

# **BRISBANE DECLARATION ON THE INDEPENDENCE AND INTEGRITY OF JUDICIAL OFFICERS OF THE LOWER COURTS**

*For the purposes of this Declaration, 'judicial officers in the lower courts' includes those in courts and tribunals of limited jurisdiction and lay and professionally qualified magistrates.*

## **PREAMBLE**

**Recalling** the UN Basic Principles on the Independence of the Judiciary of 1985 and noting that throughout the Commonwealth the jurisdiction of lower courts has been greatly increased since that date;

**Re-affirming** the CMJA's commitment to the implementation of the Commonwealth (Latimer House) Principles on the Accountability and Relationship between the Three Branches of Government and the Commonwealth (Latimer House) Guidelines on Parliamentary Supremacy and Judicial Independence as well as the Nairobi Plan of Action for Africa and the Edinburgh Plan of Action for the Commonwealth on the implementation of the Commonwealth (Latimer House) Principles,

**Convinced** that the right to a fair trial is provided for in international human rights conventions and national constitutions and that this applies to hearings before all courts be they courts of limited jurisdiction in criminal or civil matters or 'superior' courts of record and be be the judicial officers involved legally qualified or lay,

**Reaffirming** the Resolution taken by the CMJA General Assembly in 2009 in Turks and Caicos: *"This General Assembly deplores the fact that in parts of the Commonwealth the independence of the magistracy is inadequately safeguarded and requests Council in collaboration with the Commonwealth Secretariat to take positive steps to eliminate these breaches of the Latimer House Principles wherever they occur."*

**Recalling** the CMJA Guidelines for the Independence and Integrity of the Magistracy of 2013

**Recalling** that, in accordance with Article 10 of the Universal Declaration of Human Rights, "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal" AND that right applies to hearings before all courts and that members of the judiciary at all levels are entitled to all the rights enshrined in constitutional and relevant international instruments

**Recalling** that in exercising those rights they are bound to conduct themselves in such a manner as to preserve the dignity, integrity, impartiality and independence of judicial office,

**Conscious** of the necessity of re-affirming the vital role of an independent and integrity led judiciary at all levels in ensuring the realisation of the Commonwealth vision of a just and progressive society,

WE, the judicial officers of the Commonwealth, gathered together at the CMJA's General Assembly in Brisbane, Australia

## **DO SOLEMNLY ADOPT AND PROCLAIM THE FOLLOWING DECLARATION:**

### **Section 1: INSTITUTIONAL INDEPENDENCE**

1. As an integral part of the judiciary, judicial officers in the lower courts must be, and be seen to be, institutionally independent of the Executive and the Legislative branches of government. The latter branches of government must respect the independent exercise of the judicial function of such judicial officers.
2. Constitutional and Legislative provisions should ensure that all judicial officers are treated as an integral part of the judiciary and receive such protections as are required to ensure independence.
3. The Head of the Judiciary should ensure that judicial officers in the lower courts are seen to be an integral part of the judiciary by fully involving its members in decisions relating to court procedures in such courts, sentencing guidelines, appropriate ethical standards and other mechanisms to ensure the smooth running of the courts and the good administration of justice.

### **Section 2: ADJUDICATORY INDEPENDENCE**

4. In order to discharge their judicial functions and duties and in order to adjudicate with impartiality in accordance with the law, judicial officers of the lower courts must be kept free from any physical insecurity, intimidation, actual or apparent duress, pressure, influence or interference from fellow judicial officers or from other persons or institutions, including government bodies, in the conduct of their judicial function.

### **Section 3: ADMINISTRATIVE INDEPENDENCE**

5. The control of the administration of justice should be under the jurisdiction of the Head of the Judiciary and adequate funding and other resources (including access to digital resources where appropriate) should be allocated for the smooth running of the lower courts.
6. In order to ensure the administrative and functional independence of the lower judiciary:
  - a) the assignment of cases and other work to a judicial officer of the lower courts must be under the exclusive control of a senior judicial officer as a matter of internal administration;
  - b) Judicial officers in the lower courts should be given as much autonomy as appropriate in the internal management of the administration of the courts over which they preside including the provision of adequate financial and human resources, appropriately appointed court and security personnel under the control of the judiciary;
  - c) the judiciary should have the right to adequately maintained and secure court buildings.

