

B. Independence of the Bar/Legal Profession

1. Institutional/Collective Independence

a. Access

The right to counsel is guaranteed in the *Canadian Charter of Rights and Freedoms*.³²⁰ The accused must be afforded "a reasonable opportunity to retain and instruct counsel without delay", including the use of a telephone or other facility to make contact with counsel.³²¹ The accused must make a "reasonably diligent" effort to contact counsel,³²² and cannot insist upon the services of a lawyer who is unable or unwilling to represent him.³²³ Where duty counsel and legal aid are available, the accused must be informed of these services.³²⁴ It would appear that where an accused cannot afford counsel, legal aid must be provided.³²⁵

b. Regulation

The legal profession in Canada is governed by twelve law societies. The societies are established by provincial statutes, and are therefore subject to legislative change by the provincial or territorial legislatures. Otherwise, however, the law societies are largely self-governing and autonomous in the exercise of delegated authority. To practice law and be heard before a provincial court, a lawyer must be licensed by and be a member of the provincial law society. Barristers and solicitors of any province are allowed to practice before the federal courts.³²⁶

320 s. 10(b) states: Everyone has the right on arrest or detention... (b) to retain and instruct counsel without delay and to be informed of that right. See Hogg, *supra* note 235 at 47-6 to 47-13.

321 *R. v. Manninen* [1987] 1 S.C.R. 1233, 1241.

322 *R. v. Smith* [1989] 2 S.C.R. 368.

323 *Re R. and Speid* (1983) 43 O.R. (2d) 596 (C.A.)

324 *R. v. Brydges* [1990] 1 S.C.R. 190.

325 *R. v. Rowbotham* (1988) 63 C.R. (3d) 113 (Ont. C.A.). This case held that lacking the means to employ counsel violated the accused's s. 7 and s. 11(d) *Charter* rights. Section 7 reads "Everyone has the right to life, liberty, and security of the person and the right not to be deprived thereof except in accordance with the principles of natural justice." Section 11(d) reads "Any person charged with an offence has the right... to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal."

326 For example, *The Supreme Court Act*, R.S.C. 1985, c. S-26, ss. 22-24 states: "22. All persons who are barristers or advocates in a province may practice as barristers, advocates and counsel in the Court.

c. Membership

The *Canadian Charter of Rights and Freedoms* has been used on two occasions to secure greater participation in the legal profession. In one case,³²⁷ a citizenship requirement for entry into the profession in British Columbia was struck down on the basis that it violated the equality rights³²⁸ of an entire class of persons (permanent residents who were non-citizens) and that the violation could not be justified as a reasonable limit demonstrably justified in a free and democratic society.³²⁹ The Supreme Court of Canada held that the requirement was not carefully tailored enough to meet the purported objectives of the requirement: familiarity with Canada and its laws, a commitment to Canadian society, and honorably and conscientiously carrying out a lawyer's public duties.

In the second case,³³⁰ two law society rules were found to violate the mobility rights³³¹ of members of the Alberta Bar. One rule prohibited the joint practice of law in Alberta between bar members who were active in and ordinarily resident in Alberta, and members who were not active and resident in Alberta. A second rule prohibited members from being a partner or an associate with more than one law firm. The rules were enacted to discourage law firms in one province from establishing branch offices in Alberta. The Supreme Court of Canada found that the rules impaired the ability of lawyers to maintain viable associations for the purpose of obtain-

23. All persons who are attorneys or solicitors of the superior courts in a province may practice as attorneys, solicitors and proctors in the Court.

24. All persons who may practice as barristers, advocates, counsel, attorneys, solicitors or proctors in the Court are officers of the Court.

327 *Andrews v. Law Society of British Columbia* [1989] 1 S.C.R. 143; 56 D.L.R. (4th) 1.

328 *Canadian Charter of Rights and Freedoms*, s.15(1) states: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, color, religion, sex, age or mental or physical disability."

329 *Canadian Charter of Rights and Freedoms*, s.1 states: "The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

330 *Black v. Law Society of Alberta* [1989] 1 S.C.R. 591; 58 D.L.R. (4th) 317.

331 *Canadian Charter of Rights and Freedoms*, s.6(2)(b) states: "Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right...to pursue the gaining of a livelihood in any province."

ing a livelihood, and would make it practically impossible for a person to practice law in Alberta without taking up residence in the province.

2. Individual/Personal Independence

a. Representation

Lawyers are free to represent clients on any matter that they are competent to handle, subject to such ethical considerations as conflict of interest.³³²

b. Privileged Communications

Solicitor-Client privilege is recognized in common law, and protected in the federal and provincial evidence acts.³³³ All information that must be provided in order to obtain legal advice and that is given in confidence for that purpose enjoys the privilege of confidentiality. The privilege arises as soon as the client takes the first steps to obtain legal advice.³³⁴

VI. THE RESPONSE - INTERNATIONAL RECOMMENDATIONS

The protection of lawyers and judges, and of the independence of the judiciary, has long been the subject of international consideration. The International Bar Association adopted a "Code of Minimum Standards of Judicial Independence" in 1982 (attached as Annex I). In the same year, the Law Association for Asia and the Western Pacific (LAWASIA) debated the "Tokyo Principles on the Independence of the Judiciary in the LAWASIA

332 In commenting on the right of Canadian lawyer Douglas Christie to represent an individual charged with "hate crimes" under the Canadian *Criminal Code*, the general counsel of the Canadian Civil Liberties Association, Alan Borovoy, emphasized the distinction between the lawyer as advocate and as citizen. He stated that "...we're so concerned that lawyers must feel free to defend the rights of unpopular people and that is certainly important to a civil liberties organization. What we said was lawyers, like everyone else, must have the right not only to defend their client's rights, but also to endorse their views. but the moment they go beyond the mere defence of their client's rights to endorsing their client's views, then the rest of society is entitled at that point to judge the lawyers not as lawyers but as citizens expressing those views. So at that point, we're entitled to treat them as we would treat their clients"; quoted in *Canadian Lawyer*, Vol. 14(8), November, 1990.

