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RECENT DEVELOPMENTS

Responding to Terrorism

The tragic events in the United States on 11 September, 2001, have brought terrorism to the forefront of the agenda of the world community. This comes at a time when there are also widespread concerns about the impact of international and organized crime. The need to develop effective legal responses to these problems is reflected in the UN Security Council Resolution 1373 of 28 September, 2001, which calls upon all States to adopt further measures in accordance with the relevant provisions of international law, including international standards of human rights, to prevent terrorism and to strengthen international co-operation in combating terrorism. Similarly, the UN Convention against Transnational Organized Crime seeks to "promote co-operation to prevent and combat transnational organized crime more effectively".

This challenges African states to make a concerted and ongoing legal response. These include full implementation of Resolution 1373; working towards universal implementation of the numerous international and regional conventions in place to address terrorism and organized crime; strengthening of national, regional and international legal frameworks to combat terrorism and organized crime in a comprehensive manner; and increasing efforts to prevent the use and abuse of the financial services sector by money launderers and the like. In this respect, two developments call for attention. One is the establishment of the *Eastern and Southern Africa Anti-Money Laundering Group*. The second is a move to improve the capacity of lawyers to handle the complex legal issues raised by terrorism and organized crime. Whilst both initiatives pre-date 11 September their significance is now greater than ever.

Combating money laundering

The Financial Action Task Force is the single most important international body in terms of the formulation of anti-money laundering policy. It is perhaps best known for its Forty Recommendations, which were made in 1990 and revised in 1996. These focus on three central areas: (i) making improvements to national legal systems; (ii) enhancing the role of the financial sector in combating money laundering; and (iii) strengthening of international co-operation in the fields of mutual assistance; extradition and proceeds of crime. The recommendations are available on the FATF web site: www.oecd.org/fatf.

Several regional FATF-style organizations have now been set up, one of which is the *Eastern and Southern Africa Anti-Money Laundering Group* that covers the fourteen countries of the region. This was launched at a meeting of Ministers and high-level representatives in Arusha, Tanzania, on 26–27 August, 1999. A Memorandum of Understanding (MoU) based on the experience of the FATF and other FATF-style regional bodies was agreed at the meeting and following the signature of the MoU by seven of the potential members, the ESAAMLG came into formal existence. All the members are Commonwealth countries

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which have committed themselves to the Forty Recommendations of the Financial Action Task Force. The text of the MoU is as follows:

MEMORANDUM OF UNDERSTANDING AMONG MEMBER GOVERNMENTS OF THE EASTERN AND SOUTHERN AFRICA ANTI-MONEY LAUNDERING GROUP

Considering the threat posed by the activities of money launderers;
Determined to preserve and maintain social, economic and political stability in the Region;
Acknowledging the need for expertise and training to ensure the effective implementation of money laundering counter-measures and the support of non-member countries and international organizations in sustaining such training programmes; and,
Acknowledging that regional and international co-operation is critical in the fight against money laundering and reaffirming their commitment given in various Commonwealth meetings including those of Heads of Government, and Law and Finance Ministers do adopt and implement the 40 Recommendations of the Financial Action Task Force (FATF).
Acknowledging the need for the development and implementation of notional anti-money laundering legislation in the respective countries, which is in accordance with international anti-money laundering strategies.

The Governments party to this memorandum have reached the following understanding:

I Objectives

Member countries of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) agree to:
(a) adopt and implement the 40 Recommendations of the Financial Action Task Force,
(b) apply anti-money laundering measures to all serious crimes; and
(c) implement any other measures contained in multilateral agreements and initiatives to which they subscribe for the prevention and control of the laundering of the proceeds of all serious crimes.

II Members

1. Member countries are:
(a) those Commonwealth countries within the Eastern and Southern Africa Region (initial subscribers) which subscribe to this Memorandum either:
  (i) by signing this Memorandum at the meeting held in Arusha, Tanzania on 27 August, 1999; or
  (ii) within six months thereafter
(b) any country within the region, other than an initial subscriber to this Memorandum of Understanding, whose application for membership of the group is approved.

2. Applications for membership by a country described in paragraph II.I(b) will be considered by the President in consultation with other member countries within 12 months of receipt. Countries will be admitted as Members upon approval of their application by two-thirds of the Member countries and their subscription to this Memorandum.

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III Co-operating and Supporting Nations

1. Co-operating and Supporting Nations are countries which express their support for the objectives of the Eastern and Southern Africa Anti-Money Laundering Group.

