

Judicial Integrity: Relevant International Charters, Conventions, Covenants, Principles, Recommendations, Treaties and Other Instruments

African Charter on Human and People's Rights (1981)¹

Article 7(1)

Every individual shall have the right to have his cause heard. This comprises: ... (d) the right to be tried within a reasonable time by an impartial court or tribunal.

Article 26

States parties to the present Charter shall have the duty to guarantee the independence of the Courts...

African Commission on Human and People's Rights

Resolution on the Respect and Strengthening of the Independence of the Judiciary (1996)²

Calls upon African countries to:

- repeal all their legislation which are inconsistent with the principles of respect of the independence of the judiciary, especially with regard to the appointment and posting of judges; ...
- provide judges with decent living and working conditions to enable them maintain their independence and realise their full potential;
- incorporate in their legal systems, universal principles establishing the independence of the judiciary, especially with regard to security of tenure;
- refrain from taking any action which may threaten directly or indirectly the independence and the security of judges and magistrates.

The Bangalore Principles of Judicial Conduct (2002)³

Principle 1 - Independence

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

(1) A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

¹ <http://www1.umn.edu/humanrts/instree/z1afchar.htm>

² http://www.achpr.org/english/resolutions/resolution26_en.html

³ http://www.transparency.org/building_coalitions/codes/bangalore_conduct.html

(2) A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.

(3) A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.

(4) In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.

(5) A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

(6) A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

Principle 2 – Impartiality

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

(1) A judge shall perform his or her judicial duties without favour, bias or prejudice.

(2) A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

(3) A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.

(4) A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.

(5) A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where

(1) the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;

(2) the judge previously served as a lawyer or was a material witness in the matter in controversy; or

(3) the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy: Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

Principle 3 – Integrity

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

(1) A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.

(2) The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

Caracas Declaration of Presidents of Ibero-American Supreme Justice Tribunals and Courts (Caracas,1998)⁴

Autonomy and Independence of the Judiciary and Cooperation Between Public Authorities

I. Budgetary Autonomy and Independence

The autonomy and independence of the Judiciary will strengthen through the instrumentation of mechanisms allowing for the determination of the efficiency with which the resources of the judicial system are administered, and not only through the establishment of a fixed budgetary allowance.

The Fight Against Corruption

I. Ethics of the Ibero-American Judicial Civil Servant

The Code of Ethics of the Ibero-American Judicial Civil Servant are:
Canon 3. Judicial civil servants will at all times preserve their judicial independence and dignity.

Canon 4. Judicial civil servants will defend the independence of the judicial branch from any act whose purpose is to do violence to it or discredit it.

Canon 7. Judicial civil servants must remain, in any case, impartial with regard to conflicting parties.

Canon 8. Judicial civil servants will never allow themselves to be influenced by interests other than those of the justice administration system; neither will they allow other civil servants to be influenced.

Canon 9. Judicial civil servants will not use their respective offices for their own private interests or those of other parties.

Canon 10. Judicial civil servants will receive, hear, and attend to the parties in conflict in an equitable manner, maintaining precedence of transactions.

Canon 11. Judicial civil servants, with their conduct, will preserve the transparency of judicial activities, to promote public confidence in the system of justice, except in those cases in which the law establishes confidentiality.

Canon 13. Judicial civil servants will be careful of the quality of their acts and of the results of their transactions.

The Charter for the Defence of Minorities Human Rights (1993, San Francisco)⁵

⁴<http://www.tsj.gov.ve/informacion/eventos/llcaracasdeclaracion.html>

⁵<http://www.uanet.org/documents/qquia/resolutions/Defence%20of%20Minorities%20Human%20Rights.pdf>. The Charter for the Defence of Minority Human Rights was adopted during the San Francisco Congress on 1 September 1993. The final text has been ratified by the Governing Board of the UIA which met in Vienna, Austria, on 12 February 1994.

Article 4

In application of the principle set forth in Article 1, any person who is a member of a minority has the right to be judged in complete independence and impartiality, in accordance with the principles guaranteed by international Law...

