



Justice for our times? The Bangalore Principles and Judicial Integrity

- ▶ Judith Gleeson
- ▶ Judge of the Upper Tribunal
- ▶ IARMJ Africa Conference, Arusha
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Universal Declaration of Human Rights 1948, Article 19

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.



Integrity in the global judiciary

“A judiciary of undisputed integrity is the bedrock of democracy and the rule of law. Even when all other protections fail, the judiciary provides a bulwark to the public against any encroachments on rights and freedoms under the law.

These observations apply both domestically - in the context of each nation State - and globally, for the global judiciary is seen as one great bastion of the rule of law throughout the world. Ensuring the integrity of the global judiciary is thus a task to which much energy, skill and experience must be devoted.”

Justice Christopher Weeramantry

*Vice-President, International Court of Justice,
1997-2000, Chairperson, Judicial Integrity Group*



Rule of Law

“The ultimate protection for people is the rule of law, an independent judiciary and a separation of powers”

*Lady (Mary) Arden of Heswall DBE
Former Justice of the Supreme Court
of the United Kingdom
Member, Judicial Integrity Group*





Judicial ethics in history

“The setting of the sun shall be the extreme limit of time within which a judge must render his decision”

Chinese law around 312 BC

“The [Bangalore] Judicial Values are not only global; they are also eternal. They are part of our common heritage.”

*Dr Nihal Jayawickrama
Coordinator of the Judicial Integrity Group,
2001*

The Bangalore Values - 1-3

Value 1: Independence

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Value 2: Impartiality

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made

Value 3: Integrity

Integrity is essential to the proper discharge of the judicial office

The Bangalore Values 4-6

Value 4: Propriety

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge

Value 5: Equality

Ensuring equality of treatment is essential to the due performance of the judicial office

Value 6: Competence and Diligence

Competence and diligence are prerequisites to the due performance of judicial office

Using the Principles - resources for judges

Each of the Bangalore Principles has sub-paragraphs on *Application*, setting out the judge's responsibilities in greater detail.

In **2006**, the Principles were further supported by expanded guidance and examples in the *Commentary on the Bangalore Principles of Judicial Conduct*.

Bangalore Principles - implementation

Approved by

- UN Commission on Human Rights
- UN Office on Drugs and Crime
- UN Commission on Crime Prevention and Criminal Justice
- UN Economic and Social Commission

Implementation and use

- Developing or revising national codes of judicial conduct in Austria, Belize, Bulgaria, Fiji, Indonesia, Ireland, Malaysia, Mongolia, Thailand, and the United Kingdom (including Scotland)
- Training aid in Central Europe, Eurasia and Africa

2004 - UN Special Rapporteur Despouy

▶
“...The fact that the public in some countries tends to view the judiciary as a corrupt authority is particularly serious: a lack of trust in justice is lethal for democracy and development and encourages the perpetuation of corruption. Here, the rules of judicial ethics take on major importance. ... judges must not only meet objective criteria of impartiality but must also be seen to be impartial; what is at stake is the trust that the courts must inspire in those who are brought before them in a democratic society.”

*Leandro Despouy, UN Special Rapporteur on the
Independence of Judges and Lawyers
April 2004, 60th session UNCHR*

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International case law

Cautionary tales for Judges

2004 - High Court of Australia Al-Kateb v Godwin [2004] HCA 37

- ▶ Interpretation of national law in accordance with basic principles of international law. Per Gleeson CJ:
 - ▶ “Whatever may have been possible in the world of 1945, the complete isolation of constitutional law from the dynamic impact of international law is neither possible nor desirable today. That is why national courts, and especially national constitutional courts such as this, have a duty, so far as possible, to interpret their constitutional texts in a way that is generally harmonious with the basic principles of international law, including as that law states human rights and fundamental freedoms [\[223\]](#).”
- ▶ Footnote [223] referenced Justice Michael Kirby’s work on the Principles. Not clear which Value is meant!

2009 - Privy Council: Hearing on the Report of the Chief Justice of Gibraltar (Gibraltar) [2009] UKPC 43 (12 November 2009)

Values 2 and 4 - Impartiality and Propriety -

Removal of the Chief Justice of Gibraltar - his wife made public statements to the Bar Council and the Kenyan Jurists that the Chief Minister was trying to hound her husband out of office. He brought judicial review proceedings in which he publicly adopted that allegation.

