

“How to Promote in Practical Way the Independence of Judges as Protectors of International Human Rights Law”

April 2013- Questionnaire 1st Study Commission

At last year’s meeting In Washington, D.C., we voted to undertake an examination of the topic identified above. It is the view of the officers of the First Study Commission that in order to examine the independence of judges as “Protectors of International Human Rights” is necessary to examine a variety of factors that may affect the overall independence of judges. After all, if judges are not independent in the exercise of their regular day to day duties, how will they be able to be independent in acting as protectors of international human rights law.

Therefore, we are posing a number of questions that address factors we believe affect judicial independence in general, and we are also asking a number of questions that address more specifically when and how matters that specifically involving international human rights law are brought before us as judges.

We look forward to receiving your answers, which we will compile and share with each other at our meeting in Ukraine. Please respond by 15 July 2013, if at all possible. Thank you.

POLITICAL INDEPENDENCE

- 1- In your country and legal system, with respect to reducing the influence of politics on the decisions that are made by judges, what guarantees or provisions of law exist to ensure the independence of judges in their decision-making ? NOTE: We list several examples and invite you to add any others that may also apply in your own judicial system:
 - a- Is there security of a judge’s tenure in office? If so, please describe how this is provided – for example, by constitution, by statute, by judicial rules, etc.
 - b- Is there legislation that prohibits others in the government from interfering in the judicial decision-making process? If so, please describe.

- c- Is there legislation that prohibits others outside the government from attempting to influence improperly a judge's decision? If so, please describe.
- d- Is there a system to provide for the physical security of a judge and the judge's family that may be invoked by the judge? If so, how is this security provided and who provides it?
- e- Are there any special provisions to ensure a judge's independence from improper political influence when the judge is deciding a matter involving alleged human rights violations? If so, please describe.
- f- Please describe any other guarantees or provisions of law that are intended to reduce the influence of politics on a judge's decision-making?

APPOINTMENT SYSTEM FOR THE JUDGES/JUSTICES

- 2- Are the procedures and criteria for judicial selection clearly defined by law in order to ensure transparency in the selection process? Please describe the procedures and criteria that exist.
- 3- Is there a separate expert commission or other authority either outside or inside the judiciary which has jurisdiction and competence to participate in judicial selection, including to conduct examinations of prospective judges if such examination are used in the process of judicial selection? If so, please describe.

ADMINISTRATION OF THE JUDICIARY

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 - a- How are the salaries of judges set?
 - b- Are those salaries and any other allowances paid to the judges adequate to satisfy the reasonable living expenses of judges?
 - c- Do the judges' compensation adequately reflect the dignity and importance of the judges' position?
- 5- Is the administrative authority of the chief judges/justices used in a way to influence the adjudication of cases and to affect the content of judicial decision-making? If so, how?

6- To address disciplinary matters involving judges who are accused of violating judicial conduct rules, is there a judicial council or some other body that has the power to:

- a- Receive complaints and conduct disciplinary investigations? If so, please describe.
- b- Hear evidence, make decision based on the evidence, and, if it finds a violation of judicial conduct rules, impose disciplinary measures ? If so, please describe.
- c- Hear appeals from the decisions that have found disciplinary violations and imposed disciplinary measures? If so, please describe.
- d- Does the person who has made a complaint about a judge's conduct have an opportunity to participate in whatever process is available for reviewing that conduct? If so, what is the extent of that participation?

INTERNATIONAL HUMAN RIGHTS ISSUES

7- What is the source of the law, if any, that a judge takes into consideration when deciding whether and how to enforce international human rights law? For example: the constitution, treaties, laws of the country?

8- Do there exist procedures by which your courts may hear cases involving alleged violations of international human rights law when those alleged violations are separate from and independent of the laws of your country law? If yes, please describe these procedures.

9- If the answer to Question 8 is "No," are there any types of cases in which a judge may consider and apply principles of international human rights law when making a decision, or is the judge limited to applying fundamental principles of international human rights law in making a decision only if such principles are embodied in the laws of the country?

10- Are there any persons or groups of people who work for the government in your country who have judicial immunity for their illegal actions?