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人权委员会
第六十届会议
议程项目 11(d)

公民权利和政治权利，包括司法机构的
独立性、司法、法不治罪问题

2004年2月27日，奥地利常驻联合国日内瓦办事处代表团致
人权事务代理高级专员的信

值此在 1993 年世界人权会议和《维也纳宣言和行动纲领》十周年之际，奥地利外交部长和联合国人权事务高级专员与联合国毒品和犯罪问题办事处合作举行了一次国际专题讨论会，主题为“法官对增进和保护人权的作用，加强机构间的合作”。专题讨论会于 2003 年 11 月 24 日在维也纳举行，政府组织和非政府组织高级代表以及知名法官和专家出席了会议。

专题讨论会的重点是司法机关作为增进和保护人权国家制度的核心所发挥的作用。讨论会的动因是认识到，法官的作用是人权的中枢，但其根本任务及其对一国整个人权情况的长期影响往往被低估。专题讨论会的目标是提请注意法官在其独立性、公正、能力和廉政方面需要获得支持，以及推动联合国体系内外的有关国际行为者，以更有效和更协调一致的方式，协助各国加强法官在增进和保护人权方面的作用。

谨随函附上《关于法官在促进和保护人权和基本自由方面的作用的维也纳宣言》，其中体现了专题讨论会筹备过程中及会议期间提出的许多建设性想法和建议。

《维也纳宣言》是奥地利对执行大会 2002 年 12 月 18 日第 57/535 号决定所作的贡献。在该决定中，大会决定“第五十八届会议期间，在 2003 年 12 月 10 日纪念《世界人权宣言》五十五周年的全体会议，也将同时纪念《维也纳宣言和行动纲领》通过十周年，届时各国政府、联合国人权事务高级专员以及联合国系统各有关机关、基金和机构将根据各自权限志庆。”

谨请安排将本函及其附件 * 作为人权委员会第六十届会议议程项目 11(d)，题为“司法机构独立性、司法、法不治罪”的正式文件分发为荷。

大使衔常驻代表

Wolfgang PETRITSCH(签名)

* 附件不译，原文照发。

Annex

24 November 2003

Vienna Declaration on the Role of Judges in the Promotion and Protection of Human Rights and Fundamental Freedoms

The participants in the Symposium on „The Role of Judges in the Promotion and Protection of Human Rights – strengthening interagency cooperation”, convened in Vienna on 24 November 2003 upon the initiative of the Foreign Minister of Austria and the UN High Commissioner for Human Rights to mark the 10th Anniversary of the 1993 World Conference on Human Rights and the Vienna Declaration and Programme of Action, agreed on the following Declaration, bearing in mind that paragraph 27 of the Vienna Declaration and Programme of Action states the following:

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

I. The role of judges in safeguarding human rights and fundamental freedoms:

1. Judges are front-line actors in the protection of human rights. Their role is pivotal in the process of enabling people to assert their rights and in enforcing their claims to those rights. Independence and impartiality as well as competence and integrity of the judiciary are key to the protection of human rights, given that the implementation of all rights ultimately depend upon the proper administration of justice.

2. The domestic justice system is one of the pillars of the State and as such has an obligation to ensure the observance of the State's international legal obligations. An independent and impartial judiciary that is familiar with international norms and standards, including relevant case law, can best articulate and activate the normative framework for the protection of human rights. In doing so judges also act as catalysts for law reform and social change, defending the constitution, establishing norms and contributing to the progress towards the full enjoyment of human rights and sustainable human development. Judges also have a crucial role in balancing the requirements of defending society against invidious types of crime - such as terrorism, organized crime and corruption - and preserving fundamental rights and freedoms. The rule of law and a

fair judicial system can also reduce injustices in society and deter the resort to force for settling disputes.

