

# The Approach of the Statute of the International Criminal Court to the Principle of Judicial Independence

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## The Approach of the Statute of the International Criminal Court to the Principle of Judicial Independence

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### **Abstract:**

In progressive criminal justice systems, a fair trial is one of the basic principles. One of the mechanisms to ensure this is the principle of judicial independence, which is explicitly emphasized in the Statute of the International Criminal Court. The present article, which examines the approach of the Statute of the International Criminal Court (adopted in 1994 with subsequent amendments) to the principle of judicial independence, after explaining the concept and mechanisms of guaranteeing judicial independence, examines the independence of the International Criminal Court and its pillars. Explains the mechanisms for the independence of judges in the Statute of the Court. The findings of this article indicate that the Statute of the International Criminal Court has been drafted taking into account the principles and criteria that ensure judicial independence; It reflects a high level of support for the principle of judicial independence of judges of the International Criminal Court. This international document, in addition to considering the structural independence of the Court and its most important pillars, namely the Assembly of States Parties and the Prosecutor of the Court, stipulates in independent articles the independence of judges in the performance of their duties and to achieve or guarantee this Independence, several important mechanisms include: avoiding activities that affect judicial duties; Avoid employment in professional occupations; The impossibility of reducing the salaries of judges during their tenure has provided for the non-renewal of the tenure of judges and the judicial immunity of judges of the Court.

**Keywords:** Judicial Independence, Impartiality, Structural Independence, Court Prosecutor, Security Council

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## **Introduction:**

The administration of criminal justice undoubtedly depends on the observance of a fair trial. In the present era, a fair trial has been recognized as one of the standards of human rights in many international instruments. One of the indicators of fair trial is judicial independence, which is mentioned in the statute of the International Criminal Court on the one hand, and on the other hand, has always been considered by the pillars of this international court. Considering the impact of the principle of judicial independence on the establishment of international criminal justice (as the most important goal of the International Criminal Court) and the establishment and maintenance of trust of natural and legal persons, including governments, in this institution and cooperation with it to pursue And the prosecution of perpetrators of international crimes, its observance, is of great importance in the actions of the International Criminal Court; As this issue has been mentioned in various cases in the Statute of the Court. With this in mind, the present article seeks to answer the question of how the Statute of the International Criminal Court (adopted in 1994 with subsequent amendments) views the principle of judicial independence and how it approaches it. In order to answer this question, this article will use descriptive and analytical methods and based on library studies, the approach of the Statute of the International Criminal Court to the principle of judicial independence in two independent parts. In this regard, the first part of the article explains the concept of judicial independence. Then, in the second part, the independence of the International Criminal Court and its pillars will be explained, and finally, in the third part, the mechanisms of independence of judges in the statute of the court will be reviewed and analyzed.

Part 1 - The concept of judicial independence and its guarantee mechanisms Considering that the examination of each issue primarily requires familiarity with the basic concepts related to it, in order to know the exact approach of the Court's Statute to judicial independence, in this section first the concept of judicial independence and then the mechanisms for guaranteeing it. , Will be explained. A- The concept of judicial independence Although the Statute of the International Criminal Court mentions the issue of judicial independence in some articles, none of the articles of the Statute defines "judicial independence". The concept of judicial independence is that the judge can base his decision on his free will on legal events and reasons, without any obligation to the parties and government officials, and without the cost of his work by any other body that is also independent. Meaning to be provided.

One of the important categories that is often used alongside "independence" is the issue of "neutrality"; Some international and domestic documents speak of the independence and impartiality of judges or courts. However, there are differences between the two categories and they should not be confused. "Impartiality" legally means "non-partisanship and prejudice against one of the parties to the dispute." The impartiality of the court requires that the judge not be prejudiced against the case under consideration and not allow himself to be influenced by factors outside the case, such as public sentiment, media propaganda, and their internal tendencies; Rather, it must base its opinion on objective arguments. In fact, neutrality is a state of mind that is really or ostensibly created for the judge or parties. This state of mind refers to the quality of judgment on the subject of the case or the parties; While independence is a situation or

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situation. This situation or situation is related to a person or persons who are out of the case, are not part of the litigants, and really or apparently have legal or illegal powers or abilities that affect how the case is handled or issued. In other words, in the discussion of the violation of the independence of the judge, the influence of persons other than the litigants is discussed; In the event of a breach of neutrality, the influence of third parties is not at stake, unless the breach of neutrality is the result of a breach of independence

