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UNITED NATIONS STANDARDS AND NORMS IN THE FIELD OF CRIME PREVENTION AND CRIMINAL JUSTICE

Report of the Secretary-General

Addendum

USE AND APPLICATION OF THE BASIC PRINCIPLES ON THE INDEPENDENCE OF THE JUDICIARY

Summary

The present report has been prepared in response to Economic and Social Council resolu-tion 1993/34 of 27 July 1993. It contains information received from Governments and other sources on the use and application of the Basic Principles on the Independence of the Judiciary. Drawing on the experience gained from previous surveys, the report takes into account the specific recommendations made by the Commission on Crim e Prevention and Criminal Justice. The results of the survey should provide a standard of comparison by which to assess the progress and needs of each country, and thus direct the course of future action by the Commission.

*E/CN.15/1996/1.

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INTRODUCTION

1. The Economic and Social Council, in its resolution 1993/34, section III, requested the Secretary-General to commence a process of information-gathering to be undertaken by means of surveys, initially paying attention to, *inter alia*, the Basic Principles on the Independence of the Judiciary.[1] The results of the surveys were to be considered by the Commission on Crime Prevention and Criminal Justice. In its resolu-tion 1994/18 of 25 July 1994, the Council endorsed a questionnaire which had been drawn up by the Secretariat and reviewed by the Commission in response to that request.

2. This report provides a summary of the responses received from 57 countries.* Replies were also received from the following five non-governmental organizations: Howard League for Penal Reform (for Belarus); Centre for the Independence of Judges and Lawyers (CIJL) of the International Commission of Jurists; Japan Federation of Bar Associations (for the International Bar Association); Penal Reform International (for Cameroon and Uganda); and Andean Commission of Jurists (for Bolivia, Chile, Colombia, Ecuador, Peru and Venezuela).

3. The present report summarizes the replies received, following the format of the Basic Principles on the Independence of the Judiciary. The Secretary-General has already covered a wide range of topics and analysed emerging trends in an earlier report (A/CONF.144/19 and Corr.1) on the implementation of the Basic Principles on the Independence of the Judiciary, which was submitted to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Havana from 27 August to 7 September 1990.

4. In his last report to the Commission on Human Rights (E/CN.4/1995/39), the Special Rapporteur on the independence of judges and lawyers highlighted the historical background of his mandate, the legal framework and the methods of work on alleged violations of the independence of the judiciary, reviewed the progress achieved, and made concrete recommendations. In an earlier report, the Special Rapporteur had made suggestions for strengthening cooperation between the United Nations programmes on human rights and in crime prevention and criminal justice, including the establishment of a monitoring mechanism. Specifically, he had suggested that a special procedure be established to examine "the still too numerous violations perpetrated today, only the most symptomatic of which" had been described in his report; to elicit the cooperation of Governments in addressing relevant questions or situations; and "to remedy the insufficient involvement of judges' and lawyers' professional organizations in a question which is nevertheless of direct concern to them". He had further suggested that "apart from this monitoring function, the special procedure instituted might comprise prospecting for new work areas whose importance and urgency, already considerable, will probably attain priority status: justice and the media, justice and reasons of state, justice and emergency situations, justice and anti-terrorism measures etc." (E/CN.4/Sub.2/1993/25, part two, chap. II, paras. 10 and 11). The Commission on Human Rights, in its resolution 1994/41 of 4 March 1994, as approved by the Economic and Social Council in its decision 1994/251 of 22 July 1994, confirmed the proposal of the Subcommission on Prevention of Discrimination and Protection of Minorities to create a monitoring system to follow up the question of the independence and impartiality of the judiciary, particularly with regard to judges and lawyers, as well as court officials, and the nature of problems liable to attack this independence and impartiality.

I. INDEPENDENCE OF THE JUDICIARY

A. Formal guarantees

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*Argentina, Australia, Belarus, Belgium, Cameroon, Canada, Chile, Colombia, Cuba, Cyprus, Denmark, Dominican Republic, Finland, France, Germany, Greece, Guyana, Haiti, Holy See, Iran (Islamic Republic of), Israel, Italy, Japan, Jordan, Kuwait, Luxembourg, Malawi, Malta, Morocco, Mexico, Myanmar, Netherlands, New Zealand, Niger, Oman, Peru, Philippines, Portugal, Republic of Korea, Romania, Russian Federation, San Marino, Singapore, South Africa, Spain, Sudan, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Tonga, Trinidad and Tobago, Turkey, Ukraine, United Republic of Tanzania, United States of America, Uruguay and Vanuatu.

5. Almost all States reported that the independence of the judiciary enjoyed constitutional guarantees. Thirteen States further indicated that the independence of the judiciary was guaranteed not only by the constitution, but also by the law of the States concerned. Other States replied that the independence of the judiciary was enshrined in law, but was not guaranteed by the constitution. In Israel, for example, a constitution does not exist. Israel has a number of basic laws that contain constitutional rules, including rules relating to the independence of the judiciary. The United States explained that the independence of federal judges in the United States system was not guaranteed by specific language in the Constitution, but that there were provisions in the Constitution, in statutes and in regulations which guaranteed the independence of the judiciary, such as provisions relating to life tenure for judges, the principle of no reduction in compensation for judges, the doctrine of separation of powers and the administration of the judicial branch by judges. Chile, Kuwait, Peru and United States stated that judicial independence was guaranteed by judiciary regulations. Switzerland observed that the organization of justice was essentially the responsibility of the individual cantons. Guyana reported that no attempt had been made to undermine the independence of the judges and lawyers.

B. Freedom from interference

1. External interference

6. Almost all States replied that the judiciary could decide matters both impartially and independently from "external forces", in particular, the police and prosecutors, offenders and their lawyers, politicians and the Government, social groups and public opinion. Other States reported that their judiciary was not free from external pressure. For example, the judiciary could not decide matters in total independence from the police in three States. Five States reported that the judiciary did not decide on certain matters independently from prosecutors. Offenders and their lawyers could influence judicial decisions in five other States. A number of other States reported that politicians and the Government might have an impact on judicial decisions. Social groups or public opinion could influence judicial decisions in six States.

7. Provision 2 prohibits intimidation and harassment of the judiciary, and almost all States protect members of the judiciary from intimidation by private individuals or organizations. Colombia, Haiti, Luxembourg and New Zealand to a certain extent protect their judiciary from intimidation and harassment.

8. While the previous report of the Secretary-General reflected in detail the difficulties Member States had to face with regard to personal security measures for judges, the protection of the personal safety of judges did not seem to be a major problem during the reporting period. Australia (Victoria) reported that providing judges with individual protection was generally seen as unnecessary. Security measures were in place to protect judges and officers of the court when it was considered necessary. Some courts had installed permanent security devices (i.e. metal detectors, scanners). In Niger, such protection was granted only on an exceptional basis; while in Belarus, Malawi, the Netherlands and New Zealand there was no provision of protection. In New Zealand, judges had the power to punish for contempt of court, and persons could be arrested for related breaches of the peace. Cyprus reported that, generally, judges were never under threats or intimidation by anybody. Their lives had never been in danger. Cameroon reported that one judge had been assassinated in the past, but that this was not connected with the exercise of his functions. In some States, however, intimidation of the judiciary has included physical threats and violence. While in many States, no judge had been assassinated in the past year, up to five judges had been killed in Germany, Iran (Islamic Republic of) and Italy. In Ukraine, three judges were assassinated in 1993. In Turkey, one judge was assassinated in 1993, for reasons still to be determined.

