



International Standards On Judicial Independence And Judicial Accountability

Dr. Shrinivasa Prasad R.*

Vaikunta Baliga College of Law, Udupi

Abstract

The standards of judicial independence and judicial accountability were drafted, bearing in mind the special challenges facing the judiciary in view of the challenges and problems in both the national and international spheres. Standards for judicial independence and judicial accountability are called for in order to give appropriate response to the developments and challenges regarding the position of courts and judges in contemporary society. This is important to enable the judiciary to play a role in assuring adequate protection of human rights and in the operation of an efficient and fair market economy in this era of globalization. This paper presents the text of all relevant international instruments and standards on judicial independence and judicial accountability and the guidelines of general application which will contribute to the independence and accountability of the judiciary, with a view to ensuring the legitimacy and effectiveness of the judicial process.

Key Words: Judicial Independence, Judicial accountability, International Standards, Human Rights, United Nations

1. Introduction

The free exercise of fundamental human rights as well as peace between nations can only be secured through respect for the rule of law. A competent, independent and impartial judiciary is likewise essential if the courts are to fulfill their role in upholding constitutionalism and the rule of law. 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. The universal standards on judicial independence and judicial accountability give due consideration particularly to the fact that each jurisdiction and legal tradition has its own characteristics that must be recognized as also International instruments, objectives which embrace the independence of the administration of the justice.

2. International Standards on Judicial Independence

A person's right to a fair trial may be respected in a particular case when a judge is independent, a state would be in breach of its international obligations if the judiciary were not an independent branch of power. Therefore, in this context, independence refers both to the individual judge as well as to the judiciary as a whole. The UN Basic Principles on the Independence of the Judiciary lay out the requirement of independence, in its first Principle:

“The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.”¹

The Council of Europe's Recommendation on the Independence of Judges states that ‘The independence of judges must be guaranteed by inserting specific provisions in constitutions or other legislation’ and that “[t]he executive and legislative powers should ensure that judges are independent and that steps are not taken which could endanger the independence of judges.”² The independence of the judiciary is also specifically recognised in other regional contexts, namely Africa and the Asia-Pacific. In the case of the African region, it is worth highlighting the resolution on ‘the respect and strengthening of the independence of the judiciary,’ adopted in 1999 by the African Commission on Human and People's Rights.³ In the Asia-Pacific region, the Beijing Principles stipulate that the “Independence of the judiciary requires that matters be decided before it in accordance with its impartial assessment of the facts and its understanding of the law without improper influences, direct or indirect, from any source”.⁴ The Universal Charter of the Judge, an instrument approved by judges from all regions of the world, establishes that “[t]he independence of the judge is indispensable to impartial justice under the law. It is indivisible. All institutions and authorities, whether national or international, must respect, protect and defend that independence.”⁵

2.1 Institutional Independence

The notion of institutional independence is set out in the second sentence of Principle 1 of the UN Basic Principles, wherein ‘the duty of all institutions to respect and observe that independence is guaranteed’ is provided. This constitutes a safeguard against disagreements over rulings by other institutions and their potential refusal to comply with them. In order to prevent unwarranted interference from others, the UN Basic

*Assistant Professor, Vaikunta Baliga College of Law, Udupi

¹ *Supra* note 5.

² Council of Europe, *Recommendation No. R (94) 12 of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges*, 13 October 1994, Principle 2 (b).

³ Adopted in April 1996 at the 19th Session of the African Commission on Human and People's Rights.

⁴ Operative para.3.a.

⁵ The *Universal Charter of the Judge*, approved by the International Association of Judges (IAJ) on 17 November 1999, article 1. The IAJ was founded in 1953 as a professional, non-political, international organisation, grouping not individual judges, but national associations of judges. The main aim of the Association, which encompasses 67 such national associations or representative groups, is to safeguard the independence of the judiciary, as an essential requirement of the judicial function and guarantee of human rights and freedom.

