

High-Level Meeting of the Global Judicial Integrity Network

(25-27 February 2020, Doha, Qatar)

US TOO? BULLYING, SEXUAL HARASSMENT AND OTHER GENDER-RELATED INTEGRITY ISSUES IN THE JUDICIARY

International Bar Association

I. SESSION ORGANIZER

Session Organizer:	Kieran Pender
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Organization:	International Bar Association

II. RAPPORTEUR¹

Rapporteur:	Sara Carnegie
Position:	Director Legal Projects
Organization:	International Bar Association

III. MODERATOR AND PANELLISTS:

Moderator:	Kieran Pender
Position:	Senior Legal Advisor, Legal Policy and Research Unit
Organization:	International Bar Association

PANELLISTS

Name:	Nancy Hendry
Position:	Senior Advisor
Organization:	International Association of Women Judges
Topic of presentation:	The work of the Global Judicial Integrity Network on gender-related topics
Summary of presentation:	The presenter spoke about her work as the drafter of the issue paper of the Global Judicial Integrity Network on gender-related judicial integrity issues. The issue paper examines the wide range of ways in which gender-related integrity issues affect judicial conduct and integrity, including cases and

¹ Responsible for drafting the session report.

	<p>global practices. This is relevant to how judges preside over the court, give judgments/decisions, work and interact with colleagues, staff and counsel, and behave when outside the court room.</p> <p>The key issues highlighted were: (i) lack of reliable data about the prevalence of gender-related integrity issues in the judiciary. This is because allegations and proceedings are often confidential or hard to access; (ii) underreporting – this is a long-standing, societal wide issue although reluctance to speak out has decreased in recent years following the #MeToo movement; (iii) discrimination on the basis of gender, unequal gender representation and gender stereotyping also impact on the impartiality and integrity of the judiciary – whether conscious or unconscious; and (iv) sextortion and sexual harassment, which are both intentional forms of behaviour which transgress ethical (and often legal) boundaries.</p>
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Name:	Dame Laura Cox DBE
Position:	Dame Laura Cox served as a Justice of the High Court (England and Wales) from November 2002 to November 2016. Previously, from 1995 to 2002, she was the Head of Chambers at Cloisters.
Organization:	Retired
Topic of presentation:	Bullying, sexual harassment and the judiciary
Summary of presentation:	<p>Judicial standard of conduct is defined by what is ethical, not merely lawful.</p> <p>Issues arise at all levels of the judiciary and administration – not only with regard to women. Primary safeguards are:</p> <ul style="list-style-type: none"> (i) Codes of conduct: these should provide clear and specific guidance, consistent with Bangalore Principles of Judicial Conduct and anchored in the international gender equality framework. (ii) Strengthen judicial accountability: clear standards should be adopted and barriers to reporting misconduct should be reduced or removed. There is a need to ensure ongoing monitoring and fair and transparent disciplinary mechanisms. (iii) Effective judicial education and training – this should be ongoing, perhaps mandatory and evaluated regularly. (iv) Share best practice within judicial networks. <p>Judges must be held to a higher standard of behaviour, but a recognised and underlying challenge is that judges reflect values of society, even misconduct. This is a significant problem, but with a lack of clear and reliable data to show prevalence. This conduct cuts across the majority of the Bangalore Principles of Judicial Conduct, including integrity, propriety, equality and competence/diligence. The bulk of judges may be unaware they are crossing a line and think it is acceptable.</p> <p>Internal (behaviour in the workplace) and external behaviour were both considered, in addition to the implications of misbehaviour – what happens?</p>

	If the ranks close in, there is no justice for the victim, which deters reporting and reduces confidence.
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Name:	Justice Shiranee Tilakawardane (ret)
Position:	Justice of the Supreme Court (ret)
Organization:	Sri Lanka Judges Institute, Sri Lanka
Topic of presentation:	Modern challenges linked to gender-related judicial integrity issues
Summary of presentation:	<p>The presenter drew on her 40 years of experience in the legal profession, with over ten years as a Supreme Court Judge.</p> <p>One of her focus areas has been on how to improve the representation of women in the judiciary. Measures should be put in place to ensure there is sustained representation of women at all levels in the judiciary (with avoidance of stereotypical appointments based on assumptions and patriarchal beliefs) and that barriers must be overcome.</p> <p>Complaints mechanisms and processes must be easy and accessible, with every law and policy that protects patriarchy to be addressed and removed.</p> <p>There was reference to cases of harassment and sextortion in the judiciary and legal profession – very few cases are reported by women in Asia, but the presenter has encountered many complaints. Unfortunately, stigmatisation and barriers make victims reluctant to report and take matters further. New standards have to be set and enforced strictly.</p> <p>Sextortion by a judge can be prevented by meeting the need for new standards of judicial conduct and accountability. The Bangalore Principles of Judicial Conduct provide effective measures to be adopted by judiciaries to put in place mechanisms to implement these principles. States create their own codes of conduct and should consider measures to tackle harassment and sextortion, which should not be generic, but must be described in detail, to make them more effective. The codes must be sufficiently comprehensive and not limited to nuanced references. The presenter also alluded to the lack of specificity in the law and lack of consistency in sentencing. Accountability mechanisms should monitor and address such cases.</p>

IV. SUMMARY OF THE SESSION:

The session explored the following issues:

- (i) The session explored the relationship between bullying, sexual harassment and related conduct in judicial workplaces and judicial integrity. It considered potential solutions in the judicial sector and the legal profession more broadly.