2. Co-operating and Supporting Nations are committed to the mutual evaluation of their progress in implementing the 40 Recommendations of the FATF and will make such contributions to the work and/or resources of the ESAAMLG as are permitted by their respective national laws and policies.

Other countries that are not Members of the ESAAMLG may become Co-operating and Supporting Nations. All future Co-operating and Supporting Nations must express their commitment to the support of the ESAAMLG and have undergone a positive mutual evaluation by the FATF or an FATF-style regional body.

Countries may apply in writing to the President of the Ministerial Council to become Co-operating and Supporting Nations. Applications will be considered by the President in consultation with other Member countries within 12 months of receipt. A Country will be considered a Co-operating and Supporting Nation upon approval of their application by two-thirds of the Member countries.

IV Observers

Observers are:

1. (a) Organizations which actively support or otherwise are interested in the objectives of the ESAAMLG;
   (b) Countries which are considering Membership or becoming Co-operating and Supporting Nations;
   (c) Any other country or organization, after appropriate consultation, invited by the President of the Council with Members.

2. Initial observers to the ESAAMLG are the Commonwealth Secretariat, the UN Global Programme Against Money Laundering, the FATF Secretariat, the World Bank, the IMF, Interpol, the World Customs Organization, the African Development Bank, the SADC Secretariat, the COMESA Secretariat and the EAC Secretariat, East African Development Bank, and the Eastern and Southern Africa Development Bank.

3. An Organization or country, may apply in writing to the President of the Council to become an Observer. Applications will be considered by the President in consultation with other Member countries within twelve months of receipt. Organizations or countries will be admitted as Observers upon the approval of their applications by two-thirds of the Member countries.

V Funding

1. The activities of the ESAAMLG will be funded by annual contributions from Member countries as decided by the Ministerial Council and by contributions from Co-operating and Supporting Nations or any other source approved by the Ministerial Council.

2. Member countries will bear the cost of their participation in the activities of the ESAAMLG.

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VI Structure

The Eastern and Southern Africa Anti-Money Laundering Group comprises:

(a) The Ministerial Council (the Council);
(b) The Task Force of Senior Officials (the Task Force);
(c) The Secretariat.

VII The Council

1. Subject to Chapter XI, the Ministerial Council will be the key Decision Body within the ESAAMLG and consist of at least one ministerial representative or duly authorized alternate from each Member country.

2. The Council will meet at least once a year.

3. The Council shall elect a President and a Vice-President from among its number provided always that:

(a) The President and the Vice-President may not represent the same Member country.
(b) The President and the Vice-President include among their number one Minister representing legal or law enforcement interests and the one Minister representing financial interests.

4. The Council will:

(i) approve the Annual Report;
(ii) approve the Financial Reports for the previous financial year;
(iii) approve the Work Programme for the following years;
(iv) approve the budget for the following year;
(v) establish a Secretariat and appoint the Executive Secretary and where relevant, the Deputy Executive Secretary of the Secretariat;
(vi) appoint the Chairman and the Vice-Chairman of the Task Force;
(vii) appoint an External Accountant and an Auditor;
(viii) adopt Evaluation Reports on Member countries;
(ix) decide on policy matters including the adoption of any international anti-money laundering standards;
(x) approve the admission of new Member countries, Co-operating and Supporting Nations, and Observers;
(xi) take appropriate action with respect to Member countries that do not comply with this Memorandum;
(xii) determine the location of the Secretariat;
(xiii) discuss any other business of which written notice has been given to the Secretariat at least three months prior to the meeting of the Council; and
(xiv) agree on the date and venue of the next meeting of the Council.

VIII The President

1. The President will hold office for a term of one year and will chair meetings of the Council.

2. The President will represent the ESAAMLG at meetings of other intergovernmental groups dealing with anti-money laundering and other occasions determined by the Council.

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3. In the event that the President is unable to perform any official function, the Vice-President will assume the duties and powers of the President.

IX The Vice-President

The Vice-President will undertake such functions as may be delegated by the President.

X The Task Force

1. Each Member will be represented in the Task Force by such senior officials as may be appropriate provided that each member shall nominate one senior official as head of delegation.