Principles provide that “The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration”.⁶

2.2 Individual Independence

Unless individual judges are free from unwarranted interference when they decide a particular case, the individual right to receive a fair trial is violated.⁷ Regrettably, many judges around the world suffer from subtle and not-so-subtle pressure, ranging from killings and torture to extortion, transfer, proceedings for carrying out their professional duties, and unlawful removal from office.⁸ The UN Commission on Human Rights has called upon all governments to “respect and uphold the independence of judges and lawyers and, to that end, to take effective legislative, law enforcement and other appropriate measures that will enable them to carry out their professional duties without harassment or intimidation of any kind”.⁹ From the perspective of their personal independence, it is crucial that judges are not subordinated hierarchically to the executive or legislature, nor that they are civil employees of these two powers.

2.3 Impartiality

The right to a fair trial requires judges to be impartial. The UN Basic Principles spell out this requirement: “... judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary”.¹⁰ The Council of Europe has reiterated this principle, by saying that “Judges should have unfettered freedom to decide cases impartially, in accordance with their conscience and their interpretation of the facts, and in pursuance of the prevailing rules of the law”.¹¹ For its part, the Inter-American Commission on Human Rights has said that “an impartial tribunal is one of the core elements of minimum guarantees in the administration of justice”.¹²

2.4 Financial Autonomy and Sufficient Resources

Inadequate resources may render the judiciary vulnerable to corruption, which could result in a weakening of its independence and impartiality.¹³ Various international instruments recognise the need for the judiciary to receive sufficient funds. The UN Basic Principles establish that “It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions”.¹⁴ The European

⁶ *UN Basic Principles*, Principle 14.

⁷ See, *Incal v. Turkey*, HCHR41/1997/825/1031, para.65; *Findlay v. United Kingdom*, HCHR 22107/93, para.73.

⁸ See “Attacks on Justice: A Global Report on the Independence of Judges and Lawyers”, 11th ed., International Commission of Jurists, Geneva 2002, available online at www.icj.org, visited on 22.02.2014.

⁹ Commission on Human Rights Resolution 2004/33, operative para.7.

¹⁰ *UN Basic Principles*, Principle 8.

¹¹ Council of Europe, *Recommendation No. R (94)*, Principle I.2.d. See also Principle V.3.b: “Judges should in particular have the following responsibilities: to conduct cases in an impartial manner in accordance with their assessment of the facts and their understanding of the law, to ensure that a fair hearing is given to all parties and that the procedural rights of the parties are respected pursuant to the provisions of the Convention”.

¹² Report N° 78/02, Case 11.335, para.74.

¹³ See the *Policy Framework for Preventing and Eliminating Corruption and Ensuring the Impartiality of the Judicial System*, ICJ’s Centre for the Independence of Judges and Lawyers (CIJL), CIJL Yearbook 2000, p.127.

¹⁴ *UN Basic Principles*, Principle 7.

Charter on the statute for judges,¹⁵ The Beijing Principles,¹⁶ and the Latimer House Guidelines,¹⁷ acknowledge this requirement.

It is worth noting that international standards allow every state to determine the best way to guarantee that the judiciary receives adequate funds. As adequate funding is an essential component of the independence of the judiciary,¹⁸ this principle should be included in each country's legal system, preferably in the constitution.

2.5 Appointment

In order to guarantee the independence and impartiality of the judiciary, international law requires States to appoint judges through strict selection criteria and in a transparent manner.

2.5.1 Appointment Criteria

There is, however, no agreement in international law as to the methods of appointment. In this field, a certain degree of discretion is left to individual States, provided that the selection should be always based on the candidates' professional qualifications and personal integrity.

The UN Basic Principles establish that: "Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory."¹⁹ Similarly, the Universal Charter of the Judge stipulates that: "The selection and each appointment of a judge must be carried out according to objective and transparent criteria based on proper professional qualification".²⁰ The European Charter on the Statute for Judges,²¹ the African Principles and Guidelines on the Right to a Fair Trial,²² the Beijing

¹⁵ Council of Europe, *European Charter on the statute for judges*, DAJ/DOC (98) 23, operative para.1.6. "the State has the duty of ensuring that judges have the means necessary to accomplish their tasks properly and in particular to deal with cases within a reasonable period".

