

*TOOLKIT FOR REVIEW ON GUIDANCE ON  
JUDICIAL CONDUCT -  
ADDITIONAL DOCUMENTATION*

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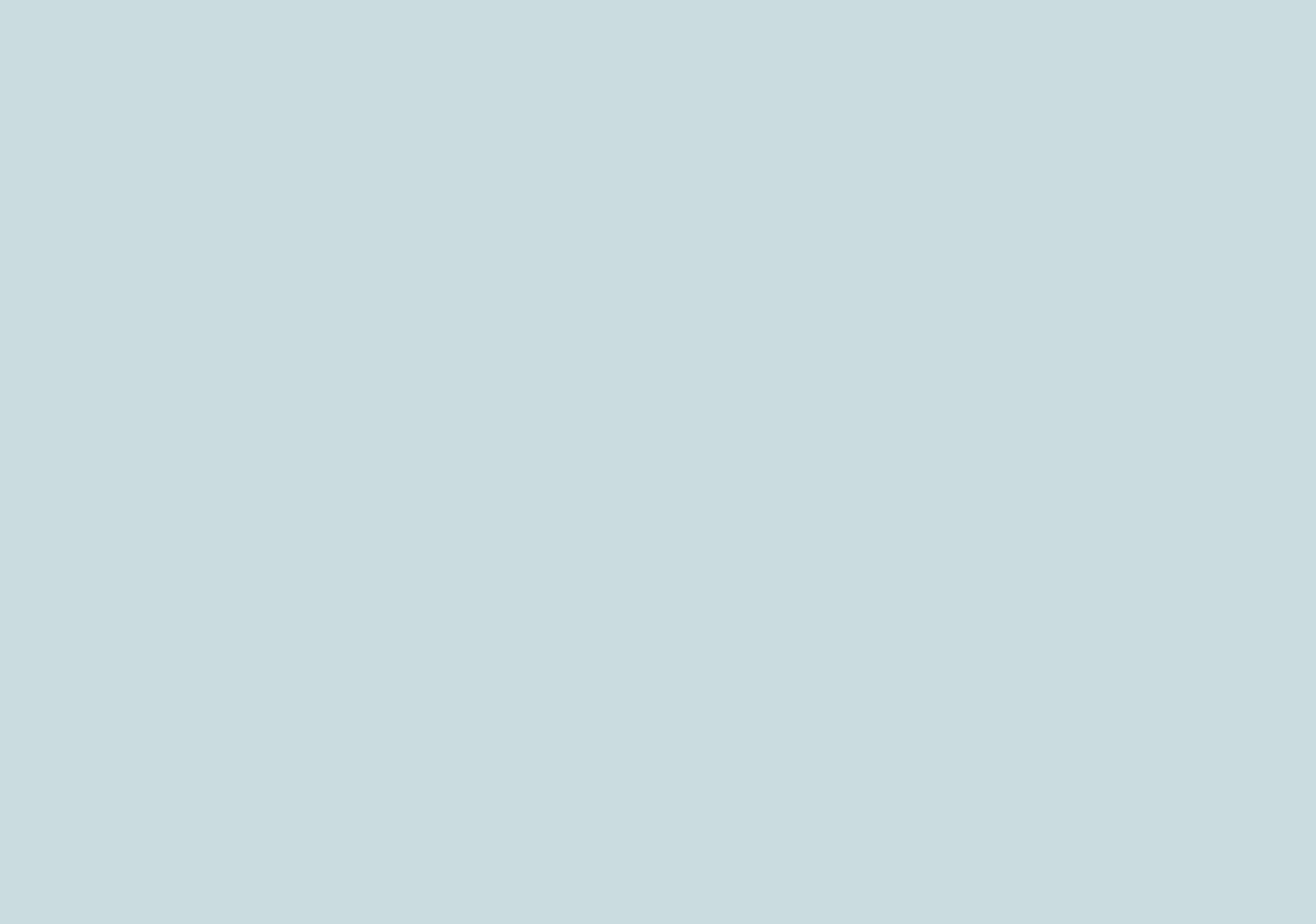




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## **ANNEX 1: BANGALORE PRINCIPLES**

### **Bangalore Principles of Judicial Conduct**

WHEREAS the Universal Declaration of Human Rights recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge,

WHEREAS the International Covenant on Civil and Political Rights guarantees that all persons shall be equal before the courts and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law,

WHEREAS the foregoing fundamental principles and rights are also recognized or reflected in regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions,

WHEREAS the importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice,

WHEREAS a competent, independent and impartial judiciary is likewise essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law,

WHEREAS public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society,

WHEREAS it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system,

WHEREAS the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country,

AND WHEREAS the Basic Principles on the Independence of the Judiciary are designed to secure and promote the independence of the judiciary and are addressed primarily to States,

THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct that bind the judge.

## Value 1 - Independence

### Principle

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

### Application

- 1.1. A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.
- 1.2. A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute that the judge has to adjudicate.
- 1.3. A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.
- 1.4. In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions that the judge is obliged to make independently.
- 1.5. A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.
- 1.6. A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary, which is fundamental to the maintenance of judicial independence.

## Value 2 - Impartiality

### Principle

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

### Application

- 2.1. A judge shall perform his or her judicial duties without favour, bias or prejudice.
- 2.2. A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.
- 2.3. A judge shall, as far as is reasonable, so conduct himself or herself as to minimize the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.
- 2.4. A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process, nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.

- 2.5. A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where:
- (a) The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
  - (b) The judge previously served as a lawyer or was a material witness in the matter in controversy; or
  - (c) The judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy;
  - (d) provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

### **Value 3 - Integrity**

#### **Principle**

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

#### **Application**

- 3.1. A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.
- 3.2. The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

### **Value 4 - Propriety**

#### **Principle**

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

#### **Application**

- 4.1. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
- 4.2. As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.
- 4.3. A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations that might reasonably give rise to the suspicion or appearance of favouritism or partiality.
- 4.4. A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.
- 4.5. A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.

- 4.6. A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but, in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.
- 4.7. A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.
- 4.8. A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgement as a judge.
- 4.9. A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.
- 4.10. Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.
- 4.11. Subject to the proper performance of judicial duties, a judge may:
  - (a) Write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
  - (b) Appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;
  - (c) Serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or
  - (d) Engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.
- 4.12. A judge shall not practise law while the holder of judicial office.
- 4.13. A judge may form or join associations of judges or participate in other organizations representing the interests of judges.
- 4.14. A judge and members of the judge's family shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.
- 4.15. A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.

## **Value 5 - Equality**

### **Principle**

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

## **Application**

- 5.1. A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes (“irrelevant grounds”).
- 5.2. A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.
- 5.3. A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.
- 5.4. A judge shall not knowingly permit court staff or others subject to the judge’s influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.
- 5.5. A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

## **Value 6 - Competence and Diligence**

### **Principle**

Competence and diligence are prerequisites to the due performance of judicial office.

### **Application**

- 6.1. The judicial duties of a judge take precedence over all other activities.
- 6.2. A judge shall devote the judge’s professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court’s operations.
- 6.3. A judge shall take reasonable steps to maintain and enhance the judge’s knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for that purpose of the training and other facilities that should be made available, under judicial control, to judges.
- 6.4. A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.
- 6.5. A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.
- 6.6. A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge’s influence, direction or control.
- 6.7. A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

### **Implementation**

By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

### **Definitions**

In this statement of principles, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

**“Court staff”** includes the personal staff of the judge, including law clerks;

**“Judge”** means any person exercising judicial power, however designated;

**“Judge’s family”** includes a judge’s spouse, son, daughter, son-in-law, daughter-in-law and any other close relative or person who is a companion or employee of the judge and who lives in the judge’s household;

**“Judge’s spouse”** includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.

## ANNEX 2: MEASURES OF THE EFFECTIVE IMPLEMENTATION OF THE PRINCIPLES

### Measures for the effective implementation of the Bangalore Principles of Judicial Conduct (The Implementation Measures)

#### INTRODUCTION

The Bangalore Principles of Judicial Conduct identify six core values of the judiciary - Independence, Impartiality, Integrity, Propriety, Equality, Competence and Diligence. They are intended to establish standards of ethical conduct for judges. They are designed to provide guidance to judges in the performance of their judicial duties and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand the judicial role, and to offer the community a standard by which to measure and evaluate the performance of the judicial sector. The Commentary on the Bangalore Principles is intended to contribute to a better understanding of these Principles.

