



Pacific Judicial Development Programme

TOOLKIT FOR REVIEW OF GUIDANCE ON JUDICIAL CONDUCT

September 2014





The information in this publication may be reproduced with suitable acknowledgement.

Toolkits are evolving and changes may be made in future versions. For the latest version of the Toolkits refer to the website - <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>.

Note: While every effort has been made to produce informative and educative tools, the applicability of these may vary depending on country and regional circumstances.

Published in September 2014. © New Zealand Ministry of Foreign Affairs and Trade.

Prepared by Kerin Pillans for the Federal Court of Australia.

Enquiries:

Federal Court of Australia
Locked Bag A6000, Sydney
Australia, NSW 1235

Email pjdp@fedcourt.gov.au

Web <http://www.fedcourt.gov.au/pjdp>



PJDP TOOLKITS

Introduction

For over a decade, the Pacific Judicial Development Programme (PJDP) has supported a range of judicial and court development activities in partner courts across the Pacific. These activities have focused on regional judicial leadership meetings and networks, capacity-building and training, and pilot projects to address the local needs of courts in Pacific Island Countries (PICs).

Toolkits

Since mid-2013, PJDP has launched a collection of toolkits for the ongoing development of courts in the region. These toolkits aim to support partner courts to implement their development activities at the local level by providing information and practical guidance on what to do. These toolkits include:

- Judges' Orientation Toolkit
- Annual Court Reporting Toolkit
- ***Toolkit for Review of Guidance on Judicial Conduct***
- National Judicial Development Committee Toolkit
- Family Violence and Youth Justice Project Workshop Toolkit
- Time Goals Toolkit
- Access to Justice Assessment Toolkit
- Trainer's Toolkit: Designing, Delivering and Evaluating Training Programs

These toolkits are designed to support change by promoting the local use, management, ownership and sustainability of judicial development in PICs across the region. By developing and making available these resources, PJDP aims to build local capacity to enable partner courts to address local needs and reduce reliance on external donor and adviser support.

Use and support

These toolkits are available on-line for the use of partner courts at <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>. We hope that partner courts will use these toolkits as / when required. Should you need any additional assistance, please contact us at: pjdp@fedcourt.gov.au

Your feedback

We also invite partner courts to provide feedback and suggestions for continual improvement.

Dr. Livingston Armytage
Team Leader,
Pacific Judicial Development Programme

September 2014

PREFACE

In 2011, with the aim of developing individual understanding and awareness of the ethical principles and strengthening the integrity of the judiciary as whole, Pacific judiciaries resolved to ensure that every judge has access to simple, clear and relevant guidance on conduct in his or her own language. This toolkit is intended to help your judiciary to achieve that. It describes the processes of reviewing existing guidance, developing new guidance and planning training to introduce new guidance. It discusses some of the issues which may arise along the way.

But, who is to conduct the work? We cannot tell you who that should be, because as an independent entity, your judiciary must be responsible for its own organisation, training and development. In some small jurisdictions the largest part of that responsibility will fall on the Chief Justice with the support of other judges or administrative staff. It may well be necessary for the task of revision to be delegated. The important thing is that judicial independence is not compromised. Guidance on conduct is effective because the judiciary adopt it as a statement of the principles according to which they, individually and collectively, should conduct themselves. It is for the judiciary concerned to determine the process for adopting the finished guidance.

Whether you are a Chief Justice or someone delegated to co-ordinate the process of revising your jurisdiction's guidance on conduct, we hope you will find some of the 'tools' in this toolkit useful.

We believe that you and those of your judiciary who participate in the revision process will find it a rewarding exercise. Judges spend a great deal of their working lives working alone; revising your guidance on conduct will provide an opportunity to collaborate with your judicial colleagues.

PJDP 2012

TABLE OF CONTENTS

1	Introduction	1
1.1	Why?	1
1.2	What is the point of guidance on conduct?	2
1.3	What do we mean by a toolkit?	2
1.4	How to use the toolkit?	3
2	Overview of toolkit	4
3	Preliminary matters	5
3.1	Should we use the word 'code'? What's in a name?	5
3.2	Ground rules for the review process	7
4	Planning the process	9
5	The stages in the process	12
5.1	Is our current guidance good enough?	12
5.2	Talking to non-judicial stakeholders	15
5.3	Workshops with judges	16
5.4	Drafting your guidelines	17
5.5	Translation	19
5.6	Publication	20
6	Identifying country specific materials	21
6.1	A checklist of the local materials you will need to find	21
7	Reference and resource materials	22
7.1	An Introduction to The Bangalore Principles	22
7.2	What to do in workshops - planning in more detail	24
7.3	Drafting tips	34
7.4	Useful references	37
8	For the future	39
8.1	Training on guidance	39
8.2	Should your jurisdiction have a complaints procedure?	40
8.3	Keeping guidance under review	46
Additional Documentation - http://www.fedcourt.gov.au/pjdp/pjdp-toolkits/PJDP-Codes-of-Judicial-Conduct-CoJC-Toolkit-AD.pdf		
Annex 1	Bangalore Principles	A-1
Annex 2	Measures of the effective Implementation of the principles	A-7
Annex 3	Example Codes from Niue Kiribati and Tuvalu	A-18
Annex 4	Example of training materials	A-34

ABBREVIATIONS

- CJs - Chief Justices
- CoJC - Code of Judicial Conduct
- ICCPR - International Convention on Civil and Political Rights
- JIG - Judicial Integrity Group
- MFAT - New Zealand Ministry of Foreign Affairs and Trade
- MSC - Managing Services Contractor - Federal Court of Australia
- NGO - Non-Government Organisation
- NJDC - National Judicial Development Committee
- PEC - Programme Executive Committee
- PIC - Pacific Island Country
- PJDP - Pacific Judicial Development Programme ('Programme')
- RTT - Regional Training Team

INTRODUCTION

1.1 WHY?

In October 2011 the National Coordinators, the Programme Executive Committee (PEC) and 9 Chief Justices (CJs) adopted the following recommendations:

- 1. The project should encourage PICs to review their current guidance regarding judicial conduct with the aim of ensuring that every judge has access to simple and clear guidance in his own language which addresses the particular issues that he is likely to encounter. Particular consideration should be given to those judges at the lowest levels and in the subordinate courts. Where necessary the project should support:
 - a. the revision of codes, and*
 - b. the translation of codes into native language.**
- 2. The project should support and facilitate the provision of local training designed to explore and reinforce conduct guidelines. Priority being given to those judges at the lowest levels and in the subordinate courts. This training will need to be delivered in local language.*
- 3. The project should work with CJs to foster a sense of judicial community.*

The principal aim of this document is to help you address the first of those recommendations; however it includes some discussion of the opportunities you will have to incorporate training and development in the review process. The review process will provide an opportunity for members of your judiciary to come together and discuss what it means to be a judge and a member of the judicial community.

"Every judge has access to simple, clear and relevant guidance on conduct in his or her own language."

1.2 WHAT IS THE POINT OF GUIDANCE ON CONDUCT?

Most judges want to perform their duties well, and appropriate guidance can provide support, helping them to understand and fulfil their judicial role, building their confidence and their effectiveness in court. Guidance is likely to be most needed by those working in remote locations with few training or development opportunities and by newly appointed judges especially if they are not legally qualified¹. That is why the first recommendation set out above suggests that in formulating guidance particular regard should be paid to those judges working at the lowest levels and in the subordinate courts.

The Pacific Island Countries participating in PJDP have very different judiciaries. Some have a number of highly trained and experienced judges whereas others have only one or two legally qualified judges. In all but two PICs the judges of the lower courts are not legally qualified and in most countries geographic isolation has made training difficult and expensive to organise. These are just the circumstances in which guidance on conduct can be of most help.

Whilst the primary reason for formulating guidance on judicial conduct is to strengthen judicial integrity, there are additional benefits to be gained if the guidelines are made available to the public. By doing so the judiciary will earn the respect of the community, because it shows that the judiciary recognises that it must behave consistently and with integrity. By accepting that it should be accountable in this way the judiciary will safeguard its independence.

1.3 WHAT DO WE MEAN BY A TOOLKIT?

During 2011 the judiciaries of Niue, Tuvalu and Kiribati each developed and adopted a new code of judicial conduct (CoJC) with support provided by PJDP. The three codes are similar in that each is consistent with general principles set out in Bangalore² but each is different because it reflects the judiciary which developed it.

This toolkit aims to support your jurisdiction in the process of reviewing, and, if necessary, revising the guidance regarding conduct provided for your judiciary so as to fulfil the projects aims of ensuring that every judge has access to simple, clear and relevant guidance on conduct in his or her own language and that every judge receives training in relation to that guidance. It incorporates the experience gained in Niue, Tuvalu and Kiribati, together with examples and reference materials which you may find of use. There is today a wealth of material available via the internet but we are aware that not everyone has ready access to that resource.

We call this a toolkit because it describes various techniques (tools) which could be used to carry out a review of your existing guidance on conduct and if necessary revise it or draft new guidance. You won't need them all. It is for you to choose which suit your purpose depending on the problems or challenges you face.

In assembling this we are mindful that not everyone who leads a review of guidance on conduct will necessarily be a judge or have had the opportunity to consider guidance on conduct in great depth prior to embarking on the present exercise. Therefore we have tried to identify and explain the principal issues and

¹ It could be argued that there is little point in setting out guidance on conduct for legally qualified judges because judges should know how to behave however there is evidence that in some parts of the world judiciaries are routinely corrupt and, where that is the case, it is often despite the existence of a Code of Conduct. Those judges know they are doing wrong and the way to address their behaviour is through criminal sanctions. (see *Corruption in the Judiciary*, Global Corruption Report 2007, Transparency International, available at:

http://www.transparency.org/whatwedo/pub/global_corruption_report_2007_corruption_and_judicial_systems).