Accordingly, it can be said that independence in international proceedings means the lack of citizenship and the inviolability of the court and the trial of external pressures and factors, including governments, international organizations and powerful individuals. But neutrality means non-partisanship and non-prejudice in favor of one of the parties to the proceedings, and in principle, independence is one of the factors providing impartiality. B- Mechanisms to guarantee judicial independence Today, in different legal systems, several mechanisms have been considered to guarantee judicial independence. Some of these mechanisms that can be seen in most legal systems are: 1- Job immunity of judges; 2- Civil immunity of judges; 3- Appropriate method for selecting judges; 4- Supervising the professional behavior of judges; 5- Financial security of judges. Most of these mechanisms have also been considered in the Statute of the International Criminal Court, which seems to have entered into the Statute of the International Criminal Court from domestic legal systems; Such as the immunity of judges of the Court (subject of Article 48 of the Statute of the Court); Appropriate method for selecting judges of the Court (subject of paragraph 3 of Article 36 of the Statute of the Court) and financial security of judges of the Court (subject of Article 49 of the Statute of the Court).

Part II - Independence of the International Criminal Court and its pillars It is now accepted that the independence of an organization also affects the independence of its decision-making and governing institutions. Considering the effect of the independence of the Court and some of its pillars on the judicial independence of the judges of the Court, in this section, first the structural independence of the Court and then the independence of some of its pillars are explained. A. Structural independence of the Court At the time of the establishment of the International Criminal Court, a group of states held the view that the establishment of peace in any case would take precedence over justice and the mere exercise of law; Consequently, the main and fundamental purpose of the Statute of the Court should be primarily to ensure peace and security; Because it is in such an atmosphere that humanity, suffering from the pain and boredom of the hostile situation resulting from international crimes, calms down. Accordingly, the group believed that the creation of an institution independent of the Security Council and a mere legal institution would eliminate the elements of world peace and would itself be the root of many differences. For this reason, some countries, such as the United States, insisted that the Court should follow the decisions of the Security Council and take action after the Council; The provisions of the UN Charter will be ignored if the Court can deal with international crimes independently of the Security Council.

However, at the time of the establishment of the International Criminal Court, a group of countries demanded that the Court be one of the main pillars of the United Nations; Most countries, however, opposed the issue for fear of undermining the independence of the Court from the influence of major powers as well as international organizations. Some countries have expressed concern: "If the International Criminal Court becomes the main body of the United Nations, the Security Council is more likely to interfere in its affairs

and undermine its independence." Although governments play an important role in the establishment and operation of the International Criminal Court through measures such as funding and the selection of judges, the Court is independent as an international organization. Pursuant to Article 4 1 of the Statute of the International Criminal Court, this body has legal personality independent of States and has the legal capacity to perform its duties and perform its purposes. Therefore, at present, the International Criminal Court is an independent organization and has an independent legal personality; That is, independent of the character of the states that created it and the other international organizations that are associated with it.

Among the international organizations, the most important organization that may be the subject of its impact on the independence of the International Criminal Court is the United Nations, especially the pillar of its Security Council; Because this pillar, according to the statute of the International Criminal Court, has duties related to the court. Pursuant to Article 13 of the Statute and paragraph (b) thereof, the Court may, if the Security Council refers a situation to which a crime appears to have been committed in accordance with Chapter VII of the Charter of the United Nations, the Court may: In accordance with the provisions of the Articles of Association, exercise its jurisdiction over the crimes mentioned in Article 5 of the Articles of Association (including: war crimes, crimes against humanity, genocide and rape). In addition, according to Article 16 of the Statute of the Court, if, in the implementation of Chapter VII of the Charter, a resolution is issued by the Security Council requesting the Court to suspend an investigation or prosecution, no investigation or prosecution under this Statute may be Start or continue for 12 months. The purpose of this article is to allow the Security Council to block the Court's action when an investigation by the Court may be considered interference in ongoing diplomatic negotiations necessary for international security. Given these powers of the Security Council, the question arises as to whether the powers of this body would undermine the independence of the International Criminal Court. In response, the first case (ie, the referral of the matter by the Security Council to the Prosecutor of the Court), at first glance it may seem that this ruling can lead to substantial political pressure on the Court; Because governments and the Security Council can in any case have political reasons instead of judicial reasons for referring a situation to the Court. However, this may not have much effect on the independence of the Court; Because the prosecutor is not obliged to initiate prosecution in any case when the case is referred to him by the Security Council; Rather, if in his opinion there are reasonable reasons and grounds for starting the prosecution, he will take action. In the latter case, the suspension of the prosecution, the effect of the Security Council decision on the independence of the Court becomes even greater, perhaps because the Court cannot reject the request for a stay of proceedings. However, the Security Council's discretion in preventing an investigation under Article 16 of the Statute is limited to investigations by the Prosecutor after the referral of the Preliminary Branch (paragraph 4 of Article 15 of the Statute); As a result, the council is unable to intervene in the Court's activities before being referred to the Preliminary Branch. Therefore, despite the powers that the Security Council has in the area of the Court's remit, it cannot undermine its independence much.

