

THE RECORD OF THE EIGHTH MEETING
OF
THE JUDICIAL GROUP ON STRENGTHENING JUDICIAL INTEGRITY
(The Judicial Integrity Group)
Berlin, Germany
January 28 and 29, 2020

INTRODUCTION

1 On the invitation of The Hon. Dr Rudolf Mellinghoff, President of the Federal Supreme Finance Court of Germany, the Judicial Integrity Group (“the Group”) held its eighth meeting at the Maritim Hotel in Berlin, Germany, on January 28 and 29, 2020. The meeting was facilitated by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) on behalf of the German Federal Ministry for Economic Co-operation and Development (BMZ), and in collaboration with the United Nations Office on Drugs and Crime, Vienna (UNODC). The meeting was held in conjunction with the “Conference on Judicial Integrity in the Twenty-First Century – Supporting Strong Independent African Judiciaries” convened by BMZ in its conference series “Rule of Law, Justice and Development”, and in which several members of the Group actively participated.

PARTICIPATION

2 The Members present were: The Hon. Michael Kirby (former Justice of the High Court of Australia), The Hon. Dr. Benjamin Odoki (former Chief Justice of Uganda), The Hon. Dr Adel Omar Sherif (Deputy Chief Justice of the Supreme Constitutional Court of Egypt), The Hon. Christine Chanet (former President of the Criminal Division of the Cour de Cassation of France), The Rt. Hon. The Lord Mance (former Deputy President of the Supreme Court of the United Kingdom), The Hon. Prof. Dr Rudolf Mellinghoff (President of the Federal Supreme Finance Court of Germany), The Hon. Dr Mogoeng Mogoeng (Chief Justice of South Africa), and The Hon. Adrian Saunders (President of the Caribbean Court of Justice). Dr Nihal Jayawickrama, Coordinator of the Group, also served as Rapporteur.

3 Invited as Special Guests were The Hon. Said Marie Amr (Chief Justice of Egypt), The Hon. Dr Mathilda Twomey (Chief Justice of the Seychelles), The Hon. Daniela Salazar Marin (Vice-President of the Constitutional Court of Ecuador), and The Hon. Shiranee Tilakawardena (former Justice of the Supreme Court of Sri Lanka). Invited as Observers were Mr Michael Roll (BMZ), Mr Daniel Seidler (GIZ) and Ms Tatiana Balisova (UNODC).

PRELIMINARY MEETING

4 On Wednesday 28 January, at the conclusion of the BMZ Conference, the Members of the Group (excluding the Special Guests and the Observers) met at 15.00.

5 By consensus, the members elected Justice Rudolf Mellinghoff as Chairperson of the Group in succession to the late Judge Christopher Weeramantry, and it was agreed that initially he would serve in that capacity for a period of three years.

6 The members agreed that Dr Nihal Jayawickrama should continue as the Coordinator and also function as the Rapporteur of the Group.

7 The Chairperson welcomed the two new members of the Group: Chief Justice Mogoeng and President Adrian Saunders.

8 The members agreed to invite the three Special Guests: Chief Justice Dr Mathilda Twomey, Vice-President Daniela Salazar Marin, and Justice Shiranee Tilakawardena, to join the Group.

9 It was agreed that certain provisions of the MOU be re-formulated as follows:

Sub-paragraph 4 (ii): The number of active members *should* not exceed fifteen.

Sub-paragraph 4 (iii): The Group shall by consensus determine to admit new Members, bearing in mind the importance of ensuring, so far as is practicable, *gender diversity*, and either an equitable geographical distribution or the representation of the major legal systems of the world.

10 It was agreed that the Rapporteur should contact those members who, for several years, had not been able to actively participate in meetings or other activities of the Group, and inquire whether they would be willing to serve the Group in an advisory capacity as Honorary Members.

MEETING OF THE GROUP

Inaugural Session

11 The Eighth Meeting of the Group commenced at 09.30 on Thursday 29 January 2020.

12 At the outset, on the invitation of the Chairperson, Justice Mellinghoff, the members observed two minutes silence in memory of the three members of the Group who had passed away since the last meeting: the late Chief Justice Pius Langa, the late Chief Justice P.N. Bhagwati, and the late Judge C.G. Weeramantry, the Chairperson of the Group. The Rapporteur, Dr Jayawickrama, observed that these three were founder members who had made an immense contribution to the achievements of the Group. Chief Justice Bhagwati initially served the Group

as the representative of the UN High Commissioner for Human Rights. In 2002, Judge Weeramantry secured not only the historic Japanese Room at the Peace Palace at The Hague as the venue of the Round-Table Meeting of Chief Justices that adopted the Bangalore Principles, but also the participation of the Judges of the International Court of Justice at that meeting. In 2006, it was the unique judicial experience and temperament of Judge Weeramantry and Chief Justice Langa, the joint chairpersons of the Inter-Governmental Expert Group Meeting, that made it possible to retain the Bangalore Principles unamended in their original form despite scrutiny by representatives of over 40 governments.