¹⁶ *Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region*, doc. cit., operative para.41. "It is essential that judges be provided with the resources necessary to enable them to perform their functions."

¹⁷ *Latimer House Guidelines for the Commonwealth on Parliamentary Supremacy and Judicial Independence*, adopted on 19 June 1998, Guideline II.2. "Sufficient and sustainable funding should be provided to enable the judiciary to perform its functions to the highest standards. Such funds, once voted for the judiciary by the legislature, should be protected from alienation or misuse. The allocation or withholding of funding should not be used as a means of exercising improper control over the judiciary."

¹⁸ See *UN Basic Principles*, Principle 1.

¹⁹ *UN Basic Principles*, Principle 10.

²⁰ *Universal Charter of the Judge*, Article 9.

²¹ Para.2.1. "The rules of the statute [...] base the choice of candidates on their ability to assess freely and impartially the legal matters which will be referred to them, and to apply the law to them with respect for individual dignity. The statute excludes any candidate being ruled out by reason only of their sex, or ethnic or social origin, or by reason of their philosophical and political opinions or religious convictions." The Charter further envisages that "The statute makes provision for the conditions which guarantee, by requirements linked to educational qualifications or previous experience, the ability specifically to discharge judicial duties." (Operative para.2.2).

²² Principle A, paras.4 (i) and (k) "The sole criteria for appointment to judicial office shall be the suitability of a candidate for such office by reason of integrity, appropriate training or learning and ability". The *Guidelines* also contain a non-discrimination clause, with, however, certain exceptions: "Any person who meets the criteria shall be entitled to be considered for judicial office without discrimination on any grounds such as race, colour, ethnic origin, language, sex, gender, political or other opinion, religion, creed, disability, national or social origin, birth, economic or other status. However, it shall not be discriminatory for

Principles,²³ the Latimer House Guidelines,²⁴ also contain a provision against discrimination with a similar caveat on criteria of judges appointment.

2.5.2 Appointment Procedure

International law does not lay down one single appointment procedure. However, a number of international instruments contain certain requirements to be taken into account in this matter, particularly on the role of the other branches of authority and the characteristics of the body in charge of appointments. For its part, the Council of Europe has laid down detailed guidelines on appointment procedures and the body in charge of selecting judges: “The authority taking the decision on the selection and career of judges, should be independent of the government and the administration. In order to safeguard its independence, rules should ensure that, for instance, its members are selected by the judiciary and that the authority decides its own procedural rules”.²⁵ For their part, the African Guidelines support the idea of an independent body as stated that “the process for appointments to judicial bodies shall be transparent and accountable and the establishment of an independent body for this purpose is encouraged. Any method of judicial selection shall safeguard the independence and impartiality of the judiciary.”²⁶

2.6 Tenure and Promotion

One of the basic conditions for judges to retain their independence is that of security of tenure. The international standards on the independence of the judiciary establish a number of requirements related to the conditions of service and tenure of judges. For example, the UN Basic Principles stipulate that “The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law”.²⁷ When referring specifically to tenure, the Principles stipulate that “Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement

states to: 1. prescribe a minimum age or experience for candidates for judicial office; 2. prescribe a maximum or retirement age or duration of service for judicial officers; 3. prescribe that such maximum or retirement age or duration of service may vary with different level of judges, magistrates or other officers in the judiciary; 4. require that only nationals of the state concerned shall be eligible for appointment to judicial office.” (Principle 4.j).

²³ Para.13. “In the selection [of] judges there must be no discrimination against a person on the basis of race, colour, gender, religion, political or other opinion, national or social origin, marital status, sexual orientation, property, birth or status, except that a requirement that a candidate for judicial office must be a national of the country concerned shall not be considered discriminatory.”

²⁴ Principle II.1. “Judicial appointments to all levels of the judiciary should be made on merit with appropriate provision for the progressive removal of gender imbalance and of other historic factors of discrimination”.