### **Section 5: SECURING AND SAFEGUARDING JUDICIAL INDEPENDENCE**

#### **Judicial Appointments on Merit**

7. To secure independence, impartiality, and competence, appointment of judicial officers in the lower courts should be made in accordance with an appropriate independent and transparent process proportionately reflecting that of the higher judiciary including by a judicial appointments commission or by an appropriate officer of State acting on the recommendation of such a commission. In either case, the process and criteria for appointment should be independent, open and transparent and be made public and in accordance with clearly defined and published criteria. The process should be designed to guarantee the competence integrity independence and impartiality of those selected for appointment and should ensure:

- equality of opportunity for all who are eligible for judicial office;
  - appointment on merit;
  - that appropriate consideration is given to the need for progressive attainment of gender equity, diversity and the removal of other historic factors of discrimination such as race, culture or ethnicity. This does not preclude the use of quotas or positive discrimination in favour of a group perceived to be disadvantaged or underrepresented.
8. Appointments to judicial officers of the lower courts should normally be permanent; whilst in some jurisdictions, contract appointments may be inevitable, such appointments should be subject to appropriate security of tenure.
9. Judicial vacancies should be advertised.

### **Promotion**

10. Any promotion of judicial officers from the lower courts should satisfy the appointment criteria set out in paragraph 13 above.

### **Security of Tenure**

11. Judicial officers of the lower courts must have security of tenure, and their tenure must not be altered to his or her detriment or disadvantage during their term of office.
12. Security of tenure requires that such judicial officers:
- have tenure (guaranteed by the Constitution or statute) until a mandatory retirement age or the expiry of their fixed term of office
  - only be subject to suspension or removal from office on the grounds of incapacity or misbehaviour that renders him or her unfit to perform judicial functions and duties.
13. There must be appropriate mandatory constitutional or legislative procedures and standards for the suspension, transfer and removal of judicial officers of the lower courts from office. Such standards and procedures must not undermine, or be perceived to undermine, the independence of the judiciary, must not be carried out by the executive branch alone and should satisfy the following criteria:
- a) "Incapacity" should refer to a judicial officer's mental or physical fitness to discharge the duties of the judicial office to which he or she has been appointed.
  - b) "Misbehaviour", should relate to matters such as a conviction for a serious offence, corrupt practice, incompetence or serious neglect of the duties of judicial office or conduct unbecoming of a judicial officer.
  - c) Where an allegation of incapacity or misbehaviour is made, an independent investigation should be carried by a judicial service commission, investigating committee or a senior judicial officer of a superior court. A charge or complaint made against a judicial officer of the lower courts shall be dealt with expeditiously and fairly under an appropriate procedure. The judicial officer shall have the right to a fair hearing, including the right to representation during any

investigation. The investigation of the charge or complaint in its initial stages shall be kept confidential, unless otherwise requested by the judicial officer. A judicial officer should only be removed from office on the recommendation of the investigating authority.

- d) A judicial officer of the lower courts shall not be suspended from office by the Executive unless the investigating authority has formed the opinion that, having regard to the charge or complaint, grounds may exist to justify removal from office.

#### **Entitlement Following the Abolition Of Office**

- 14. A judicial officer of the lower courts who held an abolished judicial office (whether directly due to the abolition of a court or part of a court) shall be entitled (without loss of remuneration) to be appointed to and to hold another judicial office in the same court or in a court of equivalent or higher status for the term of the original appointment, subject to suspension and removal in accordance with law. The right lapses if the judicial officer declines appointment to the other office or resigns from it. Judicial Officers for whom no alternative office can be found must be fully compensated.

#### **Financial Security**

- 15. In order to ensure the independence of the judiciary in the lower courts, the salaries, benefits and terms and conditions of judicial officers at this level shall be:
  - (a) adequate, commensurate with the status, dignity and responsibility of judicial office and at such a level as to attract candidates of the highest quality to serve as judicial officers and to minimise the likelihood that judicial officers once appointed will be affected by improper, extraneous considerations;
  - (b) secured by law and not be diminished during the continuance of their term;
  - (c) periodically reviewed by the independent body referred to in (d) below, to overcome or minimise the effect of inflation and so as to avoid the remuneration of the judiciary in the lower courts declining against salaries of comparable officers;
  - (d) set by a body independent of the Executive branch of government (such as an independent remuneration tribunal) whose decisions shall be binding on both the Executive and Legislative branches of government.