13 The Chairperson next welcomed the three new members: Chief Justice Twomey, Vice-President Daniela Salazar Marin, and Justice Shiranee Tilakawardena. He also welcomed the Special Guest: Chief Justice Said Marie Amr, and the three Observers: Tatiana Balisova (UNODC), Michael Roll (BMZ) and Daniel Seidler (GIZ).

Revision and updating of the Bangalore Principles and/or the Commentary.

14 It was agreed that the Group should focus on revising and updating the Commentary and should avoid seeking to amend the Bangalore Principles. The Group then proceeded to consider five discussion papers prepared by the Rapporteur. Dr Jayawickrama explained that he had presented these papers in August 2019 in Vienna at a specially dedicated session at an expert group meeting convened by UNODC under the auspices of the Global Judicial Integrity Network. The papers addressed the following contemporary issues that had not been dealt with in the Commentary when it was prepared fifteen years ago.

(a) “Courage” – a new judicial value or an attribute of an existing value?

Among the views expressed by members was that “courage” means acting from the heart; a pre-condition to doing what is right; acting irrespective of consequences; acting without fear or favour; a commitment to justice; valour; ignoring old laws that are against fundamental principles. It was submitted that “courage” was an integral part of “Independence”, or a pre-condition to “Integrity”. It was argued that “courage” should be distinguished from judicial activism. It was suggested that a paragraph on “courage” could be inserted immediately after paragraph 27 of the Commentary. A suggestion that “justice” be substituted for “courage” did not find favour since a person could not be a judge if he/she had no commitment to justice.

(b) Use of social media by judges

It was suggested that the use of social media by judges should be expressed in positive terms. On the other hand, it was argued that social media might soon be outdated and replaced by other new tools such as predictive analysis. An annex on the use of modern technology would be useful. Justice Mellinghoff agreed to draft a note on legal tech. Concern was also expressed about the use of the internet by judges for the purpose of discovering information not produced in court to supplement specific evidence in a case,

or to discover information of relevance to the case without due notice to the parties, and it was agreed to address this matter further.

(c) Gender-related integrity issues

It was submitted that the definition of “gender” in the Bangalore Principles should be updated to include sexual orientation or identity. It was also suggested that sex discrimination be described as involving treating someone unfavourably because of that person’s sex, and extends to men, women, and other persons on account of sexual orientation or gender identity. Gender bias reflects a preference or prejudice towards one gender over “*another*” (not over “the other”). It was submitted that paragraph 184 of the Commentary should state that respect for individual dignity is basic to the judicial role. Justice Tilakawardena agreed to prepare a new paragraph to replace paragraph 185 of the Commentary.

(d) Conflict of interest and recusal

It was argued that the principle that a person may not be a judge in his or her own cause, when applied literally, should mean that the judge is in fact a party to the litigation or has a “direct” financial interest in its outcome. However, after considerable discussion, it was agreed that paragraph 78 in its present form should be retained. It was submitted that an apprehension of bias in respect of conduct outside the proceedings may occur where a judge has expressed himself or herself strongly, in public or private, his or her views on an issue of fact or law which is likely to be “determinant” (rather than “relevant”) to the proceedings. In regard to direct or indirect relationships, it was submitted that a judge is ordinarily required to recuse himself or herself if any member of the judge’s family, including “*a person with whom the judge has had an intimate personal relationship*” (instead of “fiancé or fiancée”) has participated or has entered an appearance as counsel. It was also suggested that a judge should “*ordinarily*” declare to the parties to a case any potential conflict of interest.

(e) Judicial Immunities

The discussion paper proposed that the principle that a judge should enjoy personal immunity from civil suits for conduct in the exercise of a judicial function be not applicable to protect a judge where (a) there has been a gross abuse of judicial power; (b) human rights have been violated, such as arbitrarily ordering detention without the power to do so; or (c) evidence of corruption exists. However, this proposal did not find favour with the Group.

15 Dr Jayawickrama agreed to prepare a draft revised and updated version of the Commentary for consideration by the Group.

Future work programme and priorities

16 The Group next proceeded to consider its future work programme.

17 Chief Justice Mogoeng proposed that the Group should consider intervening whenever a judge was victimized. He mentioned instances when the Southern African Chief Justices Forum had done so with success. He also proposed that the Group should provide advice to the International Commission of Jurists (ICJ) and the International Bar Association (IBA) on the non-implementation of the Bangalore Principles by national judiciaries. Dr Jayawickrama recalled that, in 2013, when the Sri Lankan Parliament began proceedings to impeach the incumbent Chief Justice in what was clearly a political exercise, the Group had refrained from intervening on the ground that its members were serving Judges. On the other hand, 45 Judges from all the continents had addressed a letter to the President condemning the removal of the Chief Justice, joining condemnations from other organizations of Judges such as the ICJ and the Commonwealth Judges and Magistrates Association (CMJA).

18 Chief Justice Mogoeng also proposed that the Group should establish links with other organizations such as the IBA Human Rights Committee, the ICJ, the Venice Commission, and the Conference of the Chief Justices of Asia and the Pacific.

