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## JUDGES ASSOCIATIONS

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### 1. Introduction

The judiciary has a vital role to play as guardians of the rule of law and to serve as an important check on the powers of government. An independent judiciary is essential to protecting against abuses of power by State institutions, and to preserving the integrity of the courts so that disputes are adjudicated fairly, impartially, and without any political or other interference or influences.

An important way to assist the judiciary in fulfilling its role, and protecting and promoting its interests, is through a judges association. This paper sets out the purpose of such associations, and the types of activities they may conduct with a view to protecting and promoting the rule of law, judicial independence, human rights, and enhancing the judiciary's professional development. Also considered are the different forms a judicial association may take, and the types of governance structures it may adopt. Lastly, even where judges volunteer their services, an association will nevertheless require funding to enable it to carry out its functions in an effective and sustainable way. These are all issues that any judiciary, considering establishing an association, must consider.

### 2. Aims and Activities

#### 2.1. Aims

*Judges shall be free to form and join associations of judges or other organisations to represent their interests, to promote their professional training and to protect their judicial independence.*

Principle 9 of the UN Basic Principles on the Independence of the Judiciary ("UN Basic Principles").

The three objectives, as specified in the UN Basic Principles, namely to: (i) represent the judiciary's interests; (ii) promote their professional training; and (iii) protect their judicial independence, are amongst the most important aims of judges associations. Indeed, more specific aims often stem from these three principles. The following are examples of aims that judicial associations may seek to attain, and have been compiled having looked at a range of

jurisdictions, including America, Canada, the United Kingdom, South Africa, Uganda, Kenya, Malawi, and India:

- (i) Maintain the independence of the judiciary;
- (ii) Protect and represent the judiciary's interests, including ensuring security of tenure, fair and reasonable salaries and other terms and conditions of employment, to achieve a competent and committed judiciary;
- (iii) Ensure transparency and public accountability of the judiciary: In particular, judicial associations can strive to achieve fair and transparent procedures for the selection and disciplining of judges. Importantly, self-regulation is key to attaining high standards and ensuring independence;
- (iv) Play a role in developing training for judges, and promote and conduct continuing professional development and legal education;
- (v) Improve the effective administration and delivery of justice;
- (vi) Conduct civic education about the law, particularly human rights, the legal system, and the role of the judiciary;
- (vii) Lobby and work with government with respect to laws affecting the role and work of the judiciary, as well as other legislation to enhance the rule of law, access to justice, and human rights;
- (viii) Establish and maintain links with international, regional and other national associations with a view to sharing experiences, collaborating on projects, and enhancing professional development;
- (ix) Organise conferences, seminars and other programs to advance professional development, address or promote specific issues affecting the judiciary and the rule of law, and provide opportunities for networking;
- (x) Create a forum to meet and discuss matters of common interest for the purpose of improving the administration of justice;
- (xi) Deal with procedures and mechanisms for complaints and inquiries concerning the conduct of judges and to provide appropriate guidelines and assistance to its members in relation to those matters, as well as to review and develop codes or rules of conduct or ethics;
- (xii) Speak out in support of members of the judiciary who may be targeted by the government, media, or other sections of society for their judicial decisions.
- (xiii) Conduct human rights monitoring through, for example, visiting detention facilities;
- (xiv) Conduct research on rule of law, human rights, specific laws, and any other issues pertaining to the judiciary and the law;
- (xv) Address the needs and concerns of retired judges.

Although a judges association need not adopt all these objectives, and indeed, it may not have the capacity to achieve all these goals, it may nevertheless work towards such aims.

## **2.2. Activities**

### **2.2.1. Introduction**

The types of activities that judges associations may conduct will very much depend on a range of factors, which include:

- The extent to which the legal and political system is developed;
- Whether human rights and the rule of law are respected; the level of the judiciary's education and training and;
- The funds available.

Examples from jurisdictions such as America and Canada show a very developed and established judiciary with the resources and capacity to conduct civic education projects, and work with government on the judiciary's budget. In other jurisdictions, the judiciary may focus on specific issues such as developing constitutionalism and speaking out in support of the rule of law and judicial independence. The following are examples of the types of activities conducted by judicial associations in different countries.

