



## PRINCIPLES ON THE FUNDING AND RESOURCING OF THE JUDICIARY IN THE COMMONWEALTH

### INTRODUCTION

The **Commonwealth (Latimer House) Principles on the Accountability of and Relationship Between the Three Branches of Government**<sup>1</sup> state:

*“Each Commonwealth country’s Parliaments, Executives and Judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchments of good governance based on the highest standards of honesty, probity and Accountability”.*

In order to fulfil this responsibility, the judiciary must be institutionally independent. The provision of adequate financial resources and autonomy in finance and administration are fundamental to institutional independence. The proper funding and repair of the court estate, the provision of adequate computer systems and up to date software for courts and court users, and the provision of adequate numbers of judicial officers (judges and magistrates) and court staff help access to justice, the rule of law, and the independence of the judiciary.

Institutions need to be accountable for the funding allocated. However, any measures such as cost control mechanisms, performance indicators or algorithms which assess the numbers of cases cleared, the reduction of delays, etc..., whilst being useful tools, should not be depended on in the allocation of funding. These processes must not impact adversely on the independence of the judiciary or the quality of justice.

The Commonwealth Magistrates’ and Judges’ Association (CMJA) has been concerned with the funding of the Judiciary for many years. In order to safeguard the independence, integrity, and accountability of the judiciary, it is imperative that adequate resources are allocated to the judiciary. Whilst there may be reasons for budgetary constraints imposed by the Executive Branch, the judiciary must not be treated like a department of state but as the third arm of democracy. Limitations imposed on resources allocated to the Judiciary severely undermine the rule of law and access to justice. Sufficient resources must be allocated to the judiciary in order for it to manage its

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<sup>1</sup> endorsed by Commonwealth Heads of Government Meeting (CHOGM) in 2003, becoming an integral part of the Commonwealth political fundamental values at the CHOGM in 2005

functions in an efficient and effective manner. Without adequate funding, access to justice and the right to a fair trial within a reasonable time limit may be jeopardised. The existence of an impartial, honest, and competent judiciary and the observance of the law are essential to economic growth and investment and is the right of every citizen.

The following principles are intended to provide a framework for the Legislature and Executive Branches of State in relation to the funding of the Judiciary and to assist in better understanding and supporting the judiciary in the fulfilment of their functions. They will also provide a guide to the Judiciaries of the Commonwealth in their requests for sufficient funding.

[NB: *Judicial Officer in the Principles below refers to all judicial officers whatever their titles, of limited or unlimited jurisdiction and at any level*].

## WHEREAS:

- i. **Principle IV of the Commonwealth (Latimer House) Principles** of 2003 on the Three Branches of government states:  
*“Adequate resources should be provided for the judicial system to operate effectively without any undue constraints which may hamper the independence sought”.*
- ii. **The Commonwealth (Latimer House) Guidelines on Parliamentary Supremacy and Judicial Independence** of 1999 annexed to the Principles state:  
**“Funding**  
*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.*<sup>2</sup>  
  
*Appropriate salaries and benefits, supporting staff, resources and equipment are essential to the proper functioning of the judiciary.*  
  
*As a matter of principle, judicial salaries and benefits should be set by an independent body and their value should be maintained”.* Chapter II (2).
- iii. **The UN Basic Principles on the Independence of the Judiciary** of 1985 state that:  
*“It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions”.*
- iv. **The Limassol Conclusions on Combating Corruption in the Judiciary of 2002** recommended that  
*“..... governments should allocate sufficient resources to the courts to ensure their ability to provide an efficient, impartial and accessible service;”* (10 ix) and *“to promote the recruitment and retention of persons of the requisite integrity and competence, Governments should ensure at all times that the remuneration of judicial officers is fixed at a level that will ensure that they enjoy financial security during their tenure of office and that upon retirement they continue to*

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<sup>2</sup> The Guidelines provide in the footnote to this article that *“The provision of adequate funding for the Judiciary must be a very high priority in order to uphold the rule of law, to ensure that good governance and democracy are sustained and to provide for the effective and efficient administration of Justice. However, it is acknowledged that a shortfall in anticipated national income might lead to budgetary constraints. Finance ministries are urged to engage in appropriate consultations in order to set realistic and sustainable budgets which parliaments should approve to ensure adequate funds are available”.*

