

ANTI-CORRUPTION HELPDESK

PROVIDING ON-DEMAND RESEARCH TO HELP FIGHT CORRUPTION

CODES OF CONDUCT FOR JUDGES

QUERY

Could you please provide good practice examples of codes of conduct for judges?

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SUMMARY

Corruption in the judiciary seriously impedes effective prosecution of corruption cases – denying the accused and victims the right to a fair and impartial trial, fuelling impunity, and undermining the rule of law. Many countries have set out standards of ethical conduct to be expected by judges in codes of conduct that have been developed as a tool to strengthen judicial integrity and complement existing regulations.

The Bangalore Principles of Judicial Conduct, which were adopted by the Judicial Group on Strengthening Judicial Integrity and endorsed by several UN bodies¹, provide guidance for regulating judicial conduct and are widely recognised as an international standard of good practice. Most codes adopted in the last decade are structured around the six underlying values of the Bangalore principles, namely: independence, impartiality, integrity, propriety, equality, and competence and diligence.

The content of the various codes may be similar, but there are notable distinctions in the way these codes are implemented and enforced; some codes have a normative power (often in common law countries) whereas others are used as a guiding document for judges. Regardless of the enforcement mechanism, it is generally recognised that without training and buy-in, the codes have little impact on judicial conduct.



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¹ Namely, the Commission on Human Rights in 2004, as well as the Commission on Crime Prevention and Criminal Justice and the Economic and Social Commission in 2006.

1 JUDICIAL CORRUPTION AND ETHICAL STANDARDS

Judicial corruption seriously impedes effective prosecution of corruption cases, denying the accused and victims the right to a fair and impartial trial, fuelling impunity, and undermining the rule of law. Judicial corruption has many faces ranging from undue influence by the other branches of government or economic powers to bribery and fear of retribution, and nepotism in appointments or decision-making.

National and international anti-corruption legal instruments require well-functioning, independent and impartial judiciaries for enforcement. Article 11 of the United Nations Convention against Corruption states that,

Each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

The judiciary ought to be independent from outside influence – political or economic – to properly enforce the law. However, independence does not result in absolute freedom for judges “to behave as they please” (Transparency International 2007). “With independence comes responsibility” (Pepys 2007) and judges must uphold and promote the highest standards of integrity.

Ethical challenges for judges

Judges have a unique position in state systems; they are the “mouth of the law” and guardians of civil rights and liberties. They are thus confronted with particular corruption risks and ethical challenges. Moreover, the function of the judiciary has gone beyond dispute resolution since judges are increasingly called upon to address controversial social and moral issues

(Jayawickrama 2007). Given the significant powers of the function, the judge can be exposed to the risks of political interference in the judicial process and undue influence by the other branches of government, by peers or by economic powers. His or her decisions can be manipulated by bribes or fear of retribution. The main challenge addressed by codes of judicial conduct is the retention of public trust: the conduct of a judge, inside and outside court, needs to be irreproachable in order to inspire confidence among citizens – “a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen” (Bangalore Principles 2002).

Different approaches for the codification of ethical standards

Codes of conduct have been developed in recent years as a tool for promoting judicial integrity and raising standards of ethical conduct. As part of soft law approaches to judicial integrity, codes of conduct are valuable tools to define standards of ethical and appropriate behaviour. The overall purpose of a code of conduct is to:

- help judges solve questions of professional ethics
- inform the public about standard conduct
- provide the judiciary with standards against which to measure its performance
- provide protection to judges against accusations of misconduct (Cardenas, Chayer 2007)

Judges are considered civil servants and the judiciary is usually subject to codes of conduct for civil servants and public administration², which deal with issues of conflicts of interest, gifts and hospitality and post-employment, among others, when such a code exists. However, the specificity of the function of judges requires a unique framework including, for example, provisions regarding the conduct to be held in public and private life.

² See Helpdesk answers *Codes of Conduct for Public Officials and Members of Government* and *The Effectiveness of Codes of Conduct for Parliamentarians*

Despite the consensus over the necessity of ethical standards in the judiciary, codification of standards is not an obvious decision since most countries already regulate ethical standards in several binding documents (for example, statute of the judge, judicial oaths and a constitution, among others). Codes of conduct for judges are often integrated into a broader disciplinary structure and they are “self-regulatory codes” or guiding documents that are neither binding nor enforceable, as the sanctions applicable to judges for gross misconduct are most often found in the law or in professional statutes.