▶ HELD:

- ▶ 224. This conduct infringed almost every one of the principles in the two Guides to Judicial Conduct that set out in paragraphs 28 and 29, namely 2.2, 2.3, 4.1, 4.2, 4.3, 4.6 and 4.8 of the Bangalore Principles and 3.1 and 3.2 of the Guide to Judicial Conduct and the warning in this guide in relation to disqualification and to talking to the media with the greatest circumspection.
- ▶ 225. The conduct of the Chief Justice has brought him and his office into disrepute. The Tribunal had evidence and submissions from a large proportion of those who practise in the courts of Gibraltar that in their perception his conduct had adversely affected his ability to carry out his duties and functions and that it would be inimical to the due administration of justice in Gibraltar if he remained in office. Indeed they went further and submitted that his occupation of his office had been rendered untenable. ...
- ▶ **227. We have reached the conclusion that the actions of the Chief Justice and his wife have rendered his position as Chief Justice of Gibraltar untenable.**

2010 - Privy Council:Madam Justice Levers, Hearing on the Report of (The Cayman Islands) [2010] UKPC 24 (29 July 2010) -

- ▶ **Values 2, 4 and 5 - Impartiality, Propriety and Equality.** Removal of Madam Justice Levers as a Judge of the Grand Court of the Cayman Islands on the ground of inability to perform that office or misbehaviour.
 - ▶ 48. The standard of behaviour to be expected of a judge is set out in the Bangalore Principles of Judicial Conduct. ...
 - ▶ 64. ...There was no justification whatsoever for this series of interventions, which flagrantly violated the Bangalore principles. They showed bias, and indeed contempt, for Jamaicans which extended not merely to the defendant but to his victim, who happily was not in court. The comments about Pauline Hunter were monstrous, suggesting that she should have been sent "home", describing her as "a woman like that" and accusing her of "spreading her goodwill around" - a clear allegation of promiscuity.”

2010 - United Kingdom Upper Tribunal (Administrative Appeals Chamber) *SW v Secretary of State for Work and Pensions* (IB) [2010] UKUT 73 (AAC)

▶ **Value 1 - Independence** - United Kingdom Guide to Judicial Conduct based on the Bangalore Principles. Recently retired senior litigation partner acting as judge for a former employee of his firm in an incapacity benefit appeal. Firm had acted in a previous incapacity benefit appeal by her and were still representing her before the Criminal Injuries Compensation Authority. Principles 7.2.2 and 7.2.6 applied.

▶ **Perceived, not actual bias sufficient for removal:**

▶ “50. ...the fact that Ms A and Judge B are acquainted is really neither here nor there. As indicated above, that is a daily fact of life in tribunals and courts. As the Commentary on the Bangalore Principles of Judicial Conduct advises, judges should avoid frequent recusals and it is important to avoid the impression that a party (and indeed any representative) may be able to “pick and choose the judge who will decide its case” (paragraph 66). ...[but]

▶ “52. It may be that one of these factors alone would not have been sufficient for the fair-minded and informed observer to be concerned about a real possibility of bias. Taken together, however, and bearing in mind again the guidance in the case law and the domestic and international codes of judicial conduct, my view is that the fair-minded and informed observer would conclude that there was a real possibility of bias. ”

2011- UN Human Rights Committee

Akwanga v. Cameroon

- ▶ **Value 1 - Independence** - Mr Akwanga, a Cameroonian national living in the United States of America, alleged violations by Cameroon of his rights under the ICCPR Articles 7 (prohibition of torture), 9 (liberty and security of person), 10 (human dignity in detention) and 14 (equality before courts and tribunals).
- ▶ The fair trial issue referred to his trial by a military court, the use of tortured evidence, and limited access to a lawyer to prepare his trial.
- ▶ The Individual Opinion of Ms Christine Chanet, Mr Ahmad Fathalla, Ms Zonke Majodina, Ms Iulia Motoc, Sir Nigel Rodley and Ms Margo Waterval held that:
 - ▶ “Military functions fall within the framework of a hierarchical organization and are subject to rules of discipline that are difficult to reconcile with the independence of judges called for under article 14 of the Covenant and reaffirmed in the Bangalore Principles on the independence of the judiciary.”