²⁵ *Recommendation No. R (94) 12, doc. cit.*, Principle I.2.c. See also article 9 of the *Universal Charter of the Judge*: “[...] Where this is not ensured in other ways, that are rooted in established and proven tradition, selection should be carried out by an independent body, that include substantial judicial representation”.

²⁶ *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, doc. cit.*, Principle A, para.4 (h). See also the *Beijing Principles*, Principles 13 to 17 and the *Latimer House Guidelines, doc. cit.*, principle II.1.

²⁷ *UN Basic Principles*, Principle 11; Principle I.3 of the Council of Europe’s *Recommendation No. R (94 12)* is identical.

age or the expiry of their term of office, where such exists”.²⁸ The Latimer House Guidelines,²⁹ the African Guidelines,³⁰ the Beijing Principles,³¹ also establish that judges must have security of tenure.

Another aspect of ‘tenure’ refers to the factors that determine promotions. In this case, the criteria are similar to those that regulate appointment, i.e. objective. The UN Basic Principles establish that “Promotion of judges, wherever such a system exists, should be based on objective factors, in particular- on ability, integrity and experience”.³² The Beijing Principles,³³ the European Charter on the statute for judges,³⁴ contain similar wordings on the promotion of judges.

3 International Standards on Judicial Accountability

While judicial independence forms an important guarantee, it also has the potential to act as a shield behind which judges have the opportunity to conceal possible unethical behaviour. For this reason, judges must conduct themselves according to ethical guidelines. In order to provide judges with clear rules of conduct, several nations have approved codes of ethics to regulate judicial behaviour.³⁵ In some cases, judges have drafted these codes; in other cases, governments have sought their input.

At international level, the Bangalore Principles of Judicial Conduct, 2002 contain a set of six values that should determine judicial behaviour. These values are reflected in most codes of conduct; the values are: independence, impartiality, integrity, propriety, equality, competence and diligence. Grounds for removal based on a judge’s conduct will normally be based on these principles.

As a general rule, judges can only be removed for serious misconduct, disciplinary or criminal offence or incapacity that renders them unable to discharge their functions. This should only occur after the conduct of a fair procedure. Judges cannot be removed or punished for bona fide errors³⁶ or for disagreeing with a particular interpretation of the law. Furthermore, judges enjoy personal immunity from civil suits for monetary damages arising from their rulings.³⁷ States have a duty to establish clear grounds for removal and appropriate

²⁸ *UN Basic Principles*, Principle 12; Principle I.3 of the Council of Europe’s *Recommendation No. R (94 12)* is identical.

²⁹ *Latimer House Guidelines*, Guideline II.1: “Judicial appointments should normally be permanent; whilst in some jurisdictions, contract appointments may be inevitable, such appointments should be subject to appropriate security of tenure”.

³⁰ Principle A, paras.4 (l) and (m), 4 (n) 3. Judicial officers shall not be appointed under a contract for a fixed term”.

³¹ *Beijing Principles*, operative paras.18-20. See also operative para.21, which states that “A judge’s tenure must not be altered to the disadvantage of the judge during her or his term of office”.

³² *UN Basic Principles*, principle 13. Principle A, para.4 (o) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa is identical.

³³ Para.17. “Promotion of judges must be based on an objective assessment of factors such as competence, integrity, independence and experience”.

³⁴ Para.4.1. contemplates two systems of promotion of judges: on the one hand, a system based on seniority, under which judges are promoted after spending a fixed time at a post (and are still able to discharge their professional duties); on the other, a system of promotions based on merit, in which improper factors such as race, sex or religious or political affiliation have no role to play.

³⁵ For a discussion on corruption in the judiciary, see Richard J. Scott, “Towards an ethic to control judicial corruption”, in *Strengthening Judicial Independence, Eliminating Judicial Corruption*, CIJL Yearbook 2000, p.117.

