



Global Judicial Integrity Network Substantive Breakout Session Report

I. TITLE OF THE SESSION:

Title of the Session:	THE BANGALORE PRINCIPLES AFTER 18 YEARS
Date and time of the Session:	9 April 2018, 14.00-15.30
Topic of the session:	A review of the Bangalore Principles of Judicial Conduct with a view to revising and updating them to meet contemporary challenges.
Organizer(s):	The Judicial Integrity Group
Contact information of the session coordinator:	Dr Nihal Jayawickrama, Coordinator, Judicial Integrity Group. Email: nihaljayawickrama@hotmail.com ; mobile: +44 7764616883.

II. RAPPORTEUR¹

Rapporteur:	Dr Nihal Jayawickrama
Position:	Coordinator
Organization:	The Judicial Integrity Group

III. MODERATOR AND PANELLISTS:

Moderator:	The Hon. Christine Chanet
Position:	Formerly, Conseillere of the Cour de Cassation of France and President of its Criminal Division; Advocate-General of the Court of Appeal of Paris; Chairperson of the UN Human Rights Committee; Member of the UN Committee against Torture; Personal Representative of the UN High Commissioner on Human Rights for examining the situation in Cuba; and Chairperson of the UNHRC Fact-finding Mission on Israeli Settlements.
Organization:	Member of the Judicial Integrity Group

¹ Responsible for drafting the session report.



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PANELLISTS	
Name:	The Rt. Hon. The Lord Mance
Position:	Deputy President of the Supreme Court of the United Kingdom, and Justice of that Court since 2009. Formerly, Lord Justice of Appeal and Judge of the Queen's Bench Division of the High Court. He was the first President of the Council of Europe's Consultative Council of European Judges.
Organization:	Member of the Judicial Integrity Group
Name:	The Hon. Adrian Saunders
Position:	President of the Caribbean Court of Justice with effect from 4 th July 2018; currently a Justice of that Court. Formerly, Acting Chief Justice of the former Eastern Caribbean Supreme Court. He is the Chairman of the Caribbean Association of Judicial Officers, and Course Director of the Halifax-based Commonwealth Judicial Education Institute.
Organization:	Chairman of the Caribbean Association of Judicial Officers
Name:	The Hon. Shiranee Tilakawardane
Position:	Formerly, Acting Chief Justice of the Supreme Court of Sri Lanka, President of the Court of Appeal, Judge of the High Court, and Judge of the Admiralty Court, being the first woman to be appointed to several of these offices; Member of the Judicial Service Commission and of the Council of Legal Education. She is currently an International Arbitrator, and Consultant to the Sri Lanka Judges Institute; and has served as an expert on trafficking of women and children, cyber enabled crime, and the leading of evidence of sexually abused women and children.
Organization:	Member of the International Association of Women Judges.
Name:	Mr Jeffrey A. Apperson
Position:	Vice-President of the National Center for State Courts, USA. Formerly, President and Co-Founder of the International Association for Court Administration, and co-founder of the International Institute for Justice Excellence in The Hague; served as Chief of Court Management and Support for the United Nations International



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	Criminal Tribunal for the former Yugoslavia; and was a member of the Inspector General’s Office of the U.S. Courts. He is a Past President of the Federal and Bankruptcy Court Clerks Associations in the U.S., and is a member of the United States Supreme Court Bar.
Organization:	The National Center for State Courts, USA.

IV. BACKGROUND INFORMATION ON THE TOPIC:

The Bangalore Principles were adopted at a Round Table Meeting of Chief Justices in November 2002, nearly sixteen years ago. Their adoption was preceded by a consultation process that began in Bangalore in February 2001 and extended over the next twenty months. Chief Justices and Senior Justices from over 75 countries, representing different legal systems, participated in the consultation. In 2006, the Economic and Social Council of the United Nations endorsed the Bangalore Principles as representing a further development of, and as being complementary to, the 1985 UN Basic Principles on the Independence of the Judiciary. In the same year, a 175-page Commentary on the Bangalore Principles was reviewed and approved at an Open-Ended Intergovernmental Expert Group convened by UNODC at the request of ECOSOC. In 2010, the Judicial Integrity Group adopted Measures for the Effective Implementation of the Bangalore Principles. These Measures have been further elaborated in the Evaluative Framework for Article 11 of the United Nations Convention against Corruption.

The Bangalore Principles are now the global standard and the model for national codes of judicial conduct. They have been translated into at least eleven languages. They have been adopted or been the model for national codes of judicial conduct by judiciaries on all the continents. They have been cited in decisions of the UN Human Rights Committee and in judgments of national courts. They have been the subject of articles in learned journals. The Code of Conduct for the Judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal is based on the Bangalore Principles.

