



# Judicial Integrity: Driver for Development

## The Lusaka Declaration on Judicial Integrity and the Bangalore Principles of Judicial Integrity

### What is Judicial Integrity?

Judicial integrity is the essential attribute of the judicial system of a country. It is the guarantee that, in the determination of his or her rights and obligations and of any criminal charge against him or her, a person will receive, in full equality, a fair and public hearing by a competent, independent and impartial tribunal. Judicial integrity requires the absolute commitment of the judge to six judicial values: independence, impartiality, personal integrity, propriety, equality, and competence and diligence.

### Why is it Important?

Judicial integrity is an essential element of the rule of law. Therefore, the reason why judicial integrity is of such public importance is that a free society exists only when it is governed by the rule of law. The rule of law binds the governors and the governed, and ensures that justice is administered equally to those who seek its remedies and to those against whom its remedies are sought. Under the rule of law, the exercise of governmental power is regulated by the provisions of the constitution and of law, and the arbitrary exercise of discretion is curbed. Judicial integrity, therefore, contributes to political stabilisation. It provides security not only for the citizens in their normal life, but also for those engaged in commerce and trade. It is often a precondition for international investment in a developing country, and is therefore viewed as a driver for development.

### Deficits in Developing Countries

There is credible evidence that many judicial systems in developing countries are plagued by corruption. The acceptance of bribes by judges, prosecutors, police, court staff and attorneys is one form of judicial corruption. Another equally damaging form of corruption is the undue influence exerted on the judiciary by the executive branch of government. Nepotism in the matter of the appointment of judges is a frequently observed deficit in many countries. Among the causes of this state of affairs is the lack of transparency in judicial proceedings, the low salaries of personnel involved in the judicial system,

non-transparent recruitment procedures and the appointment of judges who lack a proper legal education, the lack of in-service training, the arbitrary assignment of cases, the neglect of court administration, the lack of case management, the absence of accountability mechanisms, and the general public apathy that is either the cause or the result of a democratic deficit that characterises many developing countries.

### Standards of Judicial Integrity – the Bangalore Principles

By resolution 2006/23, the Economic and Social Council of the United Nations requested Member States to encourage their judiciaries to take into consideration the Bangalore Principles of Judicial Conduct when reviewing or developing rules with respect to the professional and ethical conduct of members of the judiciary. The Bangalore Principles were formulated by a group of chief justices and senior justices – the Judicial Integrity Group (JIG) – who were invited by the United Nations to formulate a concept of judicial accountability that would be consistent with the principle of judicial independence. The JIG was of the view that judges (unlike legislators, ministers or civil servants) should be accountable to the community they serve through their absolute adherence to a set of core judicial values. These core judicial values should be such that adherence to them will result in the effective, inexpensive and expeditious delivery of justice. The JIG believed that by adopting and enforcing standards of conduct based on these core values, the judiciary will be able to earn and retain the respect and confidence of the community, and thereby strengthen the integrity of the judicial system.

### Which Standards of Judicial Conduct are Defined?

The six core judicial values recognised in the Bangalore Principles are:

- **Independence:** A judge should uphold and exemplify judicial independence in both its individual and institutional aspects.
- **Impartiality:** Impartiality must exist both as a matter of fact and as a matter of reasonable perception in all the

processes leading to the decision, and including the decision itself.

- **Integrity:** In private as well as in public life, a judge should always act honourably and in a manner befitting the judicial office; be free from fraud, deceit and falsehood, and be good and virtuous in behaviour and in character, since the public demands from the judge conduct that is far above that which is demanded of fellow citizens, standards of conduct that are much higher than those demanded of society as a whole.
- **Propriety:** In respect of both professional and personal conduct, a judge must accept restrictions on his or her activities even when these activities might not be viewed negatively if carried out by other members of the community or of the legal profession.
- **Equality:** A judge should be aware of, and understand, diversity in society and differences arising from various sources, and should ensure equality of treatment to all who appear before the court.
- **Competence and Diligence:** Competence in the performance of judicial duties requires legal knowledge, skill, thoroughness and preparation, while diligence is exhibited by considering soberly, deciding impartially, and acting expeditiously.

The Bangalore Principles are intended to establish standards of ethical conduct for judges. They are designed to provide guidance to judges in the performance of their judicial duties and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand the judicial role. They offer the community a standard by which to measure and evaluate the performance of the judicial sector. For these objectives to be realised, the Bangalore Principles need to be disseminated widely in the community, so that legislators, public officials, lawyers, academia, civil society and the media know and understand the standards of conduct that judges are required to observe.

#### GTZ's Contribution to Strengthening Judicial Integrity

Recognising the importance of judicial integrity and the significance of the Bangalore Principles in this regard, GTZ supported the preparation of a Commentary on the Bangalore Principles. This Commentary, which was prepared by the Judicial Integrity Group and reviewed by an intergovernmental expert group convened by the United Nations, was published in 2007. The 175-page document is designed to facilitate a better understanding of the applicability of the Bangalore Principles to issues, situations and problems that are likely to arise or emerge.