2011: Western Cape High Court, South Africa: Brown v National Director of Public Prosecutions and others (1800/2011) [2011] ZAWCHC 386 (28 September 2011)

▶ All Values cited

- ▶ “106. The Bangalore Principles are international judicial standards that provide a framework for regulating judicial conduct. These principles have been endorsed by the United Nations General Assembly and South Africa has adopted these principles. The principles feature six core judicial values of preeminent importance to the fair and effective functioning of judicial systems. The judicial values are; independence, impartiality, integrity, propriety, equality and lastly competence and diligence.
- ▶ 107. The preamble to the Bangalore Principles state that these principles "are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. ...
- ▶ 115. Judges have years of experience and are aware of the dangers of media reports on 'high profile' cases. The judge will however, view each case based on its own merits. *Pelser v Director of Public Prosecution, Transvaal* stated: "A Judge is a trained judicial officer and he knows that he must decide every case which comes before him on the evidence adduced in that case. He knows further that a decision on facts in one case is irrelevant in respect of any other case, and that he must confine himself to the evidence produced in the case he is actually trying.””

2015 - Privy Council: *Misick & Ors v The Queen (Turks and Caicos)* [2015] UKPC 31

► Values 1 and 2 - Independence and Impartiality

“Courts must be both independent and impartial. ... independence has a separate significance, apart from ensuring impartiality between the parties to the cause, for it is also required to protect the judge from dependence upon, and against interference by, the Executive, whether the latter is a party to the litigation or not.

The same point is underlined in the Bangalore Principles of Judicial Conduct...independence ‘connotes not merely a state of mind or attitude in the actual exercise of judicial functions, but a status or relationship to others, particularly to the executive branch of government, that rests on objective conditions or guarantees’.

The complementary requirements of **independence** and **impartiality** both import ...not merely the absence of actual dependence or partiality but **the public appearance of such absence**. The test is whether a reasonable objective observer would be confident in the independence and impartiality of the judge.” [*Emphasis added*]

2015 - Supreme Court of the Republic of Ireland: Good Concrete -v- CRH Plc, Roadstone Wood Ltd., & anor [2015] IESC 70 (31 July 2015)

Values 1 and 2 - Independence and Impartiality - Bangalore Principles and Commentary on bias set out extensively. Circumstances when a judge should make disclosure set out in the Commentary.

- ▶ “52. The Commentary also suggests that a judge must ordinarily recuse himself or herself from any case in which the judge or a member of the judge’s family is in a position to gain or lose financially.
- ▶ 53. While the Bangalore Principles and Commentary go into some detail as to the principles underlining the exercise of recusal, the test is that of the reasonable observer. The jurisprudence of this jurisdiction, the reasonable, objective and informed person, is fundamentally consistent with the approach in the Bangalore Principles.”

2015 - Supreme Court of the Republic of Ireland: O'Driscoll -v- Hurley and Health Service Executive [2016] IESC 32 (14 June 2016)

- ▶ **Values 1 and 2 - Independence and Impartiality** “...the Bangalore Principles are of assistance given that they encapsulate at an international level norms of universal application in relation to such issues as bias, the reasonable observer and the question of recusal.”

Good Concrete cited with approval, Bangalore Principles set out extensively.

2019 - European Court of Justice - Polish judiciary cases

A.K. (Independence de la chambre disciplinaire de la Cour supreme) (Equal treatment in employment and occupation - Non-discrimination on the ground of age - Lowering of the retirement age of judges) [2019] EUECJ c-585/18_0 (27 June 2019)

Values 1 and 2 - Independence and Impartiality - *Opinion of Advocate General Tanchev*:

120. As I observed in my Opinions in *Commission v Poland (Independence of the Supreme Court)* (C-619/18) and *Commission v Poland (Independence of the ordinary courts)* (C-192/18), (77) the independence and impartiality of a judge under Article 6(1) ECHR extends to an objective assessment of whether the tribunal itself offers sufficient guarantees to exclude any legitimate doubt in respect of its impartiality. Appearances are of a certain importance, so that ‘justice must not only be done, it must also be seen to be done’. **What is at stake is the confidence which courts in a democratic society must inspire in the public.** Further, in deciding in a given case if there is a legitimate reason to fear that the appearance of objective independence is not met, the ECtHR has held that what is decisive is whether this fear is objectively justified. (78)

- ▶ Footnote [77] “See also Bangalore Principles of Judicial Conduct, 2002, in particular points 1.3, 1.6 and 3.2.”