2. Internal interference

9. Provision 2 also prohibits improper interference which may come from sources within the judiciary. In many States, it was mandatory practice that a judge, deciding on matters within his or her competence, was not subject to directions from internal forces within the judiciary, in particular his or her superiors. Other States reported that this was not always the case. Argentina, Colombia, Haiti and the Holy See reported that the judiciary usually was not

subject to directions from internal forces. In Argentina and the Holy See, it was mandatory practice not to give such directions in certain specified cases. In Australia (Victoria) and the Russian Federation, not allowing a judge to be subject to directions from his or her superiors in an individual case was a practice that was always, but not mandatorily, applied. In Switzerland, the principle was applied without exception in the case of members of the courts (the bench); in some cantons, however, examining magistrates had a hierarchical organization and received instructions from their superiors.

C. Competence and specialization of courts

10. As stipulated in provision 3, almost all countries reported that the judiciary had jurisdiction over all issues of a judicial nature, and that it had exclusive authority to decide whether an issue submitted for its decision was within its competence, as defined by law. Morocco and the Netherlands reported that the judiciary could always decide whether a matter rested within its own competence, but that this practice was mandatory by law with specified exceptions. Oman indicated that this practice was mandatory in certain specified cases, and that reforms on the issue would be introduced in the foreseeable future to comply with the Basic Principles.

11. Courts (or a separate section within a court) in the fields of criminal law had been established in almost all countries except Australia (Australian Capital Territory), Canada, Chile, Holy See, Israel, Italy, Singapore and Tonga. In many countries, courts or separate sections of a court were established in the fields of juvenile justice, civil law and administrative law. A number of countries had established courts or separate sections of a court in family law, labour law, trade law and traffic law. Some countries reported that there were courts or separate sections of a court for telecommunications law, social law, fiscal law, environmental law, town planning law or immigration law.

12. Courts (or a separate section within a court) in the fields of criminal law had been established in almost all countries except Australia (Australian Capital Territory), Canada, Chile, Holy See, Israel, Italy, Singapore and Tonga. In many countries, courts or separate sections of a court were established in the fields of juvenile justice (35 countries), civil law (43 countries) and administrative law (35 countries). A number of countries had established courts or separate sections of a court in family law (34 countries), labour law (38 countries), trade law (25 countries) and traffic law (22 countries). Some countries reported that there were courts or separate sections of a court for telecommunications law (10 countries), social law (18 countries), fiscal law (15 countries), environmental law (11 countries), town planning law (12 countries) or immigration law (12 countries).

D. Revision of judicial review

13. Provision 4 stipulates that there shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision.

1. Revision

14. Many countries reported their observance of provision 4. Those countries pointed out that a judicial decision was never subject to revision by any authority or by the judge who, or the court which, initially decided on the same matter, and that this was mandatory practice. Kuwait reported that this principle was only exceptionally applied, and that the practice was mandatory in certain specified cases. In Australia (Northern Territory), Canada, Germany, Greece, Uganda, United States and Vanuatu, the principle was usually applied that a judicial decision was not subject to revision by any authority, judge or court which initially decided on the case. This practice was mandatory in Australia (Northern Territory), Germany and Greece, while it was mandatory with specified exceptions in Uganda. Australia stated that judicial decisions were subject to review in certain circumstances by appellate courts. The United States further explained that the decision of a trial judge in the federal courts or state courts could be modified or reversed by that judge if an attorney in the case filed a post-trial (in the case of a jury verdict, e.g. motion for judgement notwithstanding the verdict) or post-judgement motion, and the judge after consideration determined that the verdict or judgement was erroneous under applicable law.

15. Germany noted that its procedure codes allowed that a court whose decision had been contested by ordinary complaint had to redress it if the court deemed the complaint to be well-founded. In Germany, as a rule, an ordinary complaint must be lodged with the original court, and - if the court redresses it - it makes a decision by the higher instance superfluous. In the Islamic Republic of Iran, no official authority or governmental office could change a sentence of courts of the Ministry of Justice or hamper its implementation other than a higher court or the cour t which had initially decided on the matter, in the cases defined by the law. Switzerland reported that the decision of the courts were subject to revision under specific conditio ns. Essentially, an applicant must adduce facts or evidence not known to the lower court. Revision was also allowable if the proceedings were influenced by a punishable act (e.g. perjury), or if an international tribunal so required, or if there was a contradiction between two rulings given on the same offence. Vanuatu noted that in principle the appeal rested with the Supreme Court or the Court o f Appeal, while, as an exception, there was an escape clause. In San Marino, the law provided for specific cases of revision of civil and criminal rulings. In Colomb ia, the Dominican Republic and Finland the principle that a judicial decision was never subject to revision by any authority or by the judge who, or the court which, initially decided on the same matter was only exceptionally applied, and was mandatory on ly in certain specified cases. In Haiti, Jordan, Mexico, Philippines and Spain, the authorities, judges or courts always had the power to review matters on which they had initially decided, a mandatory practice in those countries. Oman envisaged reforms on the subject in the foreseeable future.

2. Judicial review of executive action

16. Numerous countries reported that the judiciary always had the power to overrule actions of the executive on substantive as well as on procedural grounds, and that the guarantees were mandatory. Australia (Norther n Territory), Canada, Cuba, Holy See, Oman, Romania, Russian Federation, Switz erland and Turkey reported that such a practice was usually the case. Switzerland added that, as a rule, executive decisions relating to political activity might not be referred to the judiciary. In Canada, the superior courts generally had plenary jurisdiction with respect to reviewing, on application, the decisions of the executive in order to ensure compliance with laws. Suc h jurisdiction, however, could be limited by legislation. The superior courts had the constitutional right to revie w decisions of the executive in order to ensure compliance with the constitution. Australia (New South Wales, South Australia, Australian Capital Territory), Belarus, Luxembourg and Philippines reported that this was exceptionally the practice, and France reported that it was ne ver the case. In Cameroon, Cuba, Romania, Switzerland and Turkey, the practice was mandatory with specified exceptions, while in Australia (New South Wales), Belarus, Holy See, Luxembourg, Oman and Philippines, the power of the judiciary to overrule actions by the executive was exercised mandatorily in certain specified cases. Niger explained that the judicial review of executive action involved cases where administrative decisions were challenged. Malta reported that a bill was now before Parliament to widen the powers of the courts to examine and rule on executive action and discretion. In Cuba, a situation in which th e judiciary may overrule actions of the executive might arise in the case of a decision on housing. In Cuba , administrative litigation was possible under the law. Oman indicated that it expected reforms on the matter in the foreseeable future.

3. Judicial review of legislation

17. The judiciary has the power to review legislation enacted by parliament or another central legislative organ in Australia (except Western Australia and Australian Capital Territory), Canada, Colombia, Cyprus, Denmark, Dominican Republic, Germany, Greece, Israel, Japan, Malawi, Malta, Mexico, Oman, Peru, Philippines, Republic of Korea, Singapore, South Africa, Sweden, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, Uganda, United Republic of Tanzania, United States, Uruguay and Vanuatu. New Zealand reported that its judiciary could review only delegated legislation. While the judiciary usually had the power to review legislation enacted by parliament or another central legislative organ in Argentina, Australia (Australian Capital Territory) and Russian Federation, the judiciary did not have such power in Australia (Western Australia), Belarus, Cameroon, Cuba, Finland, France, Haiti, Holy See, Iran (Islamic Republic of), Italy, Luxembourg, Morocco, Myanmar, Netherlands, Niger, Romania, Spain, Switzerland, Turkey and Ukraine.