The section on "Implementation" in the Bangalore Principles of Judicial Conduct states that:

By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

In some jurisdictions mechanisms and procedures are already in existence, having been instituted by law or rules of court, to establish ethical standards of conduct for judges. In others they are not. Accordingly, this statement of measures is offered by the Judicial Integrity Group as guidelines or benchmarks for the effective implementation of the Bangalore Principles.

This statement is in two parts. Part One describes the measures that are required to be adopted by the judiciary. Part Two describes the institutional arrangements that are required to ensure judicial independence and which are exclusively within the competence of the State. While judicial independence is in part a state of mind of members of the judiciary, the State is required to establish a set of institutional arrangements that will enable the judge and other relevant office holders to enjoy that state of mind. The protection of the administration of justice from political influence or interference cannot be achieved by the judiciary alone. While it is the responsibility of the judge to be free of inappropriate connections with the executive and the legislature, it is the responsibility of the State to establish the institutional arrangements that would secure the independence of the judiciary from the other two branches of government.<sup>1</sup>

In preparing this statement of measures, reference was made to several national constitutions and to regional and international initiatives to ensure that they reflect a broad national and international consensus. The latter include:

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<sup>1</sup> In its General Comment No.32 (2007), the Human Rights Committee states that the requirement of independence in article 14(1) of the International Covenant on Civil and Political Rights refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature. Accordingly, States are required to take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of members of the judiciary and disciplinary sanctions taken against them.

1. The Draft Principles on the Independence of the Judiciary (“Siracusa Principles”) formulated by a representative committee of experts in 1981;
2. The Minimum Standards of Judicial Independence adopted by the International Bar Association in 1982;
3. The United Nations Basic Principles on the Independence of the Judiciary 1985;
4. The Draft Universal Declaration on the Independence of Justice 1988 (the “Singhvi Declaration”);
5. Recommendation No.R (94) 12 of the Committee of Ministers of the Council of Europe on the Independence, Efficiency and Role of Judges, 1994;
6. The Beijing Statement of Principles of the Independence of the Judiciary adopted by a conference of Chief Justices of the Asia-Pacific region in 1995;
7. The European Charter on the Statute for Judges adopted in 1998;
8. The Universal Charter of the Judge adopted by the International Association of Judges in 1999;
9. The Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence for the Commonwealth adopted in 2001;
10. Opinions of the Consultative Council of European Judges (CCJE):  
  
Opinion No.1 (2001): Standards concerning the Independence of the Judiciary and the Irremovability of Judges;  
  
Opinion No.2 (2002): Principles and Rules governing Judges’ Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality;  
  
Opinion No.3 (2003): Appropriate Initial and In-Service Training for Judges at National and European Levels;  
  
Opinion No.10 (2007): A Council for the Judiciary.
11. The Blantyre Rule of Law/Separation of Powers Communique issued by representatives of all three branches of government in the Southern African Development Community (SADC) region in 2003;
12. The Cairo Declaration on Judicial Independence adopted by the participants of the Second Arab Justice Conference held in 2003;
13. The Suva Statement on the Principles of Judicial Independence and Access to Justice adopted at a judicial colloquium in 2004.
14. “Justice Matters” - the report of the Irish Council for Civil Liberties on Independence, Accountability and the Irish Judiciary, 2007;
15. General Comment No.32 (2007) of the Human Rights Committee on Article 14 of the International Covenant on Civil and Political Rights.

16. The Venice Commission Report on Judicial Appointments, 2007;
17. The United Nations Office on Drugs and Crime (UNODC), Draft Guide on Strengthening Judicial Integrity and Capacity, October 2009.

## Part One RESPONSIBILITIES OF THE JUDICIARY

### 1. Formulation of a Statement of Principles of Judicial Conduct

- 1.1 The judiciary should adopt a statement of principles of judicial conduct, taking into consideration the Bangalore Principles of Judicial Conduct.
- 1.2 The judiciary should ensure that such statement of principles of judicial conduct is disseminated among judges and in the community.
- 1.3 The judiciary should ensure that judicial ethics, based on such statement of principles of judicial conduct, are an integral element in the initial and continuing training of judges.

### 2. Application and Enforcement of Principles of Judicial Conduct

- 2.1 The judiciary should consider establishing a judicial ethics advisory committee of sitting and/or retired judges to advise its members on the propriety of their contemplated or proposed future conduct.<sup>2</sup>
- 2.2 The judiciary should consider establishing a credible, independent judicial ethics review committee to receive, inquire into, resolve and determine complaints of unethical conduct of members of the judiciary, where no provision exists for the reference of such complaints to a court. The committee may consist of a majority of judges, but should preferably include sufficient lay representation to attract the confidence of the community. The committee should ensure, in accordance with law, that protection is accorded to complainants and witnesses, and that due process is secured to the judge against whom a complaint is made, with confidentiality in the preliminary stages of an inquiry if that is requested by the judge. To enable the committee to confer such privilege upon witnesses, etc., it may be necessary for the law to afford absolute or qualified privilege to the proceedings of the committee. The committee may refer sufficiently serious complaints to the body responsible for exercising disciplinary control over the judge.<sup>3</sup>

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<sup>2</sup> In many jurisdictions in which such committees have been established a judge may request an advisory opinion about the propriety of his or her own conduct. The committee may also issue opinions on its own initiative on matters of interest to the judiciary. Opinions address contemplated or proposed future conduct and not past or current conduct unless such conduct relates to future conduct or is continuing. Formal opinions set forth the facts upon which the opinion is based and provide advice only with regard to those facts. They cite the rules, cases and other authorities that bear upon the advice rendered and quote the applicable principles of judicial conduct. The original formal opinion is sent to the person requesting the opinion, while an edited version that omits the names of persons, courts, places and any other information that might tend to identify the person making the request is sent to the judiciary, bar associations and law school libraries. All opinions are advisory only, and are not binding, but compliance with an advisory opinion may be considered to be evidence of good faith.

<sup>3</sup> In many jurisdictions in which such committees have been established, complaints into pending cases are not entertained, unless it is a complaint of undue delay. A complaint is required to be in writing and signed, and include the name of the judge, a detailed description of the alleged unethical conduct, the names of any witnesses, and the complainant's address and telephone number. The judge is not notified of a complaint unless the committee determines that an ethics violation may have occurred. The identity of the person making the complaint is not disclosed to the judge unless the complainant

### 3. Assignment of Cases

- 3.1 The nomination of judges to sit on a bench is an inextricable part of the exercise of judicial power.
- 3.2 The division of work among the judges of a court, including the distribution of cases, should ordinarily be performed under a predetermined arrangement provided by law or agreed by all the judges of the relevant court. Such arrangements may be changed in clearly defined circumstances such as the need to have regard to a judge's special knowledge or experience. The allocation of cases may, by way of example, be made by a system of alphabetical or chronological order or other random selection process.
- 3.3 A case should not be withdrawn from a particular judge without valid reasons. Any such reasons and the procedures for such withdrawal should be provided for by law or rules of court.

### 4. Court Administration

- 4.1 The responsibility for court administration, including the appointment, supervision and disciplinary control of court personnel should vest in the judiciary or in a body subject to its direction and control.
- 4.2 The judiciary should adopt and enforce principles of conduct for court personnel, taking into consideration the Principles of Conduct for Court Personnel formulated by the Judicial Integrity Group in 2005.
- 4.3 The judiciary should endeavour to utilize information and communication technologies with a view to strengthening the transparency, integrity and efficiency of justice.
- 4.4 In exercising its responsibility to promote the quality of justice, the judiciary should, through case audits, surveys of court users and other stakeholders, discussion with court-user committees and other means, endeavour to review public satisfaction with the delivery of justice and identify systemic weaknesses in the judicial process with a view to remedying them.
- 4.5 The judiciary should regularly address court users' complaints, and publish an annual report of its activities, including any difficulties encountered and measures taken to improve the functioning of the justice system.

### 5. Access to Justice

- 5.1 Access to justice is of fundamental importance to the rule of law. The judiciary should, within the limits of its powers, adopt procedures to facilitate and promote such access.
- 5.2 When there is no sufficient legal aid publicly available, the high costs of private legal representation make it necessary for the judiciary to consider, where appropriate and desirable, such initiatives as the encouragement of *pro bono* representation of selected litigants by the legal profession of selected litigants, the appointment of *amici curiae* (friend of the court), alternative dispute resolution, and community justice procedures, to protect interests that would otherwise be unrepresented in court proceedings; and the provision of permission to appropriate non-qualified persons (including paralegals) to represent parties before a court.