Although the Statute of the International Criminal Court recognizes it as a structurally independent institution; Many governments, however, believe that the Court lacks full judicial independence; Some African governments are members of the Court, including

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those with such an opinion; In the view of these States, despite the commission of international crimes within the jurisdiction of the Court around the world, the Court has focused mainly on crimes committed on the African continent; Thus, from the beginning of the Court's activity until 2019, out of twelve cases before it, ten cases have been allocated to the African continent; African governments have seen this issue as influenced by political factors and the influence of governments, and have therefore cast serious doubt on the independence of the Court. B- Independence of the elements of the Court According to the Statute of the Criminal Court, this International Criminal Court has several elements. Among the pillars of the Court, the General Assembly of the member states and the judiciary are the most important pillars whose independence is of great importance. With regard to this issue, this section will explain the independence of the Assembly of States Parties and the independence of the Prosecutor, respectively.

- 1- Independence of the Assembly of Member States The Court, in addition to its judicial organs and organs, has a body called the Assembly, which consists of all the States that are members of the Statute of the Court, and each member state has one representative. The structure and duties of the Assembly are designed in accordance with the provisions of the Statute of the Court in such a way that it has extensive powers and powers to perform executive duties without the slightest impairment of the independence of the Court. With regard to the Assembly of States Parties, given the powers it has under the Statute of the Court, the question arises as to whether the Assembly may, pursuant to Article 112 of the Statute, establish an institution to supervise the judges of the Court by conducting inspections. In response, however, according to Article 112 4 4 of the Statute of the Court, "the Assembly may, if necessary, subordinate institutions such as an independent oversight system for the inspection, evaluation and investigation of the court, in order to increase efficiency and improve the financial situation. It does not mean, however, that it does not mean the establishment of overseers of the Court; Whereas, first, in accordance with paragraph 3 of Article 21 of the Statute, the implementation and interpretation of its provisions must be consistent with internationally recognized human rights; Therefore, since the trial by independent and impartial judges is a recognized principle of international human rights, the Assembly of States Parties is obliged to respect the independence of the judiciary in approving any plan in this regard. Second, as provided in this paragraph, the establishment of an oversight body is intended to "increase the efficiency" of the court; Undoubtedly, one of the most important factors influencing the efficiency of a court is its independence; Given that the establishment of such an oversight body would affect the independence of the judiciary, it would undermine its effectiveness.
- 2- Independence of the prosecutor During the drafting of the Statute of the Court, the States were divided into two groups: the Group of States Parties to the Statute and international non-governmental organizations, which submitted a proposal to the Preliminary Committee allowing the Court to commence an investigation. In other words, they advocated the idea of an independent judiciary, like the model of temporary lunatics. In interim courts, the prosecutor may initiate his or her own investigations directly, on his or her own initiative, using information obtained from various sources, including regional and international governmental and non-

governmental organizations. After receiving and obtaining the information, the prosecutor will evaluate them and decide on the existence of sufficient reasons to start the investigation. Without the need to obtain permission from any authority such as the Security Council or a branch of the court. The actions of Goldstone and Louis Arbor, the Yugoslav and Rwandan interim prosecutor prosecutors who were working on the Rome Statute, reinforced the idea of an independent prosecutor with the authority to initiate an on-the-spot investigation. On the other hand, some powerful countries strongly opposed the theory of prosecutorial independence due to the possibility of friendly relations of the judiciary with non-governmental organizations under the leadership and influence of these groups and the occupation of their position by these organizations. During the Rome Conference, the United States declared that envisioning a court that could independently file and pursue a complaint with the Court would not only lead to the progress of the Court's work, but also to the principal and independence of the judiciary. Which is a fair and comprehensive investigation into the most obvious crimes, also poses problems. According to some writers, the prosecutor needs a Security Council to be able to take effective action; Because the Security Council has a force that the judiciary lacks.