Since 2002, there have been several technological developments that appear to impact on judicial conduct, including the Internet, Facebook and Twitter, which have not been addressed in the Bangalore Principles or in the Commentary. It has been suggested that some serious social issues, such as sexual harassment, may not have been adequately addressed. Some jurists have questioned whether the six judicial values – Independence, Impartiality, Personal Integrity, Propriety, Equality, and Competence and Diligence – are exhaustive, or whether there are others as well. The objective of the session was to identify contemporary threats to judicial integrity; to determine whether these are adequately and effectively addressed in the Bangalore Principles and the Commentary; and if not, to seek the views of Judges and other participants on how best to address them.



V. SUMMARY OF THE SESSION:

The session was organized as a panel discussion where the Moderator posed pre-arranged questions to the Panellists for multiple but short answers, and the floor was thereafter opened to the participants. There were no individual presentations.

1. *Should “Courage” be recognized as an additional judicial value? Courage is defined as acting on one’s belief despite danger or disapproval. Can there be a situation in which a judge who is both “independent” and “impartial” lacks the courage to act according to his conscience and the law?*

Justice Michael Kirby, who first raised this issue at a recent UNDP meeting in Bangkok, had argued the need to encompass two aspects of Courage in a new judicial value:

- (i) *Courage* in a physical sense: persisting with the difficult and sometimes dangerous vocation of a judge because society depends upon it. In some parts of the world this could include courage in the face of risks presented by government, police, criminal accused and other litigants and their families; and
- (ii) *Courage* in an intellectual sense: tackling the hard legal and intellectual challenges and not backing down or leaving them to be undertaken by others with relevant power, whom one knows will be unlikely to act and thereby leave wrongs and injustices festering which the judge, with appropriate action, can address and hopefully cure.

Justice Saunders considered “courage” to be a special expression of a state of mind. A judge’s mettle is tested when called upon to decide a matter the judge is not accustomed to. Fearlessness is an essential attribute. An independent judge could be timid and therefore inhibited. Lord Mance suggested that Application 1.1 of the Bangalore Principles be expanded to state that the judicial function should be exercised not only independently but also unflinchingly. Judges should not be formalistic. A participant stated that moral courage is one of the attributes of a judge. Courage is not recklessness but a positive attribute. Another inquired what the international community could do if a judge who delivers a courageous judgment is removed from office? A representative of IAWJ argued that judges can be heroes and disagreed with a participant who referred to the moral and social “lynching” of judges.

2. *Should “Non-Arbitrariness” be a new judicial value/principle? An “arbitrary” decision may be defined as one based on random choice or personal whim; subjective, wilful, capricious, whimsical, fanciful, or inconsistent.*

The late Professor Sir Nigel Rodley argued for the inclusion of this new value/principle in “*The Singarasa Case: Quis Custodiet . . ? A Test for the Bangalore Principles of Judicial Conduct*”, Israel Law Review, Vol.41, pp.500-521, 2008. He based his argument on three judgments of a



former Chief Justice of Sri Lanka which, he argued, were “arbitrary” in that they were capricious, despotic and based on personal whim.²

Lord Mance argued that non-arbitrariness is integral to the judicial function and that a new judicial value is not required. Justice Saunders considered non-arbitrariness to be a fundamental principle of the rule of law and could be included by elaborating the judicial value of “Independence”. The representative of ICJ, while asserting that what Sir Nigel Rodley had written should be taken very seriously, cautioned against “updating” the Bangalore Principles which had already been accepted by Judiciaries and States. He suggested that the Commentary be amended where appropriate.

3. *How should the problem of sexual harassment and the issue of gender equality be addressed in the Bangalore Principles?*

Justice Tilakawardane argued that paragraph 185 of the Commentary (“Gender discrimination”), under Value 5: Equality, was inadequate. A definition of sexual harassment was necessary. There had been an increasing number of victims voicing their experiences of being sexually harassed by judges. She referred to decisions of disciplinary tribunals in the USA and India. For example, a hostile work environment constitutes sexual harassment. She said that male judges did harass their female colleagues. The definition should be an inclusive one which takes into account the many manifestations of sexual harassment (such as *quid pro quo* and hostile working environment), and the different relationships (judges and staff members, court reporters, law clerks, attorneys, prosecutors) and spaces (both physical and virtual) within which it can take place.