Council of Europe

European Charter on the Statute for Judges (1998)⁶**Principle 1(1)**

The statute for judges aims at ensuring the competence, independence and impartiality which every individual legitimately expects from the courts of law and from every judge to whom is entrusted the protection of his or her rights. It excludes every provision and every procedure liable to impair confidence in such competence, such independence and such impartiality. The present Charter is composed hereafter of the provisions which are best able to guarantee the achievement of those objectives. Its provisions aim at raising the level of guarantees in the various European States. They cannot justify modifications in national statutes tending to decrease the level of guarantees already achieved in the countries concerned.

Principle 1(4)

The statute gives to every judge who considers that his or her rights under the statute, or more generally his or her independence, or that of the legal process, are threatened or ignored in any way whatsoever, the possibility of making a reference to such an independent authority, with effective means available to it of remedying or proposing a remedy.

Principle 4(3)

Judges must refrain from any behaviour, action or expression of a kind effectively to affect confidence in their impartiality and their independence.

Recommendation on the Independence, Efficiency and Role of Judges (1994)⁷**Principle 1 – General Principles on the Independence of Judges**

- (1) All necessary measures should be taken to respect, protect and promote the independence of judges.
- (2) In particular, the following measures should be taken:

⁶ http://www.coe.int/T/E/Legal_Affairs/Legal_cooperation/Legal_professionals/Judges/Instruments_and_documents/charte%20eng.pdf

⁷ http://www.coe.int/T/E/Legal_Affairs/Legal_cooperation/Legal_professionals/Judges/Instruments_and_documents/Rec_94_12E%20+%20explanatory%20memorandum.pdf

- a. The independence of judges should be guaranteed pursuant to the provisions of the Convention and constitutional principles...
 - b. The executive and legislative powers should ensure that judges are independent and that steps are not taken which could endanger the independence of judges.
 - c. All decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency...
 - d. In the decision-making process, judges should be independent and be able to act without any restriction, improper influence, inducements, pressures, threats or interferences, direct or indirect, for any quarter or for any reason. The law should provide for sanctions against persons seeking to influence judges in any such manner. Judges should have unfettered freedom to decide cases impartially, in accordance with their conscience and their interpretation of the facts, and in pursuance of the prevailing rules of the law. Judges should not be obliged to report on the merits of their cases to anyone outside the judiciary.
 - e. The distribution of cases should not be influenced by the wishes of any party to a case or any person concerned with the results of the case...
 - f. A case should not be withdrawn from a particular judge without valid reasons, such as cases of serious illness or conflict of interest...
- (3) Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

European Association of Judges⁸

Statute (2003)

Article 2

The European Association of Judges works to promote closer European cooperation in all areas pertaining to the judiciaries of the member states and international and supranational judiciaries, not exceeding the European level. Therefore the association specifically aims to:

- a) strengthen and support the rule of law as well as judicial independence and impartiality within the European scope and in all member states;
- b) safeguard the interests of the judiciary, as an essential requirement of the judicial function and guarantee of human rights and freedoms;
- c) safeguard the constitutional and moral standing of the judiciary, ...

European Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe, 1950)⁹

⁸<http://xoomer.virgilio.it/goberto/statutesEAJ.htm>

⁹<http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>

Article 6 (1) – Right to a fair trial

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...

Article 10 (2) – Freedom of expression

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for ... maintaining the authority and impartiality of the judiciary.

The Geneva Conventions (1949) Protocols (1977) ¹⁰
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Convention IV: Relative to the Protection of Civilian Persons in Time of War, 1949.**Article 5**

Where in the territory of a Party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State.

Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention.

In each case, such persons shall nevertheless be treated with humanity and, in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the State or Occupying Power, as the case may be.

Article 147

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

¹⁰ <http://www.genevaconventions.org/>

Protocol I: Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977.

Section III. Treatment of Persons in the Power of a Party to the Conflict

Article 75 (4): Fundamental guarantees

No sentence may be passed and no penalty may be executed on a person found guilty of a penal offence related to the armed conflict except pursuant to a conviction pronounced by an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure

Section II. Repression of Breaches of the Conventions and of this Protocol

Article 85 (4) : Repression of breaches of this Protocol

In addition to the grave breaches defined in the preceding paragraphs and in the Conventions, the following shall be regarded as grave breaches of this Protocol, when committed wilfully and in violation of the Conventions or the Protocol: ... (e) depriving a person protected by the Conventions or referred to in paragraph 2 or this Article of the rights of fair and regular trial.

