



DIRECTOR OF PUBLIC
PROSECUTIONS



the
Prosecution
Code
2003



PROSECUTION CODE 2003

1 INTRODUCTION

- 1.1 This Prosecution Code replaces the Prosecution Policy 1997 and is issued under section 76 of the Criminal Procedure Code. This code is to be followed by all police prosecutors and all public prosecutors. It is to be made available to the public so that the decision to prosecute or not to prosecute is a process which is both transparent and uniform.
- 1.2 This code is designed to help State Prosecutors and other prosecutors play their part in ensuring that justice is done. It also contains information that is important to police officers who must consider this Code when deciding whether to charge a person with an offence.

2 DECISION TO PROSECUTE

- 2.1 The decision to prosecute is an important and serious one. Fair and effective prosecution is essential to the maintenance of law and order. It depends on several important principles. Every case should be decided on individual merits, however the decision-making process should apply in all cases.

3 PROSECUTOR'S DUTY

- 3.1 Every prosecutor has the duty to ensure that the right person is prosecuted for the right offence and that the court is given all relevant evidence in each case. They must always act in the interests of justice, not principally for the purpose of obtaining a conviction.
- 3.2 Prosecutors must be fair, independent and objective. They must not be influenced by racial, gender, religious or political views or beliefs. They must never be affected by improper or undue pressure from any source.
- 3.3 It is the duty of every prosecutor to advise and review the evidence, ensuring that the law is properly applied. All obligations of disclosure must be adhered to.
- 3.4 As a minister of justice, the prosecutor acts independently.
- 3.5 The objective of prosecution and the ethics of the prosecutor have been variously defined:

"It is important to observe that in a just society, the conviction of the guilty is in the public interest, as is the acquittal of the innocent." Mr Justice Li, CJ. (Hong Kong)

4. REVIEW

- 4.1 Proceedings in all criminal cases are usually instituted by police or the relevant statutory authority. If the prosecutor (whether police or public) is not satisfied that there is sufficient evidence, charges must not be laid. There should either be a referral to the DPP for instructions, or a request for further investigation.
- 4.2 Review is a continuing process and a prosecutor must take account of any change in the circumstances of a particular case. If at any stage of the preparation or trial, it appears that the prosecution no longer has sufficient evidence, the prosecutor must not proceed with the case but must seek directions from a senior police prosecutor or from the DPP.

Prosecutors should attempt to discuss the sufficiency of evidence with the police before withdrawing charges. This can be done verbally or in writing.

5 THE TEST FOR PROSECUTION

- 5.1 The test for prosecution: No person in Fiji shall be prosecuted unless there is sufficient evidence and it is in the public interest to prosecute. This test is adopted in all Commonwealth countries and is part of the prosecution policy of many common-law jurisdictions.
- 5.2 The first step is to be sure that there is a reasonable prospect of a conviction. This is an objective test, which includes an assessment of the reliability of evidence, and the likely defence case. The test is whether a court, properly directed in accordance with the law is more likely than not, to convict the accused of the charge alleged.

In assessing whether or not a court is likely to convict the following questions should be asked:

- (a) Is it likely that the evidence will be excluded by the courts?
- (b) Is the evidence reliable? Will the confession be excluded? Is there reliable evidence of identification? What explanation has the defendant given? Is a court likely to find it credible in the light of the evidence as a whole? Is the witness's background likely to weaken the prosecution case? Is the witness an unreliable one with a dubious agenda or motive? Are there concerns about the accuracy of witnesses?
- 5.3 Prosecutors should not ignore evidence because they are not sure whether it can be used or is reliable. They should examine it closely when deciding if there is a reasonable prospect of conviction.

6 CONDUCT OF PROSECUTION

- 6.1 In the conduct of any prosecution, the prosecutor must:

- (a) Ensure that the prosecution case is firmly but fairly put;
- (b) Vigorously test the defence case, but with courtesy and temperately;
- (c) Avoid submissions of fact which are not soundly based;
- (d) Eschew prejudice or emotion in the conduct of the case;
- (e) Reveal the existence of material that may assist the accused;
- (f) Invite the court to stop the proceedings if the point is reached at which the prosecutor concludes there is no longer a reasonable prospect of conviction;
- (g) Use all legitimate means to achieve a just disposal of the issues in contention.

