

## High-Level Meeting of the Global Judicial Integrity Network

(25-27 February 2020, Doha, Qatar)

**JUDICIAL IMMUNITY AND DUE PROCESS IN THE DETERMINATION OF ALLEGATIONS OF JUDICIAL MISCONDUCT WITH CONSIDERATION OF ISSUES OF JUDICIAL INDEPENDENCE**

Commonwealth Magistrates' and Judges' Association

International Association of Judges

International Bar Association

**I. SESSION ORGANIZER**

Session Organizer:	Keith Hollis
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Organization:	Commonwealth Magistrates' and Judges' Association

**II. RAPPORTEUR<sup>1</sup>**

Rapporteur:	Mark Guthrie
Position:	Barrister
Organization:	Red Lion Consulting, Red Lion Chambers, London Commonwealth Magistrates' and Judges' Association

**III. MODERATOR AND PANELLISTS:**

Moderator:	Justice Mankhambira Charles Mkandawire
Position:	Justice of the High Court of the Republic of Malawi
Organization:	Commonwealth Magistrates' and Judges' Association (President)

**PANELLISTS**

Name:	Judge Gerhard Reissner
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<sup>1</sup> Responsible for drafting the session report.

Position:	Honorary President
Organization:	International Association of Judges
Topic of presentation:	What is the most appropriate forum for the determination of allegations of judicial misconduct, how should that forum be constituted and led? What sanctions should be available for dealing with cases of judicial misconduct?
Summary of presentation:	The disciplinary process should ensure the accountability of the individual judges and the judiciary at large. European soft law provides that the independence of any disciplinary tribunal must be guaranteed. The disciplinary process should be characterised by independence, transparency and competency. Judges should be in the majority in any disciplinary panel. Transparency might be served by the involvement of outside members in the process. However, no other branch of government should be involved in the disciplinary process. Knowledge of the justice system and the framework of the judge's work (e.g. workload) should be a criterion for the selection of panel members. A variety of sanctions ranging from reprimand to dismissal should be available and applied proportionally. The use of the disciplinary process as a weapon against the judiciary should be guarded against. However, this was happening in some European countries. Judges were facing disciplinary tribunals ad hoc appointed by ministers; new disciplinary offences regarding the merits of decisions and accusations, which were based on evidence collected by secret service which could not be challenged.

Name:	Sara Carnegie
Position:	Director of Legal Projects
Organization:	International Bar Association
Topic of presentation:	A framework and methodology for assessing the quality of disciplinary processes, practices and sanctions for misconduct or judicial corruption
Summary of presentation:	Bribery and undue political interference are the most common forms of judicial corruption. The relationship between criminal and disciplinary processes was important. There should be a special body to combat corruption. Challenges to combatting corruption included: an unwillingness to prosecute; time limits; delay; and capacity. Prosecution should be the norm whilst procedural rights should be ensured. Investigations must be independent and impartial. The bringing of disciplinary charges was affected by a variation in judicial codes of conduct as to what constituted serious misconduct. There may a lack of transparency in disciplinary proceedings. There may be no right of appeal. The criteria for the imposition of sanctions may not be clear. The Bangalore Principles of Judicial Conduct could be strengthened by guidance on what constitutes misconduct and the interaction between criminal and disciplinary processes. Other reforms might include more protection for whistleblowers, more information about the body responsible for investigating judicial corruption and how to make complaints about judicial officers.

Name:	Justice Lynne Leitch
Position:	Justice of the Superior Court of Ontario (Canada)
Organization:	Superior Court of Ontario, Commonwealth Magistrates' and Judges' Association
Topic of presentation:	Difficulties in balancing judicial independence and judicial accountability
Summary of presentation:	<p>There were two challenges in balancing judicial independence against judicial accountability:</p> <ol style="list-style-type: none"> <li>1. Security of tenure. Any disciplinary process must be carefully considered for its impact on judicial security of tenure. Any review of judicial conduct must not be discretionary or arbitrary. The standard against which judicial conduct is to be measured must be clear. The difficulty was that some judicial codes of conduct were aspirational whilst others established standards of behaviour. Canada applied the Marshall test: <i>"Is the conduct alleged so manifestly and profoundly destructive of the concept of impartiality, integrity and independence of the judicial role, that public confidence would be sufficiently undermined to render the judge incapable of executing the judicial office?"</i></li> <li>2. The disciplinary process must preserve the integrity of justice. The judicial disciplinary process must be fair and transparent, but not over-zealous. This could be achieved by giving judicial officers notice of the allegation, full disclosure of the complaint and an opportunity to respond. Complaints should be screened to stop wholly unmeritorious complaints. There was a question whether the disciplinary process should be instituted with an anonymous complainant or without a complainant at all. Whilst there was an open question as to whether lawyers and members of the public should play a role in the disciplinary process, there was no doubt that judges have primary responsibility for the disciplinary process.</li> </ol>

**IV. SUMMARY OF THE SESSION:**

The session explored the following issues:

- What is the most appropriate forum for the determination of allegations of judicial misconduct;
- The constitution and leadership of the forum dealing with judicial misconduct cases;
- Sanctions available to deal with judicial misconduct;
- The danger of the executive and legislative branches of government influencing how judicial misconduct cases are handled;
- The relationship between criminal and disciplinary processes in the cases of judicial corruption;

- Are judicial codes of conduct mandatory or aspirational?;
- Judicial disciplinary measures must not compromise judicial independence; and
- The test of what constitutes judicial misconduct.

#### **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 the judicial disciplinary process:

- What is the most appropriate forum for the determination of allegations of judicial misconduct, how should that forum be constituted and led?
- In dealing with cases of judicial corruption, how would that forum interact with the normal criminal justice system? What special procedures may be necessary in the criminal justice system to deal with issues of judicial corruption?
- What fundamental principles should be applied to ensure the disciplinary proceedings are fair both to the judicial officer and to the complainant?
- Should a triage system be employed? Should representation be available to the judicial officer?
- Should the proceedings be held in public or in private?
- What sanctions should be made available for dealing with cases of judicial misconduct?

These are some of the issues to which those responsible for framing a judicial disciplinary process should have regard if they are to create a fair, transparent and effective process.

#### **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;
- Establishing guidelines on good practices for proceedings involving allegations against members of the judiciary, with particular emphasis on the need to safeguard threats to judicial independence;
- Exploring how far the Global Judicial Integrity Network can contribute to the promotion of good practices;

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

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

##### **Conclusions:**

- Judicial disciplinary processes should be independent, transparent and competent;
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- The understanding of what constitutes judicial misconduct varies from jurisdiction to jurisdiction;
- There must be a clear standard against which judicial conduct is to be judged;
- Cases of misconduct must preserve public confidence in the judiciary as a whole; and
- If misused, allegations of judicial misconduct could be used as a weapon against the judiciary.

**The Global Judicial Integrity Network should:**

- Identify and publish principles of good practice in the constitution of forums hearing complaints of judicial misconduct and procedures for their determination;
- Produce a model test of what constitutes judicial misconduct;
- Contribute to the revision of the Commentary on the Bangalore Principles of Judicial Conduct in order to further the Bangalore Principles' implementation;
- Develop guidelines on the relationship between criminal and disciplinary proceedings in cases of judicial misconduct; and
- Promote its various resources, including the Judicial Ethics Training Tools, the Guidelines on the Use of Social Media by Judges, the Paper on Gender-Related Judicial Integrity Issues and the Guide on How to Develop Codes of Judicial Conduct, as well as UNODC's Resource Guide on Strengthening Judicial Integrity and Capacity.