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consents. It may be necessary, however, for a complainant to testify as a witness in the event of a hearing. All matters before the committee are confidential. If it is determined that there may have been an ethics violation, the committee usually handles the matter informally by some form of counselling with the judge. If the committee issues a formal charge against the judge, it may conduct a hearing and, if it finds the charge to be well-founded, may reprimand the judge privately, or place the judge on a period of supervision subject to terms and conditions. Charges that the committee deems sufficiently serious to require the retirement, public censure or removal of the judge are referred to the body responsible for exercising disciplinary control over the judge.

5.3 The judiciary should institute modern case management techniques to ensure the just, orderly and expeditious conduct and conclusion of court proceedings.<sup>4</sup>

## 6. Transparency in the Exercise of Judicial Office

6.1 Judicial proceedings should, in principle, be conducted in public. The publicity of hearings ensures the transparency of proceedings. The judiciary should make information regarding the time and venue of hearings available to the public and provide for adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, inter alia, the potential interest in the case and the duration of the hearing.<sup>5</sup>

6.2 The judiciary should actively promote transparency in the delivery of justice, and ensure that, subject to judicial supervision, the public, the media and court users have reliable access to all information pertaining to judicial proceedings, both pending and concluded, whether on a court website or through appropriate and accessible records. Such information should include reasoned judgments, pleadings, motions and evidence, but affidavits or like evidentiary documents that have not yet been accepted by the court as evidence may be excluded.

6.3 To facilitate access to the judicial system, the judiciary should ensure that standard, user-friendly forms and instructions, and clear and accurate information on matters such as filing fees, court procedures and hearing schedules are made available to potential court users.

6.4 The judiciary should ensure that witnesses, other court users and interested members of the public have access to easily readable signs and publicly displayed courthouse orientation guides. Sufficient court personnel should be provided to respond to questions through public information services. They should be available close to court entrances. Customer service and resource centres should be provided in an accessible place. Court users should have access to safe, clean, convenient and user-friendly court premises, with comfortable waiting areas, adequate public space, and amenities for special-need users, such as children, victims, and the disabled.

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<sup>4</sup> Traditionally, the parties to a dispute control the movement of a case, with judges and court personnel merely acting as facilitators. It is now recognized in many jurisdictions that the judiciary should actively monitor and control the progress of a case, especially in the original courts, from institution to judgment, including the completion of all the post-judgment steps. The active management by the court of the progress of a case is designed to encourage the just, orderly and expeditious resolution of disputes. This may involve the case being handled by the same judge from beginning to end; the early fixing of a near-immutable trial date; the judge himself fixing the timetable and giving relevant directions in the pre-trial period; and the same judge trying the case if it goes to trial. The active involvement of the judge enables him or her to deal effectively with the critical areas of litigation, such as defective pleadings, excessive discovery of documents and other techniques frequently employed to delay the proceedings. It may also facilitate the continuous hearing of a case instead of short and incomplete hearings spread over several weeks or months.

<sup>5</sup> The requirement of a public hearing does not necessarily apply to all appellate proceedings which may take place on the basis of written presentations, or to pre-trial decisions. Article 14(1) of the International Covenant on Civil and Political Rights acknowledges that a court has the power to exclude all or part of the public for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice. Apart from such exceptional circumstances, a hearing must be open to the general public, including members of the media, and must not, for instance, be limited to a particular category of persons. Even in cases in which the public is excluded from the trial, the judgment, including the essential findings, evidence and legal reasoning must be made public, except where the interest of juvenile persons otherwise requires, or the proceedings concern matrimonial disputes or the guardianship of children.

- 6.5 The judiciary should consider initiating outreach programmes designed to educate the public on the role of the justice system in society and to address common uncertainties or misconceptions about the justice system.<sup>6</sup>
- 6.6 The judiciary should afford access and appropriate assistance to the media in the performance of its legitimate function of informing the public about judicial proceedings, including decisions in particular cases.

## **7. Judicial Training**

- 7.1 To the full extent of its powers, the judiciary itself should organize, conduct or supervise the training of judges.
- 7.2 In jurisdictions that do not have adequate training facilities, the judiciary should, through the appropriate channels, seek the assistance of appropriate national and international bodies and educational institutions in providing access to such facilities or in developing the local knowledge capacity.
- 7.3 All appointees to judicial office should have or acquire, before they take up their duties, appropriate knowledge of relevant aspects of substantive national and international law and procedure. Duly appointed judges should also receive an introduction to other fields relevant to judicial activity such as management of cases and administration of courts, information technology, social sciences, legal history and philosophy, and alternative dispute resolution.
- 7.4 The training of judicial officers should be pluralist in outlook in order to guarantee and strengthen the open-mindedness of the judge and the impartiality of the judiciary.
- 7.5 While it is necessary to institute training programmes for judges on a regular basis, in-service training should normally be based on the voluntary participation of members of the judiciary.
- 7.6 Where the language of legal literature (i.e. law reports, appellate judgments, etc) is different from the language of legal education, instruction in the former should be provided to both lawyers and judges.
- 7.7 The training programmes should take place in, and encourage, an environment in which members of different branches and levels of the judiciary may meet and exchange their experiences and secure common insights from dialogue with each other.

## **8. Advisory Opinions**

- 8.1 A judge or a court should not render advisory opinions to the executive or the legislature except under an express constitutional or statutory provision permitting that course.

## **9. Immunity of Judges**

- 9.1 A judge should be criminally liable under the general law for an offence of general application committed by him or her and cannot therefore claim immunity from ordinary criminal process.

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<sup>6</sup> In a departure from the traditional belief that judges should remain isolated from the community to ensure their independence and impartiality, judicial outreach now involves proactive measures by judges and direct interaction with the communities they serve. Experience suggests that increased public knowledge about the law and court processes promote not only judicial transparency but also public confidence. Recent outreach approaches have included town hall meetings, the production of radio and television programmes, and the dissemination of awareness-raising materials such as court user guides in the form of short pamphlets providing basic information on arrest, detention and bail, criminal and civil procedures, and useful contacts for crime victims, witnesses and other users.

- 9.2 A judge should enjoy personal immunity from civil suits for conduct in the exercise of a judicial function.
- 9.3 The remedy for judicial errors (whether in respect of jurisdiction, substance or procedure) should lie in an appropriate system of appeals or judicial review.
- 9.4 The remedy for injury incurred by reason of negligence or misuse of authority by a judge should lie only against the State without recourse by the State against the judge.
- 9.5 Since judicial independence does not render a judge free from public accountability, and legitimate public criticism of judicial performance is a means of ensuring accountability subject to law, a judge should generally avoid the use of the criminal law and contempt proceedings to restrict such criticism of the courts.

## Part Two

### RESPONSIBILITIES OF THE STATE

#### CONSTITUTIONAL GUARANTEE OF JUDICIAL INDEPENDENCE

- 10.1 The principle of judicial independence requires the State to provide guarantees through constitutional or other means:
  1. that the judiciary shall be independent of the executive and the legislature, and that no power shall be exercised as to interfere with the judicial process;
  2. that everyone has the right to be tried with due expedition and without undue delay by the ordinary courts or tribunals established by law subject to appeal to, or review by, the courts;
  3. that no special ad hoc tribunals shall be established to displace the normal jurisdiction otherwise vested in the courts;
  4. that, in the decision-making process, judges are able to act without any restriction, improper influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason, and exercise unfettered freedom to decide cases impartially, in accordance with their conscience and the application of the law to the facts as they find them;
  5. that the judiciary shall have jurisdiction, directly or by way of review, over all issues of a judicial nature, and that no organ other than the court may decide conclusively its own jurisdiction and competence, as defined by law;
  6. that the executive shall refrain from any act or omission that preempts the judicial resolution of a dispute or frustrates the proper execution of a court decision;
  7. that a person exercising executive or legislative power shall not exercise, or attempt to exercise, any form of pressure on judges, whether overt or covert;
  8. that legislative or executive powers that may affect judges in their office, their remuneration, conditions of service or their resources, shall not be used with the object or consequence of threatening or bringing pressure upon a particular judge or judges;
  9. that the State shall ensure the security and physical protection of members of the judiciary and their families, especially in the event of threats being made against them; and

10. that allegations of misconduct against a judge shall not be discussed in the legislature except on a substantive motion for the removal or censure of a judge of which prior notice has been given.