*enjoy such security” (10 xi).*

- v. The **Commonwealth Charter** agreed by Heads of Government and signed by the Head of the Commonwealth in 2013 states: *“We believe in the rule of law as an essential protection for the people of the Commonwealth and as an assurance of limited and accountable government. In particular we support an independent, impartial, honest, and competent judiciary and recognise that an independent, effective and competent legal system is integral to upholding the rule of law, engendering public confidence and dispensing justice”* (VII- Rule of Law).
- vi. The CMJA adopted a **Resolution On The Lack Of Sufficient Resources Provided To The Courts At Its General Assembly In September 2015 In Wellington, New Zealand** (see annex 1).

## **THE CMJA, REPRESENTING ITS MEMBERSHIP IN THE COMMONWEALTH, HAS RESOLVED TO ADOPT THE FOLLOWING PRINCIPLES:**

### **1. INDEPENDENCE**

Institutional independence of the Judiciary and the individual independence of each judge must be protected as the right of every citizen to a fair trial and to the protection of their human rights and fundamental freedoms. No cost cutting can be allowed to undermine judicial independence.

Decisions on the allocation of funds to the courts must be taken with the strictest respect for judicial independence.

The principal responsibility for court administration, including appointment, supervision and disciplinary control of administrative personnel and support staff must vest in the judiciary, or in a body in which the judiciary is represented and has an effective role.

### **2. ADEQUATE RESOURCES**

Whilst budgets will always be subject to scrutiny by the Legislature, each state should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with international standards and to enable judges to work efficiently without undue delay. This includes physical facilities appropriate for the maintenance of judicial independence, dignity and efficiency; judicial and administrative personnel; and operating budgets. Where economic constraints make it difficult to allocate to the court system facilities and resources which judges consider adequate to enable them to perform their functions, the essential maintenance of the rule of law and the protection of human rights require that the needs of the judiciary and the court system be accorded the highest level of priority in the allocation of resources.

The independence of the judiciary and the quality of justice will be compromised both directly or indirectly by reducing the financial resources allocated or by restricting the number of judicial officers and staff appointed to deal with increasing responsibilities and caseloads.

The Judiciary should have the authority, independent of the other branches of power, to prioritise the allocation of its resources and to define the prioritisation of use of such resources in line with a set of transparent criteria.

Courts should not be financed on the basis of discretionary decisions of official bodies but in a

stable way on the basis of objective and transparent criteria. Funding of courts should not be subject to political fluctuations. No decision of the Legislature in relation to the Budget of the Judiciary should be reversed or diminished by the actions of the Executive Branch of State.

### **3. ROLE OF THE JUDICIARY IN THE BUDGETARY PROCESS**

The budget of the Judiciary should be prepared by the courts or a competent authority in collaboration with the courts at all stages in the budgetary process. The Judiciary should have an opportunity to express its views about any proposed budget directly to the Legislature and having regard to the needs of the independence of the judiciary and its administration. The best approach is for a senior member of the national Judiciary in each country to appear before a Legislative Committee established for the purpose of determining an appropriate amount of funding for the Judiciary. The Committee should then advise the Legislature of the amount of the budget appropriation necessary to fund the Judicial branch for the upcoming year. The amount allotted should be sufficient to enable each court to function at the highest of standards and with sufficient judges to avoid delays.

In order to meet the expectations of society, the judicial budget should include resources to innovate and modernise in line with the development of information technology, but with due regard to providing continued access to justice by the public as well as open justice.

The maintenance of the rule of law requires long-term financial stability in the funding of the judiciary. Courts should not be funded only on an annual basis but should have the certainty of longer-term financial budgets. Funding of courts should be protected from fluctuations caused by political instability.

Judges should receive appropriate training in order to fulfil their administrative and financial responsibilities and have the necessary support to carry out this task.