- (ii) The integrity implications of pervasive bullying and sexual harassment in the judiciary were considered against the backdrop of data from the IBA's 2018 bullying and harassment survey. The session explored the well-being implications of bullying and harassment for judges and judicial staff – noting that the Commentary on the Bangalore Principles of Judicial Conduct recognises the relevance of physical and mental wellbeing to judicial competence and diligence (paragraph 194). It also considered the structural features that may contribute to high rates of bullying and sexual harassment in judicial workplaces. This discussion broadened out to consider gender-related integrity issues – noting that unacceptable workplace behaviour impacted female respondents at significantly higher rates than their male colleagues.
- (iii) Bullying, sexual harassment and sextortion perpetrated by judicial officers was discussed. A growing body of literature, as well as qualitative data from the IBA's recent survey, has identified the troubling phenomenon of bullying and sexual harassment carried out by members of the bench. Australian research, for example, found that almost two thirds of barristers in the region of Victoria who responded to a wellbeing survey had experienced judicial bullying. This type of conduct has serious integrity implications. As recognised by the Bangalore Principles, the personal conduct of judges affects public confidence in the integrity and competence of the judicial system as a whole (paragraph 109).
- (iv) Practical solutions available to judicial workplaces in addressing this issue were considered, and the measures individual and institutional stakeholders can take to combat bullying and sexual harassment. As the legal profession confronts these pervasive phenomena worldwide, judiciaries need to be at the forefront of that movement.

V. HOW THE SESSION SUPPORTS THE OVERALL OBJECTIVE OF THE GLOBAL JUDICIAL INTEGRITY NETWORK OF STRENGTHENING JUDICIAL INTEGRITY AND PREVENTING CORRUPTION IN THE JUSTICE SYSTEM:

The session supported the work of the Global Judicial Integrity Network by discussing the following questions relevant to issues of judicial integrity:

1. This is a serious and increasing problem that must be addressed with leadership from the top. Leadership is needed in the courts; head judge needs proper training to help other judges to tackle this behaviour when it starts; training is important to give skills; appraisal system should be run to provide feedback, resources are needed, etc.
2. Anything that damages the integrity of the system is serious – all behaviours are important and need to be addressed if they affect public perception and the fair administration of justice. Integrity implications of this behaviour are significant – low morale, less efficient staff and tribunals, absenteeism, high turn-over of staff – impact on the conduct of hearings, justice and public confidence.
3. Bangalore Principles of Judicial Conduct do not explicitly address this problem; world has changed in nearly 20 years. Commentary on harassment is vague and does not cover the full spectrum of behaviours. The Judicial Integrity Group who designed the original core values has decided to leave those values, but the Commentary is being changed to include emerging areas, such as the use of social media or gender-related issues. There is the need to modernise language and not reflect endemic stereotypes that reinforce unconscious bias.

4. Personal integrity – how are judges selected? The appraisal system is useful. It would be helpful to consider why adverse behaviours occur and their context – there may be many reasons, gender bias, racism, xenophobia, psychological problem. UNODC and the Global Judicial Integrity Network could set out a framework for integrity appraisals in the judicial selection process.
5. Mainstream consideration of gender issues into every stage of legal education. Don't work in silos – trying to work together and ensure best practices are shared.

VI. PROPOSED OUTCOME(S) OF THE SESSION AND THEIR ACHIEVEMENT:

The promotion of debate between the stakeholders in the judicial sector with a view to:

- Promoting confidence in legal processes and the judiciary at all levels; and
- Exploring how far the Global Judicial Integrity Network can contribute to the promotion of good practices.

This session generated a frank discussion about bullying and harassment in the judiciary, and associated gender-related integrity issues. The session achieved its stated outcomes, which were:

1. To provide greater empirically-informed awareness about these issues among judicial sector stakeholders;
2. To harness collective agreement and commitment that action is needed to address these issues, both as they manifest in the judiciary specifically and the legal profession more broadly;
3. To share potential solutions and best practice standards; and
4. To create informal and formal networks of interested individuals wishing to become involved in addressing these issues.

The session explored all these issues and made a number of recommendations to the Network, which are set out in section VI. Accordingly, its outcomes were achieved.

VII. CONCLUSIONS OF THE SESSION AND RECOMMENDATIONS TO THE GLOBAL JUDICIAL INTEGRITY NETWORK:

The Global Judicial Integrity Network should: consider the points raised above under section VI. The Network should consider additional, standalone work on these issues, including in relation to data collection (in light of the absence of robust empirical research) and the creation and distribution of best-practice guidance.