18. Switzerland explained that the Federal Court (the Supreme Court of Switzerland) oversaw the constitutionality of cantonal law and of orders (regulations of a general nature or based on objective standards) issued by the Federal Council (the Government of Switzerland). Niger explained that the opinion of the Supreme Court was generally required prior to enactment. It could happen that a member of the public, in his or her defence, pleaded the unconstitutionality of a law. If that law was held by the Supreme Court to be unconstitutional, it would become void. In the Islamic Republic of Iran, the legislature was separate and independent from the judiciary power, thus, the judiciary had not the right to review legislation adopted by the legislative power. While the judiciary in Jordan, Netherlands and Sudan was not empowered to review legislation enacted by parliament or another central legislative organ, the judiciary had the power to do so regarding legislation enacted by organs which were subordinate to parliament or another central legislative organ. Malta reported that its constitution granted an *actio popularis* to everyone who felt that a particular law infringed the constitution, and that some laws had to be amended after being challenged by the courts. In Chile, the constitution laid down that the "Supreme Court shall, ex officio or upon application by a party, on any matters dealt with by it or referred to it by way of appeal lodged in procedures conducted before another court, be empowered to rule that a statutory provision which was contrary to the Constitution was inapplicable in these particular cases. Such petition could be filed at any stage of the procedures and the Supreme Court may order the discontinuance of the proceedings."

E. Ordinary courts

19. As stipulated in provision 5, almost all countries reported that everyone had the right to be tried by ordinary courts or tribunals using established legal procedures. Jordan, Peru and Singapore replied that this principle was applied to a certain extent. In Singapore, persons might be detained by an executive order under the Internal Security Act and the Criminal Law (Temporary Provisions) Act. Many countries reported that all tribunals used the duly established procedures of the legal process. Argentina and Australia (Australian Capital Territory) applied this principle to a certain extent, while it was applied only in some specific situations in Western Australia. Colombia further explained that members of the military forces, when committing an offence related to their duty functions, would be tried by penal military jurisdictions instead of the ordinary jurisdiction.

20. The right to be tried by an ordinary court using established legal procedures could be affected in certain circumstances in some countries. In the Dominican Republic, Haiti, Jordan, Mexico, Niger, Republic of Korea, Singapore and Sudan, there was a provision to deprive the judiciary of its power in a possible state of emergency. In Argentina, the judiciary could be deprived of its power to a certain extent. In France, the judiciary could be deprived of its power in some specific situation, while in Australia (New South Wales) and Cuba that might occur only exceptionally. In Switzerland, judicial organs would be appointed or granted more extensive powers. Peru reported that under the emergency regulations provided for in the Constitution, there was no provision for abolishing or suspending the functions of the judiciary. The special situation through which Peru had been passing, from a social and political point of view, had led to the personal safety of judges being jeopardized by situations of conflict, as a result of which the judicial branch of Government, in coordination with the competent State agencies, had taken measures to safeguard and protect judges. In Niger, if a state of emergency was proclaimed, the rule of law was no

longer observed and judges might be deprived of their powers. In France, in territories declared to be under martial law in the event of imminent danger as a result of a foreign war, the military courts might have criminal case s referred to them, and could also try offenc es listed in article 8 of the Law of 9 August 1949. If a state of emergency was proclaimed in all or part of a Department, a decree, issued following a report by the Attorney-General, th e Minister of Justice and the Minister of Defence, could author ize the military court to assume jurisdiction for criminal cases, including related offences, which fell within the purview of the Assize Court of the Department concerned. In all other responding countries, there were no emergency provisions in place to deprive the judiciary of its power in a possible state of emergency.

F. Review of conviction

21. Most countries replied that everyone co nvicted of a crime has the right to a review of his or her conviction and sentence by a higher tribunal according to law. Argentina, Colombia, Denmark, France and Iran reported that this principle was only applied to a c ertain extent. Colombia further explained that a review was necessary if it was not possible to appeal the sentence. Vanuatu replied that this principle was always applied, except that anyone who had pleaded guilty could only appeal if he of she received a sentence of six months or more of imprisonment. Th e Government of Denmark made a reservation as to article 14, pa ragraph 5, of the International Covenant on Civil and Political Rights (General Assembly resolu-tion 2200 A (XXI), annex, of 16 December 1966). In Denmark, everyone convicted of a crime had the right to a review of his or her conviction and sentence by a higher tribunal according to law, except for minor offences specified by law, in which cases the convicted person must obtain permission to appeal. France stated, by way of example, that there was no right to a review of verdicts of the Assize Court, or, in some cases, of the decisions rendered by the police court.

G. Resources of the judiciary

22. Many countries reported that their judiciary was provided with the financial, personnel and other resource s required to perform its functions prop erly. A number of countries, however, reported that necessary resources were only exceptionally available to enable the judiciary to function properly. While most countries regarded the provision of sufficient resources as mandatory, Australia (Western Australia), Denmark, Haiti, Malawi, Malta, Niger, Sweden and Uruguay reported that the provision of resources for the judiciary was at the discretion of the Government, the executive or a political power. Australia (New South Wales and Australian Capital Territory), France, Iran (Islamic Republic of), Jordan, Niger and Vanuatu reported that this principle was usually applied, while Haiti and Malawi reported that the judiciary was never provided with sufficient resources. The United Republic of Tanzania reported that the judiciary was usually provided with adequate resources, allocated at the discretion of the Government, the executive or political authorities. Niger explained that the Ministry of Justice had long been termed the "poo r relation", since it possessed neither adequate financial nor human resources to enable it to discharge its functions properly. With the advent of democracy, there had been so me improvement in the material resources made available to the judiciary for the performance of its work, but hu man resources were still insufficient. Peru reported that while the Peruvian judiciary, through the relevant legal provisions, had been endowed with an independence that should allow adequate administration of justice, there were, however, not yet sufficient funds to ensure the necessar y material resources for a rapid and effective administration of justice. In Singapore, the remuneration of the judges of the Supreme Court was a charge on the consolidated fund under article 98 (6) of the Constitution. In Sweden, there was no legal provision under which parliament, which decided on budgetary matters, could provide the courts or any other public agency with specific resources. In Haiti, reforms were under way to provide the judiciary with the necessary human resources. To that end, a legal service training college was opened in July 1995. Haiti, Oman and Uruguay indicated reforms in the foreseeable future.

II. FREEDOM OF EXPRESSION AND ASSOCIATION

23. Many countries reported that the provision that members of the judiciary are like other citizens entitled t o freedom of expression, belief, association and assembly was respected, and that members of the judiciary wer e

always entitled to these fundamental rights and freedoms, provided that judges conducted themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary. The Holy See, Myanmar, Niger and Sudan stated that the principle of freedom of expression, belief, association and assembly was usually applied; in the Holy See and Myanmar, this practice was mandatory with specified exceptions. In the United States, the applicable code of conduct for federal judges restricted judges both from commenting on cases in their courts, or on matters that might affect pending or past litigation, and from engaging in partisan political activities. Some or all of these restrictions were applicable to state judges through state codes of judicial conduct. For Sudan, the practice was at the discretion of the individual judge. In Niger, freedom of expression, belief, association and assembly existed, although members of the judiciary were subject to the duty of discretion. Oman replied that the freedom of expression, belief, association and assembly for judges was only exceptionally applied in certain specified cases, but that reforms were expected in the foreseeable future. In Malta, a code of ethics was being drawn up to regulate the behaviour of the judiciary. In Jordan, the principle, on a mandatory basis, was never applied.