19 Justice Mellinghoff proposed that an archive for material relating to the Group be established. Dr Jayawickrama stated that he had with him all the documentation relating to the Group from its inception, including material relating to the drafting of the Bangalore Principles, and was willing to hand them over whenever an archivist was available.

20 Justice Kirby suggested that a few of the members should each consider writing an *Op-ed* (approximately five hundred words) on “What Judicial Integrity Means to Me”, and that these perspectives should be uploaded on the JIG website to give a human face and viewpoint from the members of the Group.

21 The Group recognized that its immediate task was the preparation of the updated and revised Commentary on the Bangalore Principles. Meanwhile, members of the Group should continue to play an active role in legal and judicial conferences whenever invited to participate.

22 Ms Tatiana Balisova (UNODC) stated that UNODC was ready to continue to assist the Group in the updating and revision of the Commentary, as it had already done through the Expert Group Meetings on *Use of Social Media by Judges*, *Gender-related Integrity Issues*, and *Judicial Immunities*. The Global Judicial Integrity Network could continue to create a space for further consultations and information-sharing on relevant topics, including through online consultations through the Network’s website, and the organization of a dedicated Expert Group Meeting to validate the results of the revision process. Once the 2020-2021 workplan of the Network is developed after the High-Level Meeting on 25-27 February in Doha, a more concrete discussion on the next steps of support could take place.

23 Mr Daniel Seidler (GIZ) expressed his willingness to ensure that the Group’s website, which GIZ had established and managed, is updated with relevant new material.

Office-bearers

24 The Chairperson proposed, and the Group endorsed by acclamation, the appointment of two Deputy Chairpersons: Justice Benjamin Odoki and Justice Shiranee Tilakawardena.

25 Chief Justice Mogoeng suggested that an understudy be appointed for the Coordinator.

Acknowledgements

26 The Eighth Meeting of the Group concluded with expressions of appreciation to BMZ and GIZ for facilitating it and for the hospitality extended to the members; and to UNODC for its continuing support and collaboration in the work of the Group.

THE JUDICIAL INTEGRITY GROUP

EIGHTH MEETING

Maritim Hotel, Berlin, Germany
29th January 2020

Facilitated by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)
on behalf of the German Federal Ministry for Economic Cooperation and Development (BMZ),
and in collaboration with the United Nations Office on Drugs and Crime, Vienna (UNODC)

LIST OF PARTICIPANTS

Members

The Hon. Michael Kirby
Former Justice of the High Court of Australia

The Hon. Benjamin Odoki
Former Chief Justice of Uganda

The Hon. Dr. Adel Omar Sherif
Deputy Chief Justice of the Supreme Constitutional Court of Egypt

The Hon. Christine Chanet
Former President of the Criminal Division of the Cour de Cassation of France

The Rt. Hon. The Lord Mance
Former Deputy President of the Supreme Court of the United Kingdom

The Hon. Prof. Dr. Rudolf Mellinghoff
President of the Federal Supreme Finance Court of Germany

The Hon. Dr. Mogoeng Mogoeng
Chief Justice of South Africa

The Hon. Adrian Saunders
President of the Caribbean Court of Justice

Special Guests

The Hon. Said Marie Amr
Chief Justice of Egypt
and Secretary General of the Arab Union of Constitutional Courts and Councils

The Hon. Dr. Mathilda Twormey
Chief Justice of Seychelles

The Hon. Daniela Salazar Marin
Vice-President of the Constitutional Court of Ecuador

The Hon. Shiranee Tilakawardena
Former Justice of the Supreme Court of Sri Lanka

Observers

Mr Daniel Seidler
GIZ

Ms Tatiana Balisova
UNODC

Coordinator

Prof. Dr Nihal Jayawickrama

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AGENDA

WEDNESDAY 29 JANUARY

09.00 – 09.30: **Inaugural Session**

In memory of the late Chief Justice Pius Langa, the late Chief Justice P.N. Bhagwati, and the late Judge C.G. Weeramantry.

Welcome Address by the Hon Prof. Dr. Rudolf Mellinghoff

Introductory Statement by the Coordinator, Judicial Integrity Group

Adoption of the Agenda

Revision and Updating of the Bangalore Principles and/or the Commentary

09.30 - 11.00: “Courage” – a new judicial value or an attribute of an existing value?

Use of social media by judges

11.00 - 11.30: *Tea/coffee break*

11.30 - 13.00: Gender related integrity issues
Conflict of interest and Recusal

13.00 - 14.30: *Lunch*

14.30 - 15.30: Judicial immunities
Other updates to be considered

15.30 – 16.00: *Tea/coffee break*

Future work programme and priorities

16.00 – 17.00: **UNODC:** future expert group meetings relevant to the revision and updating of the Bangalore Principles and/or Commentary.
Procedures for the adoption of the revised and updated Bangalore Principles and/or Commentary.

GIZ/BMZ: future assistance to the Judicial Integrity Group

Any other business