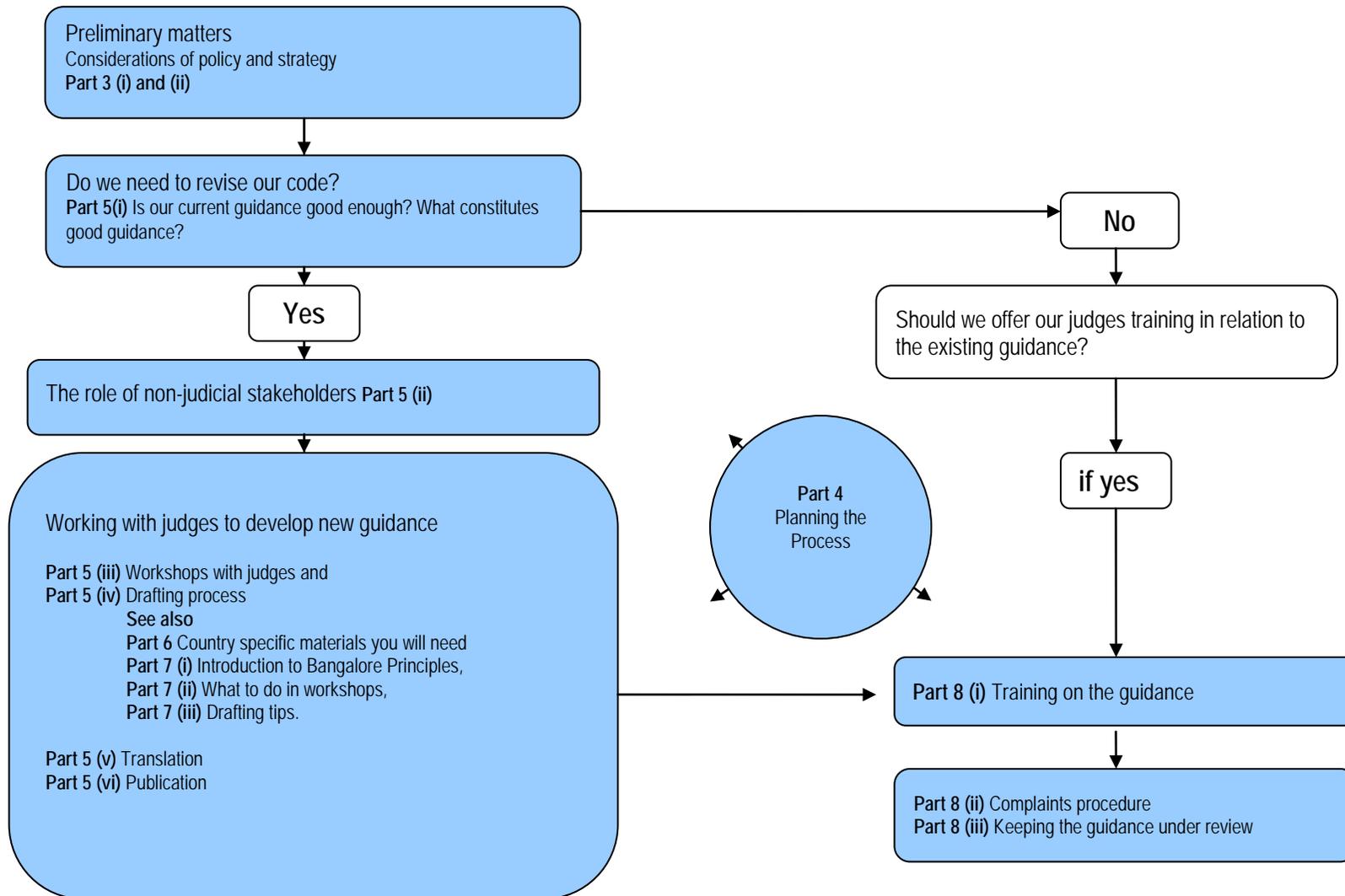
² You will find these three codes and the Bangalore Principles in the annexures.

indicate the considerations which will arise along the way. But, please bear in mind this is not an academic work, its aim is to provide only enough information for you to do the job at hand.

1.4 HOW TO USE THE TOOLKIT?

If you are reading this the chances are your jurisdiction is considering whether to revise its current guidance and you are either leading or involved with that revision. Please remember we don't know who you are or what your experience is. You may well be familiar with some of the concepts explained here. You won't necessarily need everything in the kit and you certainly don't need to have read and absorbed everything before you begin. Start with the overview; you will then have an idea of which materials will be of use to you and where it will be helpful to read in more depth.

2 OVERVIEW OF TOOLKIT



3 PRELIMINARY MATTERS

3.1 SHOULD WE USE THE WORD 'CODE'? WHAT'S IN A NAME?

*"What's in a name? That which we call a rose by any other name would smell as sweet."
Romeo and Juliet. Act II, Scene II. W. Shakespeare*

The principle of judicial independence means that judges cannot be bound except by law. Guidance on conduct, be it a code or otherwise, takes effect because the judiciary agrees to adopt it and to follow it.

So far we have drawn no distinction between 'Guidance on Conduct' and a 'Code of Conduct' and perhaps there is little material difference in practice. This is illustrated in the introduction to the United Kingdom Supreme Court Guide to Judicial Conduct (2009) in which the President of the Supreme Court³ says:

Every court should have a Code of Judicial Conduct that sets out the standards of ethical conduct to be expected of the Court. Such a Code serves a number of purposes. It provides guidance to the members of the Court. It informs those who use the Court of the standards that they can reasonably expect of its judges. It explains to members of the public how judges behave and should help to secure their respect and support for the judiciary. This Guide has been prepared by and for the Justices of the Supreme Court and has the approval and support of each of us.

Where a distinction is drawn the difference lies in the degree to which the subject is bound. In common usage guidance is understood to be advisory but not necessarily binding, whereas a code is generally regarded as binding even though, if in so far as it states principles, there may be room for discretion when it comes to their application. If we look to the dictionary definition⁴:

Guidance: *Advice or information aimed at resolving a problem or difficulty, especially as given by someone in authority.*

Code: *A systematic collection of laws or statutes - a set of conventions or moral principles governing behaviour in a particular sphere.*

The origin of the word code is explained as follows: *"Middle English: via Old French from Latin codex. The term originally denoted a systematic collection of statutes made by Justinian or another of the later Roman emperors."*

Does it matter?

Those with experience in civil law jurisdictions are more likely to regard the difference as material and the name chosen may affect the way in which the public expect the principles to apply. The section entitled "Preface / Purpose" in the New Zealand Guidelines for Judicial Conduct explains:

[2] The application of the principles in practice to circumstances as they arise every day is not always as clear cut as agreement on the general principles might suggest. The application of a principle may be novel or may be affected by changing community values. In some cases, whether the principle is engaged at all in the particular circumstances may be a matter of reasonable differences of view. In other cases there may be reasonable differences of opinion as to whether particular conduct by a judge affects the judicial function or whether it is private.

[3] For these reasons, the guidance provided in these statements and comments is not intended to be a code of conduct. It does not identify judicial misconduct. It is advice. The advice is designed

³ The Right Honourable Lord Phillips.

⁴ <http://oxforddictionaries.com>

to assist judges to make their own choices informed by a checklist of general principle and illustrations drawn from experience.

The preface / purpose goes on to explain that the guidelines are not intended to form the basis of disciplinary action against individual judges and that to use it for that purpose may undermine the independence of the judiciary.

[4] There is a further reason why a statement such as this should be seen as advisory only. A judge can be removed from office for gross misconduct by Parliament (in the case of judges of the High Court or Court of Appeal) or the responsible Minister (in the case of other judicial officers). These guidelines are not, however, principally concerned with the sort of misconduct which would justify removal from office. They are concerned with the promotion of higher standards of conduct. No system of discipline to impose and support a code of conduct for judicial officers exists in New Zealand or comparable jurisdictions for good reason. It would undermine the fundamental principle of judicial independence. The independence of the judiciary is essential to the balances in our constitutional arrangements. It is not a protection for judges. It is a protection for the people of New Zealand. It is secure only if each judge is free to decide cases impartially according to law, without external pressure and without fear of the consequences. A system of discipline according to a code of conduct, whether imposed by executive government or judicial self-regulation, is inconsistent with judicial independence.

What should you do?

It may be that the difference in choice of words is due to slightly different modern usage of the English language. English is used differently in the different parts of the world which have made it their own. In the Pacific jurisdictions any guidance or code is likely to be translated and it is unlikely that local language will allow direct translation of either term. In the end the choice is for you. If you chose "Code" you may wish to include a caveat similar to that in the Niuean code which states at the outset:

This code is issued for guidance of judges and to inform the people of Niue as to the role of the judges. These are guidelines only, not rules. It is for each judge to decide what the principles require in any given situation and different judges may properly interpret the requirements of the code differently.

In the Pacific a number of countries have used the term 'code' and the PJDP use the term 'code'. You may find the following list of titles used by non-Pacific countries of interest:

United Kingdom:	Guide to Judicial Conduct
New Zealand:	Guidelines for Judicial Conduct
Australia:	Guide to Judicial Conduct
United States:	Model Code of Judicial Conduct
Canada:	Guidelines
Kenya:	Code of Conduct
Namibia:	Code of Conduct
South Africa:	Code of Conduct for Magistrate

3.2 GROUND RULES FOR THE REVIEW PROCESS

In planning your review of guidance you will have to make decisions based on the practicalities and limitations of your particular situation. There will be balances to be determined and compromises to be made. The ground rules are matters which should guide you in the development of your plan. They are:

1. The review process should be inclusive;
2. The review process should constitute a judicial development activity (*i.e. be equivalent to a training exercise*), and
3. The review process should respect judicial independence.

Inclusivity

This means you should include as many of your judiciary as is reasonably possible and, at the very least, a representative proportion of your judiciary. The principle aim of the exercise is to *ensure that every judge has access to simple, clear and relevant guidance on conduct in his or her own language*. Therefore the review process should involve as many judges as possible, so as to:

- ensure that the language used is appropriate, and that
- the examples given are realistic and representative of the experience of the judges to whom the advice is directed.

Inclusivity extends beyond the judiciary to other stakeholders. Court users should clearly be included, but everyone has an interest in the fair administration of the law so your consultations may include other representative groups. Judicial independence must be respected and this limits the role stakeholders can play in the process. Their observations can be helpful in understanding how the judiciary is perceived and particularly in identifying specific issues which may need to be addressed in examples. The time to consult stakeholders is before you embark on workshops so that your workshops can be informed by what you have learnt and you can put issues raised to the judges. By including stakeholders in the process you will further PJDP's stated aim of *increasing public understanding of the judicial role*.

Consultations might include: the parties to civil disputes, defendants to criminal charges, prosecutors, defenders, the victims of crime, the public at large and organisations which represent groups within society or which promote the recognition of rights, such as court users groups, women's groups, rights workers.

What constitutes a representative proportion of the judiciary?

There can be no absolute answer to this. In the three jurisdictions which revised their guidance in 2011 the number of judges directly involved in the drafting process were as follows:

- Niue all 6 of 6 local judges = 100% + CJ Savage and visiting Judge Isaac (by email).
- Tuvalu 33 of 88 local judges = 38% + Senior Magistrate Afele Kitiona and CJ Sir Gordon Ward (by email).
- Kiribati 18 of 140 local judges = 13% + Senior Registrar Tetiro Semilota + Deputy Registrar + CJ Sir John Muria.

Niue is a small single island and it was therefore easy and inexpensive to bring the local judges together. Tuvalu has 88 local judges across 9 atolls as compared to Kiribati which has 140 judges spread over 32 atolls and 1 island. In Tuvalu inter-island travel is always by boat and sailings are subject to last minute changes making planning difficult. In Kiribati most atolls can be reached by small plane but once again timetables are subject to last minute changes.

In Niue most of the local judges had access to email and it was therefore possible to contact them between workshops. That was not the case in Tuvalu or Kiribati where contact with the High Court and central administration was usually mediated through a local court clerk.

You will have to decide how many of your judges can be involved depending on how many judges you have, where they are, local transport facilities and your means of communicating with them. You should be prepared to be flexible and creative!

The review process should constitute training in itself

For all but the most highly trained judges participation in a well designed workshop is likely to be a developmental experience. Workshops provide an opportunity to meet other judges and to discuss with them the values identified in Bangalore together with the principles and the application of those principles. Many judges will not have had the opportunity to investigate issues of conduct in any great depth and they are likely to find the experience useful. By including as many judges as possible in the process you will:

- *increase judges' awareness of the principles of judicial conduct, and to*
- *foster a sense of judicial community.*

Respect for Judicial Independence

Judges are independent; their conduct is governed only by the law and by their oath. Any guidance on conduct only takes effect because the judiciary voluntarily adopts it. Your approach should be to help the judiciary to develop its own guidance, by so doing you will demonstrate a respect for judicial independence. Furthermore you will be sure that there is genuine consensus as to the guidance and lay the foundations of a common understanding.

