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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Angola, Australia*, Austria, Belgium*, Bosnia and Herzegovina*, Botswana, Bulgaria*, Chile, Colombia*, Costa Rica, Croatia*, Cyprus*, Czech Republic, Denmark*, Estonia, Finland*, France*, Georgia*, Germany, Greece*, Guatemala, Hungary*, Iceland*, Ireland, Italy, Latvia*, Lithuania*, Luxembourg*, Maldives, Malta*, Mexico*, Montenegro, Morocco*, Netherlands*, Norway*, Peru, Poland, Portugal*, Republic of Moldova, Romania, Russian Federation*, Slovakia*, Slovenia*, Spain, Sweden*, Switzerland, Thailand, the former Yugoslav Republic of Macedonia*, United Kingdom of Great Britain and Northern Ireland*, Uruguay*: draft resolution

23/...Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers

The Human Rights Council,

Guided by articles 7, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 2, 4, 9, 14 and 26 of the International Covenant on Civil and Political Rights, and bearing in mind the Vienna Declaration and Programme of Action,

Recalling the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers, the Guidelines on the Role of Prosecutors, the Bangalore Principles of Judicial Conduct and the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems,

Recalling also all previous resolutions and decisions of the Human Rights Council, as well as those of the Commission on Human Rights and the General Assembly, on the independence and impartiality of the judiciary and on the integrity of the judicial system,

Convinced that an independent and impartial judiciary, an independent legal profession, an objective and impartial prosecution able to perform its functions accordingly and the integrity of the judicial system are prerequisites for the protection of human rights and the application of the rule of law, and for ensuring fair trials and that there is no discrimination in the administration of justice,

* Non-member State of the Human Rights Council.

Recalling that prosecutors should, in accordance with the law, perform their functions fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to due process and the smooth functioning of the criminal justice system,

Noting with concern the increasingly frequent attacks on the independence of judges, lawyers, prosecutors and court officials, in particular threats, intimidation and interference in the discharge of their professional functions,

Recalling that every State should provide an effective framework of remedies to redress human rights grievances or violations and that the administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, is essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development,

Recalling also that it is essential to ensure that judges, prosecutors, lawyers and court officials possess the professional qualifications required for the performance of their functions through improved methods of recruitment and legal and professional training, and through the provision of all necessary means for the proper performance of their role in ensuring the rule of law,

Emphasizing that judges, prosecutors and lawyers play a critical role in upholding human rights, including the absolute and non-derogable right of freedom from torture and other cruel, inhuman or degrading treatment or punishment,

Recognizing the importance of bar associations, professional associations of judges and prosecutors, and non-governmental organizations in the defence of the principle of the independence of judges and lawyers,

Stressing the role that independent and effective national human rights institutions in accordance with the Paris Principles can and should play in strengthening the rule of law and in supporting the independence and integrity of the judicial system,

Recognizing that legal aid is an essential element of a fair, humane and efficient system of administration of justice that is based on the rule of law,

Reaffirming Human Rights Council resolution 17/2 of 6 July 2011 on the mandate of the Special Rapporteur on the independence of judges and lawyers, and acknowledging the importance of his or her ability to cooperate closely, within the framework of his or her mandate, with the Office of the United Nations High Commissioner for Human Rights, including in the fields of advisory services and technical cooperation, in the effort to guarantee the independence of judges and lawyers,

1. *Calls upon* all States to guarantee the independence of judges and lawyers and the objectivity and impartiality of prosecutors, as well as their ability to perform their functions accordingly, including by taking effective legislative, law enforcement and other appropriate measures that will enable them to carry out their professional functions without interference, harassment, threats or intimidation of any kind;

2. *Encourages* States to promote diversity in the composition of the members of the judiciary, including by taking into account a gender perspective, and to ensure that the requirements for joining the judiciary and the selection process thereof are non-discriminatory, and provide for a public, transparent selection process, based on objective criteria, and guarantee the appointment of individuals of integrity and ability with appropriate training and qualifications in law;

3. *Stresses* that the term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement should be adequately secured by law, and that the security of tenure of judges is an essential guarantee of the independence of the judiciary and that grounds for removal must be explicit with well-defined circumstances provided by law, involving reasons of incapacity or behaviour that renders them unfit to discharge their functions, and that procedures upon which the discipline, suspension or removal of a judge are based should comply with due process;

4. *Calls on* States to ensure that prosecutors can perform their functional activities in an independent, objective and impartial manner;

5. *Condemns* all acts of violence, intimidation or reprisals against judges, prosecutors and lawyers, and reminds States of their duty to uphold the integrity of judges, prosecutors and lawyers and to protect them and their families and professional associates against all forms of violence, threat, retaliation, intimidation and harassment as a result of discharging their functions, and to prosecute such acts and to bring the perpetrators to justice;

6. *Calls upon* States, in collaboration with relevant national entities, such as bar associations, associations of judges and prosecutors, and educational institutions, to provide adequate training, including human rights training, for judges, prosecutors and lawyers, both on initial appointment and periodically throughout their career, taking into account regional and international human rights law and, where applicable and relevant, concluding observations and decisions of human rights mechanisms, such as treaty bodies and regional human rights courts;

7. *Underscores the importance* for States to develop and implement an effective and sustainable legal aid system that is consistent with their international human rights obligations and takes into account relevant commitments and good practices, and to ensure that legal aid is available at all stages of the criminal justice process, subject to appropriate eligibility criteria and in accordance with international human rights law;

8. *Urges* all Governments to cooperate with and assist the Special Rapporteur in the performance of her tasks, to provide all information and to respond to communications transmitted to them by the Special Rapporteur without undue delay;

9. *Invites* the Special Rapporteur to collaborate with relevant stakeholders within the United Nations system in the areas pertaining to her mandate;

10. *Calls upon* Governments to give serious consideration to responding favourably to the requests of the Special Rapporteur to visit their countries, and urges States to enter into a constructive dialogue with the Special Rapporteur with respect to the follow-up to and implementation of her recommendations to enable her to fulfil her mandate even more effectively;

11. *Encourages* the Special Rapporteur to facilitate the provision of technical assistance and capacity-building, and the dissemination of best practices, including through engagement with relevant stakeholders and in consultation with the Office of the United Nations High Commissioner for Human Rights, when requested by the State concerned, with a view to establishing and strengthening the rule of law, paying particular attention to the administration of justice and the role of an independent and competent judiciary and legal profession;

12. *Encourages* Governments that face difficulties in guaranteeing the independence of judges and lawyers, the objectivity and impartiality of prosecutors and their ability to perform their functions accordingly, or that are determined to take measures

to implement these principles further to consult and to consider the services of the Special Rapporteur, for instance by inviting her to their country;

13. *Encourages* Governments to give due consideration to recommendations made by United Nations human rights mechanisms addressing the independence and effectiveness of the judiciary and their effective implementation, and also invites the international community, regional organizations and the United Nations system to support any implementation efforts;

14. *Invites* United Nations agencies, funds and programmes to continue their activities in the areas of the administration of justice and the rule of law, including at the country level at the request of the State, encourages States to reflect such activities in national capacity-building plans, and emphasizes that institutions concerned with the administration of justice should be properly funded;

15. *Encourages* States to ensure that their legal frameworks, implementing regulations and judicial manuals are fully in line with their international obligations and take into account relevant commitments in the area of the administration of justice and the rule of law;

16. *Decides* to continue consideration of this issue in accordance with its annual programme of work.