7 THE PUBLIC INTEREST

- 7.1 In 1951, Lord Shawcross, who was then the Attorney-General of England said:

"It has never been the rule in this country – I hope it never will be – that suspected criminal offences must automatically be the subject of prosecution." (House of Commons, Vol 483, Col 681, 29 Jan 1951).

The public interest must be considered only if there is sufficient evidence to prosecute. In serious cases, it is almost always in the public interest to prosecute.

The following are some public interest factors both for and against prosecution but the list is not exhaustive.

- 7.2 Public Interest Factors in favour of Prosecution: A prosecution may be warranted if:

- (a) a conviction is likely to result in a significant sentence;
- (b) a weapon was used or violence used or threatened;
- (c) the offence was committed against a public officer;
- (d) the accused was in a position of authority or trust;
- (e) the evidence shows that the accused was a principal offender;
- (f) there is evidence that the offence was premeditated;
- (g) there is evidence that the offence was carried out by a group;

- (h) the victim of the offence was vulnerable, has been in fear, or suffered personal attack, damage or disturbance;
- (i) the offence was motivated by discrimination against the victim's ethnic or national origin, sex, religious beliefs, or political views;
- (j) there is a marked difference between the actual or mental ages of the accused and the victim, or if there is any element of corruption;
- (k) the defendant's previous convictions are relevant;
- (l) the defendant is alleged to have committed the offence whilst on bail, suspended sentence or other order of the court;
- (m) there are grounds for believing that the offence is likely to be repeated;
- (n) the offence, though not serious in itself, is widespread in the area where it was committed.

7.3 Public Interest Factors against Prosecution: A prosecution may not be warranted where:

- (a) the court is likely to impose a very small or nominal penalty;
- (b) the offence was committed as a result of a genuine mistake or misunderstanding;
- (c) the loss or harm can be described as minor and was the result of a single incident;
- (d) there has been a long delay between the offence and trial, unless:
 - the offence is serious;
 - the delay was caused by the accused;
 - the offence has only recently been discovered, or
 - there has been a long investigation due to the complexity of the case.
- (e) a prosecution would have a bad effect on the victim's physical or mental health;
- (f) the defendant is elderly or is suffering from significant ill-health unless the offence is serious or there is a real possibility that it may be repeated;

- (g) the accused has compensated the victim (but accused persons must not avoid prosecution simply because they can pay compensation);
- (h) details may be made public that could harm informers, international relations or national security;
- (i) the parties have reconciled (although this should not prevent prosecution in serious cases).

7.4 The public interest decision is made by balancing all relevant public interest factors, then making an overall assessment.

7.5 The Victim: The prosecutor must always act in the public interest, not just in the interests of anyone individual. However the interests of victims must be weighed as an important factor, when deciding where the public interest lies.

7.6 Young Persons: The prosecutor must always act in the public interest, not just in the interests of anyone individual. However, the interests of victims must be weighed as an important factor, when deciding where the public interest lies.

8 THE LAYING OF CHARGES

8.1 Prosecutors should select charges which:

- (a) reflect the seriousness of the offending;
- (b) give the court adequate sentencing powers, and
- (c) enable the case to be presented in a clear and simple way.
- (d) adequately reflect the true criminality of the offender's conduct

Prosecutors should not continue with more charges than are necessary. They should not lay more charges than are necessary just to encourage an accused to plead guilty to a few. They should never lay a more serious charge just to encourage an accused to plead guilty to a lesser charge.

9. IMMUNITY FROM PROSECUTION

- 9.1 An immunity should only be given if the interests of justice so require. The Director of Public Prosecutions may grant immunity to persons suspected or accused of offences in return for their undertaking to give truthful evidence on behalf of the prosecution. The immunity will be in writing and a copy should be provided by the prosecutor to the court and the defence at the beginning of the trial.
- 9.2 The central issue in deciding whether to give an accomplice an immunity is whether it is in the overall interests of justice that the prosecution of the accomplice be forgone in order to secure the person's testimony in the prosecution of another. In deciding where the balance lies, these factors are relevant:
- (a) the significance to a successful prosecution of the evidence to be obtained;
 - (c) the degree of involvement of the accomplice in the criminal activity in question compared with that of the accused;
 - (d) whether any inducement has been offered to the person concerned.
 - (e) the likely credibility of the accomplice as a witness;
 - (e) whether the accomplice has made, or is prepared to make full disclosure of all facts and matters within his or her knowledge;
 - (f) the nature and strength of any corroborative or other evidence.