"The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution and laws of a country. It is the duty of all governments and other institutions to respect and observe the independence of the judiciary."

United Nations Basic Principles on the Independence of the Judiciary. ⁵

⁵ S/RES/40/32/of 29 November 1985

4 PLANNING THE PROCESS

Planning your own revision process is important because by thinking through what you are going to do, and discussing it with others involved, you will make the best use of the time and resources you have. We use the word 'resource' to describe anything you need to conduct the review and redrafting process, from people, to pens and paper, not forgetting money.

Before you start planning you will need to have a clear view of your aims and to have thought through everything you will need to do to achieve them. We have to start somewhere, so planning is discussed before we examine the stages in the review process. We suggest that you read this part and at least glance through the section entitled '**The stages in the process**' before you try to make any firm plans.

We appreciate that funding a review exercise is likely to be difficult since many Pacific judiciaries work on very limited budgets. You may be able to get support from PJDP either for the whole exercise or part of it through the Responsive Fund. If you are unsuccessful there it may be worth approaching other NGOs for sponsorship. It will help if you have a clear plan to show them.

When it comes to planning your workshops, by all means follow the example of workshops you have attended but don't be afraid to do something different if you think it will work better. Your aims will be different and the situation in which you deliver the workshop may be very different depending on how remote you are. You may well have to work with minimal equipment; a little flexibility and ingenuity will go a long way to make up for any want of state-of-the-art equipment and has the additional advantage of keeping your costs to a minimum.

Building a team

We are assuming that you are working either in the judiciary or in some capacity related to the court service or court administration and that your work in relation to initiating a review of guidance on conduct falls within your professional remit, (in other words your time is already paid for).

We recommend that you identify a team to work with you, and in building a team you will need to bear in mind the cost. Will the individuals you wish to involve require payment or reimbursement of expenses?

There is a lot to be said for a small team so focus on the skills you will need:

- legal training and experience
- drafting competence
- English, and
- local language
- knowledge and familiarity with the working of the local courts.

You will also need administrative support to organise the practical aspects of visits and workshops from travel to refreshments. Your existing court administration service may well be able to provide this.

We hope you can identify a small team from within your jurisdiction who together have the necessary skills. If that is not possible you may need to ask for support from outside. In Niue, Kiribati and Tuvalu the National Coordinator and the PJDP Adviser had, between them, the necessary skills. Administrative support was provided by the central court administration and, in remote locations in Kiribati and Tuvalu, by the local court clerk.

It might just be that a single individual possesses all the necessary skills but there is a lot to be said for two individuals working together. As a general rule workshops are more successful with two facilitators, and when it comes to drafting two people working together are sometimes better than one.

If you need additional support it may be that you can arrange for someone from a neighbouring Pacific jurisdiction to join your team or for one of the National Coordinators who has already been through the process to mentor you, even if only by email or Skype.

Getting started

You may find the following series of questions a useful check:

Step 1. Does our existing guidance need revision?

if Yes Go to Step 2
if No Go to Step 4

Step 2. Can our judges be easily brought together in one place?

if Yes Go to Step 5
if No Go to Step 3

Step 3. What is the minimum number of places we would have to visit in order to involve a representative proportion of our judiciary in the development exercise? Work out logistics of getting to them.

.....and Go to Step 6

Step 4. Do our judges need training development with respect to conduct matters?

if Yes Go to Step 2
if No No action is needed.

Step 5. Work out logistics of bringing judges together for workshop.

.....and Go to Step 6

Step 6. Plan your workshops: See sections 5(iii) Workshops with judges, 7(ii) What to do in workshops and 7(iii) Drafting tips.

Build team > establish clear aim for workshop activities > plan workshops > schedule workshops > notify participants > conduct workshops > prepare draft > refine > translate > publish.

You may find it helpful to tabulate the resources you will need and the costs you will incur. Your table might look something like this:

Resources	Explanatory notes	Estimate of cost where appropriate	Estimated Total Cost \$\$\$
National Coordinator	Is this work properly considered part of their existing role? Additional expenses if incurred. Usual <i>per diem</i> if absent from home over night.		\$
Full time salaried local judge	Is this work properly considered part of their professional role? Additional expenses Usual <i>per diem</i> if absent from home over night.		\$
Part-time local judges: paid only when required to work or attend training	It would be fair and reasonable to pay part-time workers for extra hours during which they are involved in the review process.	rates paid estimate hours of input (\$/hour x number of hours) N.B. Sometimes rates paid differ according to role. e.g. president of local court may be paid more.	\$
Travel fares - overnight expenses	e.g visits to outer islands or remote courts to conduct workshops / development sessions.	Ferry, plane overnight car or other local transport, food.	\$
Equipment for workshops Copies of documentation White board flip chart or 'poster' paper pens stapler clips to hang up 'posters' Reference materials Draft code (?) Refreshmentslist all documentation you will need to provide. e.g. Handouts such as the Bangalore Values.		\$ \$
Translation back-translation	note this requires two individuals see Section 5 (v).		\$
Printing and distribution			\$
Launch event			\$
Training events			\$
Publicity			\$

5 THE STAGES IN THE PROCESS

In this section we will look in more detail at the different steps in the process of reviewing and revising guidance on conduct. They are as follows:

- i. What guidance do judges need? Is our current guidance good enough? Does your existing guidance need revision?

And if you decide you need to draft new guidelines

- ii. Talking to non-judicial stakeholders
- iii. Workshops with judges
- iv. Drafting
- v. Translation
- vi. Publication.

5.1 IS OUR CURRENT GUIDANCE GOOD ENOUGH?

If your jurisdiction already provides guidance for its judiciary it is worth considering whether it could be improved. Perfectly good guidance may become dated if the language used is inappropriate or if the examples used are no longer relevant.

During the last 12 years we have seen the formulation and development of the Bangalore Principles of Judicial Conduct ⁶ by the Judicial Integrity Group.⁷ The discussions around the Bangalore Principles have developed our thinking and this has led many jurisdictions to refine the guidance they give. For example, in England 20 years ago it would have been acceptable for a son or nephew to appear as a legal representative in a court in which his parent sat as judge; today that would no longer be considered appropriate.⁸

Who should decide if the current guidance is good enough?

Respect for judicial independence dictates that the judiciary should decide. This is a decision your Chief Justice might take on behalf of the judiciary, alternatively your judiciary may have an established procedure for making such decisions. Where it is practical to do so, it would be good to involve as many judges as possible in making the decision since being involved will cause them to revisit your existing guidance. If you can contact your judiciary by email it will be a relatively simple matter to use a questionnaire to find their views. Where your judges are more remote you may be able to gather responses through an intermediary such as the court clerk.

What characterises good guidance?

PJDP has adopted the aim of ensuring that every judge has access to simple, clear and relevant guidance on conduct in his or her own language. Relevant means that the guidance should address the particular issues that judge is likely to encounter. The project further endorsed the recommendation that in preparing guidance particular consideration should be given to those judges at the lowest levels and in the subordinate courts because they are the judges most likely to need and benefit from guidance on conduct.⁹

⁶ See Part 7

⁷ See Part 7

⁸ See The Guide <http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/guide-judicial-conduct-aug2011.pdf>

⁹ See The Introduction - What is the point of guidance on conduct? at page 3

The starting point is to establish what guidance, if any, is actually available to your judges. This is not always as simple as it sounds. In the past different organisations have supported good governance projects involving Pacific jurisdictions; schemes have developed materials, but for want of continuity or resources, these have not always been distributed or made available to the judges. So, for example, some time ago a handbook was developed for Kiribati magistrates but it was never distributed because it could not be satisfactorily translated into local language.

The need for guidance to be appropriate has led some judiciaries¹⁰ to formulate different guidance for different levels of judges. This has the advantage of allowing the advice given to be tailored to slightly different needs. Other jurisdictions adopt a unified approach which safeguards against any possibility of there being any apparent difference in the principles applying to different parts of the judiciary.

Consistency with Bangalore

The Bangalore Principles are now very widely accepted. At PJDP's Chief Justices' Workshop in Vanuatu¹¹ the 9 Chief Justices who were able to attend reaffirmed those principles. Your guidance on conduct should therefore reflect the 6 values identified in Bangalore and be broadly consistent with the principles which explain how each applies.

That does not mean that your guidelines must be in the same format or that you must cut-and-paste from Bangalore. What is most important is that you develop guidelines which will be meaningful to your judges. When it comes to examples illustrating the application it is vital that they reflect the experience of your judges and that the guidance takes account of the practical realities of their circumstances. In Kiribati, Niue and Tuvalu we found that it was difficult to express some of the concepts from Bangalore in local language. If it is necessary to simplify things it is important that you convey the spirit of Bangalore as best you can.

If you decide to draft new guidance you will find there are some difficult decisions to be taken. For instance; where does the balance lie between the ideal, which requires that a judge should be wholly impartial and have no knowledge of any party to a dispute, and the practical reality in the Pacific, which is that many judges work within small and isolated communities where they know everyone and are related to many? In deciding what guidance is appropriate it might be borne in mind that those contributing to commentaries on Bangalore may not have envisaged circumstances such as those in the Pacific. Judiciaries are of course bound by the law and the terms of their appointment but otherwise judicial independence dictates that it is for each judiciary to formulate its own guidelines as to conduct.

Is your guidance accessible?

If guidance is to be meaningful it must be accessible to its intended recipients. It must be presented in a language they can easily understand and written simply and clearly so as to be easily followed.

You will know your judges, how many and where they work. In order to fit your guidance to their needs, you may need to find more about their level of training, background education and in particular what language or languages they are familiar with.

The geography of the Pacific jurisdictions means that communication is not always an easy matter; you will have to think about how and in what format guidance should be made available if judges are to have ready access to it.

¹⁰ For example PNG has different guidance for its judges and magistrates. See <http://www.paclii.org/pg/Manuals/Magistrates/Part1Chap1.htm>

¹¹ October 2011, The CJs of Federated States of Micronesia, Kiribati, Nauru, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga and Vanuatu.

In deciding whether you should revise your current guidance you might find it helpful to consider the questions set out below:

Appraising your existing guidance on judicial conduct

1. How many judges are there in the lower or subordinate courts of your jurisdiction?
2. Are there any hybrid courts, traditional tribunals or quasi-courts i.e. decision making bodies recognised by the state where decision makers occupy judicial or quasi-judicial roles? If so how many 'decision makers'?
3. What provisions relating to the conduct of judges exist in the Constitution, any statute and/or terms of appointment?
4. What guidance or CoJC is available in your jurisdiction regarding judicial conduct?
5. Does it reflect the six principles enunciated in Bangalore?
6. Is the guidance on judicial conduct available to the judges in the lowest or subordinate courts?*
7. Does each of those judges have his or her own copy?*
8. Is the guidance provided in the first language of those judges?*
9. Is the guidance expressed in clear and simple terms?*
10. Is the level of complexity appropriate for those judges?*
11. Are the illustrations of its application genuinely relevant to those judges?*
12. Does it cover situations they are unlikely ever to face?*
13. Has every judge received training in the application of the guidelines?*
14. What is a judge advised to do when he or she is uncertain in relation to a conduct issue?
15. Is the guidance on judicial conduct made available to the public?
16. Are court users aware of the guidance?†
17. Have complaints been received (or made in the press/media) with regard to judicial conduct? If so what is complained of?
18. How do the public regard judges in terms of the fairness of proceedings in court? †

* The answers to these questions might best be obtained by issuing a short and simple questionnaire to a representative sample of the judges. Alternatively, the answers could be gathered orally by a court officer at a time when the court is sitting.

