and liabilities? | | |
| • Are judges required to declare affiliations, outside activities, and other non-financial interests? | | |
| • Are such declarations made available to the public and/ or for reference in the court registry by litigants or their legal representatives? | | |
| • Has a mechanism or procedure been established to receive and inquire into complaints of unethical conduct against members of the judiciary? | | |
| • Is that mechanism or procedure within the judiciary or external from it? | | |
| • Does that mechanism or procedure contain sufficient lay representation (for example, lawyers, academics, and representatives of the community)? | | |
| • What transparency measures are in place in that mechanism or procedure to promote public confidence in the process of addressing such complaints? | | |

| **Principle 15: There should be transparency in the disciplinary process of judges.** | **Yes** | **No** |
|---|---|---|
| • Has conduct that may give rise to disciplinary sanctions be defined? | | |
| • Has the procedure for making a complaint against a judge in respect of his or her professional capacity been formulated? | | |
| • Has that procedure been made known to the public? | | |
| • Has an independent disciplinary body been established to receive and investigate complaints against a judge in his or professional capacity? | | |
| • Is civil society or the community represented on that body? | | |
| • Is the investigation process confidential? | | |
| • Has a procedure been established to ensure that a complainant is kept informed of the progress of the investigation? | | |
| • Is the final decision in a disciplinary proceeding against a judge that results in a sanction published or otherwise made public? | | |

# INDEX

# INDEX OF THE COUNTRIES

İstanbul Bildirgesi
İstanbul Declaration