## **11. QUALIFICATIONS FOR JUDICIAL OFFICE**

- 11.1 Persons selected for judicial office should be individuals of ability, integrity and efficiency with appropriate training or qualifications in law.
- 11.2 The assessment of a candidate for judicial office should involve consideration not only of his or her legal expertise and general professional abilities, but also of his or her social awareness and sensitivity, and other personal qualities (including a sense of ethics, patience, courtesy, honesty, commonsense, tact, humility and punctuality) and communication skills. The political, religious or other beliefs or allegiances of a candidate, except where they are proved to intrude upon the judge's performance of judicial duties, should not be relevant.
- 11.3 In the selection of judges, there should be no discrimination on irrelevant grounds. A requirement that a candidate for judicial office must be a national of the country concerned shall not be considered discriminatory on irrelevant grounds. Due consideration should be given to ensuring a fair reflection by the judiciary of society in all its aspects.

## **12. The Appointment of Judges**

- 12.1 Provision for the appointment of judges should be made by law.
- 12.2 Members of the judiciary and members of the community should each play appropriately defined roles in the selection of candidates suitable for judicial office.
- 12.3 In order to ensure transparency and accountability in the process, the appointment and selection criteria should be made accessible to the general public, including the qualities required from candidates for high judicial office. All judicial vacancies should be advertised in such a way as to invite applications by, or nominations of, suitable candidates for appointment.
- 12.4 One mechanism which has received particular support in respect of States developing new constitutional arrangements consists in the creation of a Higher Council for the Judiciary, with mixed judicial and lay representation, membership of which should not be dominated by political considerations.
- 12.5 Where an independent council or commission is constituted for the appointment of judges, its members should be selected on the basis of their competence, experience, understanding of judicial life, capacity for appropriate discussion and appreciation of the importance of a culture of independence. Its non-judge members may be selected from among outstanding jurists or citizens of acknowledged reputation and experience chosen by an appropriate appointment mechanism.
- 12.6 The promotion of judges, when not based on seniority, should be made by the independent body responsible for the appointment of judges, and should be based on an objective appraisal of his or her performance, having regard to the expertise, abilities, personal qualities and skills required for initial appointment.
- 12.7 The procedure in certain states of the Chief Justice or President of the Supreme Court being elected, in rotation, from among the judges of that court by the judges themselves, is not inconsistent with the principle of judicial independence and may be considered for adoption by other states.

### **13. Tenure of Judges**

- 13.1 It is the duty of the State to provide a full complement of judges to discharge the work of the judiciary.
- 13.2 A judge should have a constitutionally guaranteed tenure until a mandatory retirement age or the expiry of a fixed term of office.<sup>7</sup> A fixed term of office should not ordinarily be renewable unless procedures exist to ensure that the decision regarding re-appointment is made according to objective criteria and on merit.
- 13.3 The engagement of temporary or part-time judges should not be a substitute for a full complement of permanent judges. Where permitted by local law, such temporary or part-time judges should be appointed on conditions, and accompanied by guarantees, of tenure or objectivity regarding the continuation of their engagement which eliminate, so far as possible, any risks in relation to their independence.
- 13.4 Because the appointment of judges on probation could, if abused, undermine the independence of the judiciary, the decision whether or not to confirm such appointment should only be taken by the independent body responsible for the appointment of judges.
- 13.5 Except pursuant to a system of regular rotation provided by law or formulated after due consideration by the judiciary, and applied only by the judiciary or by an independent body, a judge should not be transferred from one jurisdiction, function or location to another without his or her consent.<sup>8</sup>

### **14. Remuneration of Judges**

- 14.1 The salaries, conditions of service and pensions of judges should be adequate, commensurate with the status, dignity and responsibilities of their office, and should be periodically reviewed for those purposes.
- 14.2 The salaries, conditions of service and pensions of judges should be guaranteed by law, and should not be altered to their disadvantage after appointment.

### **15. Discipline of Judges**

- 15.1 Disciplinary proceedings against a judge may be commenced only for serious misconduct.<sup>9</sup> The law applicable to judges may define, as far as possible in specific terms, conduct that may give rise to disciplinary sanctions as well as the procedures to be followed.

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<sup>7</sup> National practice appears to favour a specified retirement age for judges of superior courts. The constitutionally prescribed retirement age for judges of the highest court ranges from 62 in Belize, Botswana and Guyana to 65 in Greece, India, Malaysia, Namibia (with the possibility of extension to 70), Singapore, Sri Lanka and Turkey, 68 in Cyprus, 70 in Australia, Brazil, Ghana, Peru and South Africa, to 75 in Canada and Chile. In some jurisdictions (for example, Belize and Botswana), provision exists to permit a judge who has reached retirement age to continue in office "as long as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age".

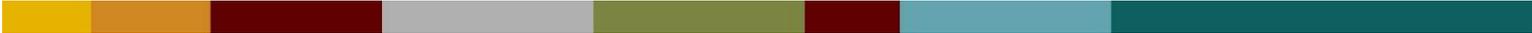
<sup>8</sup> The transfer of judges has been addressed in several international instruments since transfer can be used to punish an independent and courageous judge, and to deter others from following his or her example.

<sup>9</sup> Conduct that gives rise to disciplinary sanctions must be distinguished from a failure to observe professional standards. Professional standards represent best practice, which judges should aim to develop and towards which all judges should aspire. They should not be equated with conduct justifying disciplinary proceedings. However, the breach of professional standards may be of considerable relevance, where such breach is alleged to constitute conduct sufficient to justify and require disciplinary sanction.

- 15.2 A person who alleges that he or she has suffered a wrong by reason of a judge's serious misconduct should have the right to complain to the person or body responsible for initiating disciplinary action.
- 15.3 A specific body or person should be established by law with responsibility for receiving complaints, for obtaining the response of the judge and for considering in the light of such response whether or not there is a sufficient case against the judge to call for the initiation of disciplinary action. In the event of such a conclusion, the body or person should refer the matter to the disciplinary authority.<sup>10</sup>
- 15.4 The power to discipline a judge should be vested in an authority or tribunal which is independent of the legislature and executive, and which is composed of serving or retired judges but which may include in its membership persons other than judges, provided that such other persons are not members of the legislature or the executive.
- 15.5 All disciplinary proceedings should be determined by reference to established standards of judicial conduct, and in accordance with a procedure guaranteeing full rights of defence.
- 15.6 There should be an appeal from the disciplinary authority to a court.
- 15.7 The final decision in any proceedings instituted against a judge involving a sanction against such judge, whether held in camera or in public, should be published.
- 15.8 Each jurisdiction should identify the sanctions permissible under its own disciplinary system, and ensure that such sanctions are, both in accordance with principle and in application, proportionate.
- 16. Removal of Judges from Office**
- 16.1 A judge may be removed from office only for proved incapacity, conviction of a serious crime, gross incompetence, or conduct that is manifestly contrary to the independence, impartiality and integrity of the judiciary.
- 16.2 Where the legislature is vested with the power of removal of a judge, such power should be exercised only after a recommendation to that effect of the independent authority vested with power to discipline judges.
- 16.3 The abolition of a court of which a judge is a member should not be accepted as a reason or an occasion for the removal of the judge. Where a court is abolished or restructured, all existing members of that court should be re-appointed to its replacement or appointed to another judicial office of equivalent status and tenure. Where there is no such judicial office of equivalent status or tenure, the judge concerned should be provided with full compensation for loss of office.
- 17. Budget of the Judiciary**
- 17.1 The budget of the judiciary should be established in collaboration with the judiciary, care being taken that neither the executive nor legislature authorities is able to exert any pressure or influence on the judiciary when setting its budget.
- 17.2 The State should provide the judiciary with sufficient funds and resources to enable each court to perform its functions efficiently and without an excessive workload.

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<sup>10</sup> Unless there is such a filter, judges could find themselves facing disciplinary proceedings brought at the instance of disappointed litigants.

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- 17.3 The State should provide the judiciary with the financial and other resources necessary for the organization and conduct of the training of judges.
- 17.4 The budget of the judiciary should be administered by the judiciary itself or by a body independent of the executive and the legislature and which acts in consultation with the judiciary. Funds voted for the judiciary should be protected from alienation and misuse.

## DEFINITIONS

In this statement of implementation measures, the following meanings shall be attributed to the words used:

**“irrelevant grounds”** means race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes.

**“judge”** means any person exercising judicial power, however designated, and includes a magistrate and a member of an independent tribunal.

