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

## **Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul\***

### *Summary*

Following a brief outline of the activities carried out by the Special Rapporteur on the independence of judges and lawyers in 2011, the report highlights the existing international and regional standards relating to prosecutors and prosecution services. Thereafter, the Special Rapporteur analyses the role and responsibilities of prosecutors and the wide diversity of systems that exist within prosecution services globally. She examines the relationship between prosecutors and other actors who operate within the criminal justice system, such as the police, the judiciary, lawyers as well as other individuals entering into contact with the justice system.

The report then focuses on a number of safeguards for prosecutors, as well as various elements that may have an impact on their independence and impartiality. The report also analyses the issue of prosecutors' accountability. In particular, the Special Rapporteur examines the thin line between ensuring that prosecutors are accountable in the discharge of their functions, and the imperative that prosecutors operate independently and without fear, pressure, threats or favour. She also stresses how – in upholding the rule of law and protecting human rights – prosecutors must make, and be perceived to make, decisions objectively, independently and impartially. The Special Rapporteur also underlines the importance of developing a skilled and competent prosecution service through appropriate capacity-building. The report ends with a series of conclusions and recommendations.

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\* Late submission.

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## I. Introduction

1. In its resolution 15/3, the Human Rights Council requested the Special Rapporteur “to explore the need for, and where appropriate, elaborate on, additional individual and institutional parameters to ensure and strengthen the objectivity and impartiality of prosecutors and prosecution services and their ability to perform their functions accordingly in protecting human rights and promoting the fair administration of justice” (para. 4).

2. The previous mandate holder has already analysed the main factors that could affect the institutional independence of the judiciary, as well as the elements that impact the individual status of judges (A/HRC/11/41) and the safeguards aimed at ensuring the independence of lawyers and the legal profession (A/64/181). However, the elements affecting the independence and impartiality of prosecutors have only been referred to tangentially in previous reports.<sup>1</sup> The intention of the Special Rapporteur – following the request of the Human Rights Council – is to fill this gap and highlight the safeguards necessary to ensure an independent, autonomous, objective and impartial functioning of prosecution services. The Special Rapporteur also examines the thin line between ensuring that prosecutors are accountable in the discharge of their function and the imperative that they operate independently and without fear, pressure, threats or favour. She also stresses how – in upholding the rule of law and human rights – prosecutors must make, and be perceived to make, decisions objectively, independently and impartially.

3. In order to gather information from a wide range of legal systems on various issues related to prosecutors and prosecution services, a questionnaire was sent in January 2012 to all Member States as well as to other stakeholders. Thirty-one replies were received. The Special Rapporteur thanks Member States and other stakeholders for their substantive answers to the questionnaire.

## II. Activities in 2011

4. The activities of the Special Rapporteur are carried out in accordance with Human Rights Council resolution 17/2.

### A. Country visits and communication with Member States

5. The Special Rapporteur carried out official visits to Bulgaria from 9 to 16 May 2011 (A/HRC/20/19/Add.2), Romania from 17 to 24 May 2011 (A/HRC/20/19/Add.1), and Turkey from 10 to 14 October 2011 (A/HRC/20/19/Add.3), at the invitation of the respective Governments.

6. The Special Rapporteur sent requests for an official visit to the Governments of Argentina, China, India, Malaysia, the Maldives, Nepal, the Russian Federation, Togo, the United States of America and Venezuela (Bolivarian Republic of). The Special Rapporteur thanks the Governments of Georgia, Guinea-Bissau, the Maldives, Pakistan and the Russian Federation for inviting her to undertake an official visit.

7. From 16 March 2011 to 15 March 2012, the Special Rapporteur sent a total of 100 communications alleging violations of human rights in the context of her mandate to 69 Member States and 2 other actors. Of the communications sent, 67 were urgent appeals and

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<sup>1</sup> See A/HRC/8/4, para. 41; A/HRC/4/25, para. 24; A/HRC/11/41, para. 104.

the remaining 33 were letters of allegation. Details of the communications and responses from Governments are included in the Communications reports of special procedures.<sup>2</sup>

## **B. Other activities**

8. On 15 April 2011, the Special Rapporteur gave a speech on “The role of the United Nations Special Rapporteur on the independence of judges and lawyers in promoting and seeking to ensure the Basic principles on the role of lawyers,” during a seminar commemorating the twenty-fifth anniversary of the organization Lawyers for Lawyers, held in Amsterdam.

9. On 26 and 27 May 2011, she participated in an expert meeting on Gender and Victim and Witness Protection, organized in Geneva by the Office of the United Nations High Commissioner for Human Rights (OHCHR), during which she delivered a statement.

10. She presented her reports at the seventeenth session of the Human Rights Council on 30 May 2011 and, on 31 May, she participated in a side event on “The role of judges and lawyers in times of crisis,” organized by the International Commission of Jurists. On 1 June 2011, she participated in a side event regarding the report of her mission to Mexico (October 2010), organized by the Mexican Commission on the Defence and Promotion of Human Rights, the World Organization against Torture, the Geneva Office of Peace Brigades International and the Law Society.

11. On 16 and 17 June 2011, the Special Rapporteur attended an international conference on Strengthening the Capacity of National Associations of Judges and the Domestic Application of the Convention for the Protection of Human Rights and Fundamental Freedoms, held in Kyiv, and hosted a panel on “Challenges to the independence of the judiciary and judges.”

12. On 23 and 24 June 2011, the Special Rapporteur participated in different interactive panels during the fourth Law in the Future Conference, organized by the Hague Institute for the Internationalization of Law in The Hague.

13. From 4 to 8 September 2011, the Special Rapporteur took part in the Annual Meeting of the International Association of Judges (IAJ/UIIM), held in Istanbul, Turkey.

14. From 3 to 4 November 2011, she attended the Annual Conference of the International Bar Association, in Dubai, United Arab Emirates.

15. In preparation for the present report, the Special Rapporteur organized an expert meeting on The Role of Prosecutors in Upholding the Rule of Law, in Geneva on 7 November 2011.

16. On 31 January 2012, she participated in “the meeting, Public Act in Defence of the National Council of Justice, in Brasilia.

17. From 1 to 4 March 2012, the Special Rapporteur attended the IX Congress of Portuguese Public Prosecutors on Justice, Citizenship and Development, held in Villamoura, Portugal.