Protocol II: Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977.

Article 6 (2): Penal prosecutions

No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality.

Inter-American Convention on Human Rights (IACHR)¹¹

Article 8 (1) – Right to a Fair Trial

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

Article 27 (2) – Suspension of Guarantees

The foregoing provision does not authorize any suspension of ... the judicial guarantees essential for the protection of such rights.

International Association of Judges (IAJ)¹²

¹¹ <http://www.cidh.org/Basicos/basic3.htm>

Statute (1993):

Article 3 (1):
The objects of the Association are as follows:
(a) to safeguard the independence of the judicial authority, as an essential requirement of the judicial function and guarantee of human rights and freedom.
(b) to safeguard the constitutional and moral standing of the judicial authority...

Recommendation on Corruption¹³:**The Central Council of the IAJ,**

as the global organisation of 60 judges' associations and in that capacity representing judges all over the world, at its 44th annual meeting in Madrid on the 27th September 2001,

declared that:

- Bearing in mind "that no national integrity system is applicable to all countries" (al. 7 of the Report of the deliberations of the Global Forum II at The Hague, 31st May 2001);
- Having regard to the United Nations Basic Principles on the Independence of the Judiciary, endorsed by the General Assembly on 29th November 1985 in Resolution 40/32, in particular to Principles 4 and 5;
- Having regard to the Procedures for the implementation of the Basic Principles on the independence of the Judiciary, provided for by the United Nations Economic and Social Council on 24th May 1989 in Resolution 1989/60, in particular Procedure 5;
- Bearing in mind the Universal Charter of the Judge, approved unanimously by the Central Council of the International Association of Judges on 17th November 1999;

¹² http://www.iaj-uim.org/ENG/frameset_ENG.html. The International Association of Judges was founded in Salzburg (Austria) in 1953 as a professional, non-political, international organization, grouping not individual judges, but national associations of judges, admitted to the Association by decision of its Central Council. The main aim of the Association is to safeguard the independence of the judiciary, as an essential requirement of the judicial function and guarantee of human rights and freedom. Today the organization encompasses 67 such national associations or representative groups, from five Continents.

¹³ The 1st and 2nd Global Forums held respectively at Washington in 1999 and The Hague in 2001 on fighting corruption and safeguarding integrity were concerned about corruption in general.

- Bearing in mind the Recommendation on the theme: "Corruption in Justice" approved by the African regional group of the IAJ in Lomé (Togo) on the 22nd February 2001;

the Central Council of the International Association of Judges recommends:

1. The effective enforcement of all laws to combat corruption.
2. The recruitment to the judiciary of sufficient individuals of the highest ethical and professional standards and the provision of continuing professional education for them.
3. The substantial and effective improvement of remuneration and supporting facilities for judges and their staffs.

To insure the effective and expeditious implementation and enforcement of these recommendations, the Central Council of the IAJ

Urges

its Presidential Committee:

- To form a permanent advisory committee of judges of the highest professional standards and prestige who will be able to offer advice to national authorities about how to tackle corruption in the judiciary or any false allegations concerning judicial corruption.
- To submit the Universal Charter of the Judge and this resolution to the 3rd Global Forum fighting corruption and safeguarding integrity to be held in Japan or Korea in 2003.

International Bar Association Minimum Standards of Judicial Independence (1982)¹⁴

(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/her judicial function a judge is subject to nothing but the law and the commands of his/her conscience.

¹⁴<http://www.ibanet.org/images/downloads/Minimum%20Standards%20of%20Judicial%20Independence%201982.pdf>

(2) The Judiciary as a whole should enjoy autonomy and collective independence vis-à-vis the Executive

(42) Judges may take collective action to protect their judicial independence and to uphold their position.

(43) A judge shall enjoy immunity from legal actions and the obligation to testify concerning matters arising in the exercise of his official functions.

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

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

(46) In the decision-making process, a judge must be independent vis-à-vis his judicial colleagues and supporters.