2. The Task Force will meet at least twice annually.
The Task Force will be chaired by the Chairman, in the event of his/her absence the Vice-Chairman will deputize.
For submission to the Council, the Task Force will:

(i) prepare the draft agenda;
(ii) consider the draft Annual Report;
(iii) consider the Financial Reports;
(iv) review progress in the implementation of the approved Work Programme;
(v) consider the draft Work Programme for the following year;
(vi) consider a budget for the following year;
(vii) make recommendations for the appointment of the External Accountant and an External Auditor;
(viii) develop, consider and recommend proposals for funding;
(ix) consider self and mutual Evaluation Reports on Member countries;
(x) make recommendations on policy matters, including the adoption of any revised Recommendations;
(xi) make recommendations on the admission of new Member countries, Co-operating and supporting Nations, and Observers; and
(xii) recommend candidates for the positions of Executive Secretary and Deputy Executive Secretary.

3. The Task Force may, with the consent of the President, establish an Executive Bureau and standing sub-groups to undertake specific tasks; and *ad hoc* groups, as appropriate, to deal with specific issues including day-to-day management of its work.

XI Procedures at Meetings

1. A validly constituted quorum for a meeting of either the Council or the Task Force will exist when at least one-half of the Member countries are present.

2. All Member countries participate in meetings. Co-operating and Supporting Nations and Observers may, subject to contrary resolution by Member countries, participate in meetings.

3. Only Member countries present have the right to vote and each Member country has one vote at a meeting of the Council.

4. Co-operating and Supporting Nations and Observers may participate in the discussion of evaluations unless the evaluated Member country objects.

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5. Resolutions of the Council will be adopted by two-thirds majority of the Member countries present.

6. Notwithstanding the provision of Article XI.5, all resolutions relating to financial issues will be determined by consensus.

XII The Secretariat

1. The Secretariat will perform technical and administrative functions under the direction of the Executive Secretary.

2. The Secretariat, under supervision of the Chairman of the Task Force, will:
   (i) implement the Work Programme approved by the Council;
   (ii) administer the approved budget;
   (iii) co-ordinate and participate in mutual evaluations;
   (iv) co-ordinate and make technical recommendations on the self-assessment of members, disseminate self-assessment questionnaires, and collate and analyse the responses thereto;
   (v) identify training and technical assistance needs of Member countries and facilitate the provision of;
   (vi) act as a liaison between the ESAAMLG and third countries and organizations involved in countering money laundering and related matters;
   (vii) monitor anti-money laundering developments and on authorization by the Chairman, participate in activities not included in the Work Programme;
   (viii) receive applications on behalf of the Chair;
   (ix) receive notices of intention to withdraw and notify Members accordingly; and
   (x) discharge any other responsibility assigned by the Task Force or the Council.

3. The Secretariat will submit to the Task Force:
   (i) the Annual Report;
   (ii) the Financial Reports;
   (iii) the Work Programme for the following year;
   (iv) the budget for the following year.

XIII National Committees

Member countries will, in accordance with applicable domestic law, establish Standing Anti-Money Laundering Committees or similar entities, comprising senior representatives of relevant disciplines: Legal and Judicial, Financial and Law Enforcement.

XIV Self Assessment

Members agree to participate in an ongoing Self-Assessment Programme co-ordinated by the Secretariat.

XV Mutual Evaluation

Members agree to participate in a programme of mutual evaluation conducted in accordance with Mutual Evaluation Procedures approved by the Council.

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[Note: Mutual Evaluations of ESAAMLG Members
As part of its work, the ESAAMLG has agreed to conduct mutual evaluations of its membership. To assist in this exercise, the FATF has placed the summaries of the mutual evaluations performed by FATF-style regional organizations on its web site (www.oecd.org/fatf)].

XVI Languages and Authentic Text
The official language of the ESAAMLG will be English.

XVII Accounting Period
The financial year will be from the first day of July to the 30th day of June.

XVIII Financial Reports
1. The External Accountant will submit to the Task Force financial statements comprising a balance sheet, income and expenditure, cash flow and source and application of funds by 31 July each year.

The External Auditor will carry out an annual audit of the books and accounts of the ESAAMLG, and prepare and submit a report to the Council within three months of the end of the financial year.

XIX Amendment of this Memorandum
This Memorandum may be amended by consensus of the Member countries.

XX Entry into Effect
(i) This Memorandum will enter into force when seven Member countries have signed and advised the President that their constitutional requirements have been satisfied.
(ii) For any country which signs subsequently, it will take effect on the date on which that country notifies the President that its constitutional requirements have been satisfied.

XXI Withdrawal
A withdrawal by a Member or a Co-operating and supporting Nation or an observer will take effect three months after receipt by the secretariat of written notice of intention to withdraw.

