



Pacific Judicial  
Integrity Program

# Overview & commentary on the substance & application of the Bangalore Principles; inference and bias mitigation

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**FEDERAL COURT  
OF AUSTRALIA**