GTZ also supported the preparation by the Judicial Integrity Group of Measures for the Effective Implementation of the Bangalore Principles (Implementation Measures). In January 2010, GTZ facilitated the Sixth Meeting of the Judicial Integrity Group which was convened in Lusaka on the invitation of the Honourable Ernest Sakala, Chief Justice of Zambia. This meeting finalised the Implementation Measures and incorporated them in the "Lusaka Declaration on Judicial Integrity". This statement of measures, which is offered to judiciaries and governments as guidelines or benchmarks, is in two parts. The first describes the measures that are required to be adopted by the judiciary. The second describes the institutional arrangements that are required to be established to ensure judicial integrity and which are principally within the competence of the State.

The Implementation Measures are designed to form the basis of a serious programme of reform of the judicial sector.



Chief Justice the Hon Ernest L Sakala in talk with Dr Dedo Geinitz from GTZ

#### The "Lusaka Declaration" on Implementation Measures of the Bangalore Principles

##### Responsibilities of the Judiciary:

- Revise the existing code of judicial conduct
- Establish a judicial ethics advisory committee
- Establish a judicial ethics review committee
- Institute a predetermined arrangement for the assignment of cases
- Adopt principles of conduct for court personnel
- Utilise information and communication technologies to strengthen the transparency, integrity and efficiency of justice
- Conduct case audits, surveys of court users and other stakeholders, establish court user committees, initiate outreach programmes and adopt other such means to review public satisfaction with the delivery of justice and identify systemic weaknesses in the judicial process
- Publish an annual report of its activities, including any difficulties encountered and measures taken to improve the functioning of the justice system
- Adopt, where appropriate and desirable, alternative dispute resolution and community justice procedures, and encourage pro bono representation and appointment of amici curiae
- Institute modern case management techniques
- Actively promote transparency in the delivery of justice through public hearings, adequate facilities for the attendance of interested members of the public and the media, and access to all information pertaining to judicial proceedings, both pending and concluded, including judgments, pleadings, motions and evidence.
- Facilitate access to the judicial system by providing standard, user-friendly forms and instructions, and clear information on court procedures and fees
- Facilitate attendance in court of witnesses, court users and the public through easily readable signs, customer service centres, user-friendly court premises, and amenities for special-need users
- Institute training programmes of judges that are pluralistic in outlook and include not only relevant aspects of national and international law and procedure, but also

other fields relevant to judicial activity such as management of cases and administration of courts, information technology, social sciences, legal history and philosophy and alternative dispute resolution

- Avoid rendering advisory opinions to the executive or legislative branches of government, unless required by law to do so
- Avoid using the criminal law and contempt proceedings to restrict legitimate public criticism of judicial performance
- Ensure that while a judge cannot claim immunity from ordinary criminal process, a judge enjoys personal immunity from civil suits for conduct in the exercise of a judicial function.

#### Responsibilities of the State:

- Provide a constitutional guarantee of judicial independence
- Ensure that persons selected for judicial office are individuals of ability, integrity and efficiency with appropriate training or qualifications in law
- Ensure that the assessment of a candidate for judicial office should be made without any discrimination on irrelevant grounds, and involves consideration not only of his or her legal expertise and general professional abilities, but also of his or her social awareness and sensitivity and other personal qualities
- Ensure that members of the judiciary and members of the community each play appropriately defined roles in the selection of candidates suitable for judicial office
- Ensure that the selection criteria is made accessible to the general public and that all judicial vacancies are advertised
- Ensure that where an independent commission is constituted for the appointment of judges, its members are selected on the basis of their competence, experience and other relevant qualities, and that its non-judge members are selected from among outstanding jurists or citizens of acknowledged reputation and experience
- Provide a full complement of permanent judges
- Provide salaries, conditions of service and pensions that are commensurate with the status, dignity and responsibilities of judicial office
- Ensure that the power to discipline judges is vested in an authority which is independent of the legislature and executive; that disciplinary proceedings may be commenced only for serious misconduct; that a person who has suffered a wrong by reason of a judge's serious misconduct has a right to complain to the authority; and that the final decision of the authority is published.
- Ensure that a judge may be removed from office only for proved incapacity, conviction of a serious crime, gross incompetence, or conduct that is manifestly contrary to the independence, impartiality and integrity of the judiciary
- Provide the judiciary with the financial and other resources required to perform its functions (including the training of judges) efficiently and without

an excessive workload, and ensure that the budget of the judiciary is established in collaboration with the judiciary, and is thereafter administered by the judiciary or under its control.

