

**APPLICABILITY OF THE BANGALORE PRINCIPLES TO THE UGANDAN
JUDICIARY AS A TOOL FOR IMPROVING JUDICIAL ETHICS AND
ACCOUNTABILITY.**

**A paper Presented by Hon. Justice (Rtd) James Ogoola at the 21st Annual
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Background:

The history to the formulation of the Bangalore Principles can be traced from the Judicial Group on Strengthening Judicial Integrity, or the Judicial Integrity Group (JIG) as this body came to be known. JIG was an independent, autonomous, non-profit and voluntary entity, owned and driven by its members, all of whom were (or had been) heads of the judiciary or senior judges in their respective countries or at the regional or international level, enjoying independence from the Executive, and who shared common values and beliefs on the integrity of the judiciary and a determination to deepen and broaden the quality of the administration of justice in appropriate ways.

The Judicial Integrity Group was formed in early 2000 following discussions, initiated by Nihal Jayawickrama and Jeremy Pope in the context of their then-involvement with the Centre for Research and Innovation of Transparency International with eight Chief Justices from four African countries of Nigeria, Uganda, Tanzania and South Africa, and four Asian countries of Sri Lanka, Bangladesh, Nepal and Karnataka State in India. The Chief Justices met in Vienna under the auspices of the UN Global Programme.

The Bangalore Principles of Judicial Conduct

The Group recognized at the outset the need for a universally acceptable statement of principles of judicial conduct. Such a statement would explain the ethical aspects of appropriate conduct to judges, encourage informed public

understanding of the judicial system, and inspire public confidence in the integrity of the judiciary. An initial draft based on a survey of existing national codes in common law countries was prepared by the Coordinator. At its second meeting held in Bangalore, the Group agreed upon the text of the document that came to be known as the Draft Bangalore Code of Judicial Conduct. Over the next twenty months, the Bangalore Draft was widely disseminated among senior judges of both common law and civil law systems, and discussed at several conferences at which chief justices and other senior judges were present.

On the initiative of the American Bar Association's CEELI offices, the Bangalore Draft was translated into the national languages of Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Kosovo, Romania, Serbia and Slovakia, and then reviewed by judges, judges' associations and constitutional and supreme courts of these countries. A significant contribution towards its evolving form was made by the Consultative Council of European Judges. That body, which functioned within the Council of Europe and represented at that time the judicial systems of 30 European countries, commissioned an expert study of the Bangalore Draft. Thereafter, at a meeting to which the Coordinator of the Group and the UN Special Rapporteur on the Independence of Judges and Lawyers were invited, conducted a full and frank discussion from the perspective of the civil law system, and then adopted a comprehensive report on specific provisions of the draft.

In the light of the comments and criticisms received – and in order to ensure that the final document faithfully reflected the position of civil law jurisdictions - the Bangalore Draft was revised and placed before a Round-Table Meeting of Chief Justices drawn principally from the civil law system, which was held at the Peace Palace at The Hague. Several judges of the International Court of Justice also participated at this meeting. The final draft that emerged from this meeting – **the Bangalore Principles of Judicial Conduct** – was translated into Russian, Chinese, French, Spanish and Arabic and annexed to the report

presented to the 59th Session of the Commission on Human Rights in April 2003 by the UN Special Rapporteur on the Independence of Judges and Lawyers. The Commission, by a resolution adopted without dissent, noted the **Bangalore Principles of Judicial Conduct** and brought those Principles “to the attention of Member States, the relevant United Nations organs and intergovernmental and non-governmental organizations for their consideration”.

In July 2006, the Economic and Social Council of the United Nations (ECOSOC) adopted a resolution recommended to it by the UN Commission on Crime Prevention and Criminal Justice in which it recognized the **Bangalore Principles of Judicial Conduct** as representing a further development of, and as being complementary to, the UN Basic Principles on the Independence of the Judiciary 1985. Accordingly, ECOSOC invited Member States to encourage their judiciaries to take into consideration the Bangalore Principles when reviewing or developing rules with respect to the professional and ethical conduct of members of the judiciary.