DONE AT ARUSHA, TANZANIA, on the 27th day of August 1999 in fourteen originals all in the English Language. Each State shall retain the one original.

ESAALMG MEMBERS who have signed the ESAAMLG MoU as at June 2001
Kenya
Malawi
Mauritius
Mozambique
Namibia
Seychelles
Swaziland
Tanzania
Uganda

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MEMBERS (not yet having signed the ESAAMLG MoU)
Botswana
Lesotho
South Africa
Zambia
Zimbabwe

Observers
Commonwealth Secretariat
FATF Secretariat
United Kingdom
World Bank

Developing training programmes on international co-operation in criminal matters

The efforts of African countries to respond to the need for international co-operation to fight organized crime and terrorism is being hampered by a universal problem. This is the lack of expertise on the part of most legal professionals, both private practitioners and government law officers, on how to handle criminal cases that involve international co-operation issues. This is not surprising in that topics such as mutual assistance, extradition and the freezing and confiscation of proceeds of crime hardly ever figure in the curricula of law schools or professional training institutes.

As a practical means of addressing this problem, the Criminal Law Unit of the Commonwealth Secretariat, in association with the Commonwealth Legal Education Association, has developed a "model" curriculum and relevant materials on these issues with the aim, at the first instance, of facilitating the introduction of these subjects into the curriculum of professional law schools. The first "training the trainer" course was held in Accra, Ghana, in February 2001 and was attended by representatives from professional legal institutions in Ghana, Nigeria, Cameroon and Tanzania. As a result, courses on international co-operation will be introduced into the law curriculum in all four countries during the course of 2002. A second course, this time to be held in Zambia, will bring together representatives of professional legal training programmes from eight other Anglophonic African countries.

In outline the course covers:

A. Treaty/international law principles relevant in extradition and mutual assistance

B. Extradition
   (a) general principles
   (b) representing the requesting state
   (c) representing the person whose extradition is sought
   (d) concepts of dual criminality, speciality
   (e) scope and nature of the extradition hearing
   (f) review and appeal rights (judicial review, prerogative writ relief, etc.)
   (g) drafting a request for extradition

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C. Mutual assistance
   (a) general principles
   (b) representing the requesting state
   (c) representing the person whose affairs are being investigated
   (d) representing third parties
   (e) voluntary and compulsory measures
   (f) privileges and immunities of persons in the requested state
   (g) obligations of persons in the requested state
   (h) review and appeal rights (judicial review, prerogative writ relief, etc.)
   (i) drafting a mutual assistance request

D. Foreign requests for location, identification, seizure and confiscation of proceeds of crime
   (a) general principles
   (b) bank secrecy and other confidentiality rules
   (c) representing the requesting state
   (d) representing the accused/convicted person
   (e) representing third party interests in property
   (f) review and appeal rights
   (g) drafting a mutual assistance request
   (h) different forms of confiscation (criminal civil, administrative and *in rem* procedures)

E. Use of mutual assistance channels by the defence
   (a) seeking the issue of a commission rogatoire on behalf of the defence
   (b) requiring the state to make a request on behalf of the defence

F. Other issues arising in international co-operation cases
   (a) using foreign evidence
   (b) obtaining foreign evidence through video-conferencing

Judges, legal practitioners and law teachers in Africa all have a responsibility to develop their expertise and knowledge on one of the most challenging issues of the twenty-first century. Hopefully the development of such courses will provide a catalyst for action.

Further details are available from the General Secretary, Commonwealth Legal Education Association, c/o LCAD, Marlborough House, Pall Mall, London SW1Y 5HX, UK (fax: 44 207 747 6406; e-mail: clea@commonwealth.int).

Developing Judicial Codes of Ethics

Judicial independence and judicial accountability are closely related. A society must support and protect the judiciary for, as the 2000/2001 Zimbabwe crisis demonstrates, judges remain an easy target for those wishing to make partisan political capital. In return, society can expect judges to accept fair and temperate criticism of judgments and to maintain appropriate standards of ethical behaviour.