2019 - ECHR: RUSTAVI 2 BROADCASTING COMPANY LTD AND OTHERS v. GEORGIA - 16812/17 (Judgment : Remainder inadmissible : Fifth Section) [2019] ECHR 574

- ▶ **Values 1 and 4 - Independence and propriety** - Dispute about judge's impartiality and influence of family members considered). Relevant Values set out in full, together with the Commentary.
- ▶ 344. ...the Court notes that, according to the Bangalore Principles of Judicial Conduct, a judge shall not allow his or her family, social or other relationships to influence his or her judicial conduct The requirement of judicial impartiality cannot prevent a judge's family expressing their views on issues affecting society. ... There is no proof in the case file that the judge ever discussed the ownership dispute ...with his spouse either privately or in public.
- ▶ In his decision of 19 October 2015, the judge emphasised that his spouse had never agreed the contents of her Facebook posts with him and that he had not even been aware of the existence of those posts. The Court thus considers that, from the standpoint of an objective observer, the judge sufficiently distanced himself from the opinions which his wife published on Facebook.
- ▶ 356. ...having regard to the general question of the significance of the appearance of judicial independence from the executive and legislative branches, the Court is ready to accept that, in addition to the need for judges to refrain from taking part publicly in controversial political discussions (see the Court's findings in paragraphs 344 and 349 above), it would be normally preferable for professional judges to refrain, during their mandate, from partisan political activities, such as contributing to political parties or campaigns (see also the Bangalore Principles and the Commentary thereto).

2021 - ECHR: XHOXHAJ v. ALBANIA - 15227/19 (Judgment : Remainder inadmissible : Second Section) [2021] ECHR 104 (09 February 2021)

Value 3 - Integrity

- ▶ 407. ...The Court does not find anything arbitrary or manifestly unreasonable in the domestic decisions. Moreover, it notes that, according to the Bangalore Principles of Judicial Conduct, judges, who, by the nature of their work are considered to be guarantors of the rule of law, must be required to meet particularly high standards of integrity in the conduct of their private matters out of court - “above reproach in the view of a reasonable observer” - in order to maintain and enhance the confidence of the public and “reaffirm the people’s faith in the integrity of the judiciary”.

2022 - Kenya Supreme Court: Muya v Tribunal Appointed to Investigate the Conduct of Justice Martin Mati Muya, Judge of the High Court of Kenya (Petition 4 of 2020) [2022] KESC 16 (KLR) (Civ) (19 May 2022)

Value 6 - Diligence and competence

- ▶ “The inordinate delay in giving reasons in the ruling constituted a dereliction of duty amounting to misconduct. A judge was mandated by the Bangalore Principles of Judicial Conduct to perform all his or her duties, including the delivery of reserved decisions, efficiently, fairly, and with reasonable promptness. The delay to giving reasons for the ruling for a period of five months in a situation where there was an indication that an appeal from that decision would be made, and that such appeal could not be made without those reasons could only lead to the conclusion that the petitioner performed his duty neither efficiently nor with promptness.”

Urgent need to provide for sanctions short of dismissal. Judge not removed as isolated instance.



Conclusions

- ▶ The independence of the judiciary is essential to justice in a democratic society - justice must not only be done, but be seen to be done.
- ▶ The
- ▶ Principles provide a judge-made, judge-led tool for assessing the proper standards of judicial conduct.
- ▶ They draw together core standards recognised by senior judges worldwide (and historically) and are in growing use by judicial standard setting and training bodies, as well as being cited in judgments where judicial conduct and ethics are in question.

Thank you for listening...

Questions and comments?
Judith Gleeson

uppertribunaljudge.gleeson@ejudiciary.net