333 For example, under s. 30 of the *Canada Evidence Act*, R.S.C. 1985, c. E-5, business records made in the ordinary course of business may be admitted as evidence, but "(10) Nothing in this section renders admissible in evidence in any legal proceeding ... such part of any record as is proved to be ... a record made in the course of obtaining or giving legal advice or in contemplation of a legal proceeding."

334 *Descoteaux v. Mierzewski* [1982] 1 S.C.R. 860, 141 D.L.R. (3d) 590.

Region".³³⁵ In 1983, the First World Conference on the Independence of Justice³³⁶ adopted the "Universal Declaration on the Independence of Justice" (attached as Annex II). In 1985, the Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders adopted "Basic Principles on the Independence of the Judiciary" welcomed by the General Assembly that same year (attached as Annex III). In 1990, the Eighth UN Congress adopted "Basic Principles on the Role of Lawyers", welcomed by the General Assembly in that year (attached as Annex IV). In 1991, the Inter-American Commission on Human Rights published an interim report, including recommendations (attached as Annex V) on "Measures Necessary to Enhance the Autonomy, Independence and Integrity of the Members of the Judicial Branch". And the Federacion Interamericana de Abogados, in its Resolution 13 adopted in April, 1993, "Study of the Essential Conditions that Guarantee the Independence and Efficiency of the Judiciary" (attached as Annex VI), urged states of the hemisphere to critically examine the norms that must be respected to ensure judicial independence. Various international academic associations have also addressed the topic.³³⁷ While not every precept of each of these instruments must be implemented to achieve independence of the judiciary, the documents are indicative of the factors considered relevant.

VII. CONCLUSIONS

That the independence of the judiciary, and the protection of lawyers and judges in the exercise of their functions, is essential to a functioning legal system, to the Rule of Law, to the effective exercise of administrative and constitutional review, and to enforcing human rights, is beyond dispute.

Such international instruments as the UN Basic Principles on the Independence of the Judiciary and Basic Principles on the Role of Lawyers, and the Inter-American Commission on Human Rights' Measures Necessary to Enhance the Autonomy, Independence and Integrity of the Members of the Judicial Branch comprehensively codify the obligations on

335 Reprinted in Shetreet, *supra* note 99.

336 Co-sponsored by the Canadian Judicial Council, the Canadian Judges Conference, the Canadian Association of Provincial Court Judges, the Canadian Bar Association, the Royal Society of Canada, the Canadian Institute for the Administration of Justice, and the Canadian Section of the International Commission of Jurists, with the support of the Governments of Canada and of Quebec.

337 Including the XIth International Congress of the Academy of Comparative Law and the VIIth Congress of the International Society of Procedural law (Wuerzburg); see Shetreet, *supra* note 99.

governments to ensure this independence and protection. The IBA Code of Minimum Standards of Judicial Independence and the Universal Declaration on the Independence of Justice reflect the views of leading publicists in the field.

This study reveals, however, that the independence of the judiciary continues to be threatened throughout the Americas, and that the response in member countries has been less than consistent. Information is not, however, readily available on the actual situation in all member countries. It has long been recognized throughout the UN and OAS systems that publicity and dissemination of information³³⁸ and regular reporting are essential means to ensure respect for internationally-agreed principles. A reporting and review process

...assumes that there is a need for a constructive dialogue between the State concerned on the one hand, and an independent international group of experts on the other. Reporting is not something that is imposed upon an unwilling State, nor is it something designed as an adversarial process. Rather it is premised on the assumptions first that every State is an actual or potential violator of human rights (no matter how good its intentions might be) and second that a degree of routinized international accountability is in the best interests of the State itself, of its citizens, and of the international community.³³⁹

On August 26, 1993, the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities of the UN Human Rights Commission recommended the creation of a monitoring mechanism on the independence and impartiality of the judiciary, particularly with regard to judges and lawyers, as well as court officials, and the nature of potential threats to this independence and impartiality.³⁴⁰ In July, 1994, a UN Eco-

338 See "Report of the Human Rights Committee: Revised Guidelines for the Preparation of State Party Reports", UN GAOR, 46th Session, Suppl. No 40, at 207, UN Doc A/46/40 (1991), which requests information on "...whether any special efforts have been made to promote awareness among the public and the relevant authorities of the rights contained in the various human rights instruments".