## ANNEX 3: EXAMPLE CODES FROM NIUE, KIRIBATI AND TUVALU

### Code of Judicial Conduct for Niue

#### What is this code for?

This code is issued for guidance of judges and to inform the people of Niue as to the role of the judges. These are guidelines only, not rules. It is for each judge to decide what the principles require in any given situation and different judges may properly interpret the requirements of the code differently.

The judge's primary duty is to administer justice by applying the law. This is reflected in the oath in which the judge swears to serve *"in accordance with the constitution and law."*

This means that in deciding any case the judges must identify the applicable law and base their decision on a consideration of only those matters and facts which the law says are relevant; the judges must not take anything else into consideration.

#### Why is there a code?

Upon appointment to the High Court of Niue Commissioners and Justices of the Peace swear the following:

"I swear by Almighty God that I will well and truly serve Her Majesty as the Head of State of Niue, Her heirs and successors, in accordance with the Constitution and the law, in the office of (Commissioner or Justice of the Peace); and I will do right to all manner of people, without fear or favour, affection or ill will. So help me God."

In performing their judicial role judges make decisions which affect peoples' lives, it is important that the people affected by judicial decisions and those who may one day come before the court, have confidence that every case will be heard and decided fairly in accordance with the law.

If the respect and confidence of the public in the justice system is to be upheld Commissioners and Justices of the Peace must respect and comply with the law in their public and private lives, conducting themselves in a manner which will not bring themselves or their office into disrepute.

The following six principles or values are recognised in almost every judicial code of conduct.

However the principles are not to be neatly confined, they overlap and blend one into another.

Each principle is stated below and followed by guidelines as to its scope and application.

#### **Definitions**

"**Judge**" is used in its widest sense to include any Judge, Commissioner or Justice of the Peace.

"**Appearance**" is to be judged from the view point of a reasonable member of the community.

In determining what a reasonable, fair minded and informed member of the community might think a judge may take account of his or her knowledge of the community's values and customs.

## 1. INDEPENDENCE

*Judicial independence is essential to the rule of law and the fair conduct of trials. It is for the judges alone to interpret and apply the law and in doing so they should be seen to be free from any external influence. A judge should do nothing in public or private that might undermine his or her individual independence, the institutional independence of the judiciary, or the appearance of independence.*

### Scope and application

- 1.1 Good governance requires that the judiciary must operate independently and free from influence by the Cabinet and public servants (the executive) or the Assembly (the legislature). This independence is fundamental to democracy and protected by the constitution.
- 1.2 A judge must however be independent and free from any and all influence other than those considerations required by the law, and to that end should:
  1. firmly reject any attempt to influence his or her decisions in any matter before the Court outside the proper process of the Court;
  2. not allow public opinion or fear of public disapproval to affect the decision making process
  3. encourage and uphold arrangements and safeguards to maintain and enhance the independence of the Judiciary;

## 2. Impartiality

*Judges must be impartial, and appear to be impartial in both the decision and the decision making process.*

*Judges should make sure that their conduct, both in and out of Court, maintains and enhances confidence in their impartiality and that of the Judiciary.*

*If, in any particular case, a judge recognises that his or her impartiality is compromised he or she must not sit. The proper course of action is for the judge to disqualify (recuse) him or her self.*

### Scope and application

- 2.1 Particular aspects of conduct relating to impartiality are discussed below. In considering these it should be born in mind that a balance must be struck between the need to remain impartial and the need to be, and be seen to be, a part of the community both are important aspects of the judicial role. In deciding cases the law requires judges to evaluate the credibility of evidence, and in some cases to decide what is reasonable, such decisions require knowledge of local mannerisms and customs. Nevertheless, as much as is reasonably possible a judge should conduct his or her personal and business affairs so as to minimise the occasions on which it will be necessary to be disqualified from hearing cases.
- 2.2 The duty to be impartial touches on several areas of judicial conduct and overlaps to a considerable extent with the principles of independence, integrity, propriety and equality.
- 2.3 A judge's conduct in and out of court should maintain and enhance confidence in his or her impartiality.
- 2.4 A judge must not allow his or her decisions to be affected by, or appear to be affected by bias or prejudice.
  1. Conflicts of interest or bias may arise both from personal interests and relationships and from financial interests and relationships.

2. Prejudice may be against a group or section of the population but may also occur at personal level against individuals based on their personal characteristics or prior contact. Judges must be alert to guard against prejudice where ever it may arise whether in themselves or in others.
- 2.5 Upon appointment a judge should review his or her membership of any commercial, social and political groups and withdraw from any involvement that could compromise his or her judicial position.

#### Judicial demeanour should demonstrate impartiality

- 2.6 Whilst acting decisively, maintaining firm control of the process and ensuring cases are dealt with quickly, a judge should treat everyone before the Court with equal respect and courtesy.

#### Civic and charitable activity

- 2.7 Judges are free to participate in civic, charitable and religious activities, subject to the following considerations:
  1. A judge should avoid any activity or association that could reflect adversely on his or her impartiality or interfere with the performance of judicial duties.
  2. A judge should not solicit funds (except from judicial colleagues or for appropriate purposes) or lend the prestige of the judicial office to such solicitations.
  3. A judge should avoid involvement in causes and organisations that are likely to be engaged in litigation.
  4. A judge should not give legal or investment advice.

#### Political activity

- 2.8 All political activity must cease upon appointment. Judges should refrain from conduct that could give rise to the appearance that they are engaged in political activity. Judges should refrain from:
  1. membership in political parties and political fundraising;
  2. attendance at political fundraising events;
  3. contributing to political parties or campaigns;
  4. taking part publicly, in controversial political discussions except in respect of matters directly affecting the operation of the Courts, the independence of the Judiciary or fundamental aspects of the administration of justice;
  5. signing petitions to influence a political decision.
- 2.9 Members of a judge's family have every right to be politically active. Sometimes this may adversely affect the public perception of the judge's impartiality. In any case before the Court where there could reasonably be such a perception, a judge should not sit.

#### Conflict of interest

- 2.10 A judge must disqualify him or her self in any case in which he or she will not be able to judge impartially, or where that appears to be the case. Generally a judge should not preside over a case where the accused or witness is a
  1. is a near relative; (ie. A member of your immediate family: parent, spouse, sibling, child including adopted or step child, Grandparents.)

2. is a close friend;
  3. is an employer or employee; or
  4. has a close business relationship with the judge.
- 2.11 A judge should not preside over a case where he or she has or may appear to have preconceived or pronounced views relating to:
1. issues;
  2. witnesses; or
  3. parties.
  4. A judge should strive to avoid making any assumptions in relation to the foregoing and should make a decision based only on the evidence.
- 2.12 It is **not** appropriate for a judge to disqualify him or herself if:
1. the matter giving rise to a possibility of conflict is insignificant or a reasonable and fair-minded person would not be able to make an argument in favour of disqualification;
  2. no other Commissioners or Justices of the Peace are available to deal with the case and then only if, because of urgent circumstances, failure to act could lead to a miscarriage of justice.

*NOTE: Niue is a very small country and if judges were to disqualify themselves in every case where they know of one or other participant, the hearing of minor matters might be considerably delayed. Undue delay can, in itself, constitute a denial of justice. Therefore, the interest of justice requires that judges are careful not to disqualify themselves too readily. Inevitably judges will hear cases where they know something of the parties. In every case it should be clear to all observers that the trial is conducted fairly and the judges should explain their decision clearly. The reasons should leave no doubt that the decision was based on the law as applied only to those facts established by evidence in open court.*

*The Niuean people are used to the idea that individuals may "wear a number of different hats" and the judges must make it clear from the way they conduct themselves, that with the judicial hat comes impartiality.*

- 2.13 Where the circumstances are evenly balanced the consent of the party or parties after full disclosure in open court may be relevant, however care should be taken to identify any possibility that consent is not freely given. For instance a party may feel that he or she cannot bear the delay of waiting for a trial with a differently constituted bench.

### 3. Integrity

*Through all his or her public and private life a judge should demonstrate soundness of moral character through consistency of action, values, honesty and truthfulness. By conducting themselves with integrity judges will sustain and enhance public confidence in the Judiciary.*

#### Scope and Application

- 3.1 By exhibiting and promoting respect for the law and high standards of conduct in his or her professional and private life a judge will reinforce public confidence in the judiciary.
- 3.2 This means judges should make every effort to ensure that their conduct is above reproach in the view of reasonable, fair minded and informed members of the community. Judges should encourage and support their judicial colleagues to observe these high standards.