24. According to provision 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. In many countries, judges were free to act in accordance with that provision, which was guaranteed in a number of countries. In Japan, Niger and Sudan, the principle was usually applied. In Haiti, Jordan and Oman, judges were not allowed to form and join associations of judges or other organizations, and in Oman the restriction was applied mandatorily, with specified exceptions. In Cyprus, the law recognized the right of judges to form judges' associations. In the Republic of Korea, judges were free to join associations of judges or other organizations to promote their professional training. While, in Myanmar, judges were appointed by the Government, they were subject to the existing law concerning government servants and, in particular, the Government Servants Conduct Rules. In Niger, the Independent Union of Judges of Niger was set up in 1990. It was through the principle of the freedom of judges to join associations of judges that a solution could be found to the problem of providing financial, personnel and other resources to enable the judiciary to perform its functions properly. In Cuba, there was an association which brought together the lawyers of the country, including judges and prosecutors. In the former Yugoslav Republic of Macedonia, an association of judges had been registered in accordance with the existing law, and it had its statute and code of judges. In Argentina, there were no statutory provisions relating to such matters. The freedom of expression and association, which were guaranteed to all citizens, were not, however, subject to any restrictions in the case of judges.

25. In Peru, the constitution prohibited judges from forming trade unions and going on strike. That did not, however, prevent the establishment of associations of judges aimed at promoting their vocational and professional training, representing their interests, and protecting, subject to the regulations in force, the independence of the judicial branch and the judiciary. In Turkey, an authoritative decision adopted by the Supreme Council of Judges and Prosecutors prohibits members of the judiciary from joining associations or organizations. In Haiti, judges were free to form and join associations. However, they had never done so. In the Islamic Republic of Iran, in order to preserve judicial dignity and independence, judges were not allowed to participate in any political parties or take a job other than in the judiciary, except for education and training purposes. In Uruguay, there was an association of judicial magistrates which was affiliated to the International Union of Magistrates (Rome). The association was part of the Latin American Federation of Magistrates. The objectives of the association were to represent the interests of magistrates and to promote the professional upgrading of its members.

III. QUALIFICATIONS, SELECTION AND TRAINING

26. The replies received indicated that selection procedures differ greatly depending on the legal traditions of the State concerned. For example, States with the common law tradition select judges quite differently from States with the civil law tradition. Regardless of the legal tradition, however, almost all countries reported that they have established selection procedures that prohibit discrimination against persons on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status.

27. Guyana reported that its Constitution vested in an independent tribunal executive powers to appoint magistrates and to advise the President of the Republic as regards the appointment of judges of the High Court and the Court of Appeal. The Constitution also provided that the heads of the judiciary, namely the Chancellor and the Chief Justice, were to be appointed by the President after consultation with the leader of the minority party in parliament.

28. In many countries, judges undergo professional training in all areas of law or in the main areas of law (civil, penal and administrative law). In civil law countries and some common law countries, professional training for judges and magistrates was mandatory practice, except for lay judges in some countries. As a general rule, the requirement of specific professional training for judges was a feature of the civil law tradition, and was notably absent in common law countries. Judges undergo theoretical and practical professional training before assuming (full) judicial duties of at least one year in Finland, Italy, Luxembourg, Mexico, Myanmar and Sudan, two years in Cameroon, Colombia, Cuba, France, Jordan, Morocco, Niger, Republic of Korea, Spain, the former Yugoslav Republic of Macedonia and Turkey, three years in Greece and Ukraine, four years in Argentina, Singapore, Switzerland and Tonga, four to five years in Romania, five years in Australia (Australian Capital Territory), Belarus, Japan, Oman, Russian Federation and Sweden, and more than five years in Australia (New South Wales, Northern Territory, Victoria), Cyprus, Denmark, Germany, Holy See, Iran (Islamic Republic of), Netherlands and Philippines. Some countries reported that judges received less than one year of theoretical and practical professional training. Canada, United States and Vanuatu indicated that judges received less than one year of theoretical and practical professional training; that was also indicated by Israel and Peru, which have a civil law tradition. Malawi, which has a common law tradition, indicated that judges never received professional training.

29. Newly appointed judges undergo practical experience, under the supervision of a senior judge, for at least one year, in Greece, Jordan, Morocco, Myanmar, Netherlands, Niger, Spain, Sudan, Ukraine and Uruguay, for two years in Belarus, Cuba, Holy See and Iran (Islamic Republic of), Romania, for three years in Oman, for four years in Denmark and for five years in Japan. In Cameroon, judges before being appointed had to gain practical experience under the permanent supervision of their chiefs of jurisdiction for a non-defined duration. In some countries with a civil law tradition, a student, after completing a programme of studies, or an applicant for judicial duties had to undergo at least one professional examination to ensure that he or she was able to perform all the duties of a judicial office. As reflected in the previous report of the Secretary-General on the subject, most countries with a common law tradition, however, reported that because of their different legal system, a professional examination was not foreseen, particularly in view of the long-standing professional experience of lawyers who were appointed, or elected, to the bench. Similarly, in some countries with a civil law tradition, a professional examination was not required. The Russian Federation reported that such an examination was required to a certain extent. Uruguay reported that such examinations might be taken in specific situations.

30. Judges have the opportunity to participate in seminars to upgrade their skills in day-to-day practice in many countries, at least to a certain extent or in some specific situations. Malta, for instance, reported that from time to time, judges had been invited to attend meetings abroad and to visit courts with an international jurisdiction. Workshops and seminars were being held to exchange information and to debate particular topics of special interest to the judiciary. Switzerland reported that such seminars were only exceptionally offered to judges, and Tonga indicated that this was never the case.

A. Civil law countries

31. As a general rule, in civil law countries judges are usually appointed after having completed special education for judges. In Finland, a candidate for a judicial professional post (judge or prosecutor) was required to have passed a university law degree. On average, judicial education in Finland took five years to be completed. In addition, there was a legal apprenticeship of one year (without final examination), during which the trainee assisted a judge in drafting decisions and taking minutes of hearings. In the German criminal courts, lay judges, together with at least one presiding professional judge, participated in hearings and deliberations with the same voting rights as professional judges. Lay judges were not provided with any special training; when they took office they were merely acquainted with the course of proceedings and with their rights and duties. In the Netherlands, a distinction was

made in the election process between young lawyers and lawyers with at least six years of experience. Lawyers without experience followed a six-year course in basic theory and practice. Subsequently, before being appointed as judges, they were required to complete at least one year of training as a judge's clerk and deputy.

32. The Judicial Academy of Chile was established by law in 1994 to provide instruction to candidates for first-level career posts in the judiciary (court secretaries, judges and appeal-court judges) and in-service training for all members of the judiciary. In Romania, practical training for judges under the supervision of a senior judge was compulsory. They were known as probationary judges for a two-year period. After this training, they were required to undergo an aptitude examination to be able to take up judicial office. In Colombia, a judge was never supervised by his or her superiors, but was fully responsible for his or her decisions. In Mexico, the Supreme Court of Justice was empowered to appoint supernumerary judges and magistrates to assist in the work of the courts in order to ensure the prompt and expeditious administration of justice. In Colombia and Peru, judges received professional training in those specific areas of law in which they would later practice. In Peru, the Judges' Academy was an institution responsible for the training of judges and government procurators at all levels, for the purpose of their selection. In Sweden, all future judges underwent "in-training" as non-permanent judges. A newly appointed judge in a court of first instance might be offered an opportunity to serve in a court of appeal, where the bench was always collegial, for a short time, that is, six to nine months. In Uruguay, all judges were required to be lawyers. In law school, students had the opportunity to take an introductory course to become a magistrate. Further, students could take a course in the centre for judicial studies, which was also not compulsory for designation as a magistrate. Students who took the course, however, would be regarded more favourably by the Justice of the Supreme Court when appointing judges.

33. In the Islamic Republic of Iran, an applicant for judicial duties had to undergo a four-year period of professional training at the Faculty of Judicial Sciences, which is associated with the judiciary, in order to obtain a degree of Bachelor of Laws. In addition, the Head of the Judiciary Branch was responsible for the employment of just and worthy judges, their dismissal, appointment, transfer, assignment to particular duties and promotions, as well as similar administrative duties, in accordance with the law. In the Islamic Republic of Iran, judges were chosen among persons who were Muslim, competent, well-known and of Iranian extraction. In Niger, until 1992, students who obtained a master's degree in law specializing in the judiciary were directly admitted to the National Legal Service Training College in Paris to undergo 18 months of theoretical and practical training. Since September 1994, candidates holding a master's degree in law had to take a test before being allowed to enrol for the training course, lasting two years.