339 Alston, "The Purposes of Reporting", in *Manual on Human Rights Reporting*, UN Doc. HR/Pub/91/1, UN Sales No. E.91.xiv1 (1991) at 13, quoted by Ginger, "The Energizing Effect of Enforcing a Human Rights Treaty", 42 DePaul L. Rev. 1341, at 1366. See Schwelb, "Civil and Political Rights: The International Measures of Implementation", 62 AJIL 827 (1968); Mower, "The Implementation of the UN Covenant on Civil and Political Rights", 10 *Revue des Droits de L'Homme* 271 (1970); Note, "Reporting Under the Covenant on Civil and Political Rights: The First Five Years of the Human Rights Committee", 76 AJIL 142 (1982).

340 Resolution 1993/39, based on the final report of the Special Rapporteur of the Sub-Commission, document E/CN.4/Sub.2/1992/25 and Add.1.

nomie and Social Council decision approved a resolution of the Human Rights Commission to appoint a special rapporteur on the subject.³⁴¹

It is therefore recommended that the Inter-American Juridical Committee resolve to recommend that the Committee on Political and Juridical Affairs:

1. propose that the General Assembly:
 - (a) call the attention of member states to the basic principles on the independence of the judiciary and on the role of lawyers, as set out in the UN Basic Principles on the Independence of the Judiciary and Basic Principles on the Role of Lawyers, and the Inter-American Commission on Human Rights' Measures Necessary to Enhance the Autonomy, Independence and Integrity of the Members of the Judicial Branch and supported by the International Bar Association Code of Minimum Standards of Judicial Independence, the Universal Declaration on the Independence of Justice;
 - (b) urge member states to bring to the attention of judges, lawyers, members of the executive and the legislature and the public in general the international instruments in this field; and
 - (c) encourage all member states give priority to efforts to respect these principles;
2. maintain under continuous review developments in member countries that may threaten the independence of the judiciary or that impede adequate protection of judges and lawyers in the exercise of their functions, through:
 - (a) developing a system for annual reporting by member countries on such threats and on steps taken to enhance independence and protection, as well as for receipt of information from non-governmental organizations on these matters;
 - (b) review of these reports by an appropriate organ of the Organization; and
 - (c) publishing, in an appropriate summary form, the results of such reports and reviews.

341 ECOSOC Decision 1994/251 of 22 July, 1994, approving Commission on Human Rights Resolution 1994/41 of 4 March, 1994. Dr. Dato' Param Curamaswamy of Malaysia has now been named as Special Rapporteur.

ANNEX I

INTERNATIONAL BAR ASSOCIATION CODE OF MINIMUM STANDARDS OF JUDICIAL INDEPENDENCE.

The Jerusalem Approved Standards as adopted in the Plenary Session of the 18th IBA Biennial Conference held on Friday, 22 October 1982, in New Delhi, India.

A. Judges and the Executive

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

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

(c) Substantive independence means that in the discharge of his judicial functions, a judge is subject to nothing but the law and the commands of his conscience.
2. The judiciary as a whole should enjoy autonomy and collective independence vis-à-vis the Executive.
3. (a) Participation in judicial appointments and promotions by the Executive or Legislature is not inconsistent with judicial independence, provided that appointments and promotions of judges are vested in a judicial body, in which members of the judiciary and the legal profession form a majority.

(b) Appointments and promotions by a non-judicial body will not be considered inconsistent with judicial independence in countries where, by long historic and democratic tradition, judicial appointments and promotion operate satisfactorily.
4. (a) The Executive may participate in the discipline of judges, only in referring complaints against judges, or in the initiation of disciplin-

ary proceedings, but not the adjudication of such matters. The power to discipline or remove a judge must be vested in an institution which is independent of the Executive.

- (b) The power of removal of a judge should preferably be vested in a judicial tribunal.
 - (c) The Legislature may be vested with the powers of removal of judges, preferably upon a recommendation of a judicial commission.
5. The Executive shall not have control over judicial functions.
 6. Rules of procedure and practice shall be made by legislation or by the Judiciary in cooperation with the legal profession, subject to parliamentary approval.
 7. The state shall have a duty to provide for the execution of judgments of the Court. The Judiciary shall exercise supervision over the execution process.
 8. Judicial matters are exclusively within the responsibility of the Judiciary, both in central judicial administration and in court level judicial administration.
 9. The central responsibility for judicial administration shall preferably be vested in the Judiciary or jointly in the Judiciary and the Executive.
 10. It is the duty of the state to provide adequate financial resources to allow for the due administration of justice.
 11.
 - (a) Division of work among judges should ordinarily be done under a predetermined plan, which can be changed in certain clearly defined circumstances.
 - (b) In countries where the power of division of judicial work is vested in the chief justice, it is not considered inconsistent with judicial independence to accord to the chief justice the power to change the predetermined plan for sound reasons, preferably in consultation with the senior judges when practicable.
 - (c) Subject to (a), the exclusive responsibility for case assignment should be vested in a responsible judge, preferably the President of the Court.

12. The power to transfer a judge from one court to another shall be vested in a judicial authority and preferably shall be subject to the judge's consent, such consent not to be unreasonably withheld.
13. Court services should be adequately financed by the relevant government.
14. Judicial salaries and pensions shall be adequate, and should be regularly adjusted to account for price increases independently of Executive control.
15. (a) The position of the judges, their independence, their security, and their adequate remuneration shall be secured by law.

(b) Judicial salaries cannot be decreased during the judges' service except as a coherent plan of an overall public economic measure.
16. The Ministers of the government shall not exercise any form of pressure on judges, whether overt or covert, and shall not make statements which adversely affect the independence of individual judges, or of the Judiciary as a whole.
17. The power of pardon shall be exercised cautiously so as to avoid its use as an interference with judicial decision.
18. (a) The Executive shall refrain from any act or omission which pre-empt the judicial resolution of a dispute, or frustrates the proper execution of a court judgment.