International Charter of Legal Defence Rights (1987, Quebec)¹⁵

I – Fundamental Principles

Article 1

The right to justice and a fair trial is a fundamental right recognised by the totality of international treaty documents and instruments. The right to legal representation is a basic element in the administration of good justice. This is inseparable from the independence of the legal system; without the existence of independent and impartial tribunals there can be no effective protection for the litigant.

Article 3

Every person must be able to exercise his right to justice, and this implies the right to a court hearing and the right of access to such a court (as such terms are recognised in Public International Law). Every person has an equal right to have his case heard fairly and publicly by an independent and impartial court which shall determine his rights and obligations, or the validity of any action in criminal or civil proceedings brought against him or adversely affecting his property; such rights shall include an equality of arms between the legal weapons available to the defence and to the prosecution.

II – Judicial Procedure

Article 9

¹⁵<http://www.uianet.org/documents/qquia/resolutions/International%20Charter%20of%20Legal%20Defence%20Rights.pdf>

Judicial proceedings must be public. The court may be closed to the public by the judges during part or all of the trial either in the interest of public order, as may be permissible in a democratic society, or where the interests of the privacy of the parties involved requires this and they seek it. Every sentence passed in a criminal or civil matter must be made in public, except where the interests of minors are concerned or where the trial is concerned with matrimonial differences or the care of children.

Principles of International Law Recognized in the Charter of the Nüremberg Tribunal and in the Judgment of the Tribunal (1950)¹⁶

Principle V

Any person charged with a crime under international law has the right to a fair trial on the facts and law.

Recommendations of the First Arab Conference on Justice (Beirut, 1999)¹⁷

First: Safeguards for the Judiciary

(1) To include the UN Basic Principles on the Independence of the Judiciary into Arab constitutions and laws, and in particular, to penalize any interference in the work of the judiciary.

(2) The state shall guarantee an independent budget for the judiciary, including all its branches and institutions. This budget shall be included as one item into the state budget, and shall be determined upon the advice of the higher judicial councils within the judicial bodies.

(3) The executive power shall not intervene in the activities of judicial inspection in any form, nor shall it breach the independence of the judiciary through orders or circulars.

(5) Judges shall have immunity associated with their jobs. Except in cases of illegal acts no judicial measures shall be taken unless upon a permission issued by the highest council.

Fifth: Safeguards for the Rights of the Defense and a Fair Trial

(27) Judicial disputes shall only be decided on by judges who are the most objective given the nature of the case and the circumstances surrounding it.

¹⁶ <http://www.icrc.org/ihl.nsf/FULL/390?OpenDocument>

¹⁷ <http://www.hri.ca/doccentre/docs/beirutdec.shtml>

(29) There must be a guarantee that any trial, be it civil or criminal, is heard within a reasonable time that would secure a fair trial. Trials shall be conducted with modern technical means as much as can be provided.

Statement of Principles of the Independence of the Judiciary in the LAWASIA Region (Beijing, 1995)¹⁸

Beijing Statement of Principles of the Independence of the Judiciary

Principle 3

Independence of the Judiciary requires that;

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

Principle 4

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

Principle 10

The objectives and functions of the judiciary include the following:

- a) To ensure that all persons are able to live securely under the rule of law;
- b) To promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and
- c) To administer the law impartially among person and between persons and the State.

Principle 11

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

Principle 12

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

Principle 17

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

¹⁸ <http://www.lawasia.asn.au/uploads/images/BeijingStatement.pdf>

Syracuse Principles on the Independence of the Judiciary (1981)

Article 2 – Independence of the Judiciary means:

- (1) That every judge is free to decide matters before him in accordance with his assessment of the facts and his understanding of the law without any improper influences, inducements, or pressures, direct or indirect, from any quarter or for any reason, and
- (2) That the judiciary is independent of the executive and legislature, and has jurisdiction, directly or by way of review, over all issues of a judicial nature.

The United Nations Basic Principles on the Independence of the Judiciary (1985) ¹⁹

Independence of the judiciary**Principle 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.

Principle 2

The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

Principle 3

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

Principle 4

There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.

Principle 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.