34. There were exceptions to the general rule in the civil law tradition that judges should undergo specific professional training. For example, in Switzerland, judges were elected by the public, either by parliament or by a board of representatives of the authorities and other concerned organs. The election process was more politicized in some cantons than in others. It was generally accepted that each large political party was entitled to a quota of judges. There was no legal service training establishment in Switzerland. Although the practice was only rarely laid down by law, professional judges were required as a rule to hold at least a law degree and an advocate's diploma, which involved six years of university studies, and practical training for advocates took a further two years. In Turkey, advocates who had more than five years of professional experience might be appointed as judges or prosecutors following acceptance by the Supreme Council of Judges and Prosecutors. In Haiti, the judges appointed to date were advocates. In-service training sessions were organized for them. Initial training had not yet been introduced.

B. Common law countries

35. As a general rule, in common law countries there was no specific professional education for judges distinct from a general legal education. In those countries, judges were usually elected or appointed from the bar after having been in practice as lawyers for several years.

36. In South Africa, for example, judges of the Supreme Court were appointed by the President of South Africa acting on the advice of the Judicial Service Commission (section 104 (1) of the Constitution). The Chief Justice of South Africa presided at the meetings of that Commission. Judges were persons qualified and experienced in law and legal practice. In the United States, almost all judges were lawyers who had been to law school and received training in most areas of the law, but there was no pre-appointment or pre-election training of judges or aspirants for judicial office in either the federal or state courts. Judges were selected as part of the political process in a democracy. In Canada, it was generally considered unconstitutional, as an infringement on judicial independence, to compel a serving superior court judge to undergo mandatory judicial training or continuing education. Canadian judges were appointed from among experienced members of the legal profession. Newly appointed judges had to undergo mandatory orientation and judgement-writing courses under the direction of the judiciary. The vast majority of judges participated in a wide variety of continuing education courses and training throughout their judicial careers.

37. Australia reported that all judges were legal practitioners and had undergone both academic and professional training. However, persons were not specifically trained to be judges. In Australia (Western Australia), the Australian Institute of Judicial Administration conducted courses for newly appointed judges. In Australia (Australian Capital Territory), some judges undertook training after their appointment. Courses covered a wide variety of issues, and were organized by the judiciary. In Cyprus, judges were selected from the body of practising advocates. They must be of a high moral standard and must have at least five years of experience in the legal profession. Judges of all lower courts were appointed by the Supreme Council of Judicature, which consisted of all the judges of the Supreme Court. New Zealand reported that the only formal training was an annual week-long orientation programme for lower court judges. High Court judges might also attend. Although there were no formal safeguards in relation to the appointment of judges, the Human Rights Act of 1993 outlawed such discrimination. In Vanuatu, senior members of the judiciary were expatriates from Australia and the United Kingdom. They were people with a minimum of 15 years of experience at the bar. Senior magistrates were locals with law degrees and a minimum number of experience. In Vanuatu, where there were also lay magistrates and justices, there was a need for professional judicial training. Malta reported that a judge of the superior courts was only appointed after at least 12 years from the day of the warrant, while a magistrate was appointed after he had practiced as an advocate for at least seven years from the day of the warrant.

IV. CONDITIONS OF SERVICE AND TENURE

A. Remuneration

38. According to provision 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.

39. As reflected also in the earlier report of the Secretary-General, many countries reported that the amount of remuneration of a judge ensured that the judge could afford at least an average living standard. For example, the Constitutions of South Africa and of the United States provided that compensation of judges may never be reduced. Belarus, Holy See, Iran (Islamic Republic of), Myanmar, Niger, Ukraine, United Republic of Tanzania and Uruguay reported that the remuneration of judges usually ensured an average living standard, whereas in Haiti and the former Yugoslav Republic of Macedonia that was never the case. While for most countries adequate remuneration of judges was mandatory practice, in Australia (South Australia and Australian Capital Territory), Haiti, Myanmar, Singapore and Ukraine, the rate at which judges were remunerated was subject to the discretion of the Government, the executive or political authorities. In Vanuatu, judges were paid in accordance with the salary scales of the Public Service and Official Salaries Act. In San Marino, proper remuneration for judges was guaranteed by law. In Peru, judges were guaranteed a remuneration that ensures that they could afford an adequate living standard, in keeping with their mission and rank. In Oman, reforms will be introduced in the foreseeable future to comply with the Basic Principles. In Malawi, the salaries and pensions of judges were currently under review. In New Zealand and Turkey, information on the remuneration of judges was not available.

40. In almost all countries, conditions of service, the age of retirement and the term of office of judges was secured by law. In Australia (Victoria and Australian Capital Territory), these conditions were secured to a certain extent, while in Sweden, that was not the case. In Australia (Victoria), some of the judges' conditions of service (e.g. long service, leave entitlement, motor vehicle entitlement) were not secured by law. In the Islamic Republic of Iran, in case of retirement and need, judges might continue to practise their professions, subject to the agreement of the head of the judiciary.

1. Reporting obligations on personal debts or liabilities

41. In some countries, a judge, on a mandatory basis, had to report to the president of the court any personal debt or liabilities exceeding a certain amount. For example, in Singapore, a judge of the subordinate courts had to declare his or her indebtedness to the Government annually. In many countries, however, such an obligation was never imposed.

42. In Romania and Switzerland, judges were usually required to report personal debt or liabilities, while in Canada, Luxembourg, Niger and Oman, that was the case only on an exceptional basis. New Zealand and South Africa reported that information on the application of this principle was not available. In Niger, no provisions existed concerning the debts and liabilities of judges, irrespective of the amount involved. However, if they were reported to the judges' superiors, a solution was quickly found in the interests of the legal service. In the United States, under the federal system, all judges had to file financial disclosure forms disclosing their assets and liabilities. These were filed with the Administrative Office of the courts of the United States, and were a matter of public record to which chief judges and other judicial officers had access, as well as members of the media and private citizens. In Australia (Victoria), a candidate for appointment had to prepare a declaration of pecuniary interests which was submitted to the Attorney-General. In Denmark, a judge was not required to report any debt or liability. There was, however, a procedure established to deal with complaints about members of the judiciary, the purpose of which was to preserve their dignity. In the Dominican Republic, the Organization of Justice Act provided that judges, judicial employees and officers should observe the law, conduct themselves properly, and comply with the obligations devolving upon them. In Sweden, a judge, if involved in personal bankruptcy, was prevented from exercising his or her functions. In Turkey, if the personal debt of a judge exceeded a specific amount and deferment of its payment became the subject of legal proceedings, the judge was liable to a disciplinary penalty determined by the Supreme Council of

Judges and Prosecutors. In the Islamic Republic of Iran, the administration of the judiciary was not concerned with the personal debts of judges, but the possibility was considered of giving a loan to judges who might be indebted. In Switzerland, judges were in general required to notify the judicial supervisory authority of their insolvency or personal bankruptcy or of the filing of proceedings against them.

2. Pension

43. A number of countries reported that the amount of a judge's pension ensured that there was no need for additional savings in order to maintain his or her living standard after retirement. In Malta, a law was being enacted to ensure more generous pensions for judges and magistrates. In some countries, this principle was usually applied. In Belarus and Ukraine, the pension of judges only exceptionally maintained the same living standard for judges after retirement, while in Haiti, Morocco, Sudan and the former Yugoslav Republic of Macedonia, it was never the case that the pension ensured the same living standard.