#### 4. Propriety

*A judge must avoid impropriety and the appearance of impropriety in all his or her activities, public and private.*

##### Scope and Application

- 4.1 A judge must act with propriety in order to uphold the dignity and authority of the judicial office. A judge's conduct should not be such as to bring the judicial office into disrepute or to offend against those standards expected of a proper member of the community within which he or she lives and works.
- 4.2 A judge should avoid any relationship which may put him or her in such a position as to be, or appear to be, subject to the influence of others. To this end, Judges should especially avoid developing, or appearing to develop, close social relationships with the prosecuting authorities and those individuals who represent parties in court.
- 4.3 It is improper for judges to use their judicial office to obtain any favour or advancement and judges must avoid any conduct which might give the appearance of so doing.

##### Gifts

- 4.4 If there is any possibility that the giving of a gift is an attempt or might appear to be an attempt to curry favour a Judge must not accept.

##### Confidential Information

- 4.5 A judge should not discuss or disclose any confidential matters learnt of by reason of his or her office which includes the deliberations of judges in reaching their decisions. It is however proper for judges to discuss with other judges issues arising during the conduct of cases in the interest of developing good practice.

#### 5. Equality

*A judge should ensure that every one is treated with respect and courtesy and with equality according to the law.*

##### Scope and Application

- 5.1 It is the duty of the judges to ensure that people attending court proceedings, in whatever capacity, are treated as equal before the law.
- 5.2 Judges should:
1. ensure that the trial process is fair and that all parties are given an equal opportunity to put their case and to answer any evidence put against them;
  2. carry out their duties with appropriate consideration for all persons be they parties, witnesses, court personnel, observers or judicial colleagues, and without discrimination;
  3. strive to be aware of and understand and accommodate differences arising from, for example, gender, race, religious conviction, culture, ethnic background or disability;
  4. avoid membership in any organisation that you know currently practices any form of discrimination that contravenes the law;

- 5.3 A judge should disassociate him or herself from, and make clear his or her disapproval of clearly irrelevant comments or improper conduct by court staff, counsel, or any other person in court. Improper conduct can include sexist, racist, or discriminatory language or actions which are prohibited by law.

## 6. Competence and Diligence

*A judge must be prepared to engage in training and preparation so as to be competent in performing his or her duties. He or she should also be diligent in the performance of judicial duties.*

### Scope and Application

6.1 This means judges should:

1. be conscientious in fulfilling their judicial duties, which include not only the conduct of cases in court, but other judicial tasks essential to the Court's operation;
2. bring to each case a high level of competence and ensure that they are sufficiently informed to provide adequate reasons for each decision;
3. take reasonable steps to maintain and enhance the knowledge, skills and personal qualities necessary for their role;
4. not engage in conduct incompatible with the diligent discharge of judicial duties or condone such conduct in colleagues.

6.2 Decisions should be delivered as quickly as circumstances permit; usually this will be immediately. This means judges must be familiar with common offences, jurisdiction and procedure; and prepare before sitting in Court.

### Cases of doubt

In any case where a judge is uncertain as to how these principles apply to the particular circumstances, he or she may seek guidance from the head of the judiciary. If there is not time to do so, he or she should err on the side of caution; the question may nevertheless be referred to the Chief Justice for the future.

## CODE OF CONDUCT FOR JUDICIAL OFFICERS OF THE REPUBLIC OF KIRIBATI

### i) PREFACE

The conduct of Judicial Officers (and in Kiribati, by this term I mean Judges, Commissioners of the High Court, Chief Registrar, Magistrates, Justices of the Peace and other persons carrying out judicial functions in Kiribati) has always been a matter of public concern and interest.

In addition, apart from the provisions of the Constitution, governing the removal of Judges for misconduct, there is no formal machinery available to members of the public for the processing of complaints against Judicial Officers for any alleged misconduct.

This new Code of Conduct and the accompanying mechanism for the handling of complaints against Judicial Officers have been voluntarily adopted by the entire membership of the Judiciary and will henceforth bind all serving Judicial Officers.

The overall objectives are threefold:

1. To ensure public confidence in the administration of justice;
2. To enhance public respect for the institution of the Judiciary; and
3. To protect the reputation of individual Judicial Officers and of the Judiciary as a whole.

It is hoped that members of the public will support and cooperate with the Judiciary as it seeks, for the first time in its history, to regulate the conduct of its members in the interest of all concerned.

SIR JOHN BAPTIST MURIA  
CHIEF JUSTICE  
OCTOBER 2011

**CODE OF CONDUCT FOR JUDICIAL OFFICERS  
OF THE REPUBLIC OF KIRIBATI**

**ii) PURPOSE**

The purpose of this Code is to establish standards for ethical conduct of Judicial Officers. It is designed to provide guidance to Judicial Officers and to afford the judiciary a framework for regulating judicial conduct. It is also intended to assist Government operatives, Parliamentarians, legal practitioners and the public in general to better understand and support the judiciary.

The principle enshrined in this Code presupposes that Judicial Officers are accountable for their conduct to the appointing authorities and the general public. The Code is therefore to supplement and not substitute or derogate from existing rules of law and conduct which bind Judicial Officers.

The Judicial Officer's primary duty is to administer justice by applying the law. This is reflected in the oath in which the Judicial Officer swears:

*"I,....., do swear by Almighty God that I will well and truly serve the Independent and Sovereign Republic of Kiribati as a judicial officer, and will do right to all manner of people after the laws and usages of Kiribati, without fear or favour, affection or ill will. So help me God."*

**iii) PREAMBLE**

**WHEREAS** the Constitution of Kiribati enshrines the fundamental principles of freedom, democracy and justice;

**AND WHEREAS** an independent, strong, respected and respectable Judiciary is indispensable for the impartial administration of justice in a democratic state.

**AND WHEREAS** at the annual conference of the said members/justices the draft Code was discussed, approved and unanimously adopted the draft Code.

**WE THE MEMBERS OF THE JUDICIARY OF KIRIBATI** hereby freely and voluntarily accept to be guided and bound by this Code of ethics.

## 1. INDEPENDENCE

*Judicial independence is essential to the rule of law and the fair conduct of trials.*

*A Judicial Officer should therefore uphold and exemplify judicial independence in both its individual and institutional aspects.*

- 1.1 A Judicial Officer must not be actively involved in government or politics. This means a Judicial Officer should not be a member of the village council.
- 1.2 Judicial Officers can be involved in village activities such as the Maneapa but it is important those activities should be in compliance with the law.
- 1.3 A Judicial Officer must make his or her decisions from the evidences before the court in accordance with the law without the interference or influence from bodies outside the court.

## 2. IMPARTIALITY

*Impartiality in both the decision and the decision making process is essential to the proper discharge of judicial duties.*

Note: Particular aspects of conduct relating to impartiality are explained below. In considering these it should be borne in mind that a balance must be struck between the need to remain impartial and the need to be, and be seen to be, a part of the community; both are important aspects of the judicial role. In deciding cases the law requires Judicial Officers to evaluate the credibility of evidence, and in some cases, to decide what is reasonable. Such decisions require knowledge of local mannerisms and customs. Where a court takes local custom or tradition into account, it must say so in open court.

- 2.1 A Judicial Officer must not be biased
- 2.2 A Judicial Officer must not appear to be biased. (In the eyes of the community)
- 2.3 A Judicial Officer should not sit and hear a case that would give him or his family benefits. This applies whether the benefit is direct or indirect and includes money, lands and any other benefit.
- 2.4 A Judicial Officer should not hear a case which involves a close family member, close friend, or workmate
- 2.5 If he feels thinks his decision would be affected, or appear to be affected a Judicial Officer should not sit and hear a case. He or she should withdraw and let another Judicial Officer hear the case
- 2.6 A Judicial Officer should not recuse him or her self merely because he or she knows a person involved in the case. In a small community it is inevitable that the Judicial Officers will know the people.

*NOTE: Kiribati is a small country and the island jurisdictions are very small. If Judicial Officers were to disqualify themselves in every case where they know one or other participant, the hearing of minor matters might be considerably delayed. Undue delay can, in itself, constitute a denial of justice. Therefore, the interest of justice requires that Judicial Officers are careful not to disqualify themselves too readily. Inevitably Judicial Officers will hear cases where they know something of the parties. In every case it should be clear to all observers that the trial is conducted fairly. The Judicial Officers should explain their decision clearly giving their full reasoning. The reasons should leave no doubt that the decision was based on the law as applied only to those facts established by evidence in open court.*

*It is for the Judicial Officers to make it clear from the way they conduct themselves, that when they are sitting as Judicial Officers they will always be impartial.*

## 3. INTEGRITY

*Through all his or her public and private life a Judicial Officer should demonstrate soundness of moral character through consistency of action and values, honesty and truthfulness.*

- 3.1 Judicial Officers make decisions that affect peoples' lives, therefore it is important that a Judicial Officer should demonstrate a good and moral character so that he or she displays an image of a judge that can be trusted and respected.
- 3.2 A Judicial Officer must be true to the judicial oath.