Codification has generally been a trend in common law systems where rules are unwritten and transmitted from generation to generation. In civil law systems where greater emphasis is on the judge’s compliance with the oath of office and fundamental texts, such as the constitution, codes of conduct have often been deemed unnecessary (Hikmet 2006). Some codes can have normative power, with non-compliance justifying a complaint and sanction, whereas others are simply used to guide judges and inform the public to improve its trust in the judiciary.

2 CONTENT, UNDERLYING VALUES AND THE BANGALORE PRINCIPLES

Content of codes of conduct for the judiciary

Codes of judicial conduct are often principle-based and structured around the Bangalore Principles of Judicial Conduct described below. While all codes are not organised identically, they usually contain a preamble and an implementation or conclusion section on top of the detailed principles. The preamble generally outlines the rationale behind the drafting and adoption of the codes and references legal provisions, both international and national. The concluding section, when applicable, indicates how the code should be implemented and which institution has the responsibility to review the code and give advice. Each section is usually divided

between the principle and the articles describing the application. Some codes complete the structure with explanatory comments and recommendations to help the interpretation of the code (such as in France, for example).

The Bangalore Principles for Judicial Conduct

Most recent codes of conduct are based on a set of core underlying principles derived from the Bangalore Principles of Judicial Conduct. These principles which were adopted by the Judicial Group on Strengthening Judicial Integrity and endorsed by the Commission on Human Rights in 2004, as well as by the Commission on Crime Prevention and Criminal Justice and the Economic and Social Commission in 2006, provide guidance for regulating judicial conduct and are widely recognised as an international standard of good practice.

The Bangalore principles are an exceptional tool because they were drafted by judges – not governments – for the judiciary to use as a self-regulation mechanism (Jayawickrama 2009). Based on existing codes and international instruments, as well as extensive consultation with judges from all legal traditions, the judicial integrity group identified six principles:

Independence

“Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial” (Bangalore Principles 2002). The Bangalore principles declare that a judge ought to be independent from the executive and legislative branches of government, from society in general and from other judges to avoid the possibility of undue influence. A judge should not only be independent but must appear to be independent to the observer. She or he needs to uphold and promote the highest standards and have a conscientious understanding of the law and potential influences.

Impartiality

A judge ought to perform his or her duties without bias or prejudice. Judicial impartiality applies both “to the decision itself [and] to the process by which the decision is made”, thus a judge must behave within the frame of what makes a trial free and fair, both in and outside the court. If a potential bias exists or a risk of conflicts of interest (due to, for example, the judge’s outside or past activities, family and personal relations, or economic interests), and another tribunal can be constituted, the judge must disqualify himself from participating in the case. To maintain public confidence in the institution, the judiciary ought to be, as well as appear to be, impartial in its processes and decisions. The judge, through his or her public and private conduct, ought to minimise the occasions that would lead to his or her disqualification, and they should restrain from making any comments publicly or privately that could affect the fairness of the trial.

Integrity

The Judicial Integrity Group defines integrity through honesty and judicial morality (Jayawickrama 2007).

To safeguard public faith in the judiciary, the judge’s conduct, inside and outside the court, needs to be irreproachable. The standards applied to a judge’s private and public life are far higher than what is expected of other citizens.

Propriety

Propriety refers, in this context, to the appropriateness of the judge’s conduct in public and private life. The principle of propriety guides the judge to act with caution and to accept certain restrictions. This principle encompasses mostly the private aspects of a judge’s life – advising him or her to not maintain close relationships with individual lawyers or members of the legal profession, to not use the judicial office to advance private interests, to avoid improper behaviour, to not accept gifts or share confidential information, among others. A judge shall not let his or her

personal relations affect their judgement.

Equality

Equal and fair treatment of every citizen is a cornerstone of justice and the rule of law. This requires the judge to be aware of and understand diversity in society – be it racial, cultural, social or religious, and to exclude any prejudice from his judgement. The judge should prevent court staff and lawyers from expressing or manifesting bias or to treat those who appear in court unequally (Jayawickrama 2007).

Competence and diligence

This section of the Bangalore principles deals with the specificity of judges’ professionalism. To perform his or her duties, the judge needs to understand the law and therefore ought to keep him or herself informed of relevant developments in international law, in particular with regards to human rights norms. The judge needs to receive appropriate training and should do his or her best to “maintain and enhance [his or her] knowledge, skills and personal qualities” (Bangalore Principles 2002).

