

## Conclusions and recommendations of the First Study Commission

Marrakech 17th October 2018

### *Preamble*

Freedom of speech is an important value that is fearlessly upheld by judges. Criticism of the judiciary is a serious issue which may have ramifications for trust in the institutions of the state thereby the foundation of a democratic society based on the rule of law. Criticism that is unfair, misleading or anti-democratic should not be made by governments or the media, due to the risks it poses for the continued survival of an independent, apolitical judiciary.

This study commission therefore concludes and recommends as follows.

### *Criticism of the judiciary*

1. It is inappropriate for the executive or the legislative branch of the government to criticise the judiciary when such comment is made before the court's final determination has been made.
2. It is irresponsible for the executive or the legislative branch of the government to lead attacks on the judiciary which cast doubts on the legitimacy of the courts or their decisions.
3. It is a responsibility of the media to ensure that media stories about the judiciary are fair and balanced, respectful of the role of the judiciary as an independent branch of the state and protective of the privacy and safety of individual judges.
4. Unfair criticism of judges made on social media, particularly where it contains threats and intemperate abuse against judges and others connected with the functioning of the legal system, should not be tolerated.

### *Steps taken to respond to criticism*

5. Lead judges, judges' associations, bar associations and other representative bodies of the legal profession should continue to respond strongly to any criticism which risks the independence of the judiciary, the separation of powers or is otherwise inappropriate.
6. Members of the media and elected politicians should also take steps to defend the judiciary against inappropriate attacks. There should be ethical codes for all responsible actors: politicians, press and providers of social media.
7. Legitimate criticism of the judiciary should be based on the actual facts of the case; avoid the use of abusive or inflammatory language; and avoid personal attacks or innuendos against individuals.

### *Measures to minimise unfair criticism*

8. The principle of open justice should be promoted. All courtrooms should be open to the public and all judgments should be publicly accessible unless otherwise required for the safety, security or protection of litigants, victims and witnesses.
9. Judgments should be written in clear language and, particularly for high-profile or significant cases, be accompanied by a short summary of the key facts and findings of the case.
10. Courts should have a designated press liaison officer and a member of the judiciary trained in press relations to allow for the communication of information, the dissemination of material and the management of media requests in a way which promotes fair and balanced reporting but protects the independence of the court.
11. There should be greater public education programs surrounding the role and importance of the judiciary, particularly aimed at the importance of judicial independence and the apolitical nature of judicial decision-making. Judges should, for example, speak in schools, invite children into courts to see how the judge works and take other steps to demonstrate that they are not out-of-touch and remote from society.
12. It may be appropriate in some jurisdictions to expand the scope of liability and remedies for contempt of court, in circumstances where commentary is manifestly inappropriate and other means of redress do not exist.
13. Judges should be trained in understanding the media and how to best to communicate. There should be regular engagement with the media and wider society to explain the judicial function.

Topic for 2019:

Social media and the judiciary, notably:

1. How best to respond to unfair comments about judges made on social media
2. Use of social media by judges and courts: opportunity or danger