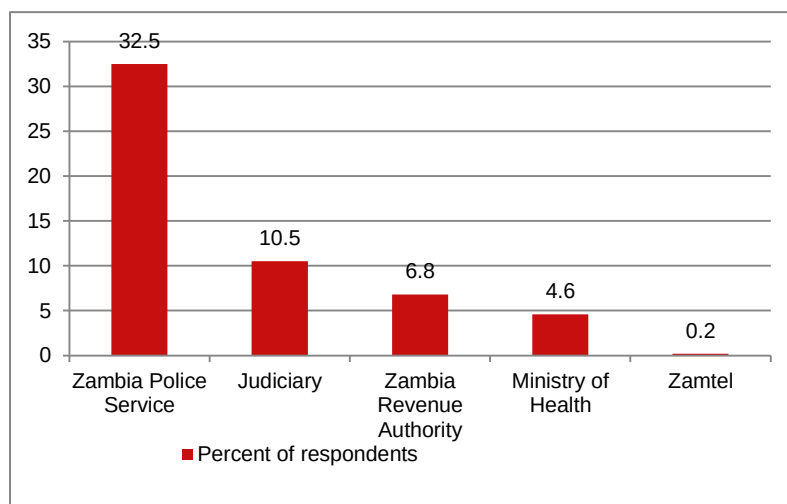
On 23-24 January 2010, the Good Governance Programme of GTZ Zambia, together with UNDP and UNODC, organised a Regional Workshop on Judicial Integrity in Africa. The workshop, which was addressed by Chief Justices and Senior Justices from Australia, Egypt, France, Georgia, Germany, Indonesia, Nigeria, South Africa, Sri Lanka, Tanzania, Uganda and the United Kingdom, examined integrity based judicial reform efforts and lessons to be learned and good practices that could be extracted.

#### Judicial Integrity in Zambia

The justice system in Zambia exhibits some of the typical deficits that are mentioned above. For example, not every member of the judiciary is a professional lawyer. The lack of legal education is especially evident in local courts in which the presiding officer usually has only knowledge of customary law. It is to these local courts that the majority of Zambian citizens go to resolve their disputes, perhaps because of their less formal procedures. Low remuneration, ties to family or interest groups, and corruption are additional deficits that characterise the Zambian justice sector.

According to the "Bribe Payers Index" published by Transparency International Zambia in July 2010, the judiciary is among the most corrupt institutions in the country. Asked which Zambian institution demands bribes most frequently, the respondents of the survey ranked the judiciary 4th out of 17 institutions. In respect of the amount of the bribe demanded, the study observed that the judiciary was at the 2nd place. As the diagram below shows, 32.5 % of the 961 respondents replied that the Zambia Police Service asked for the largest bribes, followed by the Judiciary (10.5 %), the Zambia Revenue Authority (6.8 %) and the Ministry of Health (4.6 %). At Zamtel, corruption was not a significant problem.

The effect of corruption on business is demonstrated in the Zambia National Governance Baseline Survey. 63 % of the businesses surveyed saw it as a very serious obstacle for using the courts in Zambia.



Institutions demanding the largest bribes



## What Measures has Zambia Taken to Achieve Judicial Integrity?

In recent years, Zambia has taken some measures to address these problems. For example, on 7th September 2007, Zambia ratified the UN Convention Against Corruption. However, the implementation measures have yet to emerge.

The Judicial Code of Conduct Act was enacted by the Zambian Parliament in 1999. It contains several provisions that subsequently found their way into the Bangalore Principles. However, in at least three respects, the Zambian Code falls short of contemporary international standards. Firstly, as the United Nations has requested, a code of judicial conduct should be a product of the national judiciary, not of an act of parliament. It is intended to be a self-regulatory mechanism of the judiciary. Secondly, the Zambian Code is not founded on the six core judicial values or on the principles derived from them. A consequence of omitting these core judicial values appears to be, for instance, that the significance of ensuring that the judiciary is not subjected to influence or pressure from the executive or legislative branches of government is not recognised in the Zambian Code. Thirdly, the Judicial Complaints Authority, which parlia-

ment has established by law, has the appearance of a disciplinary body. But conduct that gives rise to disciplinary sanctions must be distinguished from a failure to observe professional standards. The Judicial Integrity Group has recommended that the judiciary should establish an ethics advisory committee and an ethics review committee to implement a code of judicial conduct.

In 2009, the Zambian Government launched an "Access to Justice Programme" which aims at easier access to justice for all, including the poor and the vulnerable, women and children. Its immediate objectives are, inter alia, to increase the competence and motivation of personnel in justice institutions and agencies by carrying out training programmes, to improve communication, cooperation and coordination among justice institutions and other stakeholders, to provide an improved legislative framework affecting the administration of justice, and to re-organise record keeping and information management within and across the justice institutions. These are in accord with some of the measures recommended by the Judicial Integrity Group to give effect to the Bangalore Principles, but they require committed and consistent implementation.



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