18. On 8 March 2012, she took part in the International Women’s Day celebration, organized by the State of Tabasco, Mexico, and its judiciary. On that occasion, she was honoured with the Woman of the Year medal for 2012. The medal, which she declared

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<sup>2</sup> See A/HRC/18/51 and Corr.1; A/HRC/19/44; A/HRC/20/30.

belongs to all Mexican women, will be presented to the Human Rights Council. The celebration gathered some 1,200 people, 700 of which were women.

### III. International standards for prosecutors

19. The Special Rapporteur notes the wide variety of criminal justice systems throughout the world and the differences in the role and status of prosecutors and prosecution services. This has made the development of common international standards for prosecutors more difficult.

20. At the global level, the main instrument specifically aimed at regulating the profession of prosecutors is the Guidelines on the role of prosecutors<sup>3</sup> (hereinafter the United Nations Guidelines). Although not a binding instrument, the United Nations Guidelines were formulated “to assist Member States in their tasks of securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings” in domestic law and practice (preamble). This instrument contains 24 guidelines applicable to the qualifications, status, role and functions of prosecutors. The United Nations Guidelines should be brought to the attention of prosecutors, as well as the judiciary, the legal profession, members of the executive and the legislature and the public in general.

21. The Standards of professional responsibility and statement of the essential duties and rights of prosecutors<sup>4</sup> (hereinafter the IAP Standards of professional responsibility), adopted by the International Association of Prosecutors (IAP) on 23 April 1999, complement the United Nations Guidelines. The IAP is comprised of more than 145 organizational members from over 96 different jurisdictions, counting over 1,000 individual members.<sup>5</sup> The IAP Standards of professional responsibility were endorsed by the United Nations Commission on Crime Prevention and Criminal Justice in its resolution 17/2 of 18 April 2008.

22. A few other international instruments contain provisions applicable to prosecutors. For instance, article 11 of the United Nations Convention against Corruption,<sup>6</sup> requires Member States to take measures to strengthen integrity and prevent opportunities for corruption within the judiciary and also within the prosecution services in States Parties where they do not form part of the judiciary.

23. In addition, a number of instruments have been adopted at the regional level, notably under the auspices of the Council of Europe, to provide further guidance on the status and role of prosecutors and on the safeguards needed to perform their important function. These include the Council of Europe Recommendation on the role of public prosecution in the criminal justice system, 6 October 2000 (Rec (2000) 19); the 2005 European Guidelines on ethics and conduct for public prosecutors (the Budapest Guidelines) (CPGE(2005)05); and the 2009 Bordeaux Declaration on Judges and prosecutors in a democratic society of the Consultative Council of European Judges (CCJE) and the Consultative Council of European Prosecutors (CCPE) (CM(2009)192).

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<sup>3</sup> 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.

<sup>4</sup> International Association of Prosecutors (IAP), Standards of professional responsibility and statement of the essential duties and rights of prosecutors, 23 April 1999.

<sup>5</sup> See IAP website: <http://www.iap-association.org/default.aspx>.

<sup>6</sup> General Assembly resolution 58/4 (2003), annex.

#### IV. Independence and impartiality of prosecutors and prosecution services

24. As mentioned above, international standards applicable to prosecutors exist at both the international and regional levels. However, these standards are meant to cover many legal systems in which the status and role of prosecutors differ, therefore they are broadly formulated so as to cover various jurisdictions. The Human Rights Council requested the Special Rapporteur to elaborate parameters to strengthen the “objectivity and impartiality” of prosecutors and prosecution services, without mentioning their “independence.” The previous Special Rapporteur had recommended that the mandate elaborate an updated study on individual and institutional parameters to ensure and strengthen the “independence” of prosecutors, among others (A/HRC/11/41, para. 104). Furthermore, the current Special Rapporteur has underlined that it is essential that prosecutors be able to play their roles independently, impartially, objectively and in a transparent manner in the discharge of their functions.<sup>7</sup>

25. Given their role as “essential agents of the administration of justice”<sup>8</sup> or “Ministers of Justice,” the Special Rapporteur believes that, in devoting a thematic report to prosecutors and prosecution services, it is important to analyse the models applied in domestic legal systems, identify the challenges prosecutors may encounter in the discharge of their functions and explore ways to improve their independent functioning and impartiality.

26. In assessing the independence and impartiality of prosecutors, it is important to examine both the structural independence of prosecution services and their operational independence and impartiality, or functional independence. A lack of autonomy and functional independence can erode the credibility of the prosecutorial authority and undermine public confidence in the justice system (A/HRC/17/30/Add.3, paras. 16 and 87). In this context, the United Nations Guidelines emphasize that States have a duty to ensure that prosecutors can carry out their functions without improper interference (para. 4).

27. There has been a growing tendency to move towards a more independent prosecution service model, in terms of its relationship with other authorities, notably the executive.<sup>9</sup> In some countries, however, subordination of the prosecution service to the executive authority may often be more a question of principle than reality, in that the

<sup>7</sup> See for instance A/65/274, para 18.

<sup>8</sup> United Nations Guidelines (see footnote 3 above), para. 3.

<sup>9</sup> See Council of Europe, European Commission for Democracy Through Law (Venice Commission), Report on European standards as regards the independence of the judicial system: Part II – The prosecution service, 3 January 2011, CDL-AD(2010)040, para. 26. The tendency registered by the Vienna Commission at national level has been also reflected in the practice or deliberations of various international bodies. In its resolution 17/2, the Commission on Crime Prevention and Criminal Justice further states that “the integrity, *independence* and impartiality of prosecutors are essential prerequisites for the effective promotion of human rights...” (preamble, 4th para.). The Inter-American Commission on Human Rights held that “the Office of the Public Prosecutor must be an organ independent of the executive branch and must have the attributes of irremovability and other constitutional guarantees afforded to members of the judicial branch” and “must have autonomy and independence from the other branches of government.” (IACHR, Report on the Situation of Human Rights in Mexico, OEA/Ser L/V/II.100, chap. V, paras. 372 and 381). The Rome Statute states that “The Office of the Prosecutor shall act independently as a separate organ of the Court.” (art. 42, para. 1). “Neither the Prosecutor nor a Deputy Prosecutor shall participate in any matter in which their impartiality might reasonably be doubted on any ground” (para. 7) or which may “affect confidence in his or her independence” (para. 5).

executive avoids intervening in individual cases or operational decisions, even though it is entitled to do so. Nonetheless, the fundamental problem remains as long as there are no formal safeguards against such interventions. The existence of an entitlement to such interventions can, in terms of public perception, be as damaging as an act of interference.