### **2.2.2. Civic Education**

Judicial associations can perform an important function in raising awareness amongst the public about the judiciary, the law, the legal system and human rights. For example, the American Federal Judges Association promotes public education about the judiciary, the Constitution, the role of the courts, judicial independence and the rule of law. It has a dedicated Civics Education Task Force to evaluate the effectiveness of court websites, and to recommend best practices for public access to information about the courts. Similarly, the Canadian Superior Courts Judges Association's mandate includes promoting public understanding of the role of judges in the justice system.

One way to make information publicly available is through the development of a website. Most judicial associations have a website, and those that are more established regularly update it with information on, for example: case-law; continuing legal education; code of conduct and procedure for complaints and discipline; and laws or any rules relating to the procedure for the appointment of judges, as well as their remuneration and terms of service. A website can also be a useful discussion forum for judges to address particular legal issues and to ensure that the judiciary is up to date on important legal developments.

### **2.2.3. Continuing Professional Development**

Training and continuing professional development for the judiciary is essential to ensuring high ethical standards and competent judges. Without these opportunities, judges cannot reach decisions competently, fairly and efficiently, which can affect the administration of justice more widely. Incompetent judges are also more likely to be influenced in their decisions, thereby undermining the principle of independence and impartiality. Judicial associations can, therefore, be involved in developing judges' professional skills, particularly practical skills where these are lacking in jurisdictions, such as Somaliland.

For example, the Canadian Superior Courts Judges Association provides continuing education for judges, and organises an annual conference and educational forum for its members. It also holds special symposia to keep judges up to date with political, demographic, technological and social trends.

#### ***2.2.4. Representing and Protecting the Judiciary***

There are several ways that judicial associations represent and protect judicial interests, which contribute towards ensuring independence. For example, achieving sufficient salaries ensures committed judges who are able to function independently without limitations. For instance, the American Federal Judges Association has represented the judiciary with regards to judges' salaries, and worked on issues such as the judiciary's budget. In Canada, the Superior Courts Judges Association and the Canadian Judicial Council make joint submissions setting out the judiciary's position on salaries and benefits. The All India Judges Association also works for the betterment of the judiciary's remuneration and conditions of service.

Another important way of protecting judicial interests is to advise and speak out in favour of judges who may be targeted by the government, the media, or the public, for reaching unpopular decisions. In such cases, an association can demonstrate solidarity and support for such judges. The American Federal Judges Association includes this as one of its objectives.

#### ***2.2.5. Constitutionalism, Human Rights, and the Law***

While the judiciary must remain separate from the legislative branches of government, it nonetheless has an important consultative and lobbying role with respect to legislation and policies that affect the judiciary, the rule of law and the administration of justice. Through an organised association, the judiciary can ensure that the government is passing legislation that is in line with the constitution and human rights, and which does not undermine the effective administration of justice and judicial independence. For example, in America, the Federal Judges Association has represented the judiciary with regards to sentencing matters, and promotes dialogue between the legislative and judicial branches through an annual reception with the US legislature.

In some countries, such as America and South Africa, the judiciary has also played an important role in developing constitutionalism. The judiciary not only has a duty to reach decisions in line with the constitution, but through an organised association, can promote the constitution amongst its members to ensure that judicial decisions are in line with fundamental rights. It can further raise public awareness about constitutional rights of citizens, hence developing constitutionalism at the institutional and grassroots levels. This would, for example, be an important function that a judges association could perform in Somaliland. The country's Constitution reflects several international and regional human rights standards, yet little is known about these rights. As a result, decisions and practices that are contrary to the Constitution, continue.