To help retain the sensitive balance between independence and accountability, it is becoming increasingly common for states to develop a code of judicial ethics. Such a document is extremely desirable as a means of establishing the parameters for public expectations and criticism of judicial conduct. They should deal with both the exercise of judicial duties and extra-judicial activities and, in particular, require judges to disclose their financial assets: this to check against potential

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corruption. Whilst many codes lay down rules that are seemingly straightforward and obvious to lawyers, they provide the public with a clear statement as to what they can expect from their judges. It is extremely useful, for example, to know that judges who cause undue delay in the hearing of cases, or serve in a politically sensitive capacity, are justifiably open to public criticism. The effectiveness of such codes largely depends upon their wide public dissemination, and much more effort is required in this respect.

The method of creation of such codes varies. In Zambia the code is contained in the Judicial (Code of Conduct) Act, 1999. This approach raises concern that the legislature or executive may have too much influence on determining the appropriate conduct for judges. In any event, a statutory code is arguably inappropriate in that ethical rules are seldom absolute and it is preferable to set out standards of conduct rather than to lay down legally enforceable rules. This view has prevailed elsewhere and has led to the development of codes by members of the judiciary themselves in several African states including Nigeria (Code of Conduct for Judicial Officers); Tanzania (Code of Conduct for Judicial Officers of Tanzania, adopted by the Judges and Magistrates Conference, 1984); Kenya (Code of Conduct for Judicial Officers of Kenya, 1999); Uganda (Code of Conduct for Judges, Magistrates and Other Judicial Officers of Uganda, adopted by the Judges of the Supreme Court and the High Court, 1989); Namibia (Code of Conduct for Magistrates). These have the advantage of ensuring that the code has judicial support although, of course, it runs the risk of being viewed from the outside as being a self-serving document. Given its potential relevance to so many, the development of a code is best undertaken as a result of a co-operative effort on the part of judges, the legal profession, legal academics and civil society and having regard to developing international standards.

A recent addition to the list of codes in Africa are the *Guidelines for Judges of South Africa issued by the Chief Justice, President of the Constitutional Court and other senior judges*. Thes are intended to assist judges in dealing with ethical and professional issues which may confront them during their judicial careers. They are also intended to inform the public about the judicial ethos in the country. These are set out below. In a further development, in February 2001, a two-day workshop for Chief Justices and other senior judges from eight African and Asian countries in Bangalore, India, adopted the Bangalore Code as a draft Code of Judicial Conduct. Those involved included Chief Justice M.L. Uwais (Nigeria), Chief Justice B.A. Samatta (Tanzania), Chief Justice B.J. Odoki (Uganda) and Justice Pius Langa (South Africa). The Code itself is designed to (i) spread the example of codes of judicial conduct to those jurisdictions which do not yet have them; (ii) to encourage deliberation amongst judges and others concerning the terms of the code and the improvement of codes of judicial conduct already in force; (iii) develop the broad principles appropriate to a code drawing on the best practice and precedents in many jurisdictions of the world. The text of the Bangalore Code is also set out below.

The Guidelines are as follows:

GUIDELINES FOR JUDGES OF SOUTH AFRICA

A. With Regard to Judicial Duties

1. A judge should uphold the independence of the judiciary and the authority of the courts, and should maintain an independence of mind

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in the performance of judicial duties. A judge should also take all reasonable steps to ensure that no person or organ of state interferes with the functioning of the courts.

2. A judge should always, not only in the discharge of official duties, act honourably and in a manner befitting the judicial office.
3. A judge should at all times comply with the laws of the land.
4. In conducting judicial proceedings judges should themselves avoid and where necessary disassociate themselves from comments or conduct by any person subject to their control which is racist, sexist, or otherwise manifest discrimination in violation of the equity guaranteed by the Constitution. In court and in chambers judges should also always act courageously and respect the dignity of all who have business there.
5. In conducting judicial proceedings a judge should give special attention to the right of equality before the law and the right of equal protection and benefit of the law. A judge should not in the performance of judicial duties manifest any bias or prejudice.
6. Judges should take reasonable steps to enhance the accessibility of the courts and improve public understanding of the judicial proceedings. Therefore judicial proceedings are ordinarily conducted and decisions are announced and motivated in open court.
7. A judge should resolve disputes by making findings of fact and applying the appropriate law in a fair hearing. This includes:
   (i) observing the audi alteram partem rule;
   (ii) remaining manifestly impartial, and
   (iii) giving adequate reasons for decisions.
8. . . .
9. . . .
10. A judge should attend chambers and court in such a manner and at such times as necessary and appropriate to perform all official duties properly, timeously and in an orderly manner.
11. A judge should perform all property assigned judicial duties diligently, investigate the matter thoroughly and dispose of the business of the court promptly in an efficient and businesslike manner. A judge should not engage in conduct that is prejudicial to the effective and expeditious administration of justice or the business of the court, should avoid any personality issues and should seek to foster collegiality.
12. A judge should take reasonable steps to maintain the necessary level of professional competence in the law.
13. A judge should not exert undue influence in order to promote a settlement or obtain a concession from any party. In this regard, a judge usually refrains from expressing views about the merits or demerits of the case.
14. A judge should give judgment or any ruling in a case promptly and without undue delay.
15. Upon appointment, a judge should sever all professional links and recover speedily all fees and other amounts outstanding and organize his/her personal and business affairs to minimize the potential for conflict of interest. A judge previously in private practice should not sit in any case in which the judge or the judge's former firm is or was directly involved as either attorney of record or in any other capacity before the judge's appointment. Such a