28. In this context, it is important to develop clear and adequate policy guidelines as well as codes of conduct and ethics, so that the parameters for action and the authority of the respective actors are clearly defined, so as to detect, challenge and remedy any violation or abuse of authority that may arise.

## **V. Status and role of prosecutors**

### **A. Diversity of prosecution service structures**

29. Prosecution services are constructed in a wide variety of ways. First, the prosecution service can be an integral part of the executive power. The service may be organized as an ordinary civil service department, under the authority of the Minister of Justice or an Attorney General who may also have ministerial responsibility and operate outside the Ministry of Justice. Appointments, career and disciplinary proceedings may be organized by the Ministry of Justice, and/or a prosecutorial council or similar body may approve or advise on these matters.

30. Second, the prosecution service may be organized as an autonomous agency, but may be linked to the executive power to a greater or lesser extent. In this case, a prosecutorial council or a similar independent body may regulate the career of prosecutors. The Minister of Justice or another other organ of the executive power often retains a certain degree of control over the appointment of prosecutors, and can decide on appointments autonomously or on the advice of the prosecutorial council. In this structure, the Minister of Justice may also remain in charge of organizational matters and budget management. In other jurisdictions, all policy, operational and administrative matters reside with the operational head of the prosecution service, though some budgetary control may remain with the responsible minister, which may have an impact on the independence of the service. It should be added that nomenclatures can be misleading as there is no consistency between jurisdictions.

31. Third, the prosecution service forms part of the judiciary, which is mostly the case for a number of civil law countries. In this structure, there is usually a higher judicial council or a similar independent body that regulates the careers of both prosecutors and judges. Judges and prosecutors may have the possibility of switching between the respective careers, which in some cases is limited by law.

32. Finally, the prosecution service may be totally independent from both the executive and the judiciary branches.

33. Not only may prosecution services be institutionalized in different ways, their internal structure may also differ. Within prosecution services, prosecutors are either independent of one another within a horizontal structure, or the service is structured in a hierarchical manner. Within a horizontal structure, prosecutors generally enjoy more autonomy, while within a hierarchical structure, it is easier to align the application and interpretation of the law as well as a common approach to criminal justice policy, since there will be an objective, in the name of consistency, to ensure that common practices, procedures and policies are followed. Arguably, the likelihood for an abuse of authority increases with a more hierarchical structure; therefore an adequate system of checks and balances must be in place as a safeguard against this risk. This may occur through internal

or external scrutiny or supervision, for example, through inspectorates, lay panels or prosecutors' associations or unions. In order to maintain their autonomy in hierarchically structured prosecution services, prosecutors should not be required to obtain approval for their actions in the exercise of their functions. As stated by the previous Special Rapporteur, when discussing the election of court chairpersons by fellow judges, the possibility for the chief of the public prosecutor service to be chosen by the prosecutors themselves should be considered so as to avoid internal hierarchy running counter to the independence of prosecutors (A/HRC/11/41, para. 49).

34. In some countries and legal systems, prosecution is mandatory where prosecutors apply the *notitia criminis* (principle of legality). To some extent, the principle of legality could be considered as a safeguard, especially in high-profile cases, as there is less room to justify non-prosecution. On the other hand, prosecutors can apply some discretion (principle of opportunity) as to whether to initiate a prosecution or not, which allows for alternative non-conviction-based remedies and also avoids huge backlogs of cases. At the same time, while plea negotiation is a growing trend as a measure of expediency, excessive use of plea bargaining to address backlogs should be avoided. In this regard, the United Nations Guidelines state that "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" (para. 17).

## **B. Functions and role of prosecutors in relation to judicial and other actors**

35. Prosecutors play a key role in protecting society from a culture of impunity, and function as gatekeepers to the judiciary. Pursuant to the United Nations Guidelines, prosecutors shall respect and protect human dignity and human rights, thereby contributing to ensuring due process and the smooth functioning of the criminal justice system (para. 12). The core tasks of prosecutors consist of performing an active role in criminal proceedings, instituting and conducting prosecution (para. 11); they may also "appeal or conduct appeals concerning all or some court decisions."<sup>10</sup> Further tasks depend on each legal system. The United Nations Guidelines mention the investigation of crime, supervision over the legality of investigations, the supervision of the execution of court decisions and the exercise of other functions as representatives of public interest (para. 11).

36. The structure of prosecution services influences the relationship between prosecutors and other actors of the justice system, namely, judges, the police and individuals, including victims, witnesses and litigants. Regardless of how these relationships are construed, to promote the efficiency of prosecutors, the United Nations Guidelines recommend that prosecutors should strive to cooperate with the police, the courts, the legal profession and other government institutions (para. 20), in accordance with law and in a spirit of mutual cooperation.<sup>11</sup>

### **The role of prosecutors in relation to judges**

37. The United Nations Guidelines recommends that the office of the prosecutor be strictly separated from the judicial function (para. 10). The roles of judges and prosecutors

<sup>10</sup> Council of Europe, Committee of Ministers, Recommendation on the role of public prosecution in the criminal justice system, 6 October 2000, Rec (2000) 19, para. 2.

<sup>11</sup> IAP, Standards of professional responsibility (see footnote 4 above), art. 5, 2nd para.



are distinct, but complementary, and their proper performance is necessary to guarantee a fair, impartial and effective administration of justice.

38. In countries where the prosecution service is part of the judiciary, the careers of judges and prosecutors are usually governed by the same body, that is a Superior Council of Judiciary or a similar body. As noted earlier, in such cases, prosecutors and judges may have the possibility, albeit limited, to switch careers.

39. The opportunity to switch careers is considered useful by some prosecutors and judges since it enables them to obtain a broader perspective and understanding of both roles. However, the Special Rapporteur is of the opinion that this could potentially affect their independence and impartiality, or at least the appearance thereof, especially considering that they have different functions and play different roles, although both need to be highly qualified. Swapping roles may allow for the possibility of the same person becoming a judge in one's own cause. In many countries, the careers of judges and prosecutors are separate and the possibility of switching between roles is subject to a competitive selection process.

40. Irrespective of the system applied, the role of prosecutors should not be confused with the role of judges. It is also important that prosecutors and judges be perceived by the general public as performing different roles and functions, as public confidence in the proper functioning of the rule of law is best ensured when every State institution respects each other's sphere of competence.<sup>12</sup> This is essential to uphold public confidence in the principle of equality of arms and the fair administration of justice.

#### **The role of prosecutors in relation to the police**

41. The relationship between the police and prosecutors is essential to ensuring smooth criminal prosecutions. Within the different categories, a general divide can be made between the police service that carries out investigations independently of the prosecution service, and the police service that is subordinate to the prosecution service.