Eventually, as a result of the negotiations in Rome, an international agreement was reached, and a mechanism was adopted and designed that reconciled the two previous views. This means that the prosecutor's authority to initiate an investigation must be based on information obtained from various sources (Articles 13 and 15 of the Statute); At the same time, this power of the prosecutor should be under the constant supervision of a judicial body of the Court - the Preliminary Branch; In this way, the judges of the court supervise the initiation of the investigation by the prosecutor. However, the prosecutor is independent but subject to oversight. As a result, the decision to initiate an investigation must be approved by the Preliminary Branch, which consists of three judges. In fact, on the one hand, the prosecutor's office is independent in its function as an independent body of the court, and on the other hand, almost all decisions of the prosecutor to start, continue and stop the investigation or prosecution under the judicial supervision of the preliminary branch consist of three judges. Even summonses, arrests and detentions by the prosecutor are under the supervision of this branch

The justification for the judicial branch of the preliminary branch states that this supervision is for the protection of the interests of the international community and the protection of the rights of the suspects. Of course, the introductory branch not only plays a supervisory role after the research is done, but also intervenes in the research phase. The participation of the introductory branch in the research phase is not limited to issuing a permit to start an investigation. However, the prosecutor does not face any pressure from the judges of the Criminal Court in dealing with the reasons and the manner in which they are disclosed to the accused, and this situation is due to his independence. Judicial oversight of the Court's judgment, although it may lead to the strengthening of international proceedings, and the importance of international trials, as well as the need for a thorough examination of them. Prolonged litigation at the international level can lead to threats to international peace and security. Therefore, in international proceedings, efforts should be made to monitor

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and control as soon as possible to deprive international criminals of the opportunity to commit further crimes, and to provide for judicial oversight of the prosecutor's discretion to begin an investigation and Prosecution should not cause the Court to be ineffective; So that the international community becomes frustrated with the implementation of criminal justice for international criminals. One of the reasons for the success of prosecuting bodies in interim international criminal courts has been the lack of need for a judicial body to initiate an investigation and prosecution into a particular situation. At present, according to the Statute of the Court, the Office of the Prosecutor is one of the independent organs of the International Criminal Court, whose members neither receive orders from outside nor act on orders from outside. Of course, the statutory mechanisms for the independence of the Prosecutor of the Court are not limited to this case; But other things can be added to it. Another mechanism provided for in the statute for the independence of the prosecutor is his election by secret ballot of the members of the General Assembly of the International Criminal Court. This causes the prosecutor to not recognize the states that support his election as prosecutor; Otherwise, it means that the governments that voted for him are open, he may consider himself indebted to them, and this will affect his independence and impartiality.

Section 3 - Mechanisms for the Independence of Judges in the Statute of the Court  
The Statute of the International Criminal Court, in addition to the mechanisms established for the independence of the Court and its organs, also provides for the independence of the judges of the Court. The most important mechanisms of the statute for the independence of judges are: independence in the selection of judges of the Court and independence of judges in the performance of their duties, which are explained separately in this section

A. Independence in the selection of judges Chapter 4 of the Statute of the Court contains materials related to the selection of judges of the Court. According to the Statute, judges of the Court are elected by the Assembly of States Parties, and in each election each member state can nominate only one person for the Court. The nominee does not have to be a national of the nominating government, but must be a national of one of the member states of the Statute of the Court. According to some authors, given that the Assembly of States Parties elects judges of the Court and therefore judges are elected by politicians and diplomats, the political factor is influential in the selection of judges, and this The issue can affect the independence of judges. In fact, the Assembly of States Parties, which is composed of the political and diplomatic representatives of the member states, exercises, as the case may be, political considerations in all matters and decisions, including the election of judges of the Court; As a result, mentioning words such as having high moral standards, perfection and impartiality in the candidates for membership in the Court does not prevent the exercise of the political tastes of the representatives of the states; So, with a little carelessness, judges can be considered quasi-political representatives of governments. Even with the establishment of a mechanism for the selection of judges, ie the global composition of judges and the presence of representatives from all legal systems, in practice (at least in the first period), this has not been achieved. For this reason, some have suggested that judges be elected by independent committees (for

example, committees of academics and international jurists). However, the mechanism for selecting judges of the International Criminal Court seems to be in accordance with the Statute of the Court in a way that greatly reduces the likelihood of affecting their independence; Because regardless of the fact that the judges of the Court are selected according to paragraph 3 of Article 36 of the Statute from among persons who have high moral virtues and are known for their neutrality and perfection, their selection is such as to observe a fair geographical distribution and Represent the major civilizations and legal systems of the world. In addition, although judges of the Court are elected by the Assembly of States Parties, they are not representatives of their respective States. In fact, the Statute of the Court sets out the process of selecting judges in such a way that this process ensures that the judges of the Court are as independent as possible.