Application of the Principles:

The **Bangalore Principles** have since been used as a useful basis for the development of domestic standards and rules governing the professional conduct of judges. Many States regarded the guidance contained in the Principles as a valuable tool for strengthening the independence, impartiality, integrity, propriety, competence and diligence of judges, as well as to ensure equality of treatment for all before the courts.

In July 2007, ECOSOC adopted a further resolution recommended to it by the UN Commission on Crime Prevention and Criminal Justice in which it noted with appreciation the report of the Secretary-General on strengthening basic principles of judicial conduct, in particular the progress reported by several Member States on the implementation of the *Bangalore Principles of Judicial Conduct*, and invited Member States, consistent with their domestic legal

systems, to continue 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.

Why the Principles:

The above background to the formulation of the Bangalore Principles in summary justifies the existence of the principles. Of Importance to note however is that the Principles are intended to establish standards for ethical conduct of judges as they are designed to provide guidance to the judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the Executive, Legislature, Lawyers and the Public in general to better understand and support the judiciary.

Overall, the principles presuppose that judges are accountable for their conduct to the appropriate institutions established to maintain judicial standards, which are themselves independent and impartial and are intended to supplement and not derogate from rules of law and conduct which bind the Judge.

Summary of the Principles:

The principles are six in total highlighting the basic components intended to regulate the general conduct of a Judge. The discussion below gives a highlight of the principles and the respective commentary/application on each principle.

a) Independence:

For a trial to be said to be free and fair, a judge must exercise the highest degree of judicial independence. The independence exemplified should be both at individual and Institutional level. The independence of the Judge extends to:

- A judge's assessment of the facts of each case free from any extraneous influences, inducements, pressures or threats of interference.

- Independent of the society in which the judge operates and the parties to the dispute.
- Independent from the Executive and Legislative branches of government whether by inappropriate connection or influence.
- Independent of Judicial colleagues in respect of decisions which the judge is obliged to make independently.
- Exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary.

Application:

Judicial Independence in this case is not a prerogative of the individual Judge. It is a responsibility imposed on each judge that enables him/her to adjudicate disputes honestly and impartially on the basis of the law and the evidence without external pressure or influence and without fear of interference from any one. The core of the principle of judicial independence is the complete liberty of the judge to hear and decide the cases that come before them without any extraneous interference.

The concept of judicial independence is quite often confused with the concept of impartiality as they seem to be closely related. Impartiality refers to the state of the mind or attitude of the court in relation to the issues and the parties in a case before the court. Impartiality connotes the absence of bias, actual or perceived while 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.

b) Impartiality:

Impartiality refers to the process by which a decision is made or arrived at. A judge is expected to perform his/her duties without favour, bias or prejudice and that his/her conduct both in and out of court maintains

and enhances the confidence of the public, the legal profession and litigants.

A judge shall not knowingly while proceedings are before or could come before the judge make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process nor shall the judge make any comment in public or otherwise that might affect the fair trial of any issue.

Where necessary, a judge shall disqualify himself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially.

Application:

Impartiality is the fundamental quality required of a judge and the core attribute of the judiciary. Impartiality must exist both as a matter of fact and as a matter of reasonable perception. If partiality is reasonably perceived, that perception is likely to leave a sense of grievance and of injustice thereby destroying the confidence in the judicial system. The perception of impartiality is measured by the standard of a reasonable observer. The perception that a judge is not impartial may arise in a number of ways for instance through a perceived conflict of interest, the judge's behavior on the bench or his or her associations and activities outside the court. Consequently, where any judge is legitimately perceived to be impartial, he/she must withdraw.

Impartiality is not only concerned with the actual absence of bias and prejudice, but also with the perception of their absence. This dual aspect is captured in the often repeated words that **justice must not only be done but must manifestly be seen to be done**. The test usually adopted is whether a reasonable observer viewing the matter realistically and practically would or might apprehend a lack of impartiality in the

judge. Whether there is an apprehension of bias is to be assessed from the point of view of a reasonable observer.

c) Integrity

In common parlance, a judge should ensure that his or her conduct is above reproach in the view of a reasonable observer. The behavior and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. It is generally the attribute of rectitude and righteousness, honesty and judicial morality.