³⁶ See the *Concluding Observations of the Human Rights Committee on Viet Nam*, UN document CCPR/CO/75/ VNM, para.10, where the Committee expressed its concern at “the procedures for the selection of judges as well as their lack of security of tenure (appointments of only four years), combined with the possibility, provided by law, of *taking disciplinary measures against judges because of errors in judicial decisions*. These circumstances expose judges to political pressure and jeopardize their independence and impartiality.”

³⁷ See Principle 16 of the *UN Basic Principles doc. cit.*, which establishes that “Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions”. For other

procedures to this end. The determination as to whether the particular behaviour or the ability of a judge constitutes a cause for removal, must be taken by an independent and impartial body pursuant to a fair hearing.

The UN Basic Principles contended that “A charge or complaint made against a judge in his/ her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.”³⁸ For the grounds for removal, the Basic Principles spell out that “Judges shall be subject to suspension or removal only for reasons of incapacity or misbehaviour that renders them unfit to discharge their duties”³⁹ and so, provided. Furthermore, the UN Basic Principles stipulates that “Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review”.⁴⁰

It is worth highlighting that the Council of Europe’s recommendation on the independence of the judiciary lays down clear guidelines on the grounds that can lead to the removal of a judge.⁴¹ The European Charter on the Statute for Judges includes detailed provisions on these matters,⁴² It is worth mentioning that the African Guidelines are the only instrument on the independence of the judiciary to contain a specific prohibition on removing judges on their rulings.⁴³ The Latimer House Guidelines say: “In cases where a judge is at risk of removal, the judge must have the right to be fully informed of the charges, to be represented at a hearing, to make a full defence, and to be judged by an independent and impartial tribunal. Grounds for removal of a judge should be limited to: (a) inability to perform judicial duties; and (b) serious misconduct.”⁴⁴ The Guidelines also contain a prohibition on public admonitions.⁴⁵

provisions with similar content, see operative para.32 of the *Beijing Principles* and article 10 of the *Universal Charter of the Judge*.

³⁸ Principle 17.

³⁹ Principle 18, See also Principle 19 of the *UN Basic Principles*, which states that “All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct”. Operative paragraph 27 of the *Beijing Principles* is identical.

⁴⁰ Principle 20 excludes this requirement in specific cases, namely “decisions of the highest court and those of the legislature in impeachment or similar proceedings”.

⁴¹ *Recommendation No. R (94) 12*, Principle VI.2. The Recommendation also contemplates other sanctions short of removal: “Where judges fail to carry out their duties in an efficient and proper manner or in the event of disciplinary offences, all necessary measures which do not prejudice judicial independence should be taken. Depending on the constitutional principles and the legal provisions and traditions of each state, such measures may include, for instance: *a.* withdrawal of cases from the judge; *b.* moving the judge to other judicial tasks within the court; *c.* economic sanctions such as a reduction in salary for a temporary period; *d.* suspension.” (Principle VI.1).

⁴² *European Charter on the Statute for Judges*, operative para.5.1.

⁴³ *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, *doc. cit.*, Principle A, para.4 (p), 4 (n) 2. “Judges shall not be [...] removed from office or subject to other disciplinary or administrative procedures by reason only that their decision has been overturned on appeal or review by a higher judicial body”.

⁴⁴ *Latimer House Guidelines*, Guideline VI.1, para.(a) (i).

⁴⁵ *Ibid*, Guideline VI.1, para.(a) (iii).

4 Monitoring International Standards

In 1994, the first Special Rapporteur on the Independence of Judges and Lawyers was appointed to monitor the implementation of the UN Basic Principles.⁴⁶ The mandate is thematic, and incorporates investigatory, advisory, legislative and promotional activities. The Special Rapporteur is one of the thematic special procedures overseen by the United Nations Human Rights Council. The mandate holder examines the link between the weakening of safeguards for judges and lawyers and the gravity and frequency of human rights' violations. The Special Rapporteur studies topical questions related to this issue and identifies ways to strengthen the judicial systems.⁴⁷