B- Independence in performing tasks After the indictment is issued by the prosecutor of the court, it is the turn of the judges of the court. At this stage, the independence of judges is considered very important because of its impact on the discovery of truth and the realization of rights. For this reason, the Statute of the International Criminal Court has devoted independent articles to this issue. Article 40 of the Statute, entitled "Independence of Judges", states: "Judges must be independent in the performance of their duties." (Paragraph 1). Considering that the most important duty of the judges of the Court is to decide on the cases before them, it can be said that the purpose of this paragraph is to guarantee the individual independence of the judges. The individual independence of judges, also known as independence in decision-making, means that the judge is able to make independent and free decisions, and the events and arguments of each case, far from being influenced and interfered with, without any restrictions or prohibitions. To be considered and evaluated fairly only on the basis of legal standards. In order to achieve or guarantee the independence of judges in the performance of their duties, several important mechanisms are foreseen in the Statute of the International Criminal Court, which are: 1- Avoiding activities that affect judicial duties; 2- Avoiding employment in professional jobs; 3- Impossibility of reducing the salaries of judges during their tenure; 4- The non-renewability of the tenure of the judge and 5- Immunity of the judges of the court. Regarding the first case, ie the avoidance of activities affecting judicial duties, it should be said: According to paragraph 2 of Article 40 of the Statute of the International Criminal Court, "Judges shall not engage in any activity that may interfere with their judicial duties or in "Trust affects their independence." According to this paragraph, any activity that prevents the judges of the court from performing their legal duties or prevents them from performing their legal duties properly is prohibited; Such as the simultaneous employment of judges of the Court in the executive organs of their country. Therefore, according to this paragraph, senior officials or diplomats cannot be allowed to serve as part-time judges of the Court. In addition, it is forbidden to carry out any activity that affects their confidence in their independence; Such as party, political or even economic activities related to a particular government or group. In fact, joining political parties or engaging in any other political activity, including accepting a political position in government organizations, means his inclination towards political groups or other forces and his departure from neutrality and lack of independence in decision-making. Undoubtedly, the involvement of



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political considerations in judicial decision-making and the politicization of the judiciary is one of the most obvious errors contrary to law and moral principles and destroys judicial independence. Of course, this prohibition does not mean depriving judges of freedom of expression and freedom of association; Because, according to the Universal Declaration of Human Rights, judges, like other citizens, enjoy freedom of expression and association with others. However, they must always exercise this right in such a way that their dignity and judicial independence are preserved. Another factor affecting public confidence in the independence of judges is respect for the rule of law and compliance with laws and regulations in proceedings. This is one of the strongest guarantees of judicial independence, the effectiveness of which depends on the commitment of all judges and officials of the Court. With regard to the second case, the avoidance of employment in professional occupations, Article 40 3 3 of the Statute of the International Criminal Court provides: "Become another profession." However, the statute does not define a professional occupation and is therefore ambiguous. It seems that the statute refers to professions that are mainly related to judicial affairs, such as advocacy and legal advice. This article, which in a way expresses the rule of prohibition of gathering jobs, the reason for its status is also clear; Indeed, while in the case of ordinary government employees, the philosophy of prohibiting the collection of jobs is mainly the equitable distribution of job opportunities and the possibility of devoting sufficient time to performing job duties, in the case of judges such as senior executives and those at senior decision-making levels, is to maintain independence and neutrality and prevent influence. Therefore, according to this paragraph, judges of the Court during the trial should not be engaged in another job or accept a second official position; Because employment in the second job creates interests that increase the likelihood that the judge will leave neutrality and damage his or her independence. On the issue of the impossibility of reducing the salaries of judges during their tenure, as the third case guaranteeing the independence of judges, Article 49 of the Statute of the Court states: "It can be reduced during the tenure of judge .According to many lawyers, one of the mechanisms to ensure the judicial independence of judges is their financial security and giving adequate rights to judges. Therefore, it has been said about domestic judges: the government should provide sufficient financial resources to perform the duties of the judiciary and judges, and provide sufficient salaries for judges; Because the dependence or financial need of judges affects their independence. The mechanism set out in Article 49, which will prevent financial pressure from affecting the judges of the Court, becomes more apparent with regard to the actions of some States towards the officials of the Court; For example, after the International Criminal Court authorized the US military to investigate war crimes in Afghanistan, the US government imposed financial sanctions on the court's officials. There is no doubt that the reduction of judges' salaries along with such actions by governments may directly or indirectly affect their independence.