10 DUTY OF DISCLOSURE

- 10.1 Every accused has a right to fair trial. The prosecutor has, as an integral part of fair trial a positive and continuing duty to disclose during any part of the trial material that may assist the defence.

- 10.2 Not all materials need to be disclosed to the defence if disclosure is prejudicial to the public interest.
- 10.3 The concept of public interest immunity recognizes that there is immunity from making disclosure when the public interest in withholding information in a particular case outweighs the normal rules requiring disclosure.
- 10.4 The task of the prosecutor is to evaluate the materiality of information which he or she possesses. In R v Keane (1994) 99 Cr App R 1, the Court of Appeal defined materiality, emphasized the prosecutor's duty in judging materiality, and set out the balancing exercise to be undertaken by the courts in deciding upon disclosure. Information is material if it can be seen on a sensible appraisal by the prosecution:
- (a) to be relevant or possibly relevant to an issue in the case;
 - (b) to raise or possibly raise a new issue the existence of which is not apparent, from the evidence that the prosecution proposed to use, and
 - (c) to hold a real (as opposed to a fanciful) prospect of providing strong link evidence to (a) or (b).

11 TRIAL BY ELECTION

- 11.1 Under the Electable Offences Decree, there are only some offences where the accused may elect High Court trial.
- 11.2 However the Magistrate or a public prosecutor under section 220 of the Criminal Procedure Code may also decide on a High Court trial.
- 11.3 The application under section 220 has mandatory effect if it is made by a public prosecutor before the commencement of trial. In deciding the best mode of trial, the public prosecutor must take instructions from the Director of Public Prosecutions after considering the following factors:

- (a) the seriousness of the charge;
 - (b) the likely length of trial;
 - (c) the desirability of a trial that will continue without interruptions or part-hearings;
 - (d) the complexity of the evidence;
 - (e) the adequacy of the sentence that can be passed in the Magistrate's Court;
 - (f) the public interest in having the trial before judge and assessors.
- 11.4 Expediency must never be the only reason for consenting to a case to be heard in the Magistrate's Court. However, prosecutors should consider the effect of any likely delay if the case is heard in the High Court, and any possible distress to victims, witnesses and the accused if the case is delayed.
- 11.5 Police prosecutors should refer all cases where they think a section 220 applications should be made, to the DPP's Office. Prosecutors should also consider inviting the court to commit serious cases to the High Court for sentencing under section 222 of the Criminal Procedure Code. This may be necessary in cases such as rape, child sexual abuse, cases where weapons were used and cases of serious aggravation.

12 ACCEPTING GUILTY PLEAS

- 12.1 Accepting Guilty Plea: Accused persons may want to plead to some of the charges, or to a lesser offence. Such pleas should be accepted if prosecutors think that the sentence the court is able to pass is a sentence that matches the seriousness of the offending and if the offence is a reasonable reflection of the essential criminality of the accused. Prosecutors must never accept a guilty plea just because it is convenient.
- 12.2 Where the accused has pleaded guilty, the prosecutor must ensure that all the facts that support every ingredient of the charge are placed before the court, and that by reference to any aggravating or mitigating features, provide a comprehensive factual basis for sentencing. The outline of the facts must preferably be in writing,

avoiding reliance on the investigators version or on the declaration “facts as charged”.

13 OPPOSING BAIL

13.1 Prosecutors should never oppose Bail simply because the offence is serious. In opposing Bail or deciding not to oppose Bail, the following factors should be taken into account:

- (a) the likelihood of the accused appearing in court;
- (b) the accused’s background, employment history, prior criminal record, details of residence;
- (c) previous failure of the accused to appear;
- (d) the circumstances, nature and seriousness of the offence;
- (e) the severity of the likely penalty if convicted;
- (f) the accused’s own behaviour while investigated by police (such as attempting to flee the country);
- (g) the likely delay before the case is heard;
- (h) the ability of the accused to prepare for trial in custody;
- (i) whether the accused requires medical treatment or physical protection;
- (j) the likelihood of the accused interfering with evidence, witnesses or assessors;
- (k) the likelihood of the accused committing an offence while on bail.