Through a judges association, the judiciary can also carry out important activities to promote the rule of law and human rights. Positive examples can be found in countries such as Malawi and South Africa where, interestingly, associations of women judges have been extremely proactive. While these examples are of gender related activities, judges associations in general can learn from these with a view to conducting work on wider human rights issues. For instance, the Women Judges Association of Malawi focuses on projects of gender related exploitation and violence. It conducts research on gender justice and on specific issues

affecting the rights of women and children, especially the girl child and their access to justice. They also lobby the government for the protection and promotion of the rights of women and children, as well as perform important monitoring and awareness-raising functions, such as: visiting prisons; conducting school awareness meetings; civic education activities at grassroots level; and consultative conferences with court users committees and civil society.

The Malawian Women Judges Association is an instructive example for any developing judicial association. In particular, Somaliland judges could work with grassroots or community-based initiatives to promote access to justice and organise meetings with, for example, village committees, community-based paralegals, and police and prison officials, all with a view to enhancing legal aid and access to justice for the people of Somaliland, as well as promoting awareness of constitutional rights.

#### ***2.2.6. Transparency and Accountability***

An organised judiciary, through an association, has an important role to play in developing and reviewing its own code of conduct or ethics. It can also ensure that disciplinary mechanisms are in place to attain judicial accountability. Having the judiciary maintain responsibility for ethics and discipline, rather than any political branch of government, further protects judicial independence.

However, to promote transparency, information about judicial conduct and discipline must be publicly available. A judicial association can work to publicise its code of conduct, or any rules governing judges appointments, salaries and terms of service, in accordance with the principle of transparency. Many judicial associations do this through, for example, their website.

#### ***2.2.7. Networking***

Establishing and maintaining links with other judicial associations or organisations at the national, regional, and international levels, can create opportunities to promote professional development through, for example, judicial study exchanges and conferences. Moreover, where a judiciary is facing interference or harassment from the government, regional or international judicial organisations can offer support. They can further provide guidance on the establishment and role of judges associations. Useful examples of judicial associations, and organisations focusing on the judiciary, include: the International Association of Judges; the Commonwealth Magistrates and Judges Association; the East African Judges Association; and the International Commission of Jurist's Centre for the Independence of Judges and Lawyers.

### **3. Membership, Governance and Structure**

#### ***3.1. Membership***

Membership of a judges association will usually depend on the nature of the judiciary's structure and size. For example, countries with established and large judiciaries often have several different types of associations. For instance, the Association of Her Majesty's District Judges in the UK represents only district judges who exercise a civil and family jurisdiction in the county courts and district registries of the High Court. The association provides advice

and assistance to its members and represents district court judges in discussions and meetings with senior members of the judiciary, the court service and other organisations. A separate association exists for High Court Masters (judges dealing with pre-trial procedural matters) representing the various High Court branches. Similarly, in America and Canada, different associations exist for various types of judges.

However, in a country such as Somaliland, where most judges tend to sit in a range of cases, and given the size of the judiciary, a single association would suffice. This is the approach taken in countries such as Kenya, where the Magistrates and Judges Association includes magistrates, Khadis, Court of Appeal judges and most High Court judges. Similarly, the Uganda Judicial Officers Association encompasses all members of the judiciary, thereby including judges, registrars and magistrates, as does the Judicial Officers of South Africa Association.

Moreover, any potential association should consider whether judges must apply to become members or whether membership is automatic upon appointment to the judiciary. In America, judges must apply and pay a membership fee, as is the case for South African judicial officers. Moreover, an association may choose to make membership voluntary or mandatory. In most jurisdictions, the majority of judges choose to become members of an association given the benefits of joining. However, judges are not usually mandated to do so, thereby respecting individual judges' autonomy and ultimately, their independence.

### ***3.2. Governance and Structure***

Most judges associations will be governed by an executive body that shall consist of:

- (i) A Chairperson or President;
- (ii) Vice-Chairperson or Vice-President;
- (iii) Secretary;
- (iv) Treasurer.

To illustrate, the Kenya Magistrates and Judges Association has an elected Chairperson who is a judge, and the Uganda Judicial Officers Association's executive is elected for a term of two years.

