

Long WORKSHOP REPORT FORM

Number and title of workshop: WS 1.8: Facilitating Integrity in the Judiciary – Bangalore
Principles: Guidelines for Reform

Coordinators: Johanna Beate Wysluch (GIZ)

Date and time: 12 November 2010, 17.30-19.30

Moderator: Dr Nihal Jayawickrama

Rapporteur: Dr Nihal Jayawickrama and Johanna Beate Wysluch

Panellists (Name, institution, title)

Eduard Westreicher, Alternate Executive Director for Austria, Germany, Luxembourg, Turkey and the United Kingdom at the Asian Development Bank.

Dr Nihal Jayawickrama, Coordinator of the Judicial Integrity Group.

The Hon. Michael Kirby, former Justice of the High Court of Australia and Rapporteur of the Judicial Integrity Group.

The Hon. Professor Dr Komariah E. Sapardjaja, SH, Justice of the Supreme Court of Indonesia.

Judge Horst Schoenbohm, German Judge and Development Practitioner.

The Hon. Besarion Alavidze, Judge of the Tbilisi Court of Appeal, Georgia.

The Hon. Prof. Dr. h.c. Rudolph Mellinghoff, Judge of the Federal Constitutional Court of Germany and Member of the Judicial Integrity Group.

Summary (300 words)

The discussion in this workshop focused on the work of the Judicial Integrity Group during the past decade. Its principal products, the Bangalore Principles of Judicial Conduct, the Commentary on the Bangalore Principles, and the Measures for the Effective Implementation of the Bangalore Principles, together constitute a very valuable tool or guidelines for integrity based judicial reform programmes. A reform programme that focuses on measures such as building more courthouses, appointing more judges, and perhaps simply adopting a code of conduct, would not have addressed the fundamental issue of judicial integrity. Where it fails to do so, the problems caused by corruption and undue influence, incompetence and illegitimacy, will enhance, not diminish. Therefore, integrity is an essential element not only for the Rule of Law, but also for good governance and economic development. This was underscored in the three case studies presented in the workshop – from Indonesia, Georgia and Latin America. While the first two demonstrated the emergence of positive outcomes, the shared experience of Latin America reflected the lack of integrity based reform processes which had resulted in very limited progress in eliminating corruption within the judiciary sector.



Summary of presentations (300 words per panellist)

Mr Eduard Westreicher welcomed the panellists and other participants on behalf of the German Federal Ministry for Economic Cooperation and Development. He acknowledged the contribution of UNODC and UNDP during the past ten years in recognizing that judicial integrity is essential for good governance, economic development and an effective Rule of Law. He noted that a significant gap still existed between internationally acknowledged instruments and reality at country level. The effective implementation of international instruments is the challenge that has to be faced and addressed. He raised the question whether a country's cultural background could be an impediment to the implementation of an international instrument, and inquired what solutions the Judicial Integrity Group could offer in that regard.

Dr Nihal Jayawickrama recalled that, eleven years ago, at the 9th IACC held in Durban, he had had the privilege of chairing a workshop on strengthening judicial integrity. The message that came from that workshop was the urgent need to formulate and implement a concept of judicial accountability without eroding the principles of judicial independence. He referred to the Judicial Integrity Group, which was convened in Vienna in April 2000, charged with the task of developing a concept of judicial accountability. During the past ten years, in addition to the Bangalore Principles, the Judicial Integrity Group had also prepared a Commentary on the Bangalore Principles as well as Measures for the Effective Implementation of the Bangalore Principles. Another output of the Group was a statement of principles of conduct for court personnel.

Dr Jayawickrama traced the development of the Bangalore Principles from its first draft agreed upon in the city of Bangalore in India in February 2001 by Chief Justices and senior judges trained in the common law, to its adoption in its final form at a round-table meeting of Chief Justices and senior judges from the civil law system held at the Peace Palace at The Hague in November 2002. In the intervening eighteen months, senior judges from over 75 jurisdictions, including Judges of the International Court of Justice, had contributed to the evolution of its final form. Although several UN institutions including ECOSOC had endorsed the Bangalore Principles and recognized them as being complementary to the UN Basic Principles on the Independence of the Judiciary, he submitted that the legitimacy of the Bangalore Principles was derived from the fact that they were crafted by judges, based on their own experience, for the purpose of being utilized by judges, to regulate the conduct of judges, without the intervention of either the executive or legislative branches of government.

Dr Jayawickrama observed that merely incorporating the Bangalore Principles into a national code of judicial conduct could result in that code remaining just an aspiration. More needed to be done to transform those aspirations into something that was real in the lives of the people. To begin with, a credible, independent, mechanism needed to be established to receive, inquire into, and resolve complaints of unethical conduct. But the reform process should not end there. Judges of integrity might not necessarily deliver effective, inexpensive, expeditious justice. Process need to be established to facilitate and promote access to justice. Modern case management techniques should replace the traditional system where the parties to a dispute controlled the movement of a case. Transparency in the delivery of justice; standard, user-friendly forms and instructions; courthouses that are accessible to the young and the infirm; and judicial outreach programmes were among the measures that have been identified by the Judicial Integrity Group as being essential elements of a reform programme based on the Bangalore Principles.