44. While the provision of a pension for retired judges which secured the same living standard for them after retirement was mandatory practice in a number of responding countries, it was subject to the discretion of the Government, the executive or political authorities in Australia (Australian Capital Territory), Belarus, Haiti, Iran (Islamic Republic of) and Uganda. In Myanmar, the living standard of a retired judge depended upon the spending habits of the judge throughout his or her career and also on the size of his or her family. In Niger, the pension paid to judges was based on their salary without additional benefits, and was thus not sufficient to maintain their living standard after retirement.

45. In the United States, judges in the federal system were entitled to retire with a pension according to age and the number of years served, or they could continue to serve during their lifetime with full pay. Most, if not all, state court systems in the United States had pension plans based on age and number of years of service. Australia (Victoria) reported that there were constitutional provisions for the payment of a pension to judges at the rate per annum of 60 per cent of their annual salary. In the Netherlands, judges had the same pension entitlement as other public servants. Pension entitlements were related to pensionable years of service. The maximum was reached after 40 years of service. Entitlements were calculated on the basis of the last salary earned. In Switzerland, the pension generally allowed a retired judge to maintain a living standard consistent with the average for the country. In Peru and San Marino, judges were guaranteed a just pension. In Vanuatu, there was no pension scheme. Oman and Sudan indicated that reforms were expected to be introduced in the foreseeable future to conform with the Basic Principles.

B. Guaranteed tenure

46. In almost all countries, judges, whether appointed or elected, had guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such existed. In Switzerland, judges did not have guaranteed tenure. They were generally subject to re-election at the end of an administrative term of office (most often four years). In Peru, judges were guaranteed security of tenure and permanence of service as long as they showed appropriate conduct and fitness for their functions. Tenure was guaranteed to a certain extent in Cuba, Holy See, Mexico, Morocco and Uganda. In Cuba, judges were all elected and could be removed from office at any time for reasons laid down by law. In the absence of such reasons, they had guaranteed tenure. In Romania, tenure was guaranteed in some specific situations, while in Switzerland that was not the case. In Singapore, tenure was guaranteed for all judges of the Supreme Court, but not for judges of the subordinate courts. New Zealand reported that its Constitution protected judges of the High Court against removal from office and reduction of salary. In Niger, the Judiciary Act provided for judges' security of office. However, if the requirements of the service so necessitated, judges could be transferred by the appointing authority, with the consent of the Judicial Service Commission, which should give the reasons for its decision.

C. Promotion

47. Many countries reported that they had established procedures ensuring that the promotion of judges was based on objective factors, such as particular ability, integrity and experience. In Australia (Victoria), Belarus, Cameroon, New Zealand and Switzerland, such procedures were established to a certain extent. In Australia (New South Wales, South Australia and Australian Capital Territory), Canada and United States, such a procedure was not established.

48. In New Zealand, judges might be promoted in limited circumstances. There was, however, no specific procedure by which that was done. The United States noted that there was no system of promotion, because judges in both the federal and state systems were selected as a part of the political process for specific judicial positions. In Canada and San Marino, there was no judicial promotion system in place. In Switzerland, judges might apply for a higher post when a vacancy occurred. The election system was organized so that a candidate's ability, integrity and experience were taken into consideration, political affiliation also playing a part.

D. Assignment of cases

49. Almost all countries reported that the assignment of cases to judges within the court to which they belonged was an internal matter of judicial administration, as stipulated in provision 14. In New Zealand, district court registrars exercised some powers in this area subject to judicial oversight. In Colombia, assignment of cases to judges was not an internal matter of judicial administration. In many responding countries, cases were assigned to judges by rotation or some other method to ensure random distribution. In some countries, random distribution was usually ensured, while in Belarus such a method was not applied. In the United States, there was usually random assignment. The nature of a particular case (e.g. complex antitrust case) might, however, cause a chief judge to assign that case to a judge with experience in that area. In Switzerland, cases were sometimes assigned by the chief judge or by the president of the court; in the smaller cantons, particularly in rural areas, there was often only one judge in office.

50. In some countries, cases were always assigned on a mandatory basis to a judge by notion, which was a procedure designed to ensure impartiality. In Finland, Greece, Israel, Niger, Russian Federation and Turkey, cases were usually assigned to a judge by notion. In Australia (Victoria), Myanmar, Netherlands, that procedure was only exceptionally followed. In Australia (South Australia and Australian Capital Territory), Belarus, Colombia, Germany, Haiti, Jordan, Mexico, Spain, Sudan (mandatory), Sweden, Switzerland, Ukraine and Vanuatu, cases were never assigned to a judge by notion. Australia (Australian Capital Territory) reported that the assignment of criminal cases to judges was random, determined by call-over, which itself entailed input from the prosecutor and defence. In Germany, cases were assigned to court divisions. A court division would consist of a judge sitting alone or of a number of judges. The composition of the divisions of a court using judges attached to that court was laid down in the roster distributing court business. The roster also laid down which court divisions had to decide which groups of cases. The roster of court business was drawn up before the beginning of each business year. It was then binding for the duration of that year, and could only be altered on grounds listed by statute, which, however, had nothing to do with individual cases. The roster distributing court business was drawn up by judges of the court itself, and when doing so they acted in judicial independence. Random distribution of cases was thus ensured. In Denmark, the method of assigning cases to judges within the court was an internal matter of the individual courts, and methods varied from one court to the other. In San Marino, cases were assigned to the individual judges, and where more judges were in the same level of jurisdiction, the relevant criteria were established in advance by the Chief Judge of the Office. In Malta, in the inferior courts, criminal cases were assigned by lot. In the superior courts, there was normally one judge entrusted with criminal cases. Cyprus reported that, at the beginning of each judicial year, the President of the Court submitted to the Supreme Court for approval the programme of work in accordance with which cases were assigned and tried. Oman expected reforms to be introduced in the foreseeable future.

V. PROFESSIONAL SECRECY AND PERSONAL IMMUNITY

A. Professional secrecy

51. Provision 15 stipulates that 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. In almost all countries, as a mandatory practice, the judiciary was always bound by professional secrecy with regard to their deliberations and to keeping confidential any information acquired in the course of their duties.

52. In Singapore, this principle was always applied, following judicial practice and not by law. In Australia (Australian Capital Territory), the judiciary was bound to secrecy subject to the discretion of the Government, the executive or political authorities. In Australia (Australian Capital Territory), Haiti and Sweden, the judiciary was not always, but in many instances, bound to such secrecy, as mandated by law. In Argentina, the judiciary was always bound by professional secrecy with regard to their deliberations and confidential information received in the conduct of their duties. However, this principle was not mandated by law, except where judges had to deal with juvenile justice cases. In Colombia, judges were never bound by professional secrecy. In Sweden, a judge was always bound by secrecy regarding what had been taking place during deliberations. Regarding other information which was subjected to the court during proceedings, there was an obligation for secrecy only if that was provided for by law. In Uruguay, judges had mandatory professional secrecy with respect to the deliberations and the confidential information they received in their functions. Judges would not have to testify as witnesses in connection with such matters. Such secrecy did not involve information disclosed in public hearings.

53. In many countries, judges could not be compelled to testify on matters or information acquired in the course of their duties and in public proceedings. While in Argentina, that was the general practice, it was not mandated by law. In Colombia, Finland, Greece, Philippines, Sudan and Switzerland, judges could usually not be compelled to testify on such information. In Australia (Australian Capital Territory), Germany and Sweden, judges could only exceptionally plead that they were not compelled to testify on matters or information acquired in the course of their duties and in public proceedings. In Australia (South Australia) and Tonga, judges could be compelled to testify on matters or information acquired in the course of their duties and in public proceedings, if so required.