(b) The Executive shall not have the power to close down, or suspend, the operation of the court system at any level.

B. Judges and the Legislature

19. The Legislature shall not pass legislation which retroactively reverses specific court decisions.
20. (a) Legislation introducing changes in the terms and conditions of judicial services shall not be applied to judges holding office at the time of passing the legislation, unless the changes improve the terms of service.

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

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

C. Terms and Nature of Judicial Appointments

22. (a) Judicial appointments should generally be for life, subject to removal for cause and compulsory retirement, at an age fixed by law at the date of appointment.

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

(b) The institution of temporary judges should be avoided as far as possible except where there exists a long historic democratic tradition.
24. The number of the members of the highest court should be rigid and should not be subject to change, except by legislation.
25. Part-Time judges should be appointed only with proper safeguards.
26. Selection of judges shall be based on merit.

D. Judicial Removal and Discipline

27. The proceedings for discipline and removal of judges should ensure fairness to the judge, and adequate opportunity for hearing.
28. The procedure for discipline should be held in camera. The judge may however request that the hearing be held in public, subject to a final and reasoned disposition of this request by the Disciplinary Tribunal. Judgments, in disciplinary proceedings, whether held in camera or in public, may be published.
29. (a) The grounds for removal of judges shall be fixed by law and shall be clearly defined.

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

30. A judge shall not be subject to removal unless, by reason of a criminal act or through gross or repeated neglect or physical or mental incapacity, he has shown himself manifestly unfit to hold the position of judge.
31. In systems where the power to discipline and remove judges is vested in an institution other than the Legislature, the tribunal for discipline and removal of judges shall be permanent, and be composed predominantly of members of the Judiciary.
32. The head of the court may legitimately have supervisory powers to control judges on administrative matters.

E. The Press, the Judiciary and the Courts

33. It should be recognized that judicial independence does not render the judges free from public accountability, however, the press and other institutions should be aware of the potential conflict between judicial independence and excessive pressure on judges.
34. Subject to Standard 41, judges may write articles in the press, appear on television and give interviews to the press.
35. The press should show restraint in publications on pending cases where such publication may influence the outcome of the case.

F. Standards of Conduct

36. Judges may not, during their term of office, serve in Executive functions, such as ministers of the government, nor may they serve as members of the Legislature or of municipal councils, unless by long historical traditions these functions are combined.
37. Judges may serve as chairmen of committees on inquiry in cases where the process requires skill of fact-finding and evidence taking.
38. Judges shall not hold positions in political parties.
39. A judge, other than a temporary judge, may not practice law during his term of office.
40. A judge should refrain from business activities, except his personal investments, or ownership of property.
41. A judge should always behave in a manner as to preserve the dignity of this office and the impartiality and independence of the Judiciary.

42. Judges may be organized in associations designed for judges, for furthering their rights and interests as judges.
43. Judges may take collective action to protect their judicial independence and to uphold their position.

G. Securing Impartiality and Independence

44. A judge shall enjoy immunity from legal actions, and the obligation to testify concerning matters arising in the exercise of his official functions.
45. A judge shall not sit in a case where there is a reasonable suspicion of bias or potential bias.
46. A judge shall avoid any course of conduct which might give rise to an appearance of partiality.

H. The Internal Independence of the Judiciary

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

ANNEX II

UNIVERSAL DECLARATION ON THE INDEPENDENCE OF JUSTICE

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

Preamble

Whereas justice constitutes one of the essential pillars of liberty;

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

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

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

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

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

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

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

Whereas all those institutions, national and international, must, within the scope of their competence, seek to promote the lofty objectives set out

in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Optional Protocol to the latter Covenant and other pertinent international instruments, objectives which embrace the independence of the administration of the justice;

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

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

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

I. International Judges

Definitions

1.01 In this chapter:

- (a) "judges" means international judges and arbitrators;
- (b) "court" means an international court or tribunal of universal, regional, community of specialized competence.

Independence

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

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

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

- 1.05 Judges shall enjoy freedom of thought and, in the exercise of their duties, shall avoid being influenced by any considerations other than those of international justice.
- 1.06 The ethical standards required of national judges in the exercise of their judicial functions shall apply to judges of international courts.
- 1.07 The principles of judicial independence embodied in the Universal Declaration of Human Rights and other international instruments for the protection of human rights shall apply to judges.
- 1.08 Judges shall promote the principle of the due process of law as being an integral part of the independence of justice.
- 1.09 No reservation shall be made or admitted to treaty provisions relating to the fundamental principles of independence of the judiciary.
- 1.10 Neither the accession of a state to the statute of a court nor the creation of new international courts shall affect the validity of these fundamental principles.

Appointment

- 1.11 Judges shall be nominated and appointed, or elected in accordance with governing constitutional and statutory provisions which shall, if possible, not confine the power of nomination to governments or make nomination dependent on nationality.
- 1.12 Only a jurist of recognized standing shall be appointed or elected to be a judge of an international court.
- 1.13 When the statute of a court provides that judges shall be appointed on the recommendation of a government, such appointment shall not be made in circumstances in which that government may subsequently exert any influence upon the judge.