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judge should not sit in any case in which the former firm is involved until all indebtedness between the judge and the firm has been settled.

16. An acting judge who is a practising attorney should not sit in any cases in which the acting judge's firm is or was involved as attorney of record or in any other capacity.
17. Upon resignation, ceasing to be on active service or expiry of an acting appointment, a judge is obliged to complete all part-heard cases and to deliver all reserved judgments as soon as possible and to do such work at the applicable rate.
18. A judge should in respect of judicial activity refrain from any conduct that may be interpreted as personal advancement.
19. A judge should respect the confidences of colleagues.
20. A judge should inform the relevant professional body or a Director of Public Prosecutions of any conduct on the part of a legal practitioner or public prosecutor which may be unprofessional.
21. A judge who reasonably believes that a colleague has been acting in a manner unbecoming of the judicial office, should raise the matter with that colleague or with the head of the court concerned.

B. With Regard to Extra-judicial Activities

22. A judge may not, without the consent of the Minister of Justice, accept, hold or perform any other office of profit, or receive in respect of any service, any fees, emoluments or other remuneration apart from the salary and any allowances payable to the judge in a judicial capacity.
23. A judge should not directly or indirectly accept any gift, advantage or privilege that can reasonably be perceived as being intended to influence the judge in the performance of judicial duties or to serve as a reward therefor.
24. While judges should be available to use their judicial skill and impartiality to further the public interest, they should remain mindful of the separation of powers and the independence of the judiciary when considering a request to perform non-judicial functions for or on behalf of the State. A judge should not accept an appointment that is likely to affect or be seen to affect the independence of the judiciary, or which could undermine the separation of powers.
25. A judge's judicial duties should take precedence over all other activities.
26. A judge may not act as advocate, attorney or legal adviser but may give informal legal advice to family members, friends, charitable organizations and the like without compensation.
27. A judge may not be involved in any undertaking, business, fundraising or other activity that may affect the status, independence or impartiality of the judge.
28. A judge should not belong to any political party or secret organization. Except insofar as necessary for the discharge of the judicial office, a judge should not become involved in any political controversy or activity.
29. A judge should not take part in the activities of any organization that practises discrimination inconsistent with the Constitution.
30. A judge should not lend prestige to the judicial office to advance the private interests of the judge or others.

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31. Save in the discharge of judicial office, a judge should refrain from commenting on the merits of any case pending before that judge or in any other court. Unless necessary for or in judicial proceedings, a judge should refrain from public criticism of another judge or branch of the judiciary.
32. A judge ought to refrain from any action which may be construed as a device to stifle legitimate criticism of that or any other judge.
33. A judge, while free to participate in public debate on matters pertaining to legal subjects, the judiciary or the administration of justice, should refrain from expressing views in a manner which may undermine the standing and integrity of the judiciary.
34. A judge should not disclose or use, for any purposes unrelated to judicial duties, non-public information acquired in a judicial capacity.

CODE OF JUDICIAL CONDUCT THE BANGALORE DRAFT

Preamble

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 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 an independent judiciary is likewise essential if the courts are to fulfil their roles as guardians of the rule of law and thereby to assure good governance.

WHEREAS the real source of judicial power is public acceptance of the moral autority and integrity of the judiciary.

AND WHEREAS consistently with the *United Nations Basic Principles on the Independence of the Judiciary*, 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.

The following principles and rules are intended to establish standards for ethical conduct of judges. They are principles and rules of reason to be applied in the light of all relevant circumstances and consistently with the requirements of judicial independence and the law. They are designed to provide guidance to judges and to afford a structure for regulating judicial conduct. They are

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intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.