Application:

A judge must maintain high standards in private as well as public life. The reason for this lies in the broad range of human experience and conduct upon which a judge may be called upon to pronounce judgment. A judge should not engage in activities that bring disrepute to the courts or the legal system. In attempting to strike the balance, the judge must consider whether in the eyes of a reasonable fair minded member of society, the proposed conduct is likely to call into question his or her integrity or diminish respect for him or her as a judge and if such conduct diminishes the dignity of the judge, then it should be avoided. Generally, the behavior and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Accordingly, the personal qualities, conduct and image that a judge projects affects the judicial system as a whole and consequently, the confidence that the public places in it. In effect, the conduct of a judge must be one which is above reproach as the public expects the conduct of a judge not to be one of an ordinary member of society.

d) Propriety:

A judge must avoid impropriety and appearance of impropriety in all the judge's activities. As a subject of constant public scrutiny, a judge must

accept personal restrictions that might be viewed as burdensome by ordinary citizens and should do so freely and willingly. The conduct of a judge should be one that is consistent with the judicial office for example, a judge should in his/her personal relations with individual members of the legal profession who practice in his court avoid situations which might reasonably give rise to the suspicion of favoritism or partiality.

Where any matter comes before a judge and there is a likelihood of the judge having a fiduciary or other interest in the matter, good conscience would demand that the judge recuses him/herself from the conduct of the matter.

However, subject to the proper performance of judicial duties, a judge may write, lecture, teach, serve as a member of an official body or government commission, committee or advisory body and participate in activities concerning the law, administration of justice or any such related matter. Note however that a judge shall not practice law while holding judicial office.

Application:

Propriety and the appearance of propriety, both professional and personal are essential elements of a judge's life. What matters is more not what a judge does or does not do but what others think the judge has done or might do.

The test for impropriety is whether the conduct of the judge compromises the ability of the judge to carry out judicial responsibilities with integrity, impartiality, independence and competence or whether it likely to create, in the mind of a reasonable member of society a perception that the judge's ability to carry out judicial responsibilities in that manner is impaired.

As a subject of public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should

do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office. Visits to places such as bars, clubs, gambling houses should not be frequent and if possible be avoided as such visits may be perceived by society as not befitting the status of a judge.

A judge and members of the judge's family shall neither ask for, nor accept any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.

e) Equality

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office. In the performance of his/her duties, a judge shall not by words or conduct manifest bias or prejudice towards any person or group of persons.

Application:

Fairness and equality of treatment have long been regarded as essential attributes of justice. Equality is not only fundamental but is a feature of judicial performance strongly linked to judicial impartiality.

A judge should avoid such acts that portray discrimination against a person or group of persons and this calls for having knowledge of the necessary legal regime that prohibit discrimination both domestically and internationally as all persons are equal before the law and every person who appears before the courts is entitled to a fair trial without any distinction whatsoever with regard to race, colour, sex, language, religion, political or other conviction, national or social origin, means, status or other circumstances.

It is therefore the duty of a judge not only to recognize and be familiar with cultural, racial and religious diversity but also to be free of bias or prejudice on any irrelevant grounds. Making comments, expressions, gestures or any such conduct that may reasonably be interpreted as showing insensitivity or disrespect should as much as possible be avoided. A judge should particularly be careful to ensure that his or her remarks do not have a racist overtone and that they do not even unintentionally offend minority groups in the community. All manner of people should be treated in a way that respects dignity and fundamental human rights.

f) Competence and Diligence

A judge shall devote the judge's professional activity to judicial duties which include not only the performance of judicial functions and responsibilities in court and the making of decisions but also other tasks relevant to the judicial office. He or she should be able to enhance the Judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties.

Keeping oneself informed of developments in new jurisprudence and international law is vital for the enhancement of one's skills. Above all, a judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and other court users whom the judge deals with in his official capacity.

Application:

Competence in the performance of judicial duties requires legal knowledge, skill, thoroughness and preparation. A judge's professional competence should be evident in the discharge of his or her duties. However, Judicial Competence may be diminished and compromised when a judge is debilitated by drugs or alcohol, or otherwise mentally or physically impaired.