Compensation

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

Immunities and Privileges

- 1.15 Judges shall enjoy privileges and immunities, facilities and prerogatives, no less than those conferred upon chiefs of diplomatic missions under and recognized by the Vienna Convention on Diplomatic Relations. Only the court concerned may lift these immunities.
- 1.16 Judges shall not be liable for acts done in their official capacity.
- 1.17 (a) In view of the importance of secrecy of judicial deliberations to the integrity and independence of the judicial process, judges shall respect secrecy in, and in relation to their judicial deliberations;
- (b) States and other external authorities shall respect and protect the secrecy and confidentiality of the courts' deliberations at all stages.

Discipline and Removal

- 1.18 All measures of discipline and removal relating to judges shall be governed exclusively by the statutes and rules on their courts, and be within their jurisdiction.
- 1.19 Judges shall not be removed from office, except by a decision of the other members of the court and in accordance with its statute.

Judges Ad Hoc and Arbitrators

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

II. National Judges

Objectives and Functions

- 2.01 The objectives and functions of the judiciary shall include:
- (a) to administer the law impartially between citizen and citizen, and between citizen and the state;
- (b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights;
- (c) to ensure that all peoples are able to live securely under the rule of law.

Independence

- 2.02 Judges individually shall be free, and it shall be their duty, to decide matters before them impartially, in accordance with their assessment of the facts and their understanding of the law and without any restrictions, influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
- 2.03 In the decision-making process, judges shall be independent vis-à-vis their judicial colleagues and superiors. Any hierarchical organization of the judiciary and any difference in grade or rank shall in no way interfere with the right of the judge to pronounce his judgment freely.
- 2.04 The judiciary shall be independent of the Executive and Legislative.
- 2.05 The judiciary shall have jurisdiction, directly, or by way of review, over all issues of a judicial nature.
- 2.06 (a) No ad hoc tribunals shall be established;

(b) Everyone shall have the right to be tried expeditiously by the established ordinary courts or judicial tribunals under law, subject to review by the courts;

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

(d) In such times of emergency:
 - I. Civilians charged with criminal offenses of any kind shall be tried by ordinary civilian courts, expanded where necessary by additional competent civilian judges;
 - II. Detention of persons administratively without charge shall be subject to review by ordinary courts by way of habeas corpus or similar procedures, so as to insure that the detention is lawful, as well as to inquire into any allegations of ill treatment;
(e) The jurisdiction of military tribunals shall be confined to military offenses committed by military personnel. There shall always be a right of appeal from such tribunals to a legally qualified appellate court.

- 2.07 (a) No power shall be exercised so as to interfere with the judicial process.
- (b) The Executive shall not have control over judicial functions.
- (c) The Executive shall not have the power to close down or suspend the operation of the courts.
- (d) The Executive shall refrain from any act or omission which preempts the judicial resolution of a dispute or frustrates the proper execution of a court decision.
- 2.08 No legislation or executive decree shall attempt retroactively, to reverse specific court decisions, or to change the composition of the court to affect its decision-making.
- 2.09 Judges may take collective action to protect their judicial independence.
- 2.10 Judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary. Subject to this principle, judges shall be entitled to freedom of belief, expression, association and assembly.

Qualifications, Selections and Training

- 2.11 Candidates for judicial office shall be individuals of integrity and ability, well-trained in the law. They shall have equality of access to judicial office.
- 2.12 In the selection of judges, there shall be no discrimination on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or status, subject however to citizenship requirements.
- 2.13 The process and standards of judicial selection shall give due consideration to ensuring a fair reflection by the judiciary of the society in all its aspects.
- 2.14 (a) There is no single proper method of judicial selection provided it safeguards against judicial appointments for improper motives.
- (b) Participation in judicial appointments by the Executive or Legislature is consistent with judicial independence, so long as appointments

of judges are made in consultations with members of the judiciary and the legal profession, or by a body in which members of the judiciary and the legal profession participate.

2.15 Continuing education shall be available to judges.

Posting, Promotion and Transfer

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

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

2.17 Promotion of a judge shall be based on an objective assessment of the candidate's integrity and independence of judgment, professional competence, experience, humanity and commitment to uphold the rule of law. Article 2.14 shall apply to promotions.

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

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

Tenure

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

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

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

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

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

(b) The salaries and pensions of judges shall be adequate, commensurate with the status, dignity and responsibility of their office, and be regularly adjusted to account fully for price increases.

(c) Judicial salaries shall not be decreased during the judges' term of office, except as a coherent part of an overall public economic measure.

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

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

Immunities and Privileges

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

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

(b) Judges shall on be required to testify on such matters.

Disqualifications

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

- 2.27 Judges may not serve as chairmen or members of committees of inquiry, except in cases where judicial skills are required.
- 2.28 Judges shall not be members of, or hold positions in, political parties.

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

- 2.29 Judges may not practice law.

[Explanatory Note: See note 2.20]

- 2.30 Judges shall refrain from business activities, except as incidental to their personal investments or their ownership of property.
- 2.31 A judge shall not sit in a case where a reasonable apprehension of bias on his part may arise.