13.2 The relevant principles for Bail pending trial are whether the accused is likely to appear in court, fairness to the accused, the public interest and the protection of the community. The principles for bail pending appeal are whether a substantial portion of the term of imprisonment will have been served when the appeal is heard, whether there is merit in the appeal, or other exceptional circumstances.

14 THE PROSECUTOR AND THE VICTIM OF CRIME

- 14.1 The prosecutor must be sensitive to the interests and needs of the victims of crime. The manner in which the prosecuting authority treats the victims of crime is a measure not only of its efficacy, but also of its humanity.
- 14.2 A victim may need to recount the violence, and physical and mental trauma of the offence when called to testify. The prosecutor must always be sensitive and endeavour to safeguard the interest and the dignity of the victim, providing comfort when necessary. The courts must also be apprised of the nature and extent of harm, physical, psychological and financial, that the offence has had on the victim. Prosecutors should ensure that where the victim has suffered some injury – particularly some permanent injury or disability – that a suitable medical report is supplied to the Court before sentencing.
- 14.3 The prosecutor must endeavour to:
- (a) treat victims with courtesy and respect;
 - (b) keep victims informed of the progress of the case;
 - (c) have their views considered by prosecutors and investigators, and brought before the courts, and
 - (d) respect the victims privacy and confidentiality.

15 ROLE OF THE PROSECUTOR IN THE SENTENCING PROCESS

- 15.1 Although the prosecution should not attempt by advocacy to influence the Court, the prosecutor's duty is to assist the court and to ensure that it gives the Court the essential information it requires in order to carry out the sentencing function properly.
- 15.2 The public interest requires the prosecutor to assist the court to have access to all the available and relevant materials which may affect sentence and protect the court from any error which may need to be remedied on appeal or review in the future.

- 15.3 Upon conviction the prosecutor must inform the court of the accused's latest conviction record, and any facts which may affect the assessment of sentence, whether mitigating or aggravating in character. The prosecutor must be aware of any legal limitations on sentence, the maximum sentence and whether the court has jurisdiction to impose any particular sentence, and should be familiar with the relevant 'tariff' or 'guideline' cases prior to sentencing. These must be brought to the attention of the sentencing court to help it arrive at a just and proper sentence.
- 15.4 When matters advanced in mitigation can be proven wrong, it is the duty of the prosecutor to inform the defence accordingly. If the defence persists, it becomes the duty of the prosecutor to invite the court to put the defence to proof of the disputed material and if necessary to hear rebutting evidence.

16. PROSECUTOR AND CONVICTION APPEALS

- 16.1 The duty of the prosecutor is to assist the court achieve a just disposal of the appeal, observing relevant Practice Directions.
- 16.2 Once the perfected grounds of appeal are received, together with the relevant authorities, the prosecutor should decide upon and serve such additional authorities as will assist the court in determining the issues raised by the appeal.

17 THE PROSECUTOR AND SENTENCE APPEALS

- 17.1 The prosecutor should always seek to assist the court, drawing to its attention relevant 'guideline' or 'tariff' cases, addressing it on the prevalence of the offence, on the customary range of sentences, and providing accurate statistics.
- 17.2 It is no part of the prosecutors function on appeal to seek to uphold sentence which he or she considers manifestly excessive, wrong in principle or not authorized in law. Equally, the prosecutor should if required, indicate why it is felt that the sentencer has achieved a fair and just result in the circumstances.

18 UNITED NATIONS GUIDELINE

18.1 In 1990 the 'Guideline on the Role of Prosecutors' were adopted by the Eight United Nations Congress on the Prevention of crime and the Treatment of offenders. These provide guidance to prosecutors in Fiji. The Guidelines appear at Appendix I.

19 INTERNATIONAL ASSOCIATION OF PROSECUTORS

19.1 The 'Standard of Professional Responsibility and Statement of Essential Duties and Rights of Prosecutors' were adopted by the International Association of Prosecutors, of which the Director of Public Prosecutions Office is an organizational member. These provide guidance to prosecutors in Fiji. The Standards appear at Appendix II.