† A simple survey of court users might answer these questions.

5.2 TALKING TO NON-JUDICIAL STAKEHOLDERS

If you decide to draft new guidance you should consider talking to individuals or groups outside the judiciary who have an interest in the fair administration of justice.

Your aim:

To build a picture of judicial conduct as perceived by those with an interest in proceedings in court and to identify examples of the ways in which conduct issues confront judges.

Stakeholders include: the parties to civil matters, defendants, victims, witnesses, prosecutors, legal representatives, court staff, and public interest groups (e.g. court users, women, youth, rights groups).

Why?

We are not always the best judges of our own behaviour and therefore it is good for the drafting process to be informed by the public perception of the judiciary and judicial behaviour.

The guidance you draft will become a public document. Well drafted guidance has a valuable secondary function in helping the public to understand the judicial role and in helping court users have realistic expectations.

What?

Clearly, any consultations should be conducted sensitively and should invite only constructive criticism. Bear in mind it may be difficult for stakeholders, particularly those personally involved in the outcome of cases, to be objective.

It may be that some useful information has already been gathered in court surveys or in a record of complaints made to the court. You may have gathered some useful responses during the review process. (Discussed in Part 5 (i))

Do the court users believe that court proceedings are conducted:

- fairly,
- efficiently,
- politely,
- with appropriate gravity,
- without unnecessary delay, and that
- procedures were explained clearly, and
- the decision was explained clearly?

How?

Once you have identified the information you have already, you will need to decide how to collect any additional information. Your choice is between questionnaires of some sort, or interviewing court users in groups or individually.

Questionnaires have the advantage that you can ask specific questions whereas the more open structure of an interview is more likely to reveal issues that you have not foreseen. In gathering information you should be very careful to make your aims clear and not to give the impression that you are checking up on your judges. If you meet directly with stakeholders, what shape should your meetings take? We would suggest that you keep these meetings open and relatively unstructured. If particular issues are raised then you can talk them through.

Once you have your responses you may find it helpful to look at how they relate to the 6 Bangalore values:

1. Independence
2. Impartiality
3. Integrity
4. Propriety
5. Equality
6. Competence and Diligence.

You may decide that some points raised should be put to the judges during workshops others may simply inform your approach to different issues.

5.3 WORKSHOPS WITH JUDGES

The number of workshops you plan will depend on the size of your judiciary, the geography of your jurisdiction and the resources at your disposal. If you have a large judiciary you may decide to build your draft over a series of workshops, each with different judges. If you have only a few judges it may be that you will get them all together on one or more occasion to develop your new guidance. It is for you to decide. The size of your workshops may be dictated by the number of judges in a particular area, but where you have a choice we would advise you to keep groups small ¹² if you can. When it comes to reviewing and finalising your proposed draft a larger group may serve your needs better.

In Niue we worked with all six local judges in two half day sessions. In Tuvalu we ran three whole-day workshops each with approximately 11 magistrates (there are 5 Island Court and 6 Island Lands Court magistrates on each atoll). The first two workshops were conducted on two of the outer islands and used to formulate a draft. The final workshop in Funafuti was used to review it. A similar approach was adopted in Kiribati.

Once you have decided how many workshops you will run and how many judges will attend, you need to set clear aims for each workshop. A suggested overall aim is set out below, but you may wish to break it down so that you address only part in any single workshop, or focus on different Bangalore values or principles with different groups.

Overall aims for workshops:

To consider the application of the Bangalore principles within the context of the courts of your jurisdiction and to identify the circumstances in which the Bangalore values are most often put in issue.

And

To formulate guidance on judicial conduct that is simple, clear and relevant.

Planning a series of workshops

We will look at the detail of planning individual workshops in Part 7 (ii). At this stage you should think about how you might progress your work through a series of workshops. In order to see the bigger picture it may be helpful to tabulate what you hope to achieve in each workshop as in the example on the next page. This example assumes you are working with three different groups, each progressing the work done earlier.

¹² The smaller the group the more intense the work; a group of 6 - 8 might be optimum for drafting although anything up to 15 should be manageable.

Workshop 1 - Drafting	Workshop 2 - Drafting	Workshop 3 - Finalising
<ul style="list-style-type: none"> • Introductions • participants experience in years • Introduce Bangalore • The 6 Bangalore values • working through each value in turn (as many values as time allows) • examples of where it arises in our lives as judges • draft simple statements explaining application. <p>Afterwards: refine draft and print up for next group.</p>	<ul style="list-style-type: none"> • Introductions • participants experience in years • Introduce Bangalore • The 6 Bangalore values • review progress made in first workshop • continue to work through remaining values. <p>Afterwards: refine draft and print up for next group.</p>	<ul style="list-style-type: none"> • Introductions • participants experience in years • Introduce Bangalore • The 6 Bangalore values • review progress so far • Distribute draft code • Have group work through scenarios which raise issues of conduct with reference to the draft code. • Identify any omissions or necessary amendments. <p>Afterwards: Circulate draft for consideration and feedback, or alternatively, issue draft as provisional for use in trial period before finalisation.</p>

In Part 7 (ii) you will find some examples of simple workshop plans, some hints on designing and conducting workshops. We hope you will find these materials useful. If you have access to a member of the PJDP Regional Training Team (RTT) they may well be able to help you.

5.4 DRAFTING YOUR GUIDELINES

Be guided by the aim to produce simple, clear and relevant guidance. The golden rule must be to use simple unambiguous language and to keep guidance relevant but as short as possible. This means you must resist the temptation to cover every eventuality. Your judges are more likely to read and refer to the guidance if it is concise and deals with the kind of situations they meet in their work.

If your team have the necessary language skills you may be able to develop your guidance simultaneously in local language and English. If you are able to do this you may find that working in two languages helps to keep your expression straightforward. Never include a phrase or sentence just because it sounds good or, worse still legalistic. The test must always be, "Do these words help to convey what I am trying to say?"

You will be constructing the first draft of your guidelines with the judges during your workshops. You should take responsibility for the overall structure at this stage as you encourage your judges to formulate guidance explaining the application of each Bangalore value in simple clear statements.

Checklist for writing clearly

However experienced we are, we all do well to remind ourselves of the following tips for writing clearly:

- Plan what you want to say and follow a logical sequence,
- keep sentences short,
- keep your language simple and appropriate for your readers,

- prefer the active voice,
- use lists where appropriate, and
- avoid anything which may interrupt, distract or confuse your reader.

Structure and sequence

Your first consideration should be the overall structure of your document. If you choose to adopt a similar structure to Bangalore your job will be relatively easy. You will not be alone; many jurisdictions have adopted the same approach. All good pieces of writing have a beginning, a middle and an end; guidance on conduct is no different.

The Beginning

As the head of your judiciary, your Chief Justice may wish to write something to introduce the guidance and explain its purpose. This might be entitled either foreword or preface. The distinction is that prefaces are usually by the author or editor, and forewords are not. Prefaces and forewords are usually give page numbers in Roman numerals (i, ii, iii, iv etc.) so as to indicate they are before and outside the main work. The inclusion of a foreword or preface does not mean you cannot also have an introduction as part of the guidance which explains more about what follows. The introduction might briefly set out the context in which the judiciary works referring to the constitution, relevant statutes and the judicial oath. It may also be appropriate to explain that in final responsibility for deciding how to behave lies with the judge and the judge alone.

Foreword:	noun - a short introduction to a book, typically by a person other than the author.
Preface:	noun - an introduction to a book, typically stating its subject, scope, or aims.
Introduction:	noun - a thing preliminary to something else, especially an explanatory section at the beginning of a book, report, or speech. ¹³

The Middle

Your guidance and examples of its application will make up the middle, which will be the main part of your document. You will see that in Niue, Kiribati and Tuvalu we followed the approach adopted in the Bangalore Principles. We devoted a section to each of the 6 Bangalore Values. Each section had the same basic structure:

- a) Value - identify the value.
- b) Principle - set out the basic principle which judges should apply in giving expression to the value.

Application - examples to illustrate how the principle might apply in the kind of situation which your judges encounter.

Example from Kiribati

3. Integrity

Through all his or her public and private life a Judicial Officer should demonstrate soundness of moral character through consistency of action and values, honesty and truthfulness.

3.1 Judicial Officers make decisions that affect peoples' lives, therefore it is important that a Judicial Officer should demonstrate a good and moral character so that he or she displays an image of a judge that can be trusted and respected.

3.2 A Judicial Officer must be true to the judicial oath.

¹³ Definitions from <http://oxforddictionaries.com>. A useful free resource.

Ending your document

In conclusion you may wish to reiterate important points from the introduction and to explain what a judge can do if he or she is still not sure how to behave in a particular circumstance¹⁴. By allowing questions to be referred for the future you will learn how your guidance can be improved when it is next revised.

Example from Kiribati

Cases of doubt

In any case where a Judicial Officer is uncertain as to how these principles apply to the particular circumstances, he or she may seek guidance from the head of the judiciary, the Chief Justice. If there is not time to do so, he or she should err on the side of caution; the question may nevertheless be referred to the Chief Justice for the future.

Example from Tuvalu

3. Integrity

Through all his or her public and private life a magistrate should demonstrate soundness of moral character through consistency of action and values, honesty and truthfulness.

- 3.1 By conducting themselves with integrity magistrates will sustain and enhance public confidence in the Judiciary.
- 3.2 A magistrate must be honest in his public and private life so that people will know that the magistrate can be trusted.
- 3.3 A magistrate must be true to the judicial oath.

5.5 TRANSLATION

If you have developed your guidance in English you will need to have it translated into local language if it is to be accessible to your judges. Even if you employ a professional translator you should check the translation. This is done by back-translation.

Back-translation requires someone who is fluent in both languages but who is not familiar with the document who will translate it back to the language in which it was created. This is particularly necessary if the original translation was undertaken by someone who has no knowledge of the courts or the law.

This exercise is best done orally with the back-translator reading the translated text back to the person primarily responsible for the drafting. Between them they will identify and refine any passages where the original meaning has not been conveyed clearly in the translation.

Even if you developed your guidance simultaneously in English and your home language, you may do well to double check that the two documents are saying exactly the same when read by someone who has not seen the documents before.

¹⁴ Typically this is to seek guidance from the Chief Justice.

5.6 PUBLICATION

When your code is complete and has the approval of your judiciary, it would be nice to produce it in a booklet form for distribution to judges and the public. You may have what is needed to do this in-house; if not you might get help through the PJDP Responsive Fund.

The important thing is to get the guidance to its intended readers and you could achieve this by making it available to judges and court users in the court houses. If formal publication is delayed judges can be given photocopies. If you 'pilot' the guidance in this way it will give your team an opportunity to make any necessary amendments before investing in formal publication.