#### **Immunity from Suit**

- 16. Judicial officers in the lower courts shall enjoy personal immunity from any civil proceedings in respect of any act done or omission made in the execution of his or her duty, or any act done or omission made in good faith in the purported execution of that duty.

#### **Welfare**

- 17. Whilst maintaining internal independence, the responsibility for the welfare of a judicial officer of the lower courts should be vested in the Head of the Judiciary or any other judicial officer appointed by her/him.

## **Training and Development**

18. With a view to preserving and enhancing the independence of the judiciary in the lower courts:
- (a) a culture of judicial education should be developed including substantive law, judicial independence and ethical behaviour, procedure and the necessary judicial and digital skills required as well as social context training including ethnic and gender issues;
  - (b) training should be organised, systematic and ongoing and under the control of an adequately funded judicial body and the allocation of training resources should be under the control of the judiciary;
  - (c) the curriculum should be controlled by judicial officers who should have the assistance of lay specialists;
  - (d) where appropriate, and in order to enhance the good administration of justice, judicial training should also be holistic in nature and include judicial officers at different levels;
  - (e) for jurisdictions without adequate training facilities, access to facilities in other jurisdictions should be provided wherever possible;
  - (f) courses in judicial education should be offered to practising lawyers as part of their ongoing professional development training;
  - (g) All judicial officers should abide by a code of conduct or set of guidelines alleged breach of which should form the basis for any disciplinary action.

## **Judicial Associations**

19. Consistent with their fundamental rights, all members of the judiciary shall be free to form and join associations or other organisations to:
- a) ensure the maintenance of a strong and independent judiciary within a democratic society that adheres to the rule of law;
  - b) promote and encourage continuing legal, judicial and cross cultural study and learning by members of the judiciary;
  - c) promote and encourage the exchange of legal (or judicial) educational practical or professional information on best practice between members of the judiciary and other persons or bodies including wherever possible by attendance at relevant conferences within or without the jurisdiction for which appropriate funding should be provided. An appropriate proportion of the funds available for such attendances should be made available for attendances by judicial officers from the lower courts.
  - d) promote a better public understanding and appreciation of the proper role of the judiciary in the administration of justice and the importance of a strong and independent judiciary in protecting fundamental human rights and entrenching good governance and to do likewise within the Executive and Legislative branches of government;
  - e) seek improvements in the administration of justice and the accessibility of the judicial system;  
and

f) undertake supporting research that will further the achievement of these aims.

ADOPTED AT THE CMJA'S GENERAL ASSEMBLY ON 13 SEPTEMBER 2018

**EXPLANATORY NOTE:**

In preparing the Declaration above, reference was made to several international instruments, declarations and principles including, the following:

1. The UN Basic Principles on the Independence of the Judiciary (1985);
2. Draft Declaration on the Independence and Impartiality of the Judiciary "The Singhvi Declaration"- United Nations (1987);
3. The Commonwealth Harare Declaration (1991);
4. The Victoria Falls Proclamation "For An Independent Judiciary Through Judicial Education"- CMJA (1994)
5. The Beijing Statement of Principles on the Independence of the Judiciary in the LawAsia Region (1995);
6. The Commonwealth (Latimer House) Guidelines on Parliamentary Supremacy and Judicial Independence (1998);
7. The Yandina Statement: Principles of Independence of the Judiciary in Solomon Islands, (2000);
8. The Limassol Conclusions on Fighting Corruption in the Judiciary (2002);
9. The Bangalore Principles of Judicial Conduct – UN - 2002;
10. The Commonwealth (Latimer House) Principles on the Accountability and Relationship between the Three Branches of Government (2003);
11. The Nairobi Plan of Action for Africa on the Commonwealth (Latimer House) Principles (2005);
12. The Edinburgh Plan of Action for the Commonwealth on the implementation and development of the Commonwealth (Latimer House) Principles (2008);
13. The Commonwealth Charter (2013);
14. The Status of Magistrates Report – CMJA (2013);
15. "Judicial Appointments Commissions: A Clause for Constitutions" Report- CLA, CLEA, CMJA (2013).
16. The Magistrate in the Commonwealth: Fundamental Principles and Recommended Practices- CMJA (2017).
17. Declaration on Judicial Integrity – UNODC Global Judicial Integrity Network (2018).