3. Empowering the judiciary, ensuring their independence and equipping them with a comprehensive awareness of international standards is therefore vital for the protection of human rights, and regional initiatives in this regard are welcomed and encouraged. In this context reference is made to the "Bangalore Principles of Judicial Conduct" and the "Basic Principles on the Independence of the Judiciary" (General Assembly Resolution 40/146), with the proviso that it might be timely to revisit the latter in the light of recent developments.

4. Whilst judges have a primary role in the promotion and protection of human rights at the national level, they are also key in facilitating international cooperation in combating trans-national crimes and crimes under international law. Moreover, international tribunals and courts, in particular the ICC and regional human rights courts such as the European Court of Human Rights and the Inter-American Court of Human Rights, are an important instrument to complement and supplement the national mechanisms to ensure effective redress for violations of international human rights and humanitarian law. In this context, the importance of the establishment of the African Court on Human and Peoples' Rights is also to be welcomed. By fighting impunity, those courts strengthen the rule of law, thus making a fundamental contribution to peace, security and the respect of human rights.

II. The role of judges and their needs in conflict and post-conflict situations

5. Human rights violations and public perceptions of failure to secure justice are at the root of many conflicts. In such situations ensuring and sustaining the legitimacy of those institutions which safeguard human rights is a priority, recognizing that legitimacy depends on responsiveness to the rights of the human being and positive action taken to guarantee those rights.

6. In conflict situations it is through respect for international humanitarian, human rights and refugee law that the fundamental rights of the human being must be protected. In such situations members of the judiciary and of other law enforcement bodies have an obligation to observe those norms.

7. In post-conflict situations the re-establishment of the rule of law in a manner that protects and respects the human rights of all persons is key to an enduring peace and should therefore be a crucial element of peacekeeping. SC-Res. 1325 (2000) op11 emphasizes the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity and war crimes including those relating to sexual and other violence against women and girls. Such crimes should also be excluded from any amnesty provisions.

8 All efforts to promote peace, justice and national reconciliation have to go hand-in-hand with those to foster accountability and respect for human rights. Particularly in post-conflict situations, problems undermining the smooth and responsive functioning of the administration of the judicial branch, such as lack of resources, non-payment of

salaries, damage to physical infrastructure, inappropriate executive branch influence, judicial corruption, lack of training for judges and court staff and lack of legal reference materials as well as the need for reform of the legal framework have to be addressed.

III. Action recommended

A. Action by States

9. States are called upon to

- a) **enshrine** the independence of the judiciary from the executive and legislative branches in the constitution and/or laws of each state and observe this principle in practice;
- b) **ensure** a transparent and independent process for selection and promotion of judges at all levels without discrimination of any kind which is based on objective criteria, primarily professional qualifications, training, and impartiality, and not political considerations. Measures should be taken to ensure gender equality and also a fair representation of members of minority communities within the judiciary and their staff;
- c) **appoint** judges and prosecutors in numbers that are sufficient in relation to case loads;
- d) **ensure** that all members of the judiciary receive comprehensive and continuing training on international and regional human rights standards and humanitarian law, including specialized gender and child rights training as well as training on the use of non-custodial and restorative justice measures. Judiciary should also be provided with specialized training to handle complex crimes and with courses on new technologies available;
- e) **ensure** that all courts and members of the judiciary are provided with adequate resources to exercise their functions in a professional, objective, conscientious and impartial manner and that they receive adequate salaries;
- f) **support** the judiciary in combating corruption in society and among their own ranks, since a corrupted judiciary will neither be independent nor impartial;
- g) **ensure** adequate protection, including from political interference, pressure or attacks, of judges, court staff and others involved in the administration of justice, including prosecutors and defence counsels, as well as the protection of victims and witnesses;
- h) **take measures** to promote fair sentencing, and to ensure monitoring of prison conditions and rehabilitation programmes as well as meaningful post release support and probation services;
- i) **ensure** access of independent monitors to persons deprived of their liberty as well as the confidentiality of their conversations;
- j) **ensure** access to justice and judicial remedies, including habeas corpus, for all, limit pre-trial detentions and reduce backlogs in court proceedings;
- k) **foster** cooperation among all justice actors to improve the functioning of the system to guarantee the optimal protection of human rights and to ensure effective implementation without undue delay of judgement;
- l) **provide** an effective judicial framework of remedies to redress human rights violations, including the possibility for national courts to decide on human rights violations and on reparations to victims of such violations;

- m) **cooperate** in establishing a consolidated international data base on important judgements in the area of human rights law.