Diligence requires one to consider matters soberly, impartially and act expeditiously. The ability to exhibit diligence in the performance of judicial duties depends on the burden of work, the adequacy of resources and the time for research, deliberation, writing and executing related judicial duties other than sitting in court. This therefore requires that a judge shall devote the Judge's professional activity to judicial duties which include not only the performance of the judicial functions and responsibilities in court and the making of decisions but also other tasks relevant to the judicial office or other court operations.

Overall, a judge is responsible for the hearing and disposal of their cases. This would require efficient management of their cases meaning prompt disposal of cases, proper record keeping, management of funds allocated for sessions and supervision of court staff. If the judge is not diligent in monitoring and disposing of cases, the resulting inefficiency will increase costs and undermine the administration of justice. Consequently, a judge should maintain professional competence in judicial administration and facilitate the performance of the administrative responsibilities of court.

Effect of the Bangalore Principles since their enactment

A court administration striving to guarantee the independence and professionalism of the court and judges requires attention to judicial ethics. Judicial ethics as a system of professional values and as an institutional instrument of judiciary is an integral part of court based on the principle of self-regulation. The powers entrusted to judges are strictly linked to the values of justice, truth and freedom. The standards of conduct applying to judges are the corollary of these values and a precondition for confidence in the administration of justice.

Norms of judicial ethics can be found both in national legal systems and in the documents of different international organizations/Stater. It is established by soft law as well as by binding law. Judicial ethics is the highest constitutional

ethics because the main principles of judicial conduct (independence, impartiality, integrity, equality, etc.) are legal principles established in the constitutions of different countries. The Interpretation of the provisions of article 126(1),(2)(a) and article 128 (1) and (2) of the 1995 Uganda Constitution as amended all point to the Ethical standard and accountability requirement of a judge as a judge has to do justice to all manner of people irrespective of their social or economic status and in doing so, a judge has to be independent and without any external interference.

Further, the Uganda Code of Judicial conduct reinforces the above Constitutional requirements and the Bangalore Principles of Judicial conduct for they are more or less a replica of the Bangalore Principles for Principle 1 of the Uganda Code of Judicial Conduct requires that a judicial officer has to be independent in the Execution his/her judicial function, be impartial (Principle 2), exercise the highest level of Integrity (Principle 3), avoid acts of impropriety (Principle 4), offer equal protection of the law (Principle 5) and above all be Competent and Diligent (Principle 6).

In the Baltic Journal of Law and Politics in which is discussed the Role of Judicial Ethics in Court Administration: from setting the objectives to practical implementation, Mindaugas Simons observes that the intentions in adopting the Bangalore Principles of Judicial Conduct were not only to establish standards for ethical conduct of judges but also to provide guidance to judges and to provide the judiciary with a framework for regulating judicial conduct. Like I observed earlier, the Principles are also aimed at assisting members of the Executive and the legislature branches, as well as lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct that bind the judge.

However, Greg Mayne (in his report:, Judicial integrity: the accountability gap in the Bangalore Principles) observes that the Bangalore Principles are primarily directed at judiciaries for implementation and enforcement, rather than the state. He further observes that the chief weakness of the Bangalore Principles lies in their enforcement, because they are not contained in a binding document under International law and it appears to offer guidance to members of the judiciary, rather than to set out directly enforceable standards of behavior, and therefore may not have a direct impact on improving judicial conduct.

From the above discussion, it is important to note that the Bangalore Principles offer guidance on the ethical requirement of a judicial officer as every judicial officer is expected to live to the requirements of the principles as set out the Bangalore Principles. You are therefore called upon as judicial officers to examine and asses yourselves as to whether you are living to these set standards.

Conclusion:

A Code of Judicial ethics is intended to clarify standards for ethical conduct of judges. The Code is designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct as the affirmation of principles of professional conduct for judges strengthens public confidence and allows better understanding of the role of the judge in the society.

It is therefore essential that judges, individually and collectively, respect and honour the judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.