There is a lot to be said for arranging a formal launch to give the guidelines some publicity, and recognition to the judicial community. In Kiribati the Chief Justice and High Court organised a Magistrates' Conference at which the guidance was launched. Some 110 magistrates attended from a total of around 140. The conference provided training in relation to the guidance and other matters. In Niue a formal launch was organised to coincide with a visit from their Chief Justice. In Tuvalu the logistics of inter-island transport made it more practical for the Senior Magistrate to 'launch' the guidance at each court in turn as he made his regular circuit.

6 IDENTIFYING COUNTRY SPECIFIC MATERIALS

You guidelines must be consistent with the laws of your country. You will need to identify the relevant materials. The table below is intended as a reminder of some of documentation you may need to have to hand.

6.1 A CHECKLIST OF THE LOCAL MATERIALS YOU WILL NEED TO FIND

Checklist of reference materials you will need	
Document	How might it be relevant?
Your country's constitution	<ul style="list-style-type: none"> usually sets up the judiciary and reaffirms separation of powers usually only deals with appointment of judges for the higher courts provision for removal of judges often includes a statement of human rights.
The statute or statutes creating lower courts and governing the appointment of their judges, eg. you may have a Magistrates Court Act.	<ul style="list-style-type: none"> often includes provisions regarding the term of appointment and removal from office.
The judicial oath sworn by your judges (usually in the Magistrates Court Act or equivalent).	<p>In swearing the oath of office the judge will have undertaken to:</p> <ul style="list-style-type: none"> serve in accordance with the constitution and the law do right¹⁵ by all manner of men without fear or favour, affection or ill will.
Any other statute which purports to apply to the judiciary	For example: Tuvalu has a Leadership Code Act which specifically applies to judges and judicial officers.
Written terms of appointment, if any	It seems most Pacific countries do not have written contracts for any of their judges.
A list of international treaties or conventions to which the country is a signatory.	Confirms rights to be accorded to individuals by the court.

¹⁵ Within the context of the oath 'to do right' might be paraphrased as 'to administer justice'.

7 REFERENCE AND RESOURCE MATERIALS

In this part you will find:

- i. An Introduction to The Bangalore Principles
- ii. Planning workshops
- iii. Drafting tips
- iv. Useful references.

7.1 AN INTRODUCTION TO THE BANGALORE PRINCIPLES

The Bangalore Principles were developed over a number of years by an international group of very senior judges. The group started as an ad hoc group but has now become established as the Judicial Integrity Group (JIG)¹⁶.

The group started its work in 2000¹⁷ with the vision of developing,

*"A universally acceptable statement of judicial standards which, consistent with the principle of judicial independence, would be capable of being respected and ultimately enforced at the national level by the judiciary, without the intervention of either the executive or legislative branches of government."*¹⁸

2002: The Bangalore Principles

After a great deal of consultation involving the judges of more than 70 countries the Bangalore Principles were adopted in 2002. They identify 6 judicial values and the principles governing their application in practice. The 6 values are:

- Independence
- Impartiality
- Integrity
- Propriety
- Equality
- Competence and diligence.

The full text of the Bangalore Principles is provided in **Annex 1**.

2007: Commentary on the principles

In 2007, JIG produced an extensive commentary on the principles. This long document explains the history of JIG, the development of the Bangalore Principles¹⁹ and discusses the application of each principle at length. The commentary finishes with a review showing how the principles accord with the moral codes of the principal religions of the world. This is an extremely interesting document for anyone who wants to read in more depth, but it is too long to reproduce here. It can be found on the JIG website.

In telling the story of the development of The Bangalore Principles the commentary identifies the judges involved and the many national codes, regional and international instruments that the group considered

¹⁶ <http://www.judicialintegritygroup.org>

¹⁷ April 2000 Vienna: Judicial Group on Strengthening Judicial Integrity. (JIG) sponsored by UN Centre for International crime prevention (Global Programme Against Corruption).

¹⁸ Dr Nihal Jayawickrama: 2009 talking about JIG's work at the conference on Ethics for the Prevention of Corruption in Turkey held in Ankara.

¹⁹ See pages 9 to 18.

before drawing up the principles. These include the Universal Declaration of Human Rights (UDHR) where Article 19²⁰ states:

"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."

This right was later incorporated into The International Convention on Civil and Political Rights¹⁹ (ICCPR). Article 14 of which says:

"All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit of law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

In commenting on the preamble to The Bangalore Principles the commentary touches on the concepts on which constitutional democracies are founded, such as the Rule of Law and the Separation of Powers, and the principles such as Judicial Independence which derive from them. The discussion concludes with the following seminal quote on why it is necessary for the judiciary to set standards for the behaviour of its members:

"We form a particular group in the community. We comprise a select part of an honourable profession. We are entrusted, day after day, with the exercise of considerable power. Its exercise has dramatic effects upon the lives and fortunes of those who come before us. Citizens cannot be sure that they or their fortunes will not some day depend upon our judgment. They will not wish such power to be reposed in anyone whose honesty, ability or personal standards are questionable. It is necessary for the continuity of the system of law as we know it, that there be standards of conduct, both in and out of court, which are designed to maintain confidence in those expectations."²¹

When you come to discuss the application of The Bangalore Principles in workshops some of these concepts are bound to arise. If you are working with judges who do not have a legal training you may need to investigate and explain some basic theory. We will discuss this further in the following section.

2010: Measures for the effective implementation of the principles

This document looks at the different roles and responsibilities of The Judiciary and of The State in the administration of justice. We shall return to it in the section discussing complaints and disciplinary proceedings. It is reproduced in **Annex 2**.

²⁰ Sited in the preamble to The Principles.

²¹ J B Thomas, Judicial Ethics in Australia.

7.2 WHAT TO DO IN WORKSHOPS - PLANNING IN MORE DETAIL

The ground-rules for the revision process which we looked at in Part 3(ii) stated that the process should be conducted so as to be a developmental activity for the judges who participate. It is important not to lose sight of that part of the overall aim for your workshops stated in Part 5 as:

To consider the application of the Bangalore Principles within the context of the courts of our jurisdiction and to identify the circumstances in which the Bangalore values most often need to be considered.

And

To formulate guidance on judicial conduct that is simple, clear and relevant.

We suggested that you set out in a table what you hope to achieve in each of the workshops you plan to hold. As you develop your plans you will need to think in more detail about what you will do in each session.

You will find it helpful to produce a more detailed written plan for each workshop which sets out your aims, what you will do in order to achieve them, how you will use the time available and what resources you will need.

On the following pages we describe the revision process as it was in Tuvalu where the first two workshops were conducted with Island judges on Nukufetau and Vaitupu, two atolls in Tuvalu. These are remote islands accessible only by boat. We took with us a white board, flip chart paper, pens, sticky tape, Blu-Tack and the prepared materials for the exercises (the hand-outs were translated into Tuvaluan). We also took a laptop and a camera. Neither of those was essential but the laptop facilitated note taking, and the camera helped keep a record of the workshop by photographing things written on the white board.²² This is what we did:

Each workshop lasted a whole day. We started at 9am and finished at about 3.30pm. We deliberately chose not to make the day too long. Why? Because we would be asking our participants to work hard at something new to them and when people are doing something different they get tired more quickly than when they are doing something familiar. Workshops cease to be productive if people are tired. We organised refreshments including lunch. Whilst our budget was modest it is important to show respect and gratitude for the participants and the contribution they are making by looking after them well.

²² With the benefit of hindsight we might have not taken the white board; you can manage with flip chart paper and you can keep it for the record.

Materials used in Workshop:

CODE OF CONDUCT WORKSHOP FOR ISLAND COURT MAGSTRATES AND ISLAND LAND COURT MAGISTRATES

	Activity	Objectives
9am start 1 hour	Introductions What guidance would you like from code of conduct?	Explain what we are here for. 10 mins Who I am? 5 mins Who are the magistrates? 2 mins each x 10 participants = 20 - 25mins Establish Island Magistrates needs and expectations. about 20 mins discussion <i>Objective for first session = Establish mutual respect and confidence for exercise</i>
Short Break		
1 ½ hours	Explain activity - 10 min Groups 3+4+4 <ul style="list-style-type: none"> • They do it <30 min • Report back - 15 min (flipchart paper) • Discuss <30 min Are there any missing values?	Examine the six values and place in order of importance. Materials = 3 sets of "Bangalore Values" (1 value per A4 sheet) Clips, pins and or blue-tack to pin up flip chart paper around room Discuss differences, Identify areas of overlap, Discuss meaning of each <i>Objective for session = Agree list of values</i>
Lunch 1 hour		
1 ½ hours	What do the principles mean in practice? 3 groups differently constituted explain - 10 min Each Group to writes an explanation for chosen value or values - 40 min Discuss and refine - 40 min	To gather judges' expression and interpretation of what those principles they identify mean in practice. Flip chart paper + pens sufficient for participants
Short Break		
1 hour	Conduct	Practical session considering scenarios prepared scenarios

CODE OF CONDUCT

What is this code for?

This code is issued for guidance of judges and to inform the people of Tuvalu as to the role of the judges. These are guidelines only, not rules. It is for each judge to decide what the principles require in any given situation and different judges may properly interpret the requirements of the code differently.

The judge's primary duty is to administer justice by applying the law. This is reflected in the oath in which the judge swears to serve *"in accordance with the constitution and law."*

"I swear by Almighty God that I will well and truly serve Our Sovereign Lady Queen Elizabeth, her Heirs and Successors, as a Judicial Officer and I will do right to all manner of people after the laws and usages of Tuvalu, without fear or favour, affection or ill will. So help me God."

Hand out for first session

INDEPENDENCE

Judicial independence is essential to the rule of law and the fair conduct of trials.

A judge should therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Values - session 2

IMPARTIALITY

Impartiality in both the decision and the decision making process is essential to the proper discharge of judicial function.

Values - session 2

INTEGRITY

Through all his or her public and private life a judge should demonstrate soundness of moral character through consistency of action and values, honesty and truthfulness.

Values - session 2

EQUALITY

A judge should ensure that every one is treated with respect and courtesy and with equality according to the law.

Values - session 2

PROPRIETY

A judge must avoid impropriety and the appearance of impropriety in all his or her activities, public and private.

Values - session 2

COMPETENCE AND DILIGENCE

A judge must engage in training and preparation so as to be competent in performing his or her duties. He or she should also be diligent in the performance of judicial duties.

Values - session 2

The first workshop in Tuvalu – Nukufetau

The First Session, 9am - 10am

During the first session we explained our aims and who we were (very important if you are not already known to the participants). We then asked each participant to tell us something about him or herself, in particular how many years they had held the office of magistrate. Whilst they were talking we added up the total years of magisterial experience in the group as a whole. In Nukufetau we shared 84 years of experience and in Vaitupu 122. Those findings allowed us to talk about how valuable that experience was and to establish a basis for our discussions. We made it clear that this would be an open discussion with no right or wrong answers. We looked at the hand-out and the oath and talked about what the participants expected from guidance on conduct. Some direct quotes:

"to do justice"....."honestly and properly do the job"....."to do according to the law"....."work well and honestly".

First workshop - Second session, 10.30am - 12 noon

The objective of this session was to examine the six values and principles identified in Bangalore and decide whether they were appropriate for Tuvaluan magistrates. We approached this by providing each of three groups with a set of values and asking them to put them in order of importance. There is, in our view, no particular right order but the process of choosing one caused the judges to discuss the different values at length. By the end of the session the participants agreed that the Bangalore Values captured the judges' role and they were happy to adopt them as the basis for their code.