#### 4. PROPRIETY

***A Judicial Officer must avoid impropriety and the appearance of impropriety in all his or her activities, public and private.***

- 4.1 A Judicial Officer's conduct should not be such as to bring the judicial office into disrepute or to offend against those standards expected of a proper member of the community within which he or she lives and works. Judicial Officers should encourage respect the court and the rule of law.
- 4.2 A Judicial Officer should make sure that everything he or she does is in compliance with the law and so far as possible with the customs of the community.
- 4.3 A Judicial Officer should not use his or her judicial power or position in an improper way to get any benefit and Judicial Officers must avoid any conduct which might give the appearance of so doing.
- 4.4 A Judicial Officer should avoid any relationship with people in the community that could put him or her in an awkward position in trying to do their duty. In particular Judicial Officers should avoid developing close social relationships with the police and with lawyers or others who regularly represent parties in court.

##### Gifts

- 4.5 A Judicial Officer should not accept any kind of gift, favour or benefit that could influence his or her judicial decisions.

##### Confidential Information

- 4.6 A Judicial Officer should not release or say anything regarding a decision of the court before it is published. A Judicial Officer should not discuss details of individual cases outside court.
- 4.7 A Judicial Officer should not release information about the Judicial Officers' discussions when making their decisions.

#### 5 EQUALITY

***A Judicial Officer should ensure that every one is treated with respect and courtesy and with equality according to the law.***

- 5.1 Every proceeding should be conducted fairly.
- 5.2 The court must ensure that all persons appearing before it are given equal treatment without regard to their position, behaviour or any preconceptions.
- 5.3 The court must ensure that the parties are given the opportunity to present their case.
- 5.4 The court must ensure that all parties are given the opportunity to hear all the evidences and arguments from all sides. A Judicial Officer must not discuss the case with any party outside court.
- 5.5 The court must recognise and uphold all those rights given by law to individuals.

#### 6. COMPETENCE AND DILIGENCE

***A Judicial Officer must engage in training and preparation so as to be competent in performing his or her duties. He or she should also be diligent in the performance of judicial duties.***

- 6.1 Magistrates are created by statute (Magistrates' Courts Ordinance CAP 52 1977) and the powers of Magistrates are limited by statute. All Judicial Officers must take care not to exceed the authority given to them.
- 6.2 A Judicial Officer should read and use the materials provided for his or her guidance, such as the benchbook and the laws of Kiribati.
- 6.3 A Judicial Officer should participate in such training as is available.
- 6.4 Court hearings should be conducted at scheduled and published times and should commence punctually.
- 6.5 Decisions should be given in reasonable time and full reasons should be given identifying the relevant law and the evidence relied upon.
- 6.6 The Judicial Officers should ensure that the court makes and keeps an adequate written record of the decision and the reasons therefore.

### **Cases of doubt**

In any case where a Judicial Officer is uncertain as to how these principles apply to the particular circumstances, he or she may seek guidance from the head of the judiciary, the Chief Justice. If there is not time to do so, he or she should err on the side of caution; the question may nevertheless be referred to the Chief Justice for the future.

## **7. ESTABLISHMENT OF JUDICIAL ETHICS COMMITTEE**

7.1 The Chief Justice shall, for the purposes of this Code appoint a Committee to be called the Judicial Ethics Committee.

The Committee shall consist of -

1. the Chief Justice of the High Court who shall be chairman;
2. a Justice of the Court of Appeal; and
3. the Chief Registrar of the High Court.

The Chief Registrar shall act as Secretary to the Committee.

### **7.2 Functions of Judicial Ethics Committee**

1. Any person who has a complaint relating to the conduct of a Judicial Officer other than the Chief Justice in respect of the officers conduct may send the complaint in writing to the Chief Justice who shall, after determining whether there is merit in the complaint, refer it to the committee for investigation.
2. Where the complaint is in respect of the conduct of the Chief Justice, the complainant shall submit the complaint in writing to the most senior Justice of the Court of Appeal.

### **7.3 Procedures of Judicial Ethics Committee:**

1. Subject to this Code, the Committee shall adopt its own procedures for the investigation of complaints;
2. Where the complaint is in respect of the conduct of a Magistrate, the committee shall co-opt the most senior Magistrate to take part in its deliberations but such Magistrate shall not vote on any decision to be taken by the Committee;
3. All meetings of the committee shall be convened by the Chairman or at the request of the Chief Justice.
4. The quorum for a meeting of the Committee shall be two.
5. The committee may, if it thinks necessary, require the Complainant to appear before the committee but shall give an opportunity to the Judicial Officer against whom the complaint is made to be heard.

6. After conducting an investigation, the Committee shall decide whether any allegations made in the complaint have been proved and if it so decides it shall:
  1. Inform the Chief Justice accordingly making any recommendations, it thinks fit;
  2. Inform the complainant and the Judicial Officer whose conduct was investigated, of its findings.
7. Any recommendation made to the Chief Justice shall state whether the conduct of the Judicial Officer is of such gravity that the matter should be referred to the Judicial and Legal Service Commission.
8. The Chief Justice shall cause to be kept a register in which shall be recorded all complaints investigated by the Committee and the outcome of such complaints.

## 8. INTERPRETATION

In this Code:-

words importing the masculine gender include female;

words in the singular include the plural and words in the plural the singular, "family" means the spouse and children of the Judicial Officer;

"Judicial Officer" means the Chief Justice, a Judge of the Court of Appeal, a Judge of the High Court, a Judge Advocate, the Registrar of the High Court, the Registrar of the Court of Appeal, any Deputy Registrar, a Magistrate or any Justice of the Peace performing the functions of a Magistrate;

"Committee" means the Judicial Ethics Committee established by the Chief Justice under paragraph 6.1.

## 9. COMMENCEMENT

This Code shall come into force on [            ]

## COMPLAINTS

**ALL COMPLAINTS AGAINST JUDICIAL OFFICERS COVERED BY THIS CODE OF CONDUCT SHOULD BE ADDRESSED TO:**

**"THE JUDICIAL ETHICS COMMITTEE  
HIGH COURT OF KIRIBATI  
P O BOX 501  
BETIO, TARAWA  
REPUBLIC OF KIRIBATI**

**TEL: (686) 26451  
FAX: (686) 26149**

## CODE OF JUDICIAL CONDUCT FOR TUVALU

This code is issued for guidance of magistrates and to inform the people of Tuvalu as to the role of the magistrates. It should be read and interpreted in conjunction with the Leadership Code Act 2006.

The magistrate's primary duty is to administer justice by applying the law. This is reflected in the oath in which the magistrate swears:

"I swear by Almighty God that I will well and truly serve Our Sovereign Lady Queen Elizabeth, her Heirs and Successors, as a Judicial Officer and I will do right to all manner of people after the laws and usages of Tuvalu, without fear or favour, affection or ill will. So help me God."

### 1. Independence

*Judicial independence is essential to the rule of law and the fair conduct of trials.*

*A magistrate should therefore uphold and exemplify judicial independence in both its individual and institutional aspects.*

- 1.1 A magistrate must not be actively involved in government or politics. This is why the Islands Court Act says a member of the Kaupule may not be a magistrate.
- 1.2 Magistrates are also members of the community and may properly take their part as members of the Falekaupule, where they may vote on policy and in the election of members of the Kaupule.
- 1.3 In deciding cases a magistrate must make his or her decisions according to the law and the evidence and without fear or influence from the Kaupule, central government, anyone or anything outside the proper process of the court.

### 2. Impartiality

*Impartiality in both the decision and the decision making process is essential to the proper discharge of judicial duties.*

- 2.1 Particular aspects of conduct relating to impartiality are explained below. In considering these it should be borne in mind that a balance must be struck between the need to remain impartial and the need to be, and be seen to be, a part of the community; both are important aspects of the judicial role. In deciding cases the law requires magistrates to evaluate the credibility of evidence, and in some cases, to decide what is reasonable. Such decisions require knowledge of local mannerisms and customs. Where a court takes local custom or tradition into account, it must say so in open court.
- 2.2 A magistrate must be impartial.
- 2.3 A magistrate must also appear to be impartial, which means that a reasonable and fair minded member of the community knowing all the circumstances would believe that the magistrate is impartial.
- 2.4 In any case where there might be a reasonable doubt about a magistrate's impartiality he or she should recuse him or her self and let another magistrate hear the case.