4.1 Special Rapporteur's Annual Reports and Rapporteur's Missions

The Special Rapporteur reports annually to the Human Rights Council on all of its activities relating to its mandate. He reports complaints that have been received of attacks on judges and lawyers from all over the globe and endeavours to investigate as many of them as he can. Some complaints may be dealt with through an exchange of correspondence with the relevant personnel. But sometimes an in-situ investigation of a series of allegations causing particularly widespread concern is warranted. In these situations, the Special Rapporteur is reliant upon governmental co-operation, which may not always be easy to secure. Most of the complaints are initiated by NGO's, some even with perceived political agendas, and thus the Special Rapporteur's presence in a state may require him to exercise considerable diplomacy and caution.

The Special Rapporteur does not issue decisions concerning individual complaints and cannot require the State to remedy any alleged violation; rather, the Special Rapporteur raises the issue of concern with the relevant State. The Special Rapporteur may contact the government concerned to invite comment on the allegation, seek clarification, remind the government of its international obligations or request information on steps being taken by the government to redress the situation. Generally called "communications," these exchanges with the government can take a variety of forms of varying degrees of significance. Specifically, the Special Rapporteur contacts a government through either an allegation letter or an urgent appeal.

Alongside the Annual Reports, the Special Rapporteur undertakes periodic missions to select states.⁴⁸ The reports compiled on the basis of these missions are in-depth case studies of judicial and legal institutions in individual states, and an assessment of how the structures and institutions succeed or fail in upholding the principles of judicial independence. Both kinds of documents offer useful analyses of how principles of judicial independence can be translated into practice in a domestic context. At the same time, the documents offer warnings of how domestic judicial and legal systems can fail to uphold principles of judicial independence.

⁴⁶ Resolution 1994/41. The Human Rights Council extended the mandate in 2008 with [Resolution 8/6](#) and in 2011 with [Resolution 17/2](#).

⁴⁷ Available at <http://www.ijrcenter.org/un-special-procedures/special-rapporteur-on-the-independence-of-judges-and-lawyers>, visited on 02.02.2015.

⁴⁸ Until now Special Rapporteur visited Peru, Colombia, Belgium, United Kingdom of Great Britain and Northern Ireland, Guatemala, South Africa, Belarus, Slovak Republic, Mexico, Italy, Indonesia, Saudi Arabia, Kazakhstan, Brazil, Ecuador, Tajikistan, Maldives, Russian Federation, Colombia, Bulgaria, Romania, Turkey, Pakistan, Qatar, United Arab Emirates, Tunisia, Portugal and given reports on these states. Available at <http://www.ohchr.org/EN/Issues/Judiciary/Pages/Visits.aspx>, visited on 18.06.2015.

The Special Rapporteur reports with a short overview of the justice system, and then focuses on the challenges to the independence and impartiality of the judiciary and the proper administration of justice. Reference is made to (a) the independence and impartiality of judges, including their appointment, conditions of services and tenure, as well as public perception; (b) developments and shortcomings in the administration of justice, particularly the powers of court presidents, the allocation of cases, the application of international law, and access to information; (c) accountability and disciplinary proceedings for judges; (d) problems related to a fair trial and judicial proceedings, including issues related to pretrial detention, the presumption of innocence; and (e) issues regarding access to justice, including jury trials, the execution of judicial decisions, legal aid and the lack of an administrative court system.

The Special Rapporteur advises many states on ways to improve structural weaknesses in their judicial systems, with a number of nations progressing from autocratic styles of governance to democracy, in recent years. The reports of other thematic Special Rapporteurs are also valuable as ‘soft law’ sources for judicial independence. For instance, the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights developed the Draft Principles Governing the Administration of Justice through Military Tribunals.⁴⁹

The Special Rapporteur’s Annual Report 2009 offers a useful summary of the principles to be borne in mind in constituting a judiciary council.⁵⁰ These can be summarized as follows:

1. The composition of a judiciary council should include legislators, lawyers, academics and civil society, but judges should constitute the majority of its membership;
2. The representation of political representatives should be minimized;
3. The judiciary should have a substantial say in selecting the members of a judiciary council; and
4. The powers of a judiciary council – which could include conducting competitive examinations and interviews for judicial postings, or direct powers to nominate or appoint judges at its discretion – must be carefully set out in law.