42. In States with an independent police force, prosecutors are not entitled to instruct the police, although the possibility exists whereby prosecutors, after receiving the case file, can request additional investigatory measures for the prosecution. In the case of subordination, the prosecution service can instruct the police to carry out investigations and to assess the legality of investigatory practices. Prosecutors also have the power to carry out investigations themselves, which requires training in investigatory and forensic skills.

43. In several States, the growing importance of security police forces has led to the allocation of more resources and powers to police services. While the strengthening of the police service should be generally welcomed, the Special Rapporteur is concerned that in certain cases the police may overpower the prosecution services. In this respect, the Special Rapporteur stresses that, especially where the police service is independent of the prosecution service, effective measures must be taken to guarantee that prosecutors and the police cooperate in an appropriate manner<sup>13</sup> in order to obtain the best and most fair outcome, especially for victims. She also highlights the need for prosecutors to bring impartial and objective judgement to bear on case files prepared by police or investigators.

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<sup>12</sup> See A/HRC/20/19/Add.3, para. 86.

<sup>13</sup> Council of Europe, Recommendation Rec (2000) 19 (see footnote 10 above), paras. 21 and 22.

### The role of prosecutors in relation to lawyers

44. The right to legal assistance should be available at all stages of the proceedings, including during the pretrial stage. All persons who are arrested, detained or imprisoned should be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer,<sup>14</sup> without delay, interception or censorship and in full confidentiality.<sup>15</sup> Prosecutors must make every effort to safeguard these rights.<sup>16</sup> The United Nations Guidelines stress the importance of cooperation between prosecutors, the legal profession and public defenders.<sup>17</sup>

45. This relationship is especially important in cases where prosecutors assume a more significant role in the investigatory proceedings. Prosecutors who are involved in an investigation from the outset should ensure that the rights of defence are fully respected. During the investigation, and in particular when gathering evidence, prosecutors should at all times respect the principle of professional privilege. This principle protects the confidentiality of all communication between the lawyer and the client, and requires that such communication not be used as evidence, and that all consultations between the accused and his/her lawyer are held in private.<sup>18</sup>

46. Another important safeguard of a fair trial is equality of arms, which requires procedural equality between the prosecution and the defence.<sup>19</sup>

### The role of prosecutors in relation to individuals

47. Prosecutors also have an important role in protecting the rights of victims, accused persons and witnesses. They must ensure discontinuation of prosecution when the investigation shows the charge to be unfounded.<sup>20</sup> Furthermore, prosecutors need to be alert to evidence “obtained through recourse to unlawful methods,” in which case they “should take all necessary steps to ensure that those responsible are brought to justice.”<sup>21</sup>

48. With regard to victims and witnesses, prosecutors shall take their interests into account and take measures, where necessary, to protect their security and privacy. The United Nations Guidelines enshrine several duties that prosecutors have vis-à-vis victims, including ensuring that they are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.<sup>22</sup> Prosecutors should also take into account, when relevant to their decision, the position of the victims as well as their views and concerns, when their personal interest is affected.

<sup>14</sup> “Lawyers” are understood as being private lawyers and/or public defenders and not prosecutors.

<sup>15</sup> See Basic principles on the role of lawyers, 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, para. 8.

<sup>16</sup> The Human Rights Committee has emphasized that it is axiomatic that effective legal assistance be provided at all stages of legal proceedings, and especially in capital punishment cases, see communications No. 731/1996, *Robinson v. Jamaica*; No. 781/1997, *Aliiev v Ukraine*; No. 775/1997, *Brown v. Jamaica*.

<sup>17</sup> United Nations Guidelines (see footnote 3 above), para. 20.

<sup>18</sup> See, for instance, Basic principles on the role of lawyers, paras. 8 and 22.

<sup>19</sup> See International Covenant on Civil and Political Rights, art. 14, para. 3 (b); American Convention on Human Rights, art. 8, para. 2 (c); European Convention on Human Rights, art. 6, para. 3 (b).

<sup>20</sup> United Nations Guidelines, para. 14.

<sup>21</sup> *Ibid.*, para. 16. This is also emphasized in art. 15 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which states that “each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings”.

<sup>22</sup> United Nations Guidelines, para. 13 (d).

49. As regards the suspected person or the accused, prosecutors should ensure, as far as possible, that accused persons are aware of their rights, and that all relevant circumstances are taken into account, irrespective of whether they are to the advantage or disadvantage of the suspect. Additionally, prosecutors have a duty to ensure the accused person's right to a fair trial<sup>23</sup> and that his/her right to defend him/herself is fully respected, including the right of the accused to be informed of the charges in a language that he/she understands, and to have adequate time and facilities to prepare his/her defence.

50. In addition, prosecutors shall take into account the position of the suspect and the victim while at the same time protecting the public interest.<sup>24</sup> However, a distinction must be drawn in order to avoid confusion between public and State interests, that is, the exercise of public interest functions – such as criminal prosecution – should not be conceived as having the role to protect the interest of the Government, a political party or any other State institution.<sup>25</sup> In this vein, prosecutors should also remain unaffected by personal or other interests and pressure from the media or public.<sup>26</sup> Another duty of prosecutors vis-à-vis the public is the obligation to give due attention to the prosecution of crimes committed by public officials.<sup>27</sup>

### **The role of prosecutors in relation to juveniles and alternatives to prosecution**

51. Concerning juveniles, the United Nations Guidelines stipulate that prosecutors shall endeavour to take prosecutorial action against juveniles only to the extent strictly necessary. In countries where prosecutors are vested with discretionary functions to decide whether to prosecute a juvenile, prosecutors shall consider, in particular, available alternatives to prosecution under the relevant juvenile justice laws and procedures. In making this assessment, they should give special consideration to the nature and gravity of the offence, the protection of society and the personality and background of the juvenile.<sup>28</sup>

52. The possibilities of applying alternative procedures, where appropriate, not only applies to juveniles but can be considered in all cases where an alternative disposal would be in the interests of justice or the public. Accordingly, the United Nations Guidelines recommend that prosecutors give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally, or diverting criminal cases from the formal justice system (para. 18). This should occur with full respect for the rights of the suspect as well as the victim.

### **The role of prosecutors in ensuring non-discriminatory practices**

53. Selection criteria for prosecutors should embody safeguards against appointments based on partiality or prejudice, without discrimination based on race, colour, gender, sexual orientation, language, religion, political or other opinion, national, social or ethnic origin, property, birth, economic or other status.<sup>29</sup> It is important, in this respect, that an adequate representation of minority groups is ensured in prosecution services. Such groups should also have equal access to justice.