Discipline and Removal

- 2.32 A complaint against a judge shall be processed expeditiously and fairly under an appropriate practice, and the judge shall have the opportunity to comment on the complaint at the initial stage. The examination of the complaint at its initial stage shall be kept confidential, unless otherwise requested by the judge.
- 2.33 (a) The proceedings for judicial removal or discipline, when such are initiated, shall be held before a court or a board predominantly composed of members of the judiciary and selected by the judiciary.
- (b) However, the power of removal may be vested in the Legislature by impeachment or joint address, preferably upon a recommendation of a court or board as referred to in 2.33 (a).

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

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

- 2.35 The proceedings for discipline of judges shall ensure fairness to the judge and the opportunity of a full hearing.
- 2.36 With the exception of proceedings before the Legislature, the proceedings for discipline and removal shall be held in camera. The judge may, however, request that the hearing be held in public, subject to a final and reasoned disposition of this request by the disciplinary Tribunal. Judgments in disciplinary proceedings, whether held in camera or in public, may be published.
- 2.37 With the exception of proceedings before the Legislature or in connection with them, the decision of a disciplinary Tribunal shall be subject to appeal to a court.
- 2.38 A judge shall not be subject to removal except on proved grounds of incapacity or misbehavior, rendering him unfit to continue in office.
- 2.39 In the event that a court is abolished, judges serving in this court shall not be affected, except for their transfer to another court of the same status.

Court Administration

- 2.40 The main responsibility for court administration shall vest in the judiciary.
- 2.41 It shall be a priority of the highest order, for the state to provide adequate resources to allow for the due administration of justice, including physical facilities, appropriate for the maintenance of judicial independence, dignity and efficiency, judicial and administrative personnel, and operating budgets.
- 2.42 The budget of the court shall be prepared by the competent authority in collaboration with the judiciary. The judiciary shall submit their estimate of the budget requirements to the appropriate authority.
- 2.43 The judiciary shall alone be responsible for assigning cases to individual judges or to sections of a court composed of several judges, in accordance with law or rules of court.
- 2.44 The head of the court may exercise supervisory powers over judges on administrative matters.

Miscellaneous

- 2.45 A judge shall ensure the fair conduct of the trial and inquire fully into any allegation made of a violation of the rights of a party or of a witness, including allegations of ill-treatment.
- 2.46 Judges shall accord respect to members of the Bar.
- 2.47 The state shall ensure the due and proper execution of orders and judgments of the courts; but supervision over the execution of orders and judgments process shall be vested in the judiciary.
- 2.48 Judges shall keep themselves informed about international conventions and other instruments establishing human rights' norms, and shall seek to implement them as far as feasible, within the limits set by their national constitutions and laws.
- 2.49 The provisions of Chapter II: National Judges, shall apply to all persons exercising judicial functions, including arbitrators and public prosecutors, unless reference to the context necessarily makes them inapplicable or inappropriate.

III. Lawyers

Definitions

3.01 In this chapter:

(a) "lawyer" means a person qualified and authorized to practice before the courts, and to advise and represent his clients in legal matters;

(b) "Bar Association" means the recognized professional association to which lawyers within a given jurisdiction belong.

General Principles

- 3.02 The legal profession is one of the institutions referred to in the preamble to this declaration. Its independence constitutes an essential guarantee for the promotion and protection of human rights.
- 3.03 There shall be a fair and equitable system of administration of justice, which guarantees the independence of lawyers in the discharge of their professional duties without any restrictions, influences, induce-

ments, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

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

Legal Education and Entry into the Legal Profession

- 3.05 Legal education shall be open to all persons with requisite qualifications, and no one shall be denied such opportunity by reason of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or status.
- 3.06 Legal education shall be designed to promote in the public interest, in addition to technical competence, awareness of the ideals and ethical duties of the lawyers, and of human rights and fundamental freedoms recognized by national and international law.
- 3.07 Programmes of legal education shall have regard to the social responsibilities of the lawyer, including cooperation in providing legal services to the poor and the promotion and defence of economic, social and cultural rights in the process of development
- 3.08 Every person having the necessary integrity, good character and qualifications in law shall be entitled to become a lawyer, and to continue in practice without discrimination for having been convicted of an offence for exercising his internationally recognized civil and political rights.

Education of the Public Concerning the Law

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

Rights and Duties of Lawyers

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

- 3.11 The lawyer, in discharging his duties, shall at all times act freely, diligently and fearlessly in accordance with the wishes of his clients and subject to the established rules, standards and ethics of his profession without any inhibition or pressure from the authorities or the public.
- 3.12 Every person and group of persons is entitled to call upon the assistance of a lawyer to defend his or its interests or cause within the law, and it is the duty of the lawyer to do so to the best of his ability. Consequently the lawyer is not to be identified by the authorities or the public with his client or his client's cause, however popular or unpopular it may be.
- 3.13 No lawyer shall suffer or be threatened with penal, civil, administrative, economic or other sanctions by reason of his having advised or represented any client or client's cause.
- 3.14 No court or administrative authority shall refuse to recognize the right of a lawyer to appear before it for his client.
- 3.15 It is the duty of a lawyer to show proper respect towards the judiciary. He shall have the right to raise an objection to the participation or continued participation of a judge in a particular case, or to the conduct of a trial or hearing.
- 3.16 If any proceedings are taken against a lawyer for failing to show proper respect towards a court, no sanction against him shall be imposed by a judge who participated in the proceedings which gave rise to the charge against the lawyer.
- 3.17 Save as provided in these principles, a lawyer shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings, or in his professional appearances before a court, tribunal or other legal or administrative authority.
- 3.18 The independence of lawyers, in dealing with persons deprived of their liberty, shall be guaranteed so as to ensure that they have free and fair legal assistance. Safeguards shall be built to avoid any possible suggestions of collusion, arrangement of dependence between the lawyer who acts for them and the authorities.
- 3.19 Lawyers shall have all such other facilities and privileges as are necessary to fulfil their professional responsibilities effectively, including: a) absolute confidentiality of the lawyer-client relationship;

b) the right to travel and to consult with their clients freely, both within their own country and abroad; c) the right freely to seek, to receive and, subject to the rules of their profession, to impart information and ideas relating to their professional work; d) the right to accept or refuse a client or a brief.