The values which this Code upholds are:

- Propriety
- Independence
- Integrity
- Impartiality
- Equality
- Competence and diligence
- Accountability

I

Value
PROPRIETY

Principle

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

Code

1.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

1.2 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.

1.3 A judge shall avoid close personal association with individual members of the legal profession, particularly those who practise in the judge's court, where such association might reasonably give rise to the suspicion or appearance of favouritism or partiality.

1.4 Save in exceptional circumstances or out of necessity, 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.

1.5 A judge shall avoid the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession in circumstances that might reasonably give rise to the suspicion or appearance of impropriety on the part of the judge.

1.6 A judge shall refrain from conduct such as membership of groups or organizations or participation in public discussion which, in the mind of a reasonable, fair-minded and informed person, might undermine confidence in the judge's impartiality with respect to any issue that may come before the courts.

1.7 A judge shall, upon appointment, cease all partisan political activity or involvement. A judge shall refrain from conduct that, in the mind of a

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reasonable, fair-minded and informed person, might give rise to the appearance that the judge is engaged in political activity.

1.8 A judge shall refrain from:
- 1.8.1 Membership of political parties;
- 1.8.2 Political fund-raising;
- 1.8.3 Attendance at political gatherings and political fund-raising events;
- 1.8.4 Contributing to political parties or campaigns; and
- 1.8.5 Taking part publicly in controversial discussions of a partisan political character.

1.9 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.

1.10 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.

1.11 A judge shall not testify voluntarily as a character witness, except that a judge may testify as a witness in a criminal proceedings if the judge or a member of the judge's family is a victim of the offence or if the defendant is a member of the judge's family or in like exceptional circumstances.

1.12 Subject to the proper performance of judicial duties, a judge may engage in activities such as:
- 1.12.1 The judge may write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice and related matters;
- 1.12.2 The judge may appear at a public hearing before an official body concerned with matters relating to the law, the legal system and the administration of justice or related matters; and
- 1.12.3 The judge may serve as a member of an official body devoted to the improvement of the law, the legal system, the administration of justice or related matters.

1.13 A judge may speak publicly on non-legal subjects and engage in historical, educational, cultural, sporting or like social and recreational activities, if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties in accordance with this Code.

1.14 A judge may participate in civic and charitable activities that do not reflect adversely on the judge's impartiality or interfere with the performance of judicial duties. A judge should not be involved in fund-raising or membership solicitation.

1.15 A judge shall not serve as the executor, administrator, trustee, guardian or other fiduciary, except for the estate, trust or person connected with a

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member of the judge's family and then only if such service will not interfere with the proper performance of judicial duties.

1.16 Save for holding and managing appropriate personal or family investments, a judge shall refrain from being engaged in other financial or business dealings as these may interfere with the proper performance of judicial duties or reflect adversely on the judge's impartiality.

1.16 Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to the judge's judicial duties.

1.17 A judge shall not practise law whilst the holder of judicial office.

1.18 Except as consistent with, or as provided by, constitutional or other law, a judge shall not accept appointment to a government commission, committee or to a position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, the administration of justice or related matters. However, a judge may represent the judge's country or the state on ceremonial occasions or in connection with historical, educational, cultural, sporting or like activities.

1.19 A judge may form or join associations of judges or participate in other organizations representing the interests of judges to promote professional training and to protect judicial independence.

1.20 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.

1.21 Subject to law and to any legal requirements of public disclosure, a judge may receive a small token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

1.22 A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if such payments do not give the appearance of influencing the judge in the performance of judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

(a) Such compensation and reimbursement shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activities; and

(b) Reimbursement shall be limited to the actual cost of travel and accommodation reasonably incurred by the judge and, where appropriate to the occasion, by the judge's family. Any payment in excess of such an amount is compensation.

1.23 A judge shall make such financial disclosures and pay all such taxes as are required by law.

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II

Value
INDEPENDENCE

Principle

An independent judiciary is indispensable to impartial justice under law. A judge should therefore uphold and exemplify judicial independence in both its individual and institutional aspects

Code

2.1 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.

2.2 A judge shall reject any attempt to influence his or her decision in any matter before the judge for decision where such attempt arises outside the proper performance of judicial duties.

2.3 In performing judicial duties, a judge shall, within the judge's own court, be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.

2.4 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.

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

III

Value
INTEGRITY

Principle

Integrity is essential to the proper discharge of the judicial office

Code

3.1 A judge shall ensure that his or her conduct is above reproach in the view of reasonable, fair-minded and informed persons.