<sup>23</sup> IAP, Standards of professional responsibility (see footnote 4 above), art. 1, 6th para.

<sup>24</sup> United Nations Guidelines, para. 13 (b).

<sup>25</sup> See Venice Commission, Report on European standards, CDL-AD(2010)040 (see footnote 9 above), para. 71; also HRC/20/33/Add.6, para.56.

<sup>26</sup> IAP, Standards of professional responsibility, art. 3, 2nd para.

<sup>27</sup> United Nations Guidelines, para. 15.

<sup>28</sup> *Ibid.*, para. 19.

<sup>29</sup> *Ibid.*, para. 2 (a).

54. States should also ensure that mechanisms for prosecuting perpetrators of violence are gender sensitive, especially in cases involving sexual and/or gender-based violence, and that they are available, effective and sensitive to the specific needs of vulnerable groups. Prosecutors play an essential role in ensuring full equality with regard to access to justice and preventing the recurrence of violence, including by effectively sanctioning crimes against perpetrators. The Special Rapporteur emphasizes the importance of gender-sensitive handling of cases by prosecutors.<sup>30</sup> When crimes are not effectively sanctioned, there is lack of recognition of equal rights of women and men, and even the institutionalization of inequality.<sup>31</sup>

### C. Role of prosecutors in military courts

55. States must ensure that the conduct and functioning of prosecutors in military courts comply with international norms and standards. Prosecutors in military courts must act independently and impartially and uphold the rule of law in the same manner as those discharging their functions in civilian courts.

56. The Special Rapporteur wishes to reiterate, as stated in a number of instruments and reports on this issue, that resorting to military jurisdiction, including military prosecutors, should be exceptional and generally limited to offences committed within a military context, specifically military offences committed by military personnel.<sup>32</sup> This implies that when the offence committed amounts to a human rights violation or when the matter involves a civilian, the case must be referred to the civilian jurisdiction.<sup>33</sup>

57. Concerns related to the independence and impartiality of prosecutors in military courts may also arise out of the very structure of the military prosecution service. In certain countries, the military prosecution office is subordinate to the Ministry of Defence, and may be physically located at military bases.<sup>34</sup> This can raise serious doubts about whether prosecutors in military settings are able to act with objectivity and impartiality. As illustrated in reports of the mandate, military courts, including prosecutors, may be under considerable pressure from the military hierarchy, which may lead to impunity for transgressors.<sup>35</sup> This notwithstanding, as provided for in the United Nations Guidelines, 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 (para. 4). The Special Rapporteur also underlines that military prosecutors should undergo the same training as their civilian counterparts, including in human rights law.

<sup>30</sup> See A/HRC/17/30 and A/66/289.

<sup>31</sup> A/HRC/17/30, paras. 32 and 33.

<sup>32</sup> For example, Basic principles on the independence of the judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, 26 August -6 September 1985, para. 5; updated Set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1), principle 29; African Union, African Commission on Human and People's Rights, Principles and guidelines on the right to a fair trial and legal assistance in Africa, sect. L; also A/HRC/17/30/Add.3, paras. 42 and 89.

<sup>33</sup> E/CN.4/2005/102/Add.1, principle 29; also General Assembly res. 47/133 of 18 December 1992, Declaration on the Protection of all persons from enforced disappearance, art. 16; Inter-American Convention on Forced Disappearance of Persons, art. IX; and A/61/384, para. 26.

<sup>34</sup> Inter-American Commission of Human Rights, Third Report on the Human Rights Situation in Colombia, 26 February 1999, OEA/Ser L/V/II 102, chap. V, paras. 107-109.

<sup>35</sup> See A/61/384, para. 37; and A/62/207, para. 21 (e).

## VI. Safeguards for the independence and impartiality of prosecutors

58. Many elements affect the capacity of prosecutors to perform their functions in an independent and impartial manner. Some challenges are related to the way the prosecution system is structured and their career organized, while others depend on external factors. The Special Rapporteur has frequently come across the following examples in the exercise of her mandate: lack of adequate resources (e.g. human, financial and logistical); lack of autonomy and independence due to internal or external pressure; poor conditions of service (e.g. low salary, lack of infrastructure and the necessary technical equipment for an effective investigation); and concerns related to the security of prosecutors and their families.

### Appointment and promotion

59. The United Nations Guidelines prescribe that prosecutors be selected on the basis of objective criteria and that they be individuals of ability and integrity, with appropriate training and qualifications (para. 1). The IAP Standards of professional responsibility emphasize that recruitment (and promotion) should be decided on the basis of a fair and impartial decision-making procedure.<sup>36</sup> These criteria are also included in a number of regional standards.<sup>37</sup> Furthermore, selection criteria for prosecutors should embody safeguards against appointments based on partiality or prejudice and exclude any form of discrimination.<sup>38</sup>

60. Appointment procedures depend to some extent on the institutionalization of the prosecution service. In a number of countries, access to the career of prosecutor occurs through a public competitive examination or other selection process. In other countries, appointment involves the executive and/or the legislative branch. In some cases, practical experience as a lawyer is required to be admitted to the prosecutorial career.

61. In countries where the prosecution service is part of or linked to the executive, the body regulating the career of prosecutors is generally the Office of the Prosecutor General or the Ministry of Justice. Where the prosecution service is linked to the judiciary or is totally independent, a body such as the Superior Council of the Judiciary or the Superior Council of Prosecutors or the Office of the Prosecutor General is usually mandated to regulate the careers of prosecutors.

62. In the view of the Special Rapporteur, a public competitive selection process (an examination) is an objective way to ensure the appointment of qualified candidates to the profession. Both selection and promotion processes should be transparent in order to avoid undue influence, favouritism or nepotism.<sup>39</sup> Recruitment bodies should be selected on the basis of competence and skills and should discharge their functions impartially and based on objective criteria. This body should be composed by a majority of members from within the profession in order to avoid any possible political or other external interference.<sup>40</sup>

<sup>36</sup> IAP, Standards of professional responsibility (see footnote 4 above), art. 6.

<sup>37</sup> See African Commission on Human and Peoples' Rights, Principles and guidelines on the right to a fair trial and legal assistance in Africa, sect. F, para. (c); Council of Europe, Recommendation Rec (2000) 19, para. 5 (b).

<sup>38</sup> United Nations Guidelines, para. 2 (a).