First workshop - Third session, 1pm - 2.30pm

During this session each group worked on a different value and wrote on a sheet of flip chart paper examples of how the related principle would apply in the context of their work. We then discussed and refined each group's suggestions with the whole group.

First workshop - Fourth Session 2.45pm - 3.45pm

During this session we worked through some examples of situations the magistrates might have to deal with; in some cases acting out the appropriate reactions. The intention was that this session should be relatively active and fun, whilst helping the participants think about how they might react to different situations and challenges.

The second workshop in Tuvalu - Vaitupu

This was run along similar lines except that we modified the second session to look at the work that had been done in Nukufetau which allowed us to progress to the third session earlier and spend more time on that exercise.

A draft was then completed based on the materials generated by the two workshops. The third workshop was conducted back in Funafuti where we gave participants the draft Code of Conduct and asked them to review it and then apply it to a series of problem scenarios. The objective for this workshop was to further refine the draft code, which was subsequently submitted to the Chief Justice for approval.

Outline of the Third Workshop in Tuvalu

Session 1 9.00 - 10.30	Introducing ourselves and the code of conduct Copies of the code in English and Tuvaluan
Session 2 11.00 - 12.30	Applying the code of conduct Case studies (Printed copies in Tuvaluan)
Session 3 1.30 - 3.00	Reviewing the code of conduct Discussion: Are amendments needed?
Session 4 3.30 - 4.35	Decision making. Moses's Case - A case study provided in Tuvaluan - This was a response to requests from magistrates. The case study was designed to raise some issues of conduct.

Timing in workshops

Estimating the time activities take is always difficult especially if it is new to you; we all have a tendency to underestimate how long we need to do things. Do allow sufficient time for a proper introduction unless you know the group very well already. You should set aside time to introduce yourself and for you to find out about the experience and concerns of the individuals who make up the group.

You must expect to spend a significant part of your time in these workshops introducing the Bangalore Values and explaining the principles regarding the application of each value because that is the starting point for the discussion. This is especially true if you are dealing with judges who do not have any formal legal training.

Flexibility

Sometimes things do not go as planned. A particular exercise may simply not work as you anticipated, participants may know more, or less, than you expected. Some purely practical problem may interfere. Be ready to be flexible and modify or change your plans whilst keeping focussed on your objectives.

Some Dos and Don'ts for workshops

Do allow time for 'house keeping'

This shouldn't take long but your participants need to know what they will be doing throughout the day. This includes a brief overview of the workshop, the timing of sessions, when there will be breaks, where the bathrooms are, when and where refreshments will be available, and, if relevant, when they will receive any allowance payable in respect of attendance, and, if appropriate, safety provisions such as fire exits.

Do allow enough time for introductions

With a lot to do it is tempting to think a quick hello might suffice but this is time to find out about your participants. They are your major resource; you need to learn something of their experience and to build mutual confidence. Make it clear that their contributions are valuable and that all ideas are welcome, nothing is wrong.

Do demonstrate your respect for your participants and their experience

Learn and use their names. You could issue badges or folded paper place names. As they introduce themselves you can note their names on a bit of paper in the order in which they are sitting, as an aid to your memory.

Do think about the way the room is set up

Place chairs in a ring or informal groups to facilitate the activities you plan.

Don't place chairs in rows like school or the theatre!

Do set a clear aim for every session

Doing so will help you to plan the session and your participants to know what they are expected to achieve.

Do make sure you give clear and complete instructions for any exercise you ask them to perform

Participants will feel uncomfortable if they are not sure what they should be doing.

Do allow thinking time

If you have carefully constructed an exercise to focus your participants' minds on a particular issue, don't spoil it all by cutting short the time you allow for them to discuss and work on the task you have set.

Whilst they work you should move through the room 'hovering' to check that groups are making progress and prompting or directing where necessary. As a general rule you might divide the time you allow for an exercise roughly as follows:

20% = introduction to session aims and explanation of activity.

50% = participants do the activity you set.

20% = participants report back - comments, discussion and feedback.

10% = Summing up conclusions.

Do try to keep to the timing you planned

It is easy to get side tracked by an interesting question or persistent questioner; be friendly but firm about keeping on track. "Perhaps we could talk about that at lunch."

Don't lecture

Keep your spoken inputs short and succinct, and avoid the temptation to talk at length. Generally peoples' attention falls away rapidly after the first ten minutes.

Do learn from your mistakes

It will not always go to plan, think about why not and, if you can, prevent it from happening again.

Don't give up!



Arrival with Whiteboard - Nukufetau



Workshop - Nukufetau



Nukufetau Workshop 31 May 2011



Lunch - Nukufetau



Workshop in North Tarawa - Kiribati



Arrival in Abaiang - Kiribati



Workshop in Abaiang - Kiribati



Group Photo in Abaiang - Kiribati

How adults learn

Your workshops should be developmental for the participating judges, providing them with an opportunity to reflect on the ethical principles which govern judicial conduct. It is therefore important that you bear in mind the following points about how adults learn.

Relevance: Each adult will have developed his or her own learning style, but a common is that adults like to be able to 'attach' new learning to the framework of things they already know. That is why it is important to relate the material you seek to introduce to the experience of your students, helping them to see its relevance.

Learning styles: The academic study of teaching formally identifies a number of different learning styles. Most adults adopt a mix of styles and any group will certainly comprise individuals favouring different styles. What you need to know is that when you design your workshops you should try to include activities which will appeal to different styles of learning. So whilst some of us like to read or merely listen, others are more visual learners, some will learn more through discussion and others through activities which require them to apply their new learning. In your workshops try to create a mix:

- Write and draw things on the board or flip chart,
- use handouts,
- get your participants to write things on the board,
- get participants to discuss points, and to explain them to each other,
- illustrate points with diagrams or pictures,
- use practical illustrations, and
- set realistic practical exercises.
- Be imaginative!

Skills

How did you learn to ride a bicycle?

How did you learn to swim?

What does that tell you about how you would best help someone develop his or her judicial skills?

We doubt you learned to ride or swim by sitting down learning in theory! That is why practical exercises which give the opportunity to practise are of particular importance when you want to help someone learn a new skill or develop an existing one. Conducting oneself as a judge involves more than just knowing the rules and the law, it involves a complex range of skills including reasoning, vocal skills and interpersonal skills.

7.3 DRAFTING TIPS

We looked at structure when we discussed the drafting process in 5(iv). That was the first point in the checklist for writing clearly.

Watch points for writing clearly

However experienced we are, we all do well to remind ourselves of the checklist:

- Plan what you want to say and follow a logical sequence;
- Keep sentences short;
- Keep your language simple and appropriate for your readers;
- Prefer the active voice;
- Use lists where appropriate; and
- Avoid anything which may interrupt, distract or confuse your reader.

Keeping sentences short and your language simple

It has been suggested²³ that 20 words is a good length for a sentence in English. Longer sentences are likely to incorporate several ideas in a number of sub-clauses which can make them difficult for the reader to follow, particularly in a culture where most people are predominantly oral.

By way of example the last sentence had 33 words. Why not write?

Long sentences often incorporate several ideas in a number of sub-clauses. Such sentences can be difficult to follow. This is especially so in an oral culture.

Whilst short is generally best, English has a very rich vocabulary and it is almost always possible to find an alternative way of expressing an idea. Our experience suggests that local language may sometimes require more words. This is because it may require the formulation of a phrase just to capture the meaning of a word like 'integrity' or 'propriety'. We found that neither i-Kiribati nor Tuvaluan had a direct equivalent for either word. So the advice might be better stated as follows: use as many words as you need to convey your meaning clearly and try not to use any unnecessary words.

Simple language does not mean childish language. It means thinking about what you want to say and saying it clearly. It also requires us to think about our readers and chose language appropriate to them. As a general rule it is good to avoid the use of acronyms and jargon, but if you have to refer to something frequently throughout a document it may be useful to give it a short title.

e.g. The Pacific Judicial Development Programme (PJDP)

Should you use the second or third person?

Many authorities advise that you address your audience as if you were with them. This toolkit uses that approach. If you followed this advice you might write:

"You should make sure that you have heard all the evidence and considered the relevant law before you make your decision." (Second person)

rather than,

"A judge must make his or her decision on the basis of the facts, as proven by the evidence, and the relevant law." (Third person)

A quick glance at the guidance drafted for Niue, Kiribati and Tuvalu will show that we did not follow that advice. That is because the guidance is intended not just for the judiciary but for public information. The

²³ The Plain English Campaign see <http://www.plainenglish.co.uk>. A valuable and free resource.

guidance should have a sense of gravity. In all the circumstances we decided to adopt the convention of talking in the third person.

Accurate language

A note on the use of the words: must, shall, should, could, can and may.

In everyday use we are sometimes lax in our choice of words but in the context of guidance on conduct we must be particularly careful. In stating principles the imperative may be appropriate but generally there will be some room for the judge to decide the appropriate response in any particular situation and our language should reflect that.

The words 'must' and 'shall' are imperative; whatever they refer to has to be done there is no room for choice or discretion.

'Should' is advisory suggesting the best or expected course of action.

'Could' and 'can' refer to what the subject is able to do.

'May' is permissive; to be done if the subject chooses.

The active voice

Generally speaking the active voice is more direct and easily understood than the passive.²⁴ In the active voice the subject of the sentence does the action that the verb describes. Your reader will naturally focus on the subject of the sentence which is the judge in the examples of the active voice set out below. You might choose to use the passive form in a situation where what is happening to the case is more important than what a particular judge is doing, for example, if you were writing about the judicial oath or fairness in court proceedings.

Active	Passive
The subject is doing the action in the verb. The subject is active.	The action in the verb is being done to the subject. The subject of the sentence is passive i.e. inactive
A judge must be true to the judicial oath.	The judicial oath must be observed at all times. (Note: In this sentence the person doing the action is not identified but is understood to be the judge.)
A judge should not hear a case which involves a close family member, close friend, or workmate.	A case which involves a judge's close family member, close friend, or workmate should not be heard by the that judge.
A judge who thinks his decision would be affected, or might appear to be affected he should not sit and hear a case.	A case should not be heard by a judge who thinks his decision might be affected or might appear to be affected.
Another judge should hear the case.	The case should be heard by another judge.

- Subject
- Verb

²⁴ For more advice see: <http://owl.english.purdue.edu>. Free website. Easily followed advice on writing simply and clearly with lots of examples.

Things which may distract your reader:

The forward slash

If you use the forward slash it interrupts the reader's flow. It is often used instead of the word 'or' or the words 'and, or'.

Say what you mean, so instead of:

judges / magistrateswrite judges and, or magistrates

and / or..... write.....and, or

he / she.....write.....he or she

Gender

Most Pacific countries have legislation regarding interpretation which provides that the male includes the female (and vice versa) unless the contrary is expressly provided. However current concern to promote the equality of the sexes has led to the convention that we specifically include both male and female.

e.g. A judge must make his or her own decision. (Please, not his / her)

Some writers are tending to use the word 'their' instead of 'he or she', to do so is incorrect and may be confusing since 'their' is plural. You could write, "Judges must make their own decisions", but it would not be quite as precise as, "each judge must make his or her own decision."

'May' is permissive; to be done if the subject chooses.

Layout

Poor layout can distract or confuse. Think about the layout of your document; keep it simple and consistent.