Regarding the other case of guaranteeing the independence of judges, ie the non-renewability of the term of office of the judge, paragraph 9 of Article 36 of the Articles of Association states: The term of office of judges is nine years and judges can not be re-elected. According to some authors, mentioning the condition of non-renewability of judges of the Court or the impossibility of re-election of judges after

the end of their mission is another appropriate way to ensure their independence and impartiality. This condition will guarantee the independence and impartiality of judges by preventing the prolongation of the term of office and preventing the possibility of judges abusing this position. Finally, in the case of the fifth case guaranteeing the independence of judges, paragraph 2 of Article 48 of the Articles of Association provides: Will be awarded to the heads of political committees, and after the expiration of their term of office, they will be free from any legal formalities related to what is said or written and the actions performed by them during their term of office.

According to some international instruments, the exercise of judicial independence, as a precondition for the rule of law and the fundamental guarantee of a fair trial, is not possible except in the light of the judicial immunity of judges. Accordingly, due to the enjoyment of judicial immunity by judges of the Court, their criminal prosecution is subject to special procedures; In fact, the constitution (like the domestic laws of many countries) provides immunity for judges to ensure the administration of justice and to prevent undue aggression against the administration of justice, especially the abuse of wealth and power and professional criminals, in order to preserve its independence. One of the dimensions of a judge's independence is that no official can change his or her job status. The independence of the judge in issuing a verdict and making any fair and fact-based decision in the case requires that no official has the right to change or remove him. This is the situation called the principle of immutability of the judge; So much so that even opponents of the separation of the judiciary from the other two branches, and even those who see the judiciary as an executive act, they believe in it. According to this principle, it is impossible to change the place of service and change the job of judges without their consent and also to remove them from the job of judge; Except in cases where the judge has committed an offense punishable by temporary or permanent dismissal from the judiciary, after trial and proof of guilt. Observance of the principle of immutability of judges is a condition for the independence of the judiciary, and it is only this principle that distinguishes the status of judges from other government employees.

### **Conclusion:**

Today, the right to an independent and impartial tribunal is recognized as one of the fundamental principles of a fair trial in the international legal system as well as in domestic legal systems. The Statute of the International Criminal Court also explicitly considers the independence and impartiality of the Court, judges and prosecutors. The present article, which examines the approach of the Statute of the International Criminal Court (adopted in 1994 with subsequent amendments) to the principle of judicial independence, indicates that the Statute of the International Criminal Court has been developed taking into account the principles and criteria ensuring judicial independence; It reflects a high level of support for the principle of judicial independence of judges of the International Criminal Court. This international document, in addition to considering the structural independence of the Court and its most important pillars, namely the Assembly of States Parties and the Prosecutor of the Court, stipulates in independent articles the independence of judges in the

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performance of their duties and to achieve or guarantee this Independence, several important mechanisms include: avoiding activities that affect judicial duties; Avoid employment in professional occupations; The impossibility of reducing the salaries of judges during their tenure has provided for the non-renewal of the tenure of judges and the judicial immunity of judges. However, there is still some distance in terms of judicial independence to achieve what is considered an ideal situation; Because the Statute has several shortcomings, such as the possibility of suspending prosecution at the request of the UN Security Council, the lack of scientific and specialized process for the selection of judges of the Court, the short service period of judges, which to some extent undermines the independence of judges. With regard to this issue, in order to promote the independence of the judges of the Court, the following suggestions can be made: First, to amend Article 12 of the Statute of the International Criminal Court in order to impose restrictions on UN Security Council to request suspension of prosecution; Second, review the rules for hiring judges; The process of introducing and evaluating judges for judicial positions of the Court should be given to impartial and specialized committees consisting of prominent lawyers and judges of the countries. Third, a more precise and detailed drafting of Article 40 of the Statute of the International Criminal Court in order to determine the instances of paragraph 2 of the Statute regarding instances of activities that interfere with judicial duties or affect the confidence in the independence of judges.

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