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.

3.3 A judge, in addition to observing personally the standards of this Code, shall encourage and support their observance by others.

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IV

Value
IMPARTIALITY

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

Code

4.1 A judge shall perform his or her judicial duties without favour, bias or prejudice.

4.2 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.

4.3 A judge shall, so 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.

4.4 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.

4.5 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 a reasonable, fair-minded and informed person might believe that the judge is unable to decide the matter impartially.

4.6 A judge shall disqualify himself or herself in any proceedings in which there might be a reasonable perception of a lack of impartiality of the judge including, but not limited to, instances where:

- 4.6.1 The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
- 4.6.2 The judge previously served as a lawyer or was a material witness in the matter in controversy;
- 4.6.3 The judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy.

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 who would otherwise be disqualified on the foregoing grounds may, instead of withdrawing from the proceedings, disclose on the record the basis of such disqualification. If, based on such disclosure, the parties, independently of the judge's participation, agree in writing or on the record that the judge may participate, or continue to participate, in the proceedings, the judges may do so.

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4.9 Disqualification of a judge is not required if necessity obliges the judge to decide the matter in controversy including where no other judge may lawfully do so or where, because of urgent circumstances, failure of the judge to participate might lead to a serious miscarriage of justice. In such cases of necessity, the judges shall still be obliged to disclose to the parties in a timely way any cause of disqualification and ensure that such disclosure is included in the record.

4.10 Save for the foregoing, a judge has a duty to perform the functions of the judicial office and litigants do not have a right to choose a judge.

V

Value
EQUALITY

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

Code

5.1 A judge shall strive to be aware of, and to 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 his or her duties with appropriate consideration for all persons (for example, parties, witnesses, lawyers, court staff and judicial colleagues) without unjust 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 which is before the judge, on any irrelevant ground.

5.5 A judge shall require lawyers in proceedings before a court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds. This requirement does not preclude legitimate advocacy where any such grounds are legally relevant to an issue in the proceedings.

5.6 A judge shall not be a member of, nor associated with, any society or organization that practises unjust discrimination on the basis of any irrelevant ground.

5.7 Without authority of law and notice to, and consent of, the parties and an opportunity to respond, a judge shall not engage in independent, personal investigation of the facts of a case.

5.8 Without authority of law and notice to, and consent of, the parties and an opportunity to respond, a judge shall not, in the absence of the other

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parties to the proceedings, communicate with any party to proceedings in the judge's court concerning such proceedings.

VI

Value
COMPETENCE AND DILIGENCE

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

Code

6.1 The judicial duties of a judge take precedence over all other activities.

6.2 A judge shall devote his or her professional activity to judicial duties. Such duties are broadly defined and include not only the performance of judicial duties in court and the making of decisions but other tasks relevant to the court's operations or to the judicial office.

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.

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 and, within any applicable limits of constitutional or other law, shall conform to such norms as far as is feasible.

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 in which the judge is involved. He or she shall 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.

VII

Value
IMPLEMENTATION AND ACCOUNTABILITY

Principle
Implementing these principles and ensuring the compliance of judges with them are essential to the effective achievement of the objectives of this Code

Code

7.1 Institutions and procedures for the implementation of this Code shall

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provide a publicly credible means of considering and determining complaints against judges without eroding the essential principle of judicial independence.

7.2 By the nature of the judicial office judges are not, except in accordance with law, accountable to any organ or entity of the state for their judicial decisions but they are accountable for their conduct to institutions that are established to implement this Code.

7.3 The institutions and procedures established to implement this Code shall be transparent so as to strengthen public confidence in the judiciary and thereby to reinforce judicial independence.

7.4 Ordinarily, except in serious cases that may warrant removal of the judge from office, proceedings established to implement this Code shall be conducted in confidence.

7.5 The implementation of this Code shall take into account the legitimate needs of a judge, by reason of the nature of the judicial office, to be afforded protection from vexatious or unsubstantiated accusations and due process of law in the resolution of complaints against the judge.

7.6 The judiciary and any institution established to implement this Code shall promote awareness of these principles and of the provisions of the Code.

VIII
DEFINITIONS

In this Code, 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*" includes a magistrate, a member of customary or village courts and any person exercising judicial office, however designated.

"*Judge's family*" includes a judge's spouse, the judge's son, daughter, son-in-law or daughter-in-law, it also includes 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.

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