54. In Denmark, the judiciary could not be compelled to testify on confidential matters, but could be obliged to do so on other matters acquired in the course of their duties and in public proceedings. In Germany, judges were under a duty to preserve official secrecy. This meant that they were required to preserve secrecy about matters that had come to their knowledge during their official activity. There was an exception, in that judges were allowed to testify on such matters before court if their service superior had given his or her consent. Consent might only be refused if the testimony was regarded as detrimental to the well-being of the Federation or of a German Land (state), or would seriously jeopardize or considerably impede the performance of public duties. In addition to their duty to preserve official secrecy, judges were bound by the duty to preserve secrecy regarding their deliberations. Secrecy of deliberations prohibited judges from making any statement about their deliberations and voting, except where preservation of the secrecy of deliberations would prevent a court from remedying the consequences of illegal deliberation or voting, or from making judges responsible for their voting in a civil or criminal court procedure. In New Zealand, San Marino and South Africa, information on the application of this principle was not available. Oman expected to introduce reforms in the foreseeable future.

B. Personal immunity

55. As stipulated in provision 16, without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions. In many countries, judges always enjoy personal immunity in accordance with that principle. Compared with the results that emerged from the previous report (A/CONF.144/19), the concept of the personal immunity of judges from civil suits did not change during the reporting period.

56. This principle was usually applied in Iran (Islamic Republic of), Netherlands, New Zealand, Sweden, Switzerland, Trinidad and Tobago and Uruguay, and exceptionally in France, Greece and Myanmar. Judges were

personally liable for monetary damages for improper acts or omissions in the exercise of their judicial functions in Argentina, Belarus, Cameroon, Colombia, Denmark, Dominican Republic, Finland, Italy, Mexico, Morocco, Oman and Tonga. In Niger, no law provided for the possibility of payment of damages to an injured party by the State, as employer. In Australia (Australian Capital Territory), judges enjoyed immunity from civil suits in the exercise of their judicial functions, although the matter was undecided as to the extent of the protection, as no judge in the Australian Capital Territory had been in that situation. In Finland, victims of judicial misconduct could institute claims against the judge as well as the State. The State was thus responsible for paying damages caused in the exercise of judicial functions in the first place. In Greece, the constitution provided for a special court to rule the civil suits against the members of the judiciary. In addition, a special law declared judges liable for damages caused by malice or gross negligence in the exercise of their judicial functions. In Germany, the Civil Code provided for liability for breaches of official duty committed by a judge when passing judgement in litigation, only if the breach concerned was a criminal offence or another breach of official duty, including refusing to perform, or delaying the performance of, official duties. In such cases the victim's claims did not lie against the judge concerned, but against the Federation or one of its States.

57. In the Netherlands, a judge might be held personally liable only if, in the performance of his or her duties in a specific case, he or she violated the principles of law, and such violation might have resulted in an unfair or impartial hearing, and no appeal against the decision was possible. In New Zealand, in circumstances where a District Court Judge was liable for an act or omission in relation to his or her judicial duties, the Crown would indemnify the District Court Judge. In the Islamic Republic of Iran, according to the constitution, whenever a person was hurt morally or materially, and a judge was considered to be the culprit, he was legally responsible for the fact. But if he was not the culprit, the damages would be compensated for by the State. In Switzerland, it was generally the State which was liable for faults committed by judges in the performance of their duties. In cases of gross negligence, the State might institute an action for indemnity against the official concerned. In Mexico, public servants were liable to administrative sanctions for acts or omissions violating the standards of probity, integrity, loyalty, impartiality or diligence required in the performance of their duties; the penalties imposed might be suspension, dismissal, disqualification or a fine, without prejudice to any penal sanctions applicable. In San Marino, the responsibility of judges was established by law. Legal action for reimbursement could be taken against the State, which could then make up for the loss against the judge responsible for the damages. In Uruguay, judges could be held responsible in cases of grave misconduct. Such cases were dealt with by the Supreme Court of Justice.

VI. DISCIPLINE, SUSPENSION AND REMOVAL

A. Fair procedure

58. As stipulated in provision 17, a charge or complaint made against a judge in his or 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. In accordance with this principle, almost all countries reported that charges or complaints made against a judge were processed expeditiously and fairly, under appropriate procedures.

59. The practice was guaranteed to a certain extent in Argentina. In order to separate a judge from his or her post, proceedings of a political nature would be conducted by the Chamber of Deputies and concluded by the Senate. In Colombia, a special procedure was established for disciplinary matters. The Disciplinary Chamber of the Superior Council of the judiciary was the competent body to deal with disciplinary offences. In Niger, any complaints made against members of the judiciary were confidentially investigated, in the case of judges, by their superior or, in the case of judicial officers, by the prosecutor to whom they were responsible. In the event of proceedings, the member of the judiciary enjoyed jurisdictional privilege, competence being exercised by the Supreme Court. In New Zealand, there was no formal procedure, complaints could be made to the Chief Justice, the Chief District Court Judge, the Law Society and the Minister of Justice or Attorney-General.

B. Specified reasons

60. According to provision 18, judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties. In many countries, judges were subject to suspension or removal only on those grounds. The principle was always applied on a mandatory basis in all respondin g countries, except in Belarus, New Zealand, Sudan and Uruguay. In Uruguay, the principle was usually applied on a mandatory basis, with specified exceptions. In South Africa, a judge might be removed from office by th e President only on the grounds of misbehaviour, incapacity or incompetence established by the Judicial Servic e Commission and upon receipt of an address from both the National Assembly and the Senate requesting suc h removal. In Australia (Victoria), judges hold their offices subject to good behaviour. The Governor in Council might remove a judge upon the address of both Houses of the Legislature. In New Zealand, judges might only be removed from office, as there was no provision for suspension. In Switzerland, a judge might be removed only by judicial judgement; it was also possible, however, that a judge would not be re-elected upon expiry of his or he r administrative term of office. Oman expected reforms to be introduced in the foreseeable future to conform with the Basic Principles.

C. Established standards

61. Disciplinary, suspension or remov al proceedings were determined in accordance with established standards of judicial conduct in almost all countries on a mandatory basi s, as set forth in provision 19. In Haiti, such proceedings usually took place. In Oman, the proceedin gs were mandatorily in accordance with established standards of judicial conduct, but with specified exceptions. In New Zealand, there was no provision for disciplinary or suspensio n proceedings. Peru reported that the Law on the Organization of Justice laid down the grounds for the imposition of sanctions on judges, together with the corresponding procedure. In Peru there existed a National Council of th e Judiciary, an organ recognized by the constitution with t he power of removing from office the judges of the Supreme Court and senior government procurators and, at the request of the Supreme Court and of the Board of Senio r Procurators, respectively, judges and governmen t procurators attached to any court. In the Islamic Republic of Iran, it was impossible to remove a judge, whether temporarily or permanently, from the post he occupied, except by trial and proof of his guilt, or in consequence of a violation entailing his dismissal. A judge could not be transferred or reassigned without his consent, except in cases where the interests of so ciety necessitated it. In such cases, a decision was taken by the head of the judiciary branch after consultation with the chief of the Supreme Court and th e Prosecutor General. The periodic transfer and rotation of judges, however, was in accordance with genera l regulations laid down by law.