3 IMPLEMENTATION AND ENFORCEMENT

The existence of a code of judicial conduct is not enough to ensure the integrity of an institution. To be effective, the code needs to be accompanied by an implementation and enforcement mechanism. Many codes of conduct are seen as self-regulatory codes or guiding documents and are neither binding nor enforceable. The underlying principle for this is judicial independence and the confidence in the judge’s ability to assess situations and risks. A balance needs to be found between the independence of the judiciary and the possibility of sanctioning misconduct. The Consultative Council of European Judges reminds that the “need for caution in the recognition of [criminal, civil and disciplinary liabilities] arises from the need to maintain judicial independence and freedom from undue pressure”.

Countries have adopted various approaches to enforcement. As the codification of ethical standards for the judiciary is a relatively new topic, there are very few resources that allow making an assessment of good practices in terms of the implementation and enforcement of such codes.

Enforcement mechanisms

An effective system typically involves setting up a credible independent complaints mechanism, protecting whistleblowers and establishing clear oversight structures and procedures (Jayawickrama 2007). One question that remains is with whom the disciplinary power should sit: if the responsibility of judicial oversight is placed outside the judiciary, there is a risk of political interference jeopardising judicial independence, however, a system putting the disciplinary power in the hands of the judiciary itself might be hesitant to prosecute peers (Cardenas, Chayer 2007). More generally, experts criticise ethical standards and disciplinary mechanisms for being “weak, politicized, and lacking transparency, or too focused on the private life of judges” (Due Process of Law Foundation 2007).

A recent study by the United Nations Office on Drugs and Crime (UNODC) indicates that there are notable differences between countries with common and civil law traditions in terms of enforcement approaches.

At the state level in the US, the investigative and prosecuting powers lay with judicial conduct organisations composed of judges, attorneys and citizens. Citizens have a right to complain directly to these organisations and the disciplinary activities can be made public. At the federal level, citizens can file a complaint to a competent court of appeals and, if admissible, the complaint will go to a committee of judges appointed by the chief judge of the court.

In civil law countries, the disciplinary initiative and the disciplinary power can lay with the same entity (such as in Austria) or with different ones (such as

in France and Italy). The judging panels can be composed of judges exclusively (such as in Austria and Germany) or combine judges and “lay members” (such as in France and Italy). In civil law countries, citizens have a minor or inexistent role to play in judicial discipline (UNODC 2011).

Sanctions can range from reprimand, censure and suspension to removal from office and can be of financial nature – for example, fines, reduction of salary, and lowering of rank or of seniority (UNODC 2011).

Advisory councils

The *Measures for the Effective Implementation of the Bangalore Principles on Judicial Conduct* encourages the judiciary to establish a judicial ethics advisory committee to deal with unanswered questions and to advise judges that are in doubt about the propriety of their conduct. These advisory committees should be composed of sitting and/or retired judges. Many jurisdictions have created such bodies – for example, most of the US states have their own advisory committee; in France the *Conseil Supérieur de la Magistrature* (Superior Council of Magistrates) plays the advisory role; in the UK there is a standing committee in charge of regularly reviewing the guide and dealing with issues not addressed by the guide.

Training

The *Measures for the Effective Implementation of the Bangalore Principles on Judicial Conduct* not only encourage jurisdictions to adopt a code of judicial conduct but urge them to disseminate the code among judges and citizens. Training of judges and court staff on international law and standards, court management and administration, and judicial ethics is key to ensuring a well-functioning, independent and impartial judiciary, operating in accordance with ethical standards (Yang, Ehrichs 2007).

Media and CSOs

The issue of judicial transparency comes hand in hand with the emergence of codes of conduct and the media, as well as civil society organisations, have a role to play through scrutinising the system and monitoring the procedures and reforms.

The media plays a central role in combating judicial corruption through informing the public and exposing corruption cases. As such, the media can be considered a complementary safeguard to disciplinary enforcement of the codes through public exposure of misconduct. Therefore, journalists ought to be trained and equipped with the knowledge and skills to deal effectively with issues of judicial corruption (Due Process of Law Foundation 2007). Codes of conduct help educate both journalists and citizens about what should be expected of the judiciary.