<sup>39</sup> A/HRC/17/30/Add.3, para. 23.

<sup>40</sup> A/HRC/11/41, para. 28.

### **Prosecutor General**

63. The modalities of appointment of the Prosecutor General are also important for the proper functioning of the prosecution services and there are many models. In some countries, the Prosecutor General is appointed by the Head of State with the involvement/approval of the Parliament or the Superior Council of Judiciary, on recommendation by the Minister of Justice or the President of the Republic, on recommendation by the Supreme Court and with the approval of two thirds of Parliament. In other instances, the Prosecutor General is appointed by the Supreme Court of Justice (Court of Cassation) from a list of candidates proposed by the President of the Republic. In countries where the prosecution service is attached or dependent on the executive branch of Government, the Prosecutor General may be appointed by the Executive.

64. While it is understandable that Governments wish to retain some control over the appointment of the Prosecutor General, it is important that the method of selection maintains public confidence and the respect of the judiciary and the legal profession. The Special Rapporteur believes that appointment of a Prosecutor General resulting from cooperation among different governmental bodies is preferable to one appointed by a single body, in which case expert advice should be sought.<sup>41</sup>

65. In terms of tenure, it is preferable that the Prosecutor General be appointed for a fairly long term of office, pre-established by law, for in seeking re-appointment, there is the risk of a political body behaving, or being perceived as behaving, in a way as to favour re-appointment.<sup>42</sup>

### **Conditions of service: tenure, transfer and remuneration**

66. The United Nations Guidelines stipulate that prosecutors should enjoy reasonable conditions of service, including tenure, when appropriate, remuneration and pension commensurate with the crucial role they play in the administration of justice.<sup>43</sup> Reasonable conditions of service contribute to ensuring that prosecutors carry out their responsibilities independently and impartially.

67. The tenure of prosecutors depends on how the prosecution service is structured. In a large number of countries, prosecutors are appointed until retirement (usually when the prosecution service is part of the judiciary), while in others they are appointed for a set period of time (where the prosecution service is independent or prosecutors are proposed by political parties and elected). The Special Rapporteur believes that security of tenure for prosecutors is an important element that reinforces their independence and impartiality.

68. Another important element that should exist within their conditions of service is the irremovability of prosecutors. The undue use of the transfer may lead to unjustifiable interference as the threat of transferring prosecutors between posts can be used as an instrument for putting pressure on a prosecutor or be a means for removing them from sensitive cases. In particular, the Special Rapporteur is concerned at instances where the transfer system may be used as a punishment or reward mechanism depending on the level of allegiance of an individual prosecutor.

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<sup>41</sup> Venice Commission, Report on European standards, CDL-AD(2010)040 (see footnote 9 above), paras. 34-40.

<sup>42</sup> See also *ibid.*, para. 71, which suggests that a non-renewable term is preferable to the possibility of re-appointment.

<sup>43</sup> United Nations Guidelines, para. 6; IAP, Standards of professional responsibility, arts. 6, 3rd and 4th paras.

69. The Special Rapporteur emphasizes that transfer should not be based exclusively on the exigencies of service but should also take into account the views, aspirations and specializations of the prosecutor and his/her family situation.

70. Given their important role and function, the dismissal of prosecutors should be subject to strict requirements, which should not undermine the independent and impartial performance of their activities.<sup>44</sup> There should be a framework for dealing with internal disciplinary matters and complaints against prosecutors, who should in any case have the right to challenge – including in court – all decisions concerning their career, including those resulting from disciplinary proceedings.

71. Remuneration for prosecutors in line with the importance of the task is an element of independence and impartiality that should not be overlooked.<sup>45</sup> Dissatisfaction regarding level of remuneration has been expressed on different occasions to the Special Rapporteur. She notes that the appropriate remuneration of prosecutors also implies recognition of their important function and role and can also reduce the risk of corruption.

72. The Special Rapporteur also observes that self-management of the resources/budget of the prosecution service can be an important aspect of autonomy and independence.

### **Instructions and guidelines**

73. In order to ensure a fair and consistent approach in criminal justice policy, general guidelines can be issued by the prosecution service itself (internally) and by non-prosecutorial authorities (externally). The issue of policy guidelines and other general instructions for the prosecution service may be of importance to create consistency in the actions of the prosecution service. In this vein, the United Nations Guidelines state that States shall ensure that prosecutors are made aware of the ideals and ethical duties attributable to their public office (para. 2 (b)).

74. Prosecutors should also have the right to request that instructions be issued in writing.<sup>46</sup> In any case, all instructions should be substantiated and open to scrutiny. IAP Standards of professional responsibility stress that the issue of instructions by non-prosecutorial authorities should be: transparent, consistent with lawful authority and subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence (art. 2.2). They further underline that prosecutors are entitled to relief from compliance with an unlawful order or an order that is contrary to professional standards or ethics (art. 6). It is of vital importance for the independence of prosecutors that allegations of improper interference be duly investigated.

75. In most countries where the prosecution service is hierarchical, case-specific instructions may also be given by the Prosecutor General or the Head of the Prosecution Service or on his behalf to individual prosecutors, including instructions as to whether to initiate or discontinue prosecution in a specific case or to transfer the case to another prosecutor. It would be an abuse of authority if the motive for such an instruction is politically motivated. The Special Rapporteur further emphasizes that case-specific instructions to prosecutors from external organs are not desirable and that they should be formally recorded and carefully circumscribed to avoid undue interference or pressure.

<sup>44</sup> A/HRC/20/33/Add.6, paras. 89-90.

<sup>45</sup> United Nations Guidelines, para. 6. See also Venice Commission, Report on European standards, para. 87.21.

<sup>46</sup> Council of Europe, Recommendation Rec (2000) 19, para. 10.

**Security of prosecutors**

76. In many countries, prosecutors are directly exposed to security risks, especially those dealing with particularly sensitive cases such as organized crime and terrorism cases. A prosecutor who fears for his/her security – or that of his/her family – cannot possibly be fully independent and impartial in the performance of duties. The only specific document focusing on this important issue is the Declaration on Minimum Standards Concerning the Security and Protection of Public Prosecutors and their Families, developed by the IAP in 2008. Important safeguards concerning the personal security of prosecutors are also contained in the United Nations Guidelines (paras. 4 and 5).