D. Independent review

62. As stipulated in provision 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.

63. Disciplinary, suspension or removal proceedings were subject to an independent review in many countries. In Australia (Northern Territory), Greece, Islamic Republic of Iran, Turkey and Ukraine, the practice was usually applied, while in Luxembourg, an independent review was only exceptionally undertaken. In Argentina, Australia (Victoria, Queensland, South Australia), Colombia, Mexico, Morocco, Netherlands and Niger, such independent review proceedings did not exist. In South Africa, there was no procedure in terms of which disciplinary, suspension or removal proceedings were subject to an independent review. The Constitution of South Africa, however, provided that "every person shall have the right to have justiciable disputes settled by a court of law or, where appropriate, another independent and impartial forum". In the United States, in the federal courts, judges might be removed only by the impeachment process, in which charges were brought against the judge in the House of Representatives, and the case was tried in the Senate. Judicial councils in the federal circuits had some limited judicial disciplinary powers. In many of the state systems there were judicial disciplinary commissions which had specific powers of judicial discipline. In Australia (Victoria), disciplinary proceedings were not governed by legislation and would occur as an "in-house" process. In Australia (Queensland), magistrates and District Court judges might be removed by the Executive. A judge of the Supreme Court might be removed upon an address by Parliament to the Governor. The final decision rested with the Governor. In Cyprus and the Netherlands, disciplinary proceedings fell within the jurisdiction of the judges of the Supreme Court.

VII. ROLE OF NON-GOVERNMENTAL ORGANIZATIONS

64. Non-governmental organizations submitted replies which complemented information received from Governments on the use and application of the Basic Principles. In the view of some non-governmental organizations, although the constitution of many countries included provisions similar to those contained in the Basic Principles, in practice they were not always adhered to. In particular, CIJL reported that violence aimed at judges remained a dire obstacle to judicial independence in many countries. In its annual reports on the independence of the judiciary, entitled *Attacks to Justice*, CIJL catalogued cases in which judges and judicial officers have been harassed, persecuted, and, in some cases, assassinated.

65. Some non-governmental organizations provided information on the use and application of the Basic Principles in specific countries. For example, Penal Reform International reported on the observance of the Basic Principles in Cameroon. Penal Reform International indicated that, in their view, judicial independence was not fully guaranteed in Cameroon. It noted also that, in the areas of the protection of judges against intimidation and harassment, remuneration of judges, guaranteed tenure, internal interference, judicial review of executive action and resources available for the judiciary, the Basic Principles were not fully applied. In addition, some improvements in the training of judges were regarded as necessary to improve the overall functioning of the judiciary in Cameroon.

66. Penal Reform International reported on the application of the Basic Principles in Uganda. It noted some difficulties with regard to internal and external interference, the right to be tried by ordinary courts, and disciplinary, suspension and removal procedures for judges, but also indicated that reforms were expected to be introduced in all those areas so as to ensure full compliance with the Basic Principles in the foreseeable future.

67. With regard to the respect of the Basic Principles in Japan, the Japan Bar Association, on behalf of the International Bar Association, suggested some improvements regarding internal and external interference and the freedom of expression, belief, association and assembly for judges.

68. The Andean Commission of Jurists provided some information on the use and application of the Basic Principles in Bolivia, Chile, Colombia, Ecuador, Peru and Venezuela, reporting that in all those countries, except in Colombia, sufficient funds were not available for the judiciary, and that in all except Chile, difficulties were observed in selection procedures, as well as deficiencies particularly as regards the competence of courts (i.e. competence of Colombian regional courts and competence of Peruvian military courts in cases of terrorism) and promotion of judges (i.e. in Bolivia, Chile, Ecuador and Peru).

69. The Howard League for Penal Reform reported on the use and application of the Basic Principles in Belarus, noting difficulties in the internal and external independence and the competence and specialization of courts, the judicial review of executive action, the right of persons to be tried by ordinary courts, and resources available for the judiciary in Belarus. It also noted that the freedom of expression and association, as well as the professional training of judges, needed improvement in Belarus. Also, a system of promotion of judges should be established, as well as procedures for their discipline, suspension or removal, in accordance with the Basic Principles.

VIII. TECHNICAL ASSISTANCE

70. Many countries expressed their interest in receiving technical assistance in terms of, *inter alia*, exchange of experience, planning, financial aid, research, assistance in legal reform and training, as reflected in the following table:

Requests for assistance

Form of assistance	*Number of countries requesting assistance*
Exchange of experience	19
Training	19
Research	18
Financial aid	17
Planning	13
Assistance in legal reform	10

71. Some countries requested assistance in specific areas of their judicial systems. Guyana, for instance, reported that the long delays in the resolution of both criminal and civil matters displayed the main weakness in the judicial system. Accordingly, Guyana requested advisory services and technical assistance to ensure independent and impartial justice in the country. Malta requested particular assistance in the management and sentencing of judicial cases. Colombia, Cuba, Haiti, Iran (Islamic Republic of), Jordan, Malawi, Niger, Oman, Romania, the former Yugoslav Republic of Macedonia, Tonga and Vanuatu requested assistance in training judges and magistrates, as a matter of priority. In addition, Haiti requested assistance in building construction; Sudan in operating its printing press, which issues law reports, research papers and periodicals; and Colombia in applying disciplinary measures to combat corruption, and in ensuring more effective evidence-gathering in investigations. Cuba indicated the need for assistance in the publication of national legislation and improving the efficiency and functioning of the courts. Similarly, Morocco stressed the need for some financial aid for electronic equipment. The Government of Vanuatu needed assistance, in particular, in setting up a better remuneration and pension scheme for judges. The Howard League for Penal Reform (for Belarus) and Penal Reform International (for Cameroon) noted that assistance in the training of judges and magistrates was a matter of high priority. In addition, the Howard League for Penal Reform reported that in Belarus, some financial aid for electronic equipment was needed.

72. Several countries offered to provide assistance. The type of assistance most frequently mentioned and the number of States offering it were as follows: exchange of experience (18); training (10); research (8); and legislative reform (7).

IX. CONCLUSIONS

73. According to the information received, the Basic Principles enjoy respect in most countries. There appear to be only a few countries still needing to improve fundamental guarantees which would ensure the independence of the judiciary in all its aspects.

74. Further, as illustrated by the breadth and depth of the responses received, the principle of the independence of the judiciary is of central concern to many States. Judging from the responses, a large number of States were undertaking significant efforts to ensure the use and application of the Basic Principles in their national law and practice. Differences in legal tradition, however, particularly between common law and civil law countries, seem to suggest different approaches to the subject of judicial independence. That should be kept in mind when providing technical assistance.

75. As has been pointed out, the promotion and protection of judicial independence requires an ongoing commitment on the part of all States. No matter how well established the independence of the judiciary may be, constant vigilance and international cooperation are necessary to ensure continuing respect for judicial independence.

76. The Commission may wish to discuss further ways and means of assisting States, upon request, in the enhanced use and application of the Basic Principles. The suggestions made by the Special Rapporteur, as well as the proposals agreed upon by the Meeting of Experts for the Evaluation of Implementation of United Nations Norms and Guidelines in Crime Prevention and Criminal Justice, held at Vienna from 14 to 16 October 1991 (E/CN.15/1992/4/Add.4), could provide useful indications to the Commission.

77. Further, the Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary, as adopted by the Council in its resolution 1989/60 of 24 May 1989, offer additional guidance. The Procedures specify, *inter alia*, that States shall ensure that the Basic Principles are widely publicized in at least the main or official language or languages of each State. In particular, States shall make the text of the Basic Principles available to all members of the judiciary (Procedure 4). In addition, States shall encourage seminars and courses at the national and regional levels on the role of the judiciary in society and the necessity for its implementation (Procedure 6), which shall also be promoted by the United Nations (Procedure 11 d). According to Procedure 14, the Commission shall identify existing obstacles to, or shortcomings in, the implementation of the Basic Principles and the reasons for those obstacles or shortcomings, making specific recommendations, as appropriate, to the General Assembly and the Council, and to any other relevant United Nations human rights bodies.

Notes

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