Traditionally, the judiciary is not the most transparent branch of government and judges “speak only through their rulings” (Due Process of Law Foundation 2007). Nowadays, more and more judges make press statements and express themselves publically, which contributes to building a bridge between the institution and the public and to reaffirm citizens’ trust. Furthermore, there needs to be a balance between the confidentiality essential to the function and judges’ freedom of speech.

4 EXAMPLES OF CODES OF CONDUCT

Model codes of judicial conduct

Model codes have been developed in certain regions or federal states with the objective of standardising codes of judicial conduct while building on local experiences (XIII Latin American Judicial Summit 2006).

American Bar Association

The US has a long tradition of codification of ethical

standards; the American Bar Association published its first *Canons of Ethical Conduct* in 1924. Its latest edition, entitled *Model Code of Judicial Conduct*, was published in 2010. This code was formulated to state the ethical obligations of those performing a judicial function and aim at unifying these obligations.

The *Model Code of Judicial Conduct* provides guidance and assists judges in maintaining the highest standards of judicial and personal conduct, and it serves as a basis for regulating judges’ conduct through disciplinary agencies. As opposed to more recent codes, the model code does not follow the structure of the Bangalore principles. It is divided into four canons: (1) “A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety”; (2) “A judge shall perform the duties of judicial office impartially, competently, and diligently”; (3) “A judge shall conduct the judge’s personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office”; (4) “A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the integrity, or impartiality of the judiciary”.

The model code is binding and enforceable. It is a model code and each state adopts its own rules based on it. In parallel, each state’s bar association has its own enforcement mechanisms through disciplinary proceedings (Duke University 2011). The American Bar Association stresses that “to carry out the regulatory task, a jurisdiction should have an adequately-funded judicial discipline and incapacity system” and that developed *Model Rules for Disciplinary Enforcement* should be a guiding resource for the local bar associations.

The American Bar Association’s *Model Code of Judicial Conduct* can be found [here](#).

Latin American code of judicial ethics

In the last decade, many Latin American countries have also developed codes of judicial ethics. In an attempt to unify the standards and strengthen the

voice for judicial ethics, the XIII Latin American Judicial Summit developed the Latin American Code of Judicial Ethics in 2006. This model code intends to reaffirm the institutional commitment to excellence and to strengthen the legitimacy of the judiciary in the region (XIII Latin American Judicial Summit 2006).

The Latin American code incorporates the categories put forward by the Bangalore principles, with some additional sections: (1) Independence; (2) Impartiality; (3) Motivation and grounds; (4) Knowledge and skills; (5) Justice and equality; (6) Institutional responsibility; (7) Courtesy; (8) Integrity; (9) Transparency; (10) Professional secrecy; (11) Caution; (12) Diligence; (13) Professional honesty.

In terms of enforcement, there are several models for judicial discipline in Latin America. Some countries have conferred disciplinary authority to their respective judicial council whereas others leave the disciplinary powers in the hands of the judiciary (Cardenas, Chayer 2007). Further, some countries have opted to establish ad hoc courts of judicial ethics which are competent to judge violations of the code of conduct while, elsewhere, these courts can only declare the fault and leave the prosecution to customary disciplinary bodies (XIII Latin American Judicial Summit 2006).

Country examples of codes of conduct for judges

As mentioned previously, the Bangalore principles serve as an international standard of good practice and states tend to adhere to its structure. There are, however, different approaches to the implementation of codes of conduct – codes can have a normative power, stating that non-compliance justifies a complaint and sanction (such as in South Africa and the US), whereas others are simply used to guide judges and inform the public to improve its trust in the judiciary (such as in France). The UK occupies middle ground as its code declares itself a guiding document despite the fact that it mentions the Office of Judicial Complaints.

Countries with enforceable codes

Kenya

The Judicial Service Code of Conduct and Ethics of Kenya, established in 2003, went through a review of its compliance with the Bangalore principles in 2011, and its poor result motivated the government to reform its code of conduct, in the framework of broader institutional reform following the adoption of the new Kenyan Constitution in 2010. This example is interesting because it demonstrates that the Bangalore principles have become the benchmark for an all-embracing code of judicial conduct.

The Kenyan code is not principle-based and does not follow the six core values of the Bangalore principles. Thus, some essential provisions have been omitted (Jayawickrama 2011). Judicial independence is not sufficiently guaranteed and there is no provision safeguarding the judiciary from the influence of the other branches of government. The code does not clearly state that a judge shall act without bias nor does it provide sufficient safeguards against conflicts of interest. Another important aspect of a code of judicial conduct that is neglected in the Kenyan code is “propriety” and the judge’s behaviour outside court. Kenya currently has a disciplinary mechanism tied to its code but it lacks independence from the executive power (Transparency International 2007).