20 CONCLUSION

Prosecutors are officers of the court and are expected to always act in the public interest. They are subject to the express directions of the Director of Public Prosecutions under section 76 of the Criminal Procedure Code.

Appendix I

GUIDELINES ON THE ROLE OF PROSECUTORS

Adopted by the Eighth United Nations Congress on the

*Prevention of Crime and the Treatment of Offenders, Havana, Cuba,
27 August to 7 September 1990.*

Whereas in the Charter of the United Nations the peoples of the world affirm, *inter alia*, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion,

Whereas the Universal declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence and the right to a fair and public hearing by an independent and impartial tribunal,

Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

Whereas the organization and administration of justice in every country should be inspired by those principles, and efforts undertaken to translate them fully into reality,

Whereas prosecutors play a crucial role in the administration of justice, and rules concerning the performance of their important responsibilities should promote their respect for and compliance with the above-mentioned principles, thus contributing to fair and equitable criminal justice and the effective protection of citizens against crime,

Whereas it is essential to ensure that prosecutors possess the professional qualifications required for the accomplishment 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 or their role in combating criminality, particularly in its new forms and dimensions,

Whereas the General assembly, by its resolution 34/169 of 17 December 1979, adopted the Code of Conduct for Law Enforcement Officials, on the recommendation of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Whereas in resolution 16 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Committee on Crime Prevention and Control was called upon to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

Whereas the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Basic Principles on the Independence of the Judiciary, subsequently endorsed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

Whereas, in resolution 7 of the Seventh Congress, the Committee was called upon to consider the need for guidelines relating, *inter alia*, to the selection, professional training and status of prosecutors, their expected

tasks and conduct, means to enhance their contribution to the smooth functioning of the criminal justice system and their co-operation with the police, the scope of their discretionary powers, and their role in criminal proceedings, and to report thereon to future United Nations congresses.

The Guidelines set forth below, which have been formulated to assist Member States in their tasks of securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings, should be respected and taken into account by Governments within the framework of their national legislation and practice, and should be brought to the attention of prosecutors, as well as other persons, such as judges, lawyers, members of the executive and the legislature and the public in general. The present Guidelines have been formulated principally with public prosecutors in mind, but they apply equally, as appropriate, to prosecutors appointed on an *ad hoc* basis.

Qualifications, selection and training

1. Persons selected as prosecutors shall be individuals of integrity and ability, with appropriate training and qualifications.

2. States shall ensure that:
 - (a) Selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice, excluding any discrimination against a person on the grounds of race, colour, sex, language, religion, political or other opinion, national, social or ethnic origin, property, birth, economic or other status, except that it shall not be considered discriminatory to require a candidate for prosecutorial office to be a national of the country concerned.

 - (b) Prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their

office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law.

Status and conditions of service

- 3 Prosecutors, as essential agents of the administration of justice, shall at all times maintain the honour and dignity of their profession.
4. States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.
5. Prosecutors and their families shall be physically protected by the authorities when their personal safety is threatened as a result of the discharge of prosecutorial functions.
6. Reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations.
7. Promotion of prosecutors, wherever such a system exists, shall be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures.

Freedom of expression and association

8. Prosecutors like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of

matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional disadvantage by reason of their lawful action or their membership in a lawful organization. In exercising these rights, prosecutors shall always conduct themselves in accordance with the law and the recognized standards and ethics of their profession.

9. Prosecutors shall be free to form and join professional associations or other organizations to represent their interests, to promote their professional training and to protect their status.

Role in criminal proceedings

10. The office of prosecutors shall be strictly separated from judicial functions.
11. Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.
12. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.
13. In the performance of their duties, prosecutors shall:

- (a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;
 - (b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;
 - (c) Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise;
 - (d) Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.
14. Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.
15. Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by the international law and, where authorized by law or consistent with local practice, the investigation of such offences.
16. When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence

against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.

17. In countries where prosecutors are vested with discretionary functions, the law or published rules or regulations shall provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecution process, including institution or waiver of prosecution.