B. Action by Intergovernmental and Non-Governmental Organisations

10. Intergovernmental and Non-Governmental Organisations are called upon to
- a) **raise** judicial awareness of existing international and regional standards and practice concerning the independence of justice and the role of the judiciary in the protection of human rights in particular through wide dissemination of information on international human rights law, human rights case law, guidance materials on equal rights and justice for women, a manual on the rights of children, compilations of international standards and the United Nations manual on human rights in the administration of justice in local languages as well as through workshops and seminars;
 - b) **develop** and **conduct** training and awareness raising projects in a participatory manner addressing capacity needs and weaknesses as identified in the specific country context, focusing on the sustainable development of judicial capacity and structures and develop appropriate training evaluation criteria;
 - c) **ensure** adequate representation of female judges and an overall gender perspective in their relevant projects;
 - d) **encourage** cooperation among judges at the sub-regional or regional level through the organization of meetings, workshops and seminars on international human rights law taking into account the proposal by the Office of the High Commissioner for Human Rights contained in the report of the Secretary General on strengthening the rule of law (Doc. A/57/275), to convene a focused strategy meeting with associations specializing in the role of judges and lawyers aimed at deepening cooperation in this area;
 - e) **contribute** to raising awareness among judges of the specific situation and problems of vulnerable groups in society, in particular with a view to avoiding discrimination in the administration of justice;
 - f) **sensitise** the broad public and key governance institutions to the importance of the independence of judges and lawyers as precondition for institutionalising an effective judiciary;
 - g) **support** the capacity of the legal community to respond to threats to its independence and impartiality;
 - h) **enhance** judicial integrity through the adoption and dissemination of codes of conduct, and through assistance in the establishment of efficient public complaints mechanisms and credible and objective disciplinary control bodies;
 - i) **strengthen** coordination and cooperation both at headquarters and field level in the design and execution of assistance projects so as to increase efficiency and to avoid duplication of efforts and waste of scarce resources;
 - j) **establish** an appropriate consolidated data-base with a view to facilitating the exchange of information on any projects and concrete action undertaken in this field;
 - k) **carry out** regular assessments of the performance of States' judicial systems on the basis of common statistical criteria. One such example is the Council of Europe's European Commission for the Efficiency of Justice (CEPEJ).

C. Specific action in connection with conflict and post-conflict situations

11. States and, in accordance with their respective mandates, Intergovernmental and Non-Governmental Organisations are called upon to

- a) **ensure** that the rule of law, the independence of the judicial system and its functioning are as far as possible preserved in conflict situations and that judges and their staff be protected from unlawful pressure hindering them from exercising their function;
- b) **ensure** that members of the judiciary and law enforcement agencies receive comprehensive information and training on international humanitarian law and that they are aware of their rights and obligations under this body of law in order to allow them to contribute effectively to its application and respect;
- c) **include**, where possible, provisions in instruments resulting from conflict resolution processes under international auspices, which ensure the independence, impartiality, competence and integrity of the judicial power;
- d) **ensure** comprehensive and continuing training of those involved in peace-keeping on international human rights and humanitarian law, including specialized training on gender and juvenile justice issues, on local law as well as on relevant methodologies and procedures;
- e) **cooperate** with local actors, building, where possible, upon existing rule of law institutions, laws, traditions and cultures and **ensure** that there is national ownership of and active participation in the administration of justice and in efforts to establish a culture of respect for the rule of law;
- f) **ensure** that people with relevant experience, including local actors, are trained to monitor and publicly report on all aspects of the administration of justice in accordance with international standards, and that monitors are granted access to all places where people are deprived of their liberty and have the right to confidential communication with such persons;
- g) **ensure** a smooth transition from the peacekeeping phase to longer-term post-conflict peace-building and development efforts;
- h) **take into account** specific difficulties in the administration of justice in IDP and refugee camps and consider establishing legal advice centres and mobile court systems.
- i) **identify and address** in a systematic manner possible contradictions between national laws and international human rights law;
- j) **enable**, where appropriate and in compliance with international human rights law, the use of traditional or alternative dispute settlement and mediation mechanisms, without prejudicing access to courts.