The Judicial Service Code of Conduct and Ethics of Kenya and its review can be found [here](#).

South Africa

For more than a decade, South Africa has been engaged in aligning the countries’ institutions with the new post-apartheid Constitution (February 2007) and one of the provision of the Constitution is that a judicial accountability framework be created with a clear complaints mechanism of which the Code of Judicial Conduct is a result (Parliamentary Monitoring Group 2011).

The fact that the South African code derives from constitutional provisions gives it more weight than in

many other countries. South Africa has proven to have, at least on paper, one of the strongest enforcement frameworks in the world. The South African code, which was adopted in 2010, states in its preamble the mandatory aspect of the code, indicating that the Parliament approved a “Code of Judicial Conduct for Judges that judges must adhere to”. The South African code declares that any wilful or gross breach of the code is considered misconduct and is a ground for filing a complaint. Anyone is allowed to file a complaint against a judge and a police station is referred as the place to do so (Parliamentary Monitoring Group 2011).

The South African code is based on the Bangalore principles and is structured around the same values. The code also prevents judges from having any political affiliation, provides safeguards from conflicts of interest, advises the judge on adequate behaviour inside and outside court, and contains provisions on disclosure of assets. It states that judges need to remain informed and that “the multi-cultural nature of South African society calls for special sensitivity”. The code encourages judges to “blow the whistle” and report any misconduct they witness.

The South African Code of Judicial Conduct can be found [here](#).

Countries with self-regulatory codes

France

France adopted its Compendium of the Judiciary’s Ethical Obligations in 2010 with the aim of shedding light on the way the institution functions and how it should exercise its power, as well as to reaffirm public confidence in its judicial system. This compendium is a good example of a very comprehensive guide to support judges, since it provides comments and recommendations to facilitate the interpretation of the principles that follow the structure and spirit of the Bangalore principles.

The Parliament called for the adoption of a compendium and not for a code, which reflects both

the will to not “freeze the content of rules” and the reluctance to constitute a disciplinary code and give it normative power. This compendium is a guide for judges and prosecutors, as well as an initiative to build public trust. It provides guidance on gifts and hospitality, activities outside the court, and conflicts of interest – taking up some of the regulations to be found in the law framing the statute of magistrates. It advises judges to refrain from inappropriate relations with representatives of other branches of government and from taking on commitments (religious and political, among others.) that subject them to constraints other than the French law. It contains provisions regarding geographic mobility of the judiciary as a token of independence and encourages judges to pursue continuous education and training.

The French Compendium of Ethical Obligations can be found [here](#).

United Kingdom

In 2004, the UK published its Guide to Judicial Conduct. Much like the French compendium, the British guide is not designed to be a code associated with disciplinary sanctions. An Office for Judicial Complaints was, however, set up in 2006 to investigate complaints about judicial conduct, and in 2009 to 2012, 87 sanctions were imposed on the UK’s judiciary. The local chapter of Transparency International states that “the UK is robust in upholding the integrity of the judiciary in both principle and practice”. The guide clearly states that it must be read in conjunction with the judiciary’s Terms and Conditions of Appointment.

The UK guide lists the Bangalore principles as a reference document and uses all the categories set out by the latter. The guide cites the judicial oath³ and includes a section on the judge’s activities outside court, after retirement and a couple of paragraphs on the Office for Judicial Complaints. It covers the issues of conflicts of interest, personal integrity, and gifts and hospitality. The guide states

³ “I will do right to all manner of people after the laws and usages of this Realm, without fear or favour, affection or ill-will.”

that a judge should be immune to publicity and opinions expressed in the media and should refrain from participating in political activities and demonstrations. In the UK, a judge should disqualify himself if he or she has personal or financial relations with a party or if he or she holds and is known to hold strong views on a topic relevant to the case, but should however not be influenced to disqualify himself by a party to a case. The guide contains a whole section on activities outside the court, guiding judges' conduct with the media, in public debate and in commercial activities, among others.

To ensure the relevance of the *Guide*, the Judges' Council created a Standing Committee to maintain the Guide under scrutiny and deal with any unresolved issue.

The UK's Guide to Judicial Conduct can be found [here](#).

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