- 3.20 Lawyers shall enjoy freedom of belief, expression, association and assembly, and in particular shall have the right to: 1) take part in public discussion on matters concerning the law and the administration of justice, b) join or form freely local, national or international organizations, c) propose and recommend well-considered law reforms in the public interest and inform the public about such matters, and d) take full and active part in the political, social and cultural life of their country.

Legal Services for the Poor

- 3.22 It is a necessary corollary of the concept of an independent bar, that its members shall make their services available to all sectors of society, so that no one may be denied justice, and shall promote the cause of justice by protecting the human rights, economic, social and cultural as well as civil and political, of individuals and groups.
- 3.23 Governments shall be responsible for providing sufficient funding for legal service programmes for the poor.
- 3.24 Lawyers engaged in legal service programmes and organizations, which are financed wholly, or in part, from public funds, shall receive adequate remuneration and enjoy full guarantees of their professional independence in particular by:
- the direction of such programmes or organizations being entrusted to an independent board, composed mainly or entirely of members of the profession, with full control over its policies, budgets and staff;
 - recognition that, in serving the cause of justice, the lawyer's primary duty is towards his client, whom he must advise and represent in conformity with his professional conscience and judgment.

The Bar Association

- 3.25 There shall be established in each jurisdiction one or more independent and self-governing associations of lawyers, recognized in law, whose council or other executive body shall be freely elected by all the

members without interference of any kind by any other body or person. This shall be without prejudice to their right to form or join, in addition, other professional associations of lawyers and jurists.

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

Functions of the Bar Associations

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

- (a) to promote and uphold the cause of justice, without fear or favour;
- (b) to maintain the honor, dignity, integrity, competence, ethics, standards of conduct and discipline of the profession;
- (c) to defend the role of lawyers in society and preserve the independence of the profession;
- (d) to protect and defend the dignity and independence of the judiciary;
- (e) to promote the free and equal access of the public to the system of justice, including the provision of legal aid and advice;
- (f) to promote the right of everyone to a fair and public hearing before a competent, independent and impartial tribunal, and in accordance with proper procedures in all matters;
- (g) to promote and support law reform, and to comment upon and promote public discussion on the substance, interpretation and application of existing and proposed legislation;
- (h) to promote a high standard of legal education as a prerequisite or entry into the profession;
- (i) to ensure that there is free access to the profession for all persons having the requisite professional competence and good character, without discrimination of any kind, and to give assistance to new entrants into the profession;
- (j) to promote the welfare of members of the profession and render assistance to a member of his family in appropriate cases;

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

- 3.28 Where a person involved in litigation wishes to engage a lawyer from another country to act with a local lawyer, the Bar Association shall cooperate in assisting a foreign lawyer to obtain the necessary right of audience.
- 3.29 To enable the Bar Association to fulfil its function of preserving the independence of lawyers, it shall be informed immediately of the reason and legal basis for the arrest or detention of any lawyer; and for the same purpose the Association shall have prior notice for: i) any search of his person or property, ii) any seizure of documents in his possessions, and iii) any decision to take proceedings affecting or calling into question the integrity of a lawyer. In such cases the Bar Association shall be entitled to be represented by its president or nominee, to follow the proceedings, and in particular to ensure that professional secrecy is safeguarded.

ANNEX III

BASIC PRINCIPLES ON THE INDEPENDENCE OF THE JUDICIARY

Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan, Italy, in August and September, 1985, and welcomed by the 40th General Assembly of the United Nations in resolution 40/146, adopted December 13, 1985.

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

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

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

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

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

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

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

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

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

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

Independence of the Judiciary

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats of interferences, direct or indirect, from an quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted or its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to division. This principle is without prejudice to judicial review or to mitigation of commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

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

Freedom of Expression and Association

8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always, conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.
9. Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.

Qualifications, Selection and Training

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

Conditions of Service and Tenure

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.
12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their terms of office, where such exists.
13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.
14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration.

Professional Secrecy and Immunity

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.
16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

Discipline, Suspension and Removal

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.
18. Judges shall be subject to suspension or removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties.
19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.
20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

ANNEX IV

BASIC PRINCIPLES ON THE ROLE OF LAWYERS

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba in August and September 1990, and welcomed by the 45th General Assembly of the United Nations in resolution 45/121, adopted December 14, 1990.