The participants agreed to concert their efforts for an appropriate follow-up to these recommendations.

List of participants

The Symposium on „The Role of Judges in the Promotion and Protection of Human Rights – strengthening interagency cooperation”, was convened in Vienna on 24 November 2003 upon the initiative of the Foreign Minister of Austria and the UN High Commissioner for Human Rights in cooperation with UNODC. The meeting was opened by Austrian Foreign Minister Benita Ferrero-Waldner. It was chaired by the Acting High Commissioner for Human Rights Bertrand Ramcharan. Austria was represented by Georg Mautner-Markhof, Director for Human Rights in the Foreign Ministry and Margit Bruck-Friedrich, Counsellor for Human Rights in the Foreign Ministry.

The following organizations and experts participated in the Symposium:

United Nations:

- UNODC:** Mr. Antonio Maria Costa, Director General UNOV, Executive Director UNODC
Mr. Eduardo Vetere, Director, Division for treaty affairs
Mr. Michael Platzer, Officer in Charge, Rule of Law Section,
Ms. Jo Dedeyne, Crime Prevention Officer
- UNDP:** Mr. Magdy Martinez-Soliman, Practice Manager for Democratic Governance
Mr. Patrick Van Weerelt, Human Rights Officer
- UNHCR:** Mr. Christoph Bierwirth, Senior Liaison Officer for Human Rights
- UNESCO:** Mr. Vladimir Volodin, Chief of the Human Rights and Development Section
- DPKO:** Mr. Robert Pulver, Judicial Officer, Criminal Law and Judicial Advisory Unit
- World Bank:** Mr. Salman M. A. Salman, Legal Counsel, Legal Department ESSD & International Law

Regional intergovernmental organisations:

- Council of Europe:** Mr. Hans de Jonge, Director of External Relations
- OSCE:** Amb. Ján Kubis, Secretary General
- ODIHR:** Amb. Christian Strohal, Director
Mr. Maximilian Hennig,
- AU:** Mr. Germain Baricako, Secretary to the African Commission on Human and Peoples' Rights

Non-Governmental Organisations:

- ICJ:** Mr. Ernst Lueber, Acting Secretary General
- AI:** Ms. Jill Heine, Legal Adviser
- ICTJ:** Mr. Paul Seils, Senior Associate
- Boltzmann Institut
of Human Rights:** Prof. Manfred Nowak
- International Bar Association:** Mr. Greg Mayne

Other Organisations:

Commonwealth Secretariat:
ICRC:

Mr. Hanif Vally, Head Human Rights Unit
Ms. Cristina Pellandini, Legal Adviser; Advisory Service
on international humanitarian law

Judges/experts:

The Hon. Benjamin Odoki, Chief Justice of Uganda

Mr. Rait Maruste, judge of Estonia at the European
Court of Human Rights

Mr. Param Kumaraswamy, former Special Rapporteur
of the Commission on Human Rights on the
independence of judges and lawyers

Amb. Kurt Herndl (ret.), former UN-Assistant Secretary
General for Human Rights,
Rapporteur of the Symposium