### **4. REMUNERATION**

The remuneration of judges must remain at all times commensurate with their professional responsibilities, public duties and the dignity of their office. Judges' remuneration should be sufficient to shield them from inducements aimed at influencing their decisions. Remuneration must be entrenched constitutionally or guaranteed in law so as to preserve judicial independence and impartiality. All discussions and negotiations relating to judicial remuneration should involve the judiciary.

The salaries and emoluments (such as, and including, benefits and pensions) of the judiciary should not be altered to the disadvantage after their appointment. A reduction in the remuneration and pensions or deterioration in working conditions of judges is likely to adversely affect the quality and the independence of the judiciary as well as adversely affect the recruitment and retention of suitably qualified persons as judges and should therefore be avoided.

The remuneration should be based on independently set standards that rely on objective and transparent criteria, not on an assessment of the individual performance as a judge.

There should be provisions for the periodic review of judges' remuneration by an independent body to overcome or minimise the effect of inflation. Recommendations by the independent body should be accepted by the Executive.

Judges should receive pensions after their retirement, which should be adequate and should be in a reasonable relationship to their level of remuneration when working to avoid any ethical challenges that might arise if they were considering returning to private practice as lawyers.

## **5. TRAINING**

All budgets should include provision for judicial training including international, regional and local training. Proper training promotes high quality and prompt judicial decisions, which themselves strengthen predictability and legal certainty. The body responsible for judicial training, should be autonomous and have its own budget. The body responsible for judicial training should be under the supervision of the Judiciary.

## **6. ACCESS TO JUSTICE AND CONFIDENCE IN AN INDEPENDENT JUDICIARY**

No budgetary constraints should be imposed with a view to restricting access to justice by members of the public. No increase in court fees should disenfranchise the public's access to justice.

The public must be confident in the independence and integrity of the judiciary and if they are aware that adequate resources are not being allocated, there is a risk that the judiciary will be seen as a pawn of the state. Any budgetary constraints must be explained in a transparent way.

### **Commonwealth Magistrates' and Judges' Association July 2020**

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In preparing these principles, reference has been made to several international instruments and documents including the following:

- (a) The Commonwealth (Latimer House) Guidelines on Parliamentary Supremacy and Judicial Independence (1998);
- (b) The Commonwealth (Latimer House) Principles on the Accountability and Relationship Between the Three Branches of Government (2003);
- (c) The UN Basic Principles on the Independence of the Judiciary (1985);
- (d) The Limassol Conclusions to the Commonwealth Colloquium on Combating Corruption in the Judiciary (2002);
- (e) The Commonwealth Charter (2013);
- (f) The European Network of Councils for the Judiciary (ENCJ) report on "Funding the Judiciary" (2015-2016);
- (g) Paper presented to the Commonwealth Law Ministers Meeting in October 2017 on "The financial and administrative aspects of institutional judicial independence drafted by the Commonwealth Secretariat's Rule of Law Section;
- (h) First Study Commission of the International Commission of Judges 2017 on: "Threats to the Independence of the Judiciary and the Quality of Justice: workload, resources budgets and other threats."

**“RESOLUTION ON THE LACK OF SUFFICIENT RESOURCES PROVIDED TO THE COURTS**

Adopted at the CMJA General Assembly September 2015, Wellington, New Zealand

*Noting that jurisprudence and international conventions recognise that institutional independence is one of the fundamental pillars of judicial independence,*

*Noting that in every Commonwealth country there are pressures to reduce the cost of providing justice,*

*Noting that courts are expected to deliver results faster and with fewer resources, and*

*Noting that there is an ever increasing tension between governments who have the responsibility to fund the administration of justice and the courts that have the obligation to deliver justice,*

*Whereas, Paragraph IV of the Commonwealth (Latimer House) Principles on the Three Branches of Government states that adequate resources should be provided for the judicial system to operate, The Commonwealth Magistrates’ and Judges’ Association notes with concern the continued lack of sufficient resources provided to the courts in many Commonwealth countries,*

*Therefore, the General Assembly of the Commonwealth Magistrates’ and Judges’ Association records that the provision of sufficient resources to the courts is a fundamental constitutional obligation of the Executive branch of government”.*