Whereas the Universal Declaration of Human rights enshrines the principles of equality before law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence,

Whereas the International Covenant on Civil and Political Rights proclaims, in addition, the right to be tried without undue delay and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenant on Economic, Social and Cultural Rights recalls the obligations of States under the Charter to promote universal respect for, and observance of, human rights and freedoms,

Whereas the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that a detained person shall be entitled to have the assistance, of, and to communicate and consult with, legal counsel,

Whereas the Standard Minimum Rules for the Treatment of Prisoners recommend, in particular, that legal assistance and confidential communication with counsel should be ensured to untried prisoners,

Whereas the Safeguards Guaranteeing Protection of Those Facing the Death Penalty reaffirm the right of everyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, in accordance with article 14 on the International Covenant on Civil and Political Rights,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

Whereas adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession,

Whereas professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest,

The Basic Principles on the Role of Lawyers, set forth below, which have been formulated to assist Member States in their task of promoting and ensuring the proper role of lawyers, should be respected and taken into account by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers as well as other persons, such as judges, prosecutors, members of the executive and the legislature, and the public in general. These principles shall also apply, as appropriate, to persons who exercise the functions of lawyers without having the formal status of lawyers.

Access to Lawyers and Legal Services

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.
2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, color, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.
3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall co-operate in the organization and provision of services, facilities and other resources.
4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and

other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.

Special Safeguards in Criminal Justice Matters

5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.
6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.
7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.
8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within hearing, of law enforcement officials.

Qualifications and Training

9. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.
10. Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, color, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement that a lawyer must be a national of the country concerned, shall not be considered discriminatory.

11. In countries where there exist groups, communities or regions whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions, or languages or have been the victims of past discrimination, Governments, professional associations of lawyers and educational institutions should take special measures to provide opportunities for candidates from these groups to enter the legal profession and should ensure that they receive training appropriate to the needs of their groups.

Duties and Responsibilities

12. Lawyers shall at all times maintain the honor and dignity of their profession as essential agents of the administration of justice.
13. The duties of lawyers towards their clients shall include:
 - (a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;
 - (b) Assisting clients in every appropriate way, and taking legal action to protect their interests;
 - (c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.
14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.
15. Lawyers shall always loyally respect the interests of their clients.

Guarantees for the Functioning of Lawyers

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.
18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.
19. No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.
20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.
21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.
22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationships are confidential.

Freedom of Expression and Association

23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

Professional Associations of Lawyers

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing edu-

cation and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

25. Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.

Disciplinary Proceedings

26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.
27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.
28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.
29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.

ANNEX V

INTER-AMERICAN COMMISSION
ON HUMAN RIGHTS1992 REPORT ON "MEASURES NECESSARY TO ENHANCE THE
AUTONOMY, INDEPENDENCE AND INTEGRITY OF THE
MEMBERS OF THE JUDICIAL BRANCH"**Recommendations**

1. Guaranteeing that the executive and legislative branches will not interfere in matters that are the preserve of the Judicial Branch;
2. Providing the Judicial Branch with the political support and the means needed for it to be able to fully perform its function of guaranteeing human rights;
3. Ensuring the exclusive exercise of jurisdiction by the members of the Judicial Branch, and elimination of special courts;
4. Guaranteeing that judges cannot be removed from office as long as their conduct remains above reproach, and ensuring that panels are set upon to consider the cases of judges who are accused of unethical conduct or corruption;
5. Maintaining of the constitutional state; and declaration of states of emergency solely when absolutely necessary, in terms of Articles 27 of the American Convention on Human Rights and 4 of the International [Covenant] on Civil and Political Rights, structuring this system in such a way that it does not appreciably change the independence of the different organs of government, so that human rights legislation remains basically untouched;
6. Ensuring unrestricted access to the courts and legal remedies and enabling the victim, when called for, to take action to bring those responsible to book;
7. Ensuring the effectiveness of the judicial guarantees essential for the protection of human rights, and removing the obstacles that prevent their swift and appropriate application;
8. Guaranteeing due process of law – accusation, defense, evidence and judgment – through the public holding of trials;

9. Returning to judges the responsibility for disposition and supervision over persons detained;
10. Guaranteeing that judges will be immediately notified of all facts and situations in which human rights are restricted or suspended, regardless of the juridical status of the accused;
11. Removal of the procedural obstacles that cause trials to run on for extended periods of time, so that cases may be tried within a reasonable period and settled by means of judgments covering all points involved;
12. Ensuring separate hearings of criminal cases and of civil or administrative disputes involving compensation for injuries and losses.

ANNEX VI**INTER-AMERICAN BAR ASSOCIATION
RESOLUTION 13
APRIL, 1993****Study of the Essential Conditions that Guarantee the Independence
and Efficiency of the Judiciary**

Whereas:

The overwhelming majority of the countries in the Hemisphere have reestablished the basic norms of representative democracy;

That one of the most essential conditions for the consolidation of democracy is the respect for the norm of due process;

The existence of an independent, modern and efficient judiciary is an essential component of due process;

The ratification of the American Convention on Human Rights, and the legal value of the American Declaration of the Rights and Duties of Man, creates an obligation for the States of the Hemisphere to ensure respect for due process, including the existence of Judiciaries that are independent, modern, and efficient,

Resolves

1. To recommend that the Hemispheric States undertake to critically review the norms that could effectively ensure the independence and efficiency of the judiciary.
2. To recommend that those studies should include, *inter alia*:
 - a. The systems to appoint and promote judges
 - b. Preparation of judges
 - c. Efficient judicial procedures
 - d. Access to justice under conditions of equality.
3. Keep the subject under consideration by the Inter-American Bar Association.