Mr Apperson stated that a strong internal policy regulating conduct was necessary. Such a policy should (i) encourage employees to complain; (ii) encourage whistleblowing; and (iii) establish a counselling procedure. Lord Mance stated that Value 5 was too narrowly defined. Due respect and fair and equal treatment in court was necessary. A participant argued that sexual harassment and violence can be dealt with by the judge; sexual inequality was a different matter. A female judge is prevented from moving up in the service due to her commitments as

² He cited: (i) *Singarasa v. Attorney General*, where the Chief Justice held that the Government by acceding to the Optional Protocol to the ICCPR and thereby empowering the Human Rights Committee to receive complaints “violated the constitutional provisions that vested judicial power in the Sri Lankan courts”; (ii) *Fernando v. Sri Lanka*, where the Chief Justice imposed a penalty of rigorous imprisonment of one year for contempt of court on a petitioner who appeared in person in an application for a writ on the Judicial Service Commission of which the Chief Justice was chairperson and objected to his proceeding to hear the case. The penalty was for “raising his voice” in the presence of court and refusing to apologize. No reasoned explanation was offered why such a severe and summary penalty was warranted; (iii) *Sister Immaculate Joseph v. Sri Lanka*, where the Chief Justice declared as unconstitutional a private member’s Bill to incorporate the 100-year old Holy Cross of the Third Order of Saint Francis in Menzinger, on the ground that “the propagation and spreading of Christianity would not be permissible as it would impair the very existence of Buddhism”. The case was heard in the absence of the mover of the Bill. The Chief Justice did not explain on what information he had arrived at his conclusion. Sri Lanka is a secular State.



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housewife and mother. Therefore, the responsibilities of family life should be taken into account.

4. *Should “Accountability” be regarded as a separate and distinct judicial value? If so, what would be the attributes of judicial “accountability”? To be “accountable” is to be required or expected to justify one’s actions or decisions.*

The Rapporteur recalled that the Bangalore Principles, viewed collectively, were intended to establish the concept of judicial accountability to complement the concept of judicial independence.

Mr Apperson argued that accountability and independence reinforces each other, but that the Bangalore Principles place too much emphasis on independence and much less on accountability. He said that accountability is an evolving concept, especially with the emergence of informal actors such as arbitrators and international tribunals. Justice Saunders pointed out that there was no reference to “accountability” in the index to the Commentary. Lord Mance, referring to the Commentary, stated that the judicial values could be reinforced by including in it references to other ways in which judges are accountable, such as through the appeals process, providing reasons for a decision, and lifestyle.

5. *To what extent, if at all, should judges resort to social media such as Facebook, LinkedIn and Twitter?*

The Moderator saw no objection to judges using social media to discuss paintings, other forms of art, theatre, etc.

Lord Mance observed that it was dangerous for judges to send messages on social media since they remained for ever. He said that a judge should never praise a lawyer on social media. Justice Saunders observed that judges who used social media were not aware of the inherent dangers and said that a guide on the use of social media was necessary. Justice Tilakawardane stated that the use of social media could create circumstances where a judge may violate one or more of the Bangalore Principles. She referred to a judge who endorses a lawyer’s skills or writes a recommendation on LinkedIn; a judge’s connection to a lawyer on Facebook; or a judge posting an article about a case on Facebook. She added that eleven states in the United States had issued advisory opinions on the judicial use of social media sites.

A representative of IAWJ said that judges should be very careful when using social media and stressed the need to provide training for judges in this area. A participant suggested that a conference of judges be convened to discuss social media, while the representative of ICJE stated that the Ibero-American Commission on Judicial Ethics had already published a document on the subject. The IBA had also adopted principles on social media conduct for the legal profession. One participant argued strongly that new technology should be utilized by



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judges, pointing out that at one time there had been resistance even to the printing press. Another participant stated that what was required was that judges should exercise self-restraint.

VI. 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 revisited the content of the Bangalore Principles of Judicial Conduct, which is an integral instrument in strengthening judicial integrity and preventing corruption in the judicial system.

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

The recognition that, 18 years later, the Bangalore Principles of Judicial Conduct, the Commentary and the Implementation Measures now require to be reviewed and updated to meet contemporary challenges, and that the Judicial Integrity Group should initiate a process to do so.

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

Having considered suggestions for the inclusion of new judicial values such as “courage”, non-arbitrariness” and “accountability”, the consensus appeared to be that these concepts may fall within the existing six judicial values of Independence, Impartiality, Integrity, Propriety, Equality, and Competence and Diligence. These six values should, therefore, be redefined in the Commentary. Similarly, the issue of sexual harassment will require a new Application and/or elaboration in the Commentary. The emergence of social media will also need to be addressed through new Applications and in the Commentary and/or Implementation Measures.

Due to lack of time, certain other issues, such as the need to regulate the current trend towards Artificial Intelligence with respect to judicial decision-making processes; a re-definition of conflict of interest and recusal; and the responsibility of the judge to oversee the administration of the case process, could not be addressed in the session.

The process of revising the Applications of the six judicial values and the Commentary (and, if necessary, the Implementation Measures), and of determining whether any new judicial values should be included, could ideally commence through a forum on the Global Judicial Integrity Network.

IX. ADDITIONAL OBSERVATIONS, IF APPLICABLE

The reports of the other Sessions will be extremely useful in undertaking the task set out above.