Font: **Chose a clear font** and DON'T be tempted to use **too many techniques** in attempting to give emphasis!

Font size: Most people can easily read 12pt script you may choose a larger font size and, or bold script for headings

- 10pt is a bit small for some people
- 12pt, is ok, but
- 14pt may be good for older eyes.

Clearly you won't want to write a long document in large print unnecessarily, but if you are preparing handouts for workshops you may only have a little to write, so enlarge the script.

Alignment: We suggest you align text to the left. Fully justified text may look neater from a distance but there is a great deal of evidence that readers find it easier to navigate when the line lengths vary on the right of the page.

Break it up: Use paragraphs, headings and sub-headings to separate topics and ideas.

Check for inconvenient page breaks.

7.4 USEFUL REFERENCES

There is a great deal of useful information available free on the internet. We have already indicated some websites in footnotes here are some more you might find helpful. We are not suggesting you should visit them all!

Law of Pacific Island Countries

Pacific Islands Legal Information Institute (PacLII)
<http://www.pacii.org>

Judicial conduct and related matters (sites where you will find examples of actual guidance are separately listed below)

Judicial Conduct Commissioner, New Zealand
<http://www.jcc.govt.nz/>

Judicial Integrity Group (JIG) <http://www.judicialintegritygroup.org>
This site has all the JIG documents referred to in this toolkit but also offers links to many of the principle sites concerned with judicial integrity.

Preventing Corruption in the Judiciary System - a practical guide <http://judicialintegritygroup.org/resources/documents/qtz2005-en-corruption-in-judiciary.pdf>

Beijing Judicial Independence
<http://lawasia.asn.au/objectlibrary/147?filename=Beijing%20Statement.pdf>

Transparency International
<http://www.transparency.org>

Transparency International's Global Corruption Report 2007 Corruption in the Judiciary available from Council of Europe at
http://www.coe.int/t/dqhl/monitoring/greco/evaluations/round4/TIglobalcorruptionreport07_complete_final_EN.pdf

LegislationOnline
<http://www.legislationline.org>

For sites of judicial complaints authorities see section 8(ii).

Examples of guidance on Judicial Conduct

Australian Institute of Judicial Administration Guide to Judicial Conduct free download at
<http://www.aija.org.au/online/Pub%20no82.pdf>

Canada - Ethical Principles for Judges
http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_judicialconduct_Principles_en.pdf

England and Wales
<http://www.judiciary.gov.uk/about-the-judiciary/the-judiciary-the-government-and-the-constitution/how-the-judiciary-is-governed/guide-to-judicial-conduct/>

New Zealand

<http://www.courtsofnz.govt.nz/business/guidelines/guidelines-for-judicial-conduct/>

PNG Magistrates Manual

<http://www.paclii.org/pg/Manuals/Magistrates/Part1Chap1.htm>

United Kingdom Supreme Court

https://www.supremecourt.uk/docs/guide-to-judicial_conduct.pdf

United States Courts

<http://www.uscourts.gov/rulesandpolicies/codesofconduct/codeconductunitedstatesjudges.aspx>

American Bar Association Model Code

http://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct.html

Workshops and training

ASSET a European project to develop teaching skills for those teaching adults

http://www.assetproject.info/learner_support/introduction.htm

Continuing education at about.com, Part of the New York Times Group, some useful information (if you can ignore the adverts).

<http://adulted.about.com/od/teachers/a/teachingadults.htm>

8 FOR THE FUTURE

- i. Training on guidance
- ii. A complaints procedure? Complaints procedures as distinct from disciplinary proceedings
- iii. Keeping guidance under review.

8.1 TRAINING ON GUIDANCE

If your team has just drafted new guidance a significant proportion of your judges will have been involved in the process and if you have organised a well-publicised launch, all of your judiciary should be aware of the new guidance. When you publish your new guidance each judge should be given a copy as soon as reasonably possible and you should take steps to ensure that all your judges become familiar with the new guidance through participation in training activities. In order to determine what kind of activities those might be, we should look at more closely at the aim of making judges familiar with the guidance.

We want judges to know what the new guidance says and to have thought about the principles it spells out. There is no better way to get your judges to read and think about the guidance than to get them to use it as they discuss how they might react to different situations.

As adults we generally absorb information best when it is immediately useful to us. You can encourage your judges to read the guidance if you ask them say what they would do in a particular situation.²⁵ Perhaps the best way to do that would be in a workshop. After a relatively short introduction you could ask judges to work in small groups or pairs discussing several short scenarios before feeding back in a plenary session.

Alternatively you might set up a role play. A role play involves several participants acting out a scenario. Some participants may be given quite detailed instructions as to their roles. Others play the part of the judges with little or no instruction, their job is to behave as they would in court. Their reaction to the situation can then be discussed by the whole group with reference to the guidelines.

Setting up workshops can be very expensive in the Pacific because of some of the practical difficulties we looked at earlier.²⁶ If you do not have the resources to provide workshops for your judges you could at least provide them with a study pack. That could be quite simple; it might take the following form:

- Copy of the new guidance
- A set of written scenarios raising conduct issues
- space to write what they would do
- The commentary of a senior judge in relation to each scenario²⁷
- A simple self-test to see what has been learned.

If you have a suitable individual, perhaps a court clerk, who could organise a group session. The same exercises could be undertaken by a group of local judges working together. The court clerk could note any issues that the group are unable to resolve between them. Such questions might be referred to your group or the Chief Justice for an opinion. If several groups get stuck on the same issue it might be an indication that your guidance is insufficient in a particular respect and needs amendment.

In **Annex 4** we have reproduced some of the materials which were used in the training for magistrates in Kiribati.

²⁵ You will need to develop some scenarios which raise questions about judicial conduct. You may find it useful to refer back to the workshops you ran in developing the code for examples of testing situations.

²⁶ Geographic separation, lack of reliable regular transport, difficulties with communication etc.

²⁷ Judges should be encouraged to try to reach their own conclusion before looking at these.

8.2 SHOULD YOUR JURISDICTION HAVE A COMPLAINTS PROCEDURE?

In order to protect their independence, judges' terms of appointment typically give security of tenure and prevent their removal from office other than in very particular circumstances. If a judge becomes unfit to perform his or her duties, either through ill health or through misconduct so serious that he or she can no longer be considered fit to act in a judicial capacity, the relevant law usually provides for action which may lead to removal from office. Not every failure to follow guidance on judicial conduct will be sufficiently serious to warrant disciplinary action. Some departures will be slight and no action will be needed. Others may merit some kind of intervention ranging from a word of advice from a senior judge all the way to an investigation which may lead to disciplinary action.

It is appropriate for the judiciary to acknowledge that the community it serves has the right to expect certain standards of professionalism from its judges, and that judges should be accountable for their behaviour, when and if it falls below the expected professional standard. Furthermore the judiciary make decisions which affect peoples' lives and it is important that those people have confidence in the integrity of the individuals making those decisions.

The advantage of a complaints procedure is that it allows anyone aggrieved by a judge's behaviour to put their complaint to an independent authority for consideration. Many jurisdictions now have complaints procedures. An important function of the complaints authority has proven to be identifying properly founded complaints. It is not unusual for individuals to be confused and attempt to commence a complaint procedure in relation to a matter which should have been brought before the court by means of an appeal or judicial review. Other complaints amount to nothing more than dissatisfaction with a properly made decision. It seems likely that the complaints system plays an important part in explaining the role of the judge.

At the Chief Justices' Workshop in October, 2011 one Chief Justice expressed his reservations about linking a complaints procedure to the introduction of new guidance on conduct. He argued persuasively that the prime function of guidance should to educate by developing judicial thinking with regard to issues of conduct. If a complaints procedure is attached and presented at the same time judges may merely feel threatened and the effect might be to stultify learning. That is why we have included this discussion under the heading 'for the future'.

In reaching its decision a judiciary should bear in mind the ever-stronger insistence that those occupying positions of authority should be accountable. This constitutes a strong argument for instituting a complaints procedure.

In the commentary on the Bangalore Principles JIG gives the following warning as regard the independence of the judiciary:

"If the judiciary fails or neglects to assume responsibility for ensuring that its members maintain the high standards of judicial conduct expected of them, public opinion and political expediency may lead the other two branches of government to intervene. When that happens, the principle of judicial independence upon which the judiciary is founded and by which it is sustained, is likely to be undermined to some degree, perhaps seriously. ²⁸"

²⁸ Commentary on the Bangalore Principles 2007 at page 28.

In describing the role of the judiciary²⁹ JIG says:

"The judiciary should consider establishing a credible, independent judicial ethics review committee to receive, inquire into, resolve and determine complaints of unethical conduct of members of the judiciary where no provision exists for the reference of such complaints to a court."

In relation to the functions of the state JIG sets out at some length the safeguards which should be put in place. The full text can be found in **Annex 2**. The major points which emerge are set out on the next page.

It will be seen that the procedure proposed provides for a preliminary consideration of complaints. Claims which do not allege a breach of judicial conduct are filtered out to protect judges from unfounded disciplinary proceedings brought by disappointed litigants in respect of properly made decisions.

Whilst most complaints procedures are in line with JIG's recommendations, jurisdictions have adopted slightly different procedures. Most larger jurisdictions have appointed an independent authority to receive and handle complaints, with the power to convene panels to conduct hearings and where necessary make a recommendation to the authority with statutory power to discipline the judge. Typically panels are comprised of nominated retired judges and members of the public or civil society who are independent of the legislature and the administration. A structure of a 'typical' complaints procedure is represented in the diagram on page 63.

Summary of major points in the Judicial Integrity Group's recommendations as regards disciplinary actions against a judge

Discipline of Judges

- Conduct that gives rise to disciplinary sanctions must be distinguished from a failure to observe professional standards. Professional standards represent best practice, which judges should aim to develop and towards which all judges should aspire. They should not be equated with conduct justifying disciplinary proceedings.
- Disciplinary proceedings against a judge may be commenced only for serious misconduct. The law applicable to judges may define conduct that may give rise to disciplinary sanctions as well as the procedures to be followed.
- A person who alleges that he or she has suffered a wrong by reason of a judge's serious misconduct should have the right to complain.
- A specific body or person should be established for:
 - receiving complaints,
 - obtaining the response of the judge,
 - and for considering in the light of such response whether or not there is a sufficient case against the judge to call for disciplinary action, and
 - when appropriate referring the matter to the disciplinary authority.
- The power to discipline a judge should be vested in an authority or tribunal which is independent of the legislature and executive.