- 2.5 A magistrate should not sit in any case involving a person with whom the magistrate has a close relationship, and should not sit in any case involving the magistrate's
1. immediate family (i.e. parent, spouse, brother or sister, child including an adopted or step child.)
  2. close friend
  3. workmate

This guideline applies whatever the capacity in which the person is involved; whether the person is a defendant, victim, witness, complainant or party to a civil case.

- 2.6 A magistrate should not sit on a case where he or his family might benefit from the outcome. This applies whether the interest is direct or indirect and includes:
1. a financial interest, or
  2. an interest in land,
  3. an interest in other property
- 2.7 In a land case a magistrate ought not to decide a case concerning land which belongs to a Kaitasi of which he or she is a member.
- 2.8 A magistrate should not sit on any case where he or she has or may appear to have preconceived or pronounced views relating to:
1. issues;
  2. witnesses; or
  3. parties.
- 2.9 A magistrate should strive to avoid making any assumptions and should make a decision based only on the evidence.
- 2.10 If the Island Magistrates believe their impartiality would be compromised because of the high social standing of the individual concerned it may be appropriate to refer a case to the Senior Magistrate. e.g. a case involving the Pule ote Fenua, Pule ote Kaupule, the pastor or his wife.
- 2.11 A magistrate should not recuse him or herself merely because he or she knows a person involved in the case. In a small community it is inevitable that the magistrates will know the people.

*NOTE: Tuvalu is a small country and the island jurisdictions are very small. If magistrates were to disqualify themselves in every case where they know one or other participant, the hearing of minor matters might be considerably delayed. Undue delay can, in itself, constitute a denial of justice. Therefore, the interest of justice requires that magistrates are careful not to disqualify themselves too readily. Inevitably magistrates will hear cases where they know something of the parties. In every case it should be clear to all observers that the trial is conducted fairly and only on the evidence. The magistrates should explain their decision clearly giving their full reasoning. The reasons should leave no doubt that the decision was based on the law as applied only to those facts established by evidence in open court.*

***It is for the magistrates to make it clear from the way they conduct themselves, that when they are sitting a magistrates they will always be impartial.***

### **3. Integrity**

***Through all his or her public and private life a magistrate should demonstrate soundness of moral character through consistency of action and values, honesty and truthfulness.***

- 3.1 By conducting themselves with integrity magistrates will sustain and enhance public confidence in the Judiciary.

- 3.2 A magistrate must be honest in his public and private life so that people will know that the magistrate can be trusted.
- 3.3 A magistrate must be true to the judicial oath.

#### 4. Propriety

***A magistrate must avoid impropriety and the appearance of impropriety in all his or her activities, public and private.***

- 4.1 A magistrate's conduct should not be such as to bring the judicial office into disrepute or to offend against those standards expected of a proper member of the community within which he or she lives and works. By their behaviour individually and collectively magistrates should teach people to respect the court and the rule of law.
- 4.2 Whatever a magistrate does he must do properly, according to the law and with respect for the customs and traditions of the people.
- 4.3 It is improper for magistrates to use their judicial office to obtain any favour or advancement and magistrates must avoid any conduct which might give the appearance of so doing.
- 4.4 A magistrate should avoid any relationship which may put him or her in such a position as to be, or appear to be, subject to the influence of others. To this end, Magistrates should especially avoid developing, or appearing to develop, close social relationships with the prosecuting authorities and those individuals who represent parties in court.

#### Gifts

- 4.5 If there is any possibility that the giving of a gift is an attempt or might appear to be an attempt to gain favour, a Magistrate must not accept.
- 4.6 A magistrate does not accept any gift, benefit or advantage whatsoever that might influence the conduct of his official duties or which might give the appearance of so doing.  
*( N.B. Specific guidance regarding traditional gifts can be found in The Leadership Act)*

#### Confidential Information

- 4.7 A magistrate should not discuss or disclose any confidential matters learnt of by reason of his or her office. The deliberations of magistrates in reaching their decisions are confidential. It is proper for magistrates to discuss with other magistrates issues arising during the conduct of cases in the interest of developing good practice. A magistrate must never seek the opinion of any person, even another magistrate, other than those hearing the case in question as to the appropriate decision.

#### 5 Equality

***A magistrate should ensure that every one is treated with respect and courtesy and with equality according to the law.***

- 5.1 It is the duty of the magistrates to ensure that every court hearing is fair. This means that everyone participating in court proceedings must be treated:
  1. equally, no matter high or low, and
  2. with respect and courtesy, and
  3. without prejudice or hatred.

AND that parties to a case must be:

4. given the same voice in order to put their case to the court.
5. present during proceedings to hear the case against them and the evidence submitted in support of that case.
6. given an opportunity to answer anything said against them
7. given the opportunity to put their own evidence before the court.

5.2 The court must recognise and uphold all those rights given by law to individuals.

## 6. Competence and Diligence

*A magistrate must engage in training and preparation so as to be competent in performing his or her duties. He or she should also be diligent in the performance of judicial duties.*

- 6.1 The Island Magistrates are created by statute (the Island Courts Act and The Native Lands Act) and the powers of magistrates are limited by statute. Magistrates must take care not to exceed the authority given to them.
- 6.2 A magistrate should read and use the materials provided for his or her guidance, such as the benchbook and the laws of Tuvalu.
- 6.3 A magistrate should participate in such training as is available.
- 6.4 Court hearings should be conducted at scheduled and published times and should commence punctually.
- 6.5 Decisions should be given in reasonable time and full reasons should be given identifying the relevant law and the evidence relied upon.
- 6.6 The magistrates should ensure that the court makes and keeps an adequate written record of the decision and the reasons therefore.

### Cases of doubt

In any case where a magistrate is uncertain as to how these principles apply to the particular circumstances, he or she may seek guidance from the Senior Magistrate or the head of the judiciary, the Chief Justice. If there is not time to do so, he or she should err on the side of caution; the question may nevertheless be referred to the Chief Justice for the future.

## **ANNEX 4: EXAMPLE OF TRAINING MATERIALS**

### **Examples of materials used in Kiribati**

The workshop format can be simple. Small groups might be asked to work together to consider some simple scenarios which raise conduct issues. When they have had time to decide what they would do, answers are discussed in plenary session.

Here are some scenarios which were used in Kiribati.

1. You are due to hear a case about an assault the accused person wants to call a witness who is your neighbour. What is the correct course of action?
2. A land case is brought before you. You do not know either owner but you realise that your uncle leases part of the land over which there is dispute. He uses the land for his boat building business which employs several family members. Is there anything you should do?
3. Next week you will try a case of wife beating. The husband's mother sends you a gift of some very fine pandanus mats. What should you do?
4. You are asked to determine a debt case; Manu is accused of failing to repay \$50 he borrowed from Leonard. You remember that Manu borrowed money from your friend last year and that it took him a long time to pay the money back. Can you hear the case?
5. Everyone is talking about the fact that the magistrate on the neighbouring island regularly throws large parties where there is a lot of drinking and noise until late at night.
6. You are about to hear a case about the sale of a canoe, ownership is disputed. The village head comes to talk to you and asks about the case..... what do you tell him?
7. A case of theft is due to be heard by your court, a leading member of the village council tells you that the council has known for a long time that the defendant is dishonest and a troublemaker and thinks it would be a good thing if he was locked up for a very long time. As a magistrate, are you going to consider this information?
8. Your son runs a small business importing goods to your island. As part of an application for a loan he requires a person of good standing in the community to certify that he is of good character. He is in a hurry to send the document off on this evening's ferry and asks you to sign for him. Are you going to sign it?
9. On your way to Court, you meet one of your village members who is also on his way to the Court. You have heard that his case is listed for hearing that same day. He offers you a ride. Are you going to accept it?
10. During a break between cases you go out for a short break. Some of the parties are smoking in the office's veranda. They offer you a smoke. Do you accept?
11. After delivering your decision in a money lender's case you decide to have a drink with your fellow magistrates as it is the weekend. You do not have enough cash with you. Would it be proper for you as a magistrate to borrow money from the moneylender whose case you had just decided?







# Pacific Judicial Development Programme

## *TOOLKIT FOR REVIEW OF GUIDANCE ON JUDICIAL CONDUCT*

PJDP toolkits are available on: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>