Alternatives to prosecution

18. In accordance with national law, prosecutors shall give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally, or diverting criminal cases from the formal justice system, with full respect for the rights of suspect(s) and the victim(s). For this purpose, States should fully explore the possibility of adopting diversion schemes not only to alleviate excessive court loads, but also to avoid the stigmatization of pre-trial detention, indictment and conviction, as well as the possible adverse effects of imprisonment.

19. In countries where prosecutors are vested with discretionary functions as to the decision whether or not to prosecute a juvenile, special considerations shall be given to the nature and gravity of the offence, protection of society and the personality and background of the juvenile. In making that decision, prosecutors shall particularly consider available alternatives to prosecution under the relevant juvenile justice laws and procedures. Prosecutors shall use their best efforts to take prosecutory action against juveniles only to the extent strictly necessary.

Relations with other government agencies or institutions

20. In order to ensure the fairness and effectiveness of prosecution, prosecutors shall strive to co-operate with the police, the courts, the legal profession, public defenders and other government agencies or institutions.

Disciplinary proceedings

21. Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints against prosecutors which allege that they acted in a manner clearly out of the range of professional standards shall be processed expeditiously and fairly under appropriate procedures. Prosecutors shall have the right to a fair hearing. The decision shall be subject to independent review.

22. Disciplinary proceedings against prosecutors shall guarantee an objective evaluation and decision. They shall be determined in accordance with the law, the code of professional conduct and other established standards and ethics and in the light of the present Guidelines.

Observance of the Guidelines

- 23 Prosecutors shall respect the present Guidelines. They shall also, to the best of their capability, prevent and actively oppose any violations thereof.
24. Prosecutors who have reason to believe that a violation of the present Guidelines has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other

appropriate authorities or organs vested with reviewing or remedial power.

THE INTERNATIONAL ASSOCIATION OF PROSECUTORS

Adopted by the International Association of Prosecutors on Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors on the Twenty-Third Day of April 1999

Whereas the objects of the International Association of Prosecutors are set out in Article 2.3 of the its Constitution and include the promotion of fair, effective, impartial and efficient prosecution of criminal offences, and the promotion of high standards and principles in the administration of criminal justice;

Whereas the United Nations, at its Eighth Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba in 1990, adopted Guidelines on the Role of Prosecutors;

Whereas the community of nations has declared the rights and freedoms of all persons in the United Nations Universal Declaration of Human Rights and subsequent international covenants, conventions and other instruments;

Whereas the public need to have confidence in the integrity of the criminal justice system;

Whereas all prosecutors play a crucial role in the administration of criminal justice;

Whereas the degree of involvement, if any, of prosecutors at the investigative stage varies from one jurisdiction to another;

Whereas the exercise of prosecutorial discretion is a grave and serious responsibility;

***And Whereas* such exercise should be as open as possible consistent with personal rights, sensitive to the need not to re-victimize victims and should be conducted in an objective and impartial manner;**

Therefore the International Association of Prosecutors adopts the following as a statement of standards of professional conduct for all prosecutors and of their essential duties and rights:

1. PROFESSIONAL CONDUCT

1.1 Prosecutors shall:

- at all time maintain the honour and dignity of their profession;
- always conduct themselves professionally, in accordance with the law and the rules and ethics of their profession;
- at all times exercise the highest standards of integrity and care;
- keep themselves well-informed and abreast of relevant legal developments;
- strive to be, and to be seen to be, consistent, independent and impartial;
- always protect and accused person's right to a fair trial, and in particular ensure that evidence favourable to the accused is disclosed in accordance with the law or the requirements of a fair trial;

- always serve and protect the public interest;
- respect, protect and uphold the universal concept of human dignity and human rights.

2. INDEPENDENCE

2.1 The use of prosecutorial discretion, when permitted in a particular jurisdiction, should be exercised independently and be free from political interference.

2.2 If non-prosecutorial authorities have the right to give general or specific instructions to prosecutors, such instructions should be:

- transparent;
- consistent with lawful authority;
- subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence.

2.3 Any right of non-prosecutorial authorities to direct the institution of proceedings or to stop legally instituted proceedings should be exercised in similar fashion.