A judicial association may also appoint a Board of Directors, as is the case with the American Federal Judges Association. Similarly, the Canadian Superior Courts Judges Association is administered by a Board of Directors, made up of: a member resident in each of the provinces and territories; and representatives of the Federal and Tax Courts of Canada. Members elect a Director to represent their particular province or court. The Board meets at least three times a year. This may be a useful example for a country such as Somaliland where a Board of Directors could consist of judicial representatives from the country's different regions.

Whether the executive body is elected or appointed, and the issue of who elects or appoints them, must also be considered. For example, the Canadian Superior Courts Judges Association's executive committee is selected annually by the Board of Directors. A council of between 20 and 60 association members is elected to a two-year term, and meets at least once a year to assist the Board in governing the association.

A practical illustration of how a judicial association may be established is that of the Judicial Officers of South Africa Association (“JOSAA”). It was founded following the drafting of a constitution for the association by 100 South African judicial officers. These judicial officers elected a steering committee of ten members which took charge of interim affairs whilst those who attended the first meeting took the message of the association out to their constituencies. Provincial meetings then took place, at which regional structures were set up and representatives were nominated to attend JOSAA’s first annual general conference where a President, Vice-President, Secretary and Treasurer were elected.

Furthermore, where a judicial association aims to conduct a range of activities, it can be useful, in the long-term, to form committees to address specific issues. For instance, JOSAA has committees dealing with: publications; gender and vulnerable groups; legal affairs; education and training; fundraising; labour relations; and strategic planning. The All India Judges Association also works through various committees.

Lastly, depending on how much funding and work a judicial association has, it may consider whether it will recruit staff or function on a voluntary basis. Initially, it may have no option but to rely on voluntary time and services of judges. It can, however, eventually work towards obtaining funding for staff, such as a Director and/or Administrative Officer. Notably, even established associations, such as the American Federal Judges Association, are voluntary organisations.

#### **4. Funding**

Funding for a judges association is an issue which must be considered in order for it to function effectively and sustainably. Important activities, such as continuing professional development and training, conferences, research, monitoring and lobbying, all require time and resources. While initially, an association may depend on volunteers, it should eventually develop fundraising strategies.

Most judicial associations will apply a membership fee which is one source of funding. However, in a country such as Somaliland where the judiciary is not particularly large, and where salaries are limited, a membership fee would need to be affordable. Accordingly, membership fees should not be relied upon as the sole source of funding. Donor funding could be sourced for specific projects, as could other fundraising activities, such as conferences, and seminars, for which an attendance fee could be charged. Continuing legal education or professional development seminars or courses could also charge a fee, thereby raising funds for the association.

Ideally, fundraising strategies should eventually be developed but must ensure that any source of funding does not undermine the judiciary’s independence. For instance, individual donations, which aim to influence judicial decisions and may undermine judicial independence, must be avoided.

#### **5. Conclusion**

The establishment of any judges association must have, at its heart, the principle of judicial independence. Indeed, all activities essentially stem from, or relate to, this principle. How a judicial association is established, rules regarding its membership and funding, its aims and activities must all be geared towards promoting independence which is crucial to upholding

the rule of law. Indeed, even aims such as training and ensuring sufficient salaries and terms of appointment, relate to this fundamental principle, for an incompetent and inadequately resourced judiciary cannot reach fair and impartial decisions.

It should also be stressed that the aim of a judicial association must not only be to protect its own interests and develop its own profession. The judiciary has an important role to play in promoting human rights and access to justice for all citizens, particularly in a country such as Somaliland. A judicial association in Somaliland can play an invaluable role in, for example, raising awareness of constitutional rights amongst the public and law enforcement institutions and working with community-based initiatives to find ways to enhance access to justice. Indeed, it could perform an important function in implementing a comprehensive legal aid scheme once the National Legal Aid Bill is passed. Moreover, in a country where practical training and skills for the judiciary is lacking, an association could build links with other national, regional and international associations to obtain support for the development of training programmes for judges.

Importantly, the process of establishing an association and determining its aims and objectives, and eventually the activities it undertakes, must also be governed by the principles of transparency and accountability. Without a transparent and accountable judiciary, trust in the profession, the administration of justice, and the rule of law, will be undermined.