77. As highlighted in the IAP Declaration on Minimum standards concerning the security of prosecutors,<sup>47</sup> there should be a specific institution tasked to assess the security risks for prosecutors and their families and provide them with information, training and advice concerning personal safety (paras. 4 and 5). If prosecutors or their families are subjected to any form of violence or threats of violence, or to any form of intimidation, coercion or of inappropriate surveillance, it is the responsibility of the Government to fully investigate such incidents and take steps to prevent their future recurrence and provide, when needed, prosecutors and their families with the necessary counselling or psychological support (para. 8).

78. The Special Rapporteur underlines that States have the duty to ensure the personal safety of prosecutors and their families.

**Other elements**

79. Lack of resources, a heavy workload and inadequate physical conditions of work have been often reported as major challenges to effective performance by prosecutors.

80. The method for assigning cases within the prosecution service is another important element to safeguard the independence and impartiality of prosecutors. An independent and impartial case assignment system protects prosecutors from interference from within the prosecution service. Preferably, the specialization and qualification of the prosecutors should be taken into account when assigning cases.<sup>48</sup>

81. Prosecutors are entitled to freedom of expression, belief and association, and should be free to form professional associations to represent their interests, promote professional training and protect their status within recognized standards and professional ethics.<sup>49</sup> Prosecutors cannot generally be a candidate in political elections without resigning from office, however, in most cases, they can normally return to their career after the termination of the political term. The Special Rapporteur is of the opinion that prosecutors should, at all times, conduct themselves in a profession manner and strive to be and be seen to be independent and impartial.<sup>50</sup> She notes that affiliation to a political party or candidacy for political office may affect perceptions in this regard.

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<sup>47</sup> IAP, Declaration on Minimum standards concerning the security and protection of public prosecutors and their families, Helsinki, Finland, 1 March 2008

<sup>48</sup> Council of Europe, Recommendation Rec (2000) 19, para. 9.

<sup>49</sup> United Nations Guidelines, paras. 8-9.

<sup>50</sup> See IAP, Standards of professional responsibility, art. 1.



## VII. Accountability of prosecutors

82. The fair, independent and impartial administration of justice also requires prosecutors to be held to account should they not fulfil their functions in accordance with their professional duties. In this vein, the Special Rapporteur emphasizes that autonomy should not exist to the detriment of accountability (A/HRC/17/30/Add.3, para. 18).

83. The accountability of prosecutors can be organized in several different ways: through monitoring by the executive; accountability before a prosecutorial council, prosecution inspectorates or similar independent body; or parliamentary accountability, although this form of accountability should not be used to scrutinize individual cases.

84. The issue of accountability of prosecution services is especially important where the office of the prosecutor is fully independent and there is no scrutiny of prosecutorial actions from the executive or the legislative. Accountability in these cases could be sought through the submission of public reports by the Prosecutor General. Moreover, prosecutors may be accountable to public auditors for financial or organizational issues.

85. The work of a prosecutor is subject to judicial scrutiny where cases are brought before the courts, even though this scrutiny would not normally include the decision not to prosecute. The Special Rapporteur underlines that there should always be an effective oversight mechanism to ensure increased transparency and accountability. This is particularly important in systems where prosecutors traditionally have had and, in some instances, continue to have, very broad powers.

86. The Special Rapporteur has already stated that human rights principles and standards relating to judges, lawyers and prosecutors recognize that they should be accountable in the discharge of their functions and subject to disciplinary proceedings, as necessary (A/65/274, para. 60). Disciplinary and other proceedings against prosecutors, however, should be carried out in full conformity with existing international norms and standards. For instance, paragraph 21 of the United Nations Guidelines states that “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.” The Special Rapporteur stresses that disciplinary measures must be proportional to the gravity of the infraction, and recalls the recommendation formulated by the previous mandate holder with regard to judges, that the law should give guidance on infractions by judges and the disciplinary measures that they trigger (A/HRC/11/41/Add.2, para. 99), which should also be applied to prosecutors. To maintain public confidence in the prosecution system, prosecutors should be directly or indirectly accountable to the public. In this respect, in order to create a system of public accountability, a number of regional standards recommend the possibility of interested parties challenging the decision of prosecutors not to prosecute.<sup>51</sup>

87. The Special Rapporteur would also like to highlight the need to adopt specific measures to combat corruption in prosecution services. She recommends, as a matter of priority, the adoption of effective measures in this respect. A code of ethics for prosecutors is also an important tool for enhancing professionalism and integrity.

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<sup>51</sup> Council of Europe, Recommendation Rec (2000) 19, para. 34; Venice Commission, Report on European standards, para. 87.10.

## VIII. Capacity-building

88. Capacity-building was the focus of the Special Rapporteur's first thematic report to the Human Rights Council in 2010 (A/HRC/14/26). In particular, she underlined the need for ongoing legal education and training to enable judges, prosecutions and lawyers to apply international human rights norms, standards and principles when considering domestic cases.

89. Training is essential in order to maintain a competent and skilled prosecution service with the confidence and capability to operate autonomously with the support and confidence of the public. According to the United Nations Guidelines, States shall ensure that prosecutors have appropriate education and training and are made aware 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 (para. 2 (b)). In addition to training prior to or on appointment as a prosecutor, ongoing training is of paramount importance. Indeed, awareness of and sensitivity to human rights norms, standards, principles, rules and jurisprudence strengthens democracy, the rule of law and good governance. The right to appropriate training and education is also emphasized in several regional guidelines and principles.<sup>52</sup> Council of Europe Recommendation Rec (2000) 19 emphasizes the dual role of training as a duty and a right, that is essential to attaining the highest level of performance in the administration of justice (para. 7).

90. The Special Rapporteur further notes the development of new forms of criminality and the need for appropriate responses from prosecutorial authorities.<sup>53</sup> In this vein specialization constitutes an important aspect of the training of prosecutors, who should also be provided with the adequate human and technical resources to properly investigate crimes, when they have the mandate to do so. The Special Rapporteur also notes with some concern that in some countries the training activities of prosecutors are at their own expense.

91. The Special Rapporteur is of the opinion that, in addition to the necessary specific and separate training for prosecutors, joint training for judges, prosecutors and lawyers on themes of common interest could enhance mutual understanding and cooperation.

92. The Special Rapporteur commends the work of the International Association of Prosecutors (IAP), in particular the publication of the *Human Rights Manual for Prosecutors* (2003) and the Human Rights Training Package (2010), designed for use in training prosecutors in the practical application of international human rights standards in their professional work.

## IX. Conclusions

**93. Prosecutors are the essential agents of the administration of justice, and as such should respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.<sup>54</sup> Prosecutors also play a key role in protecting society from a culture of impunity and function as gatekeepers to the judiciary.**

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<sup>52</sup> For example, African Union, Principles and guidelines on the right to a fair trial and legal assistance in Africa, sect. F (a) (i); Council of Europe, Recommendation Rec (2000) 19, para. 7.