3. IMPARTIALITY

3.1 Prosecutors shall perform their duties without fear, favour or prejudice. In particular they shall:

- carry out their functions impartially;

- remain unaffected by individual or sectional interests and public or media pressures and shall have regard only to the public interest;
- act with objectivity;
- have regard to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;
- in accordance with local law or the requirements of a fair trial, seek to ensure that all necessary and reasonable enquires are made and the result disclosed, whether that points towards the guilt or the innocence of the suspect;
- always search for the truth and assist the court to arrive at the truth and to do justice between the community, the victim and the accused according to law and the dictates of fairness.

4. ROLE IN CRIMINAL PROCEEDINGS

4.1 Prosecutors shall perform their duties fairly, consistently and expeditiously.

4.2 Prosecutors shall perform an active role in criminal proceedings as follows:

- where authorized by law or practice to participate in the investigation of crime, or to exercise authority over the police or other investigators, they will do so objectively, impartially and professionally;

- when supervising the investigation of crime, they should ensure that the investigating services respect legal precepts and fundamental human rights;
- when giving advice, they will take care to remain impartial and objective;
- in the institution of criminal proceedings, they will proceed only when a case is well-founded upon evidence reasonably believe to be reliable and admissible, and will not continue with a prosecution in the absence of such evidence;
- throughout the course of the proceedings, the case will be firmly but fairly prosecuted; and not beyond what is indicated by the evidence;
- when, under local law and practice, they exercise a supervisory function in relation to the implementation of court decisions or perform other non-prosecutorial functions, they will always act in the public interest.

4.3 Prosecutors shall, furthermore:

- preserve professional confidentiality;
- in accordance with local law and the requirements of a fair trial, consider the views, legitimate interests and possible concerns of victims and witnesses, when their personal interests are, or might be, affected, and seek to ensure that victims and witnesses are informed of their rights; and similarly seek to ensure that any aggrieved party is informed of the right of recourse to some higher authority/court, where that is possible;

- safeguard the rights of the accused in co-operation with the court and other relevant agencies;
- disclose to the accused relevant prejudicial and beneficial information as soon as reasonably possible, in accordance with the law or the requirements of a fair trial;
- examine proposed evidence to ascertain if it has been lawfully or constitutionally obtained;
- refused to use evidence reasonably believed to have been obtained through recourse to unlawful methods which constitute a grave violation of the suspect's human rights and particularly methods which constitute torture or cruel treatment;
- seek to ensure that appropriate action is taken against those responsible for using such methods;
- in accordance with local law and the requirements of a fair trial, give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally or diverting criminal cases, and particularly those involving young defendants, from the formal justice system, with full respect for the rights of suspects and victims, where such action is appropriate.

5. CO-OPERATION

5.1 In order to ensure the fairness and effectiveness of prosecutions, prosecutors:

- shall co-operate with the police, the courts, the legal profession, defence counsel, public defenders and other government agencies, whether nationally or internationally, and
- shall render assistance to the prosecution services and colleagues of other jurisdictions, in accordance with the law and in a spirit of mutual co-operation.

6. EMPOWERMENT

6.1 In order to ensure that prosecutors are able to carry out their professional responsibilities independently and in accordance with these standards, prosecutors should be protected against arbitrary action by governments. In general they should be entitled:

- to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure;
- together with their families, to be physically protected by the authorities when their personal safety is threatened as a result of the proper discharge of their prosecutorial functions;
- to reasonable conditions of service and adequate remuneration, commensurate with the crucial role performed by them and not to have their salaries or other benefits arbitrarily diminished.
- to reasonable and regulated tenure, pension and age of retirement subject to conditions of employment or election in particular cases;
- to recruitment and promotion based on objective factors, and in particular professional qualifications, ability, integrity,

performance and experience, and decided upon in accordance with fair and impartial procedures;

- to expeditious and fair hearings, based on law or legal regulations, where disciplinary steps are necessitated by complaints alleging action outside the range of proper professional standards;
 - to objective evaluation and decisions in disciplinary hearings;
 - to form and join professional associations or other organizations to represent their interests, to promote their professional training and to protect their status, and
 - to relief from compliance with an unlawful order or an order which is contrary to professional standards or ethics.
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