¹⁹ http://www.unhcr.ch/html/menu3/b/h_comp50.htm

Principle 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.

Principle 7

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

The United Nations Convention on the Rights of the Child (1989) ²⁰

Article 40

(1) States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

(2) To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that: ...

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

The United Nations International Covenant on Civil and Political Rights (1966) ²¹
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Article 14 (1)

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 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 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

²⁰ <http://www.hrweb.org/legal/child.html>

²¹ <http://www.hrweb.org/legal/cpr.html>

otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

The United Nations Universal Declaration of Human Rights (1948)²²

Article 10

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 Universal Charter of the Judge (1999)²³

Article 1: Independence

Judges shall in all their work ensure the rights of everyone to a fair trial. They shall promote the right of individuals to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, in the determination of their civil rights and obligations or of any criminal charge against them. The independence of the judge is indispensable to impartial justice under the law. It is indivisible. All institutions and authorities, whether national or international, must respect, protect and defend that independence.

Article 2: Status

Judicial independence must be ensured by law creating and protecting judicial office that is genuinely and effectively independent from other state powers. The judge, as holder of judicial office, must be able to exercise judicial powers free from social, economic and political pressure, and independently from other judges and the administration of the judiciary.

Article 4: Personal autonomy

No one must give or attempt to give the judge orders or instructions of any kind, that may influence the judicial decisions of the judge, except, where applicable, the opinion in a particular case given on appeal by the higher courts.

Article 5: Impartiality and restraint

In the performance of the judicial duties the judge must be impartial and must so be seen.

²² <http://www.hrweb.org/legal/udhr.html>

²³ <http://www.domstol.dk/html/publikationer/universal/UniChaUk.pdf>. Preamble: Judges from around the world have worked on the drafting of this Charter. The present Charter is the result of their work and has been approved by the member associations of the International Association of Judges as general minimal norms. The text of the Charter has been unanimously approved by the delegates attending the meeting of the Central Council of the International Association of Judges in Taipei (Taiwan) on November 17, 1999.

The judge must perform his or her duties with restraint and attention to the dignity of the court and of all persons involved.

Article 7: Outside activity

The judge must not carry out any other function, whether public or private, paid or unpaid, that is not fully compatible with the duties and status of a judge. The judge must not be subject to outside appointments without his or her consent.

Article 8: Security of office

A judge cannot be transferred, suspended or removed from office unless it is provided for by law and then only by decision in the proper disciplinary procedure. A judge must be appointed for life or for such other period and conditions, that the judicial independence is not endangered. Any change to the judicial obligatory retirement age must not have retroactive effect.

Article 9: Appointment

The selection and each appointment of a judge must be carried out according to objective and transparent criteria based on proper professional qualification. Where this is not ensured in other ways, that are rooted in established and proven tradition, selection should be carried out by an independent body, that include substantial judicial representation.

Article 10: Civil and penal responsibility

Civil action, in countries where this is permissible, and criminal action, including arrest, against a judge must only be allowed under circumstances ensuring that his or her independence cannot be influenced.

Article 11: Administration and disciplinary action

The administration of the judiciary and disciplinary action towards judges must be organized in such a way, that it does not compromise the judges genuine independence, and that attention is only paid to considerations both objective and relevant. Where this is not ensured in other ways that are rooted in established and proven tradition, judicial administration and disciplinary action should be carried out by independent bodies that include substantial judicial representation. Disciplinary action against a judge can only be taken when provided for by pre-existing law and in compliance with predetermined rules of procedure.

World Conference on Human Rights (1993)²⁴

III. Vienna Declaration and Programme of Action:

²⁴[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.24+\(PART+I\).En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.24+(PART+I).En?OpenDocument). The General Assembly of the United Nations, by its resolution 45/155 of 18 December 1990, decided to convene a World Conference on Human Rights in 1993.

(27) Every State should provide an effective framework of remedies to redress human rights grievances or violations. The administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development. In this context, institutions concerned with the administration of justice should be properly funded, and an increased level of both technical and financial assistance should be provided by the international community. It is incumbent upon the United Nations to make use of special programmes of advisory services on a priority basis for the achievement of a strong and independent administration of justice.