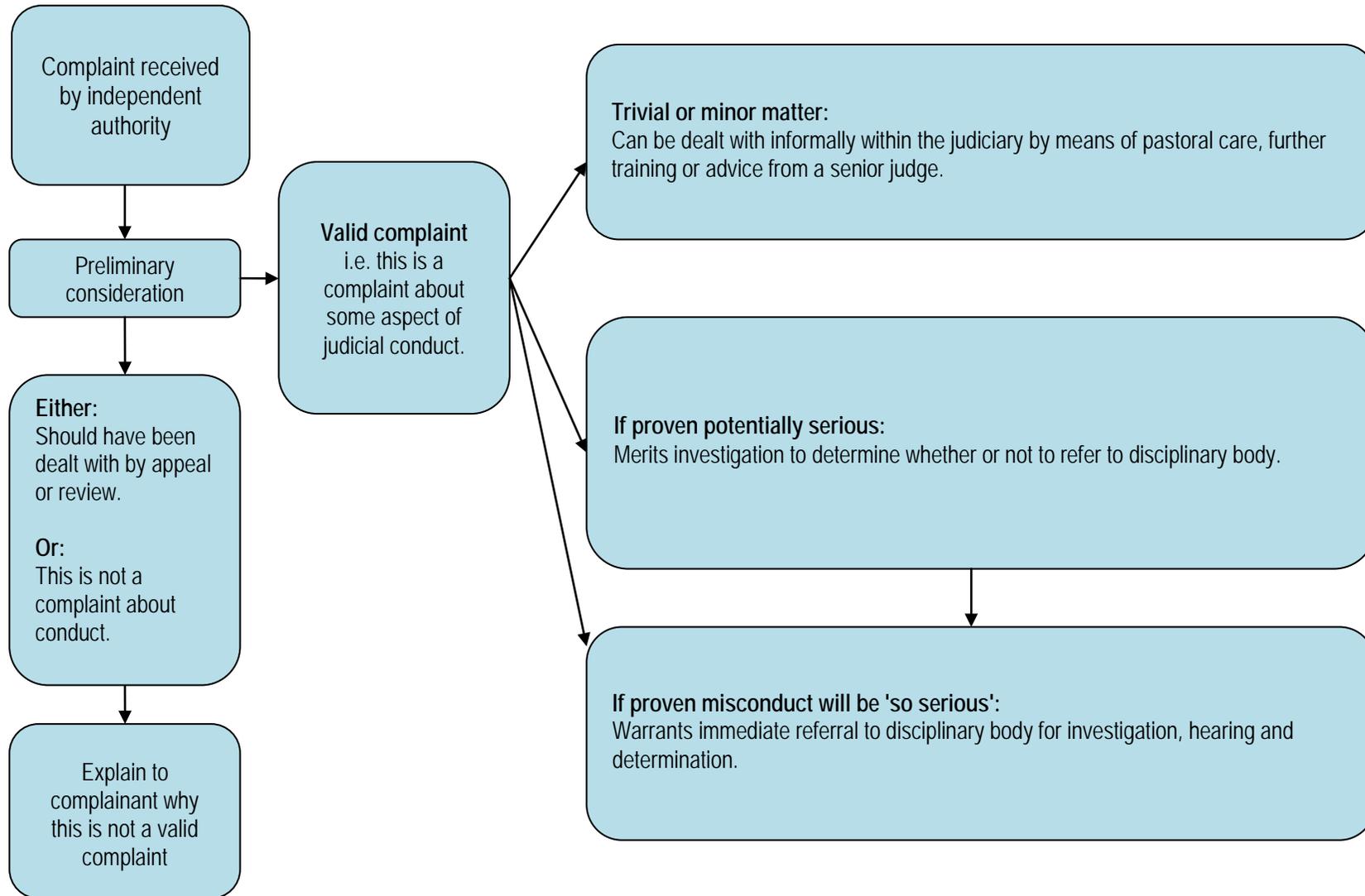
²⁹ Measures for the effective implementation of The Bangalore Principles of Judicial Conduct - Lusaka - 2010 at page 6 - See Annex 2.

- Disciplinary proceedings should be determined by reference to established standards of judicial conduct, and in accordance with the principles of a fair hearing.
- There should be a right of appeal from the disciplinary authority to a court.
- Where a sanction is imposed as a result of disciplinary action the decision should be published.

Removal of Judges from Office

- 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.

Structure of a 'typical' complaints procedure



The following table shows you where to find more detailed information regarding the complaints procedures of different jurisdictions

Jurisdiction	Complaints made to:	Web addresses
Australia - Federal Court	Chief Justice	http://www.fedcourt.gov.au/feedback-and-complaints/judicial-complaints
Australia - Federal Circuit Court	Chief Federal Magistrate	http://www.federalcircuitcourt.gov.au/html/complaints.html
Australia - New South Wales	Judicial Commission of NSW	http://www.judcom.nsw.gov.au/complaints
Canada	Canadian Judicial Council	http://www.cjc-ccm.gc.ca/english/conduct_en.asp?selMenu=conduct_complaint_en.asp#wcymaca
England and Wales	Office of Judicial Complaints	http://judicialcomplaints.judiciary.gov.uk/
New Zealand	Judicial Complaints Commissioner	http://www.jcc.govt.nz
Kiribati	Judicial Ethics Committee	Reproduced in Annex 3 .
USA - Federal Court	Varies according to court district in which judge is based	http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/RulesAndPolicies/conduct/jud_conduct_and_disability_procedure.pdf
USA - New York State	Commission on Judicial Conduct	http://www.scjc.state.ny.us/overview.htm and see also: http://www.judicialselection.us/judicial_selection/methods/removal_of_judges.cfm?state

WEB-SITE OF JUDICIAL CONDUCT COMMISSIONER FOR NEW ZEALAND³⁰

WELCOME

The Office of the Judicial Conduct Commissioner was established in August 2005 to deal with complaints about the conduct of Judges.

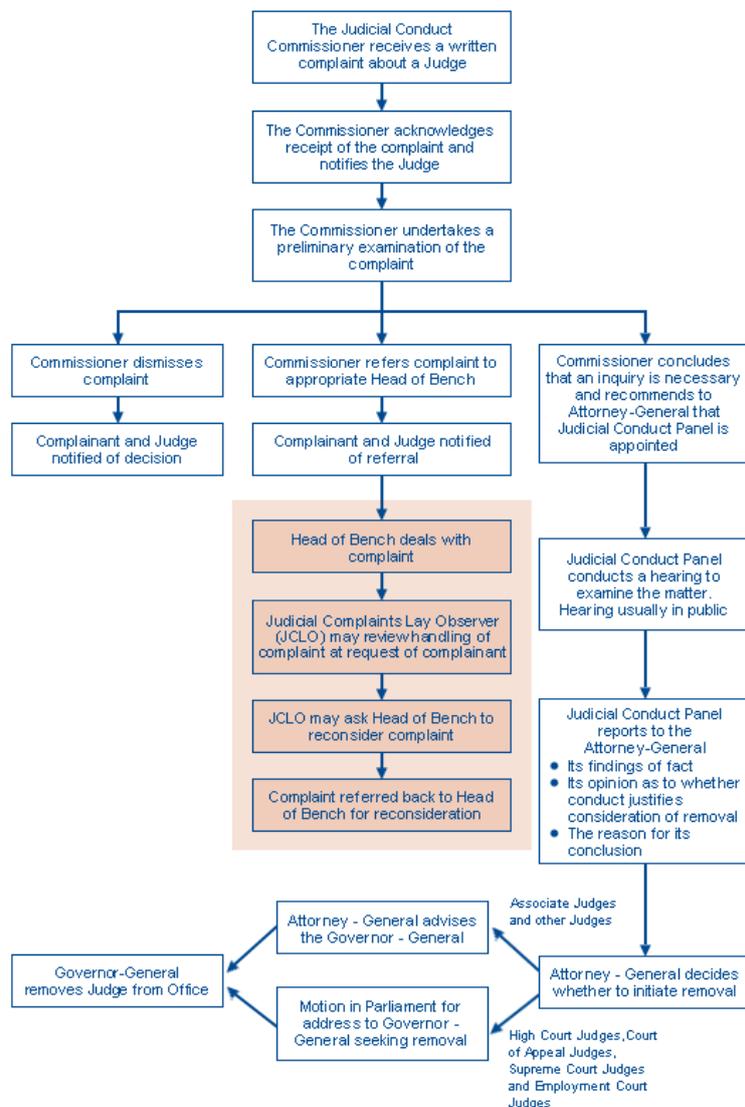
The purpose of the Judicial Conduct Commissioner is to:

- enhance public confidence in, and
- protect the impartiality and integrity of the judicial system.

Complaints may be made against Judges of the various Courts set out in Section 5 of the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, including temporary, associate, and acting Judges but not retired or former Judges.

However, the Judicial Conduct Commissioner cannot challenge the legality or correctness of a Judge's decision in relation to any legal proceedings.

The present Commissioner is Sir David Gasgoigne.



³⁰ Reproduced with kind permission of the Office of the JCC.

8.3 KEEPING GUIDANCE UNDER REVIEW

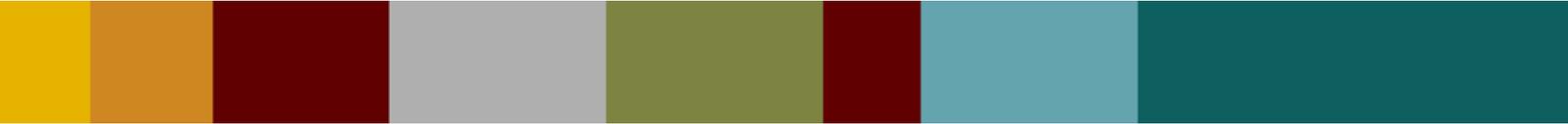
As we noted at the start of this toolkit our expectations as regards conduct change with time and yet the fundamental values and principles which guide judicial conduct have remained more or less constant throughout history. It is our interpretation of the application of those principles which changes and that can very often be attributed to changes in society or the circumstances within which society operates.

An example might be as regards propriety; whether we like it or not, it is impossible to deny that society is becoming ever more relaxed about what is regarded as proper behaviour. It follows that what would be regarded as acceptable out of court behaviour by a judge has changed during the last 20 years. What is regarded as proper behaviour also varies across different communities and different societies.

The environment within which a judiciary operates may also affect where the balance lies between two competing interests. The principles relating to impartiality make it clearly preferable for a judge to refrain from adjudicating in any case in which a member of his or her family has an interest, however small or indirect. However the interest of justice demands that any unnecessary delay should also be avoided. In a large jurisdiction with many judges it should be an easy matter to find another judge whose impartiality is not compromised but in a small jurisdiction where judges are few and families are extended it may not be so easy. This conundrum constantly confronts judges working in the geographically isolated areas of the Pacific. In the small isolated communities of the Pacific a similar conflict arises for judges between the need to remain independent and the need to be a part of the community which they serve.³¹ These issues gave rise to interesting discussions at the PJDP National Coordinators Meeting in the Cook Islands in June 2011. Further such discussions can only be useful, although it ultimately remains for each jurisdiction to formulate the advice it gives as to these difficult issues.

It would be appropriate for each jurisdiction to review its guidance periodically as well as keeping it under informal continuing review by means of monitoring such sources of information as court surveys, requests for advice from judges and, where it exists, the record of complaints received.

³¹ See The Commentary on Bangalore Principles at page 40.



TOOLKIT FOR REVIEW ON GUIDANCE ON JUDICIAL CONDUCT - ADDITIONAL DOCUMENTATION

Available at:

<http://www.fedcourt.gov.au/pjdp/pjdp-toolkits/PJDP-Codes-of-Judicial-Conduct-CoJC-Toolkit-AD.pdf>

Toolkits are evolving and changes may be made in future versions. For the latest version of this Toolkit and the Additional Documentation please refer to the website - <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>

Note: While every effort has been made to produce informative and educative tools, the applicability of these may vary depending on country and regional circumstances.



Pacific Judicial Development Programme

TOOLKIT FOR REVIEW OF GUIDANCE ON JUDICIAL CONDUCT

PJDP toolkits are available on: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>