Following a brief outline of the activities carried out by the Special Rapporteur, in 2013 and 2014, the thematic section of the report was noteworthy.⁵¹ The Special Rapporteur has observed that the issue of judicial accountability has received renewed attention, especially in the context of democratic and/or judicial reforms.⁵² The report then addresses the issue of State responsibility and the right to a remedy for people whose human rights have been violated as the result of a wrongful conviction or miscarriage of justice. The Special Rapporteur encourages States to establish specific norms related to judicial immunity in order to avoid abuses.

⁴⁹ Draft Principles Governing the Administration of Justice through Military Tribunals, Report submitted by the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights, E/CN.4/2006/58, 13 January 2006.

⁵⁰ Report of the Special Rapporteur on the Independence of Judges and Lawyers, 2009, paras.28-30.

⁵¹ Gabriela Knaut, Report of the Special Rapporteur on the independence of judges and lawyers, 2014, available at http://www.FReportSpecial_Rapporteur_independence_judges_lawyers_2014_en.pdf, visited on 18.06.2015.

⁵² *Ibid*, para.20.

Further recommends that States develop international guidelines on the scope and application of judicial immunity, as it varies from country to country, which sometimes results in impunity.⁵³

5. Conclusion

International law offers both “hard law”- binding rules for judicial independence, and “soft law”- guidelines for judicial independence. International law permits these rules and guidelines to be met in a variety of ways in different domestic legal and constitutional contexts, and does not demand that specific models of the judiciary be established or that specific mechanisms and procedures for regulating judicial conduct be put in place. Assessing whether a country’s rules and mechanisms for the operation of the judiciary are consistent with the international law, requires detailed and thorough analysis of relevant rules and mechanisms in the light of the international law.

In the past three decades various international organisations including the International Bar Association, International Commission of Jurists have been working continuously, arranging conferences to devise a set of standards of judicial independence and judicial accountability. Achieving judicial independence and accountability is a complex undertaking and has proven a significant challenge in many countries. Reform efforts are often hampered by lack of funding, huge case backlogs, inadequate facilities and information technology, insufficient training, corruption and lack of political will, and resistance from the judiciary itself to becoming more open and transparent in its operations and decisions. Judiciaries, in many countries-in-transition, are struggling to break free from their traditional domination by elites, the military, political parties, or the executive.

The greatest threat to judicial independence is complete disregard by a government for the provisions of the constitution. Unfortunately, many military governments today refuse to subject their authority to a constitutional system, ignoring court orders made against them and providing few mechanisms for the protection of human rights. Even some democratically elected governments still dominate and control the courts in their country, so there is no check on the potential excesses of unfettered and arbitrary political power. Various reports of the Special Rapporteur on the Independence of Judges and Lawyers detail numerous examples of other kinds of attacks on judicial independence and the rule of law from all over the world, including abductions of human rights lawyers, judges and prosecutors in many jurisdictions, often allegedly by government forces and threats to suspend the constitutional courts.

At the international level, the focus until now has been primarily on defining and developing safeguards that States have to put in place to ensure the independence of their judiciaries. Specific and detailed references to judicial accountability have yet to appear in international human rights instruments. Nevertheless, the lack of an international instrument that directly and specifically addresses the issue of judicial accountability reveals a serious gap. Filling that gap could be critical to defining and implementing the principle of judicial accountability in line with the principle of judicial independence and other relevant international human rights

⁵³ *Ibid*, para.53.

standards. It is paramount that states undertake efforts to enact specific legislation establishing a comprehensive system of judicial accountability that is effective, objective and transparent with a view to strengthening the rule of law and improving the administration of justice. Accountability mechanisms and proceedings should respect the fundamental guarantees of fair trial and due process and should be implemented by an independent and impartial body.