The Hon. Michael Kirby outlined the 'core principles' endorsed by the Judicial Integrity Group, including Independence; Impartiality; Integrity; Propriety; Equality; and Competence and Diligence. He described the structure of each guideline; the expression of the governing principle and applications, together with illustrations. He then elaborated several illustrations, by reference to cases in which he had been involved in the High Court of Australia, demonstrating that, sometimes, legitimate differences could exist over the application of basic principles in countries having judicial independence and different legal traditions, histories and cultures. A merit of the Bangalore Principles is the flexibility of their expression and structure, so that they can be adapted, within limits, to significantly different societies and legal systems. Mr. Kirby described the two further documents adopted by the Group at Lusaka in January 2010: one on the implementation of the Bangalore Principles and the other on the promotion of and education about the Bangalore Principles to judiciaries throughout the world.

Main Outputs (200 words, narrative form)

The Bangalore Principles on Judicial Conduct, its Commentary and its Implementation Measures are valuable tools to strengthen integrity in the judiciary. However, their application often requires structural changes which can only be achieved through the combined efforts of the judiciary and the other two branches of government, the executive and the legislature. The case studies demonstrate that, due to the flexibility of their expression and structure, the Bangalore Principles can be adapted and applied to significantly different societies and legal systems. For this purpose, the Bangalore Principles and related instruments have to be widely publicized and brought to the attention of policy makers and judicial reformers on a global basis, since detailed knowledge on their content and use appears to be lacking in several regions. The Bangalore Principles should not be regarded as being addressed only to judges. They are more than a guideline for a national code of judicial conduct. They address all stakeholders and are a useful instrument for government agencies as well as civil society since they establish the concept of judicial accountability. The Judicial Integrity Group itself faces great challenges in the coming years. The very high level, integrity and experience of its Members have sustained it for a decade. To extend and expand the influence of the Group and its products it might be necessary to change its structure and find a permanent home. Would that result in geopolitical consequences which could weaken the cohesion of the Group, undermine its autonomy and adversely affect its credibility?

Recommendations, Follow-up Actions (200 words narrative form)

The Bangalore Principles of Judicial Conduct should form an integral element of every judicial reform process. What is required is not the mere incorporation of the Bangalore Principles in a national code of judicial conduct, but a comprehensive integrity-based reform programme. In this regard, the recently adopted “Measures for the Effective Implementation of the Bangalore Principles” offers very useful guidelines which are capable of being integrated into a reform process.

A proper integration, however, requires that all stakeholders as well as civil society are better informed of the Bangalore Principles and related documents. Additionally the Judicial Integrity Group, as a network of high level justices engaged in developing a concept of judicial accountability for the past ten years, should establish a knowledge and experience sharing base which is accessible to reformers.

Knowledge sharing: Knowledge on the *Bangalore Principles* as well as practical examples of integrity-based reform processes, such as those in Georgia or Indonesia, needs to be managed, shared and applied. Target group oriented information on the Principles, the Commentary and Implementation Measures, and their effective use as tools, have to be developed to facilitate the understanding of the complex nature of judicial integrity.

Promotion of the Bangalore Principles: Despite several UN resolutions addressed to all Member States, there are still some regions of the world which are unaware of the Bangalore Principles and related documents. Their effective propagation should therefore be considered a high priority issue. The Principles should reach every national judiciary. The Commentary should be on the desk of every judicial officer. The Implementation Measures should reach both governments and civil society.

Strengthening of the Judicial Integrity Group: The Judicial Integrity Group should ensure that regions such as Latin America and the Caribbean, Russia and Eastern Europe, and China and Central and East Asia are represented on it on a permanent basis and become involved in the ongoing work. Their regular involvement will enable the pioneering work of the Group to reach those regions.

Building alliances: It is vital to further build and sustain networks and alliances between the Judicial Integrity Group and organizations with a worldwide reach such as UN institutions and donor agencies concerned with integrity-based judicial reform processes.

Highlights (200 words please include interesting quotes)

The discussions amongst the panellists and the audience pinpointed the importance to distribute the knowledge about the principles and related documents. Most of the questions raised by the audience have been answered with quotes from the legislative guide and the implementation measures, showing the connectional and practical use of it.

“Judges don’t come from sky like angels”

“Corruption is not only fought by punishment but also by infrastructure of the judiciary”

Signed and date submitted

(sgd) Nihal Jayawickrama, Johanna Beate Wysluch_____