<sup>53</sup> A/HRC/17/30/Add.3, para 58.

<sup>54</sup> United Nations Guidelines, paras. 3 and 12.

94. The structure of prosecution services influences the relationship between prosecutors and other actors of the justice system, namely judges, the police, lawyers and individuals, including litigants. Regardless of how these relationships are constructed, prosecutors should strive to cooperate with the police, the courts, the legal profession and other Government institutions in order to strengthen the efficiency and effectiveness of the system.

95. Several structural, institutional, contingent or dispositional factors highlighted in the report may affect, in many ways, the work of prosecutors. States have an obligation to provide the necessary safeguards to enable prosecutors to perform their important role and function in an objective, autonomous, independent and impartial manner. Likewise, prosecutors need adequate human, financial and technical resources to carry out their work. At the same time, it is essential to ensure that prosecutors are accountable in the performance of their duties.

96. The Special Rapporteur also underlines the importance of developing a skilled and competent prosecution service through appropriate capacity-building and training for prosecutors, both on initial appointment and continually throughout their career.

97. The Special Rapporteur presents the following recommendations with the aim of ensuring and strengthening the objectivity and impartiality of prosecutors and prosecution services, as well as their ability to perform their functions in such a way as to contribute to the fair administration of justice.

## **X. Recommendations**

### **Structure of the prosecution service**

98. The prosecutor and the prosecution service should be autonomous, irrespective of the institutional structure. States should ensure that prosecutors can perform their functional activities in an independent, objective and impartial manner.

99. An independent and impartial case assignment system protects prosecutors from interference from within the prosecution service. Preferably the specialization and qualification of the prosecutors should be taken into account when assigning cases.

### **Relationship between prosecutors and judicial and other actors**

100. The role of prosecutors should not be confused with the role of courts and trial judges. The independence and impartiality of prosecutors as distinct from judges, and the appearance thereof, should be maintained at all times, as they have very distinct roles and functions.

101. Governments should take effective measures to guarantee that prosecutors and the police cooperate in an appropriate manner, especially where the police are independent of the prosecution service.

102. Prosecutors should, where relevant, to their decisions take into account the position of the suspect and the victim, while at the same time protect the public interest. A distinction must be drawn between public and State interests, in order to avoid confusion. Acting on behalf of public interest should not be perceived as protecting the interest of the Government, a political party or any other State institution.

103. Prosecutors should cooperate with the legal profession and public defenders and ensure that the rights to a fair trial and to adequate access to legal defence are safeguarded. States should ensure respect for the principle of equality of arms between prosecutors and lawyers, which requires, inter alia, procedural equality between the prosecution and the defence.

104. Prosecutors should promote and consider alternative measures other than formal trial when dealing with juveniles. The possibility of resorting to alternative procedures should also apply in all cases where an alternative would be in the interest of justice or the public.

105. States should also ensure that mechanisms for prosecuting perpetrators of violence are gender sensitive, especially in cases involving sexual and/or gender-based violence, and that they are available, effective and sensitive to the specific needs of vulnerable groups.

#### **Role of prosecutors in military courts**

106. States must ensure that the conduct and functioning of prosecutors in military courts comply with international norms and standards.

107. When the offence committed amounts to a human rights violations or when the matter involves a civilian, the case must be referred to a civilian jurisdiction.

#### **Safeguards for prosecutors**

108. Admission to the prosecutorial career should be based on objective criteria, through a public competitive selection process.

109. The appointment and selection of the Prosecutor General should be carried out in such a way as to gain public confidence and the respect of the judiciary and the legal profession.

110. Security of tenure of prosecutors should be ensured as an important element for strengthening their independence and impartiality.

111. The transfer of prosecutors to other posts should not be used as a threat nor be based exclusively on exigencies of service. The views, aspirations and specialization of the prosecutor and his/her family situation should be considered when deciding to transfer a prosecutor.

112. Promotion of prosecutors should be decided on the basis of a fair and impartial decision-making procedure, preferably through a competitive selection process.

113. The dismissal of prosecutors should be subject to strict criteria that do not undermine the independent and impartial performance of their functions.

114. Prosecutors should have the right to challenge – including in court – all decisions concerning their career, including those resulting from disciplinary actions.

115. Remuneration of prosecutors should be adequate and in line with the importance of the tasks they perform.

116. Case-specific instructions to prosecutors from external organs should be avoided. However, in extraordinary cases, when such instructions are deemed necessary, they should be in writing and formally recorded and carefully circumscribed to avoid undue interference or pressure. Prosecutors should have the right to challenge the instructions received, especially when they are deemed unlawful or contrary to professional standards or ethics.

117. Prosecutors should be provided with adequate infrastructure and physical conditions of work, as well as with the necessary human and technical resources to effectively perform their tasks. This includes the provision of specialized training and the necessary resources, investigative equipment and technical skills.

118. States should ensure the personal safety of prosecutors and their families. Any act of violence or threats of violence, or any form of intimidation, coercion or inappropriate interference against prosecutors and/or their families should be duly investigated. Likewise, steps should be taken to prevent their future recurrence and to provide prosecutors and their families with the necessary counselling or psychological support, when appropriate.

119. Prosecutors should at all times conduct themselves professionally and strive to be, and to be seen to be, independent and impartial. Prosecutors should not be candidates in political elections without resigning from their functions.

#### **Accountability of prosecutors**

120. Prosecutors should be accountable in the discharge of their functions. All disciplinary and other proceedings against prosecutors should be carried out in full conformity with applicable international norms and standards, including the right to a fair trial before an independent and impartial court or disciplinary body established by law.

121. Interested parties should be able to challenge decisions not to prosecute as this can serve as a means to ensure greater accountability and transparency.

122. Priority should be given to the establishment of effective measures to combat corruption in prosecution services.

123. Code of ethics for prosecutors should be established and compliance with their provisions should be monitored and accounted for.

#### **Capacity-building**

124. Prosecutors should receive adequate training both on initial appointment and periodically throughout their career. Training should mandatorily include regional and international human rights norms and standards. Training on the gender-sensitive handling of cases should be also provided.

125. In addition to the necessary specific and separate training for prosecutors, joint training for judges, prosecutors and lawyers on themes of common interest should be encouraged as it could enhance mutual understanding and cooperation.

126. The training of prosecutors should be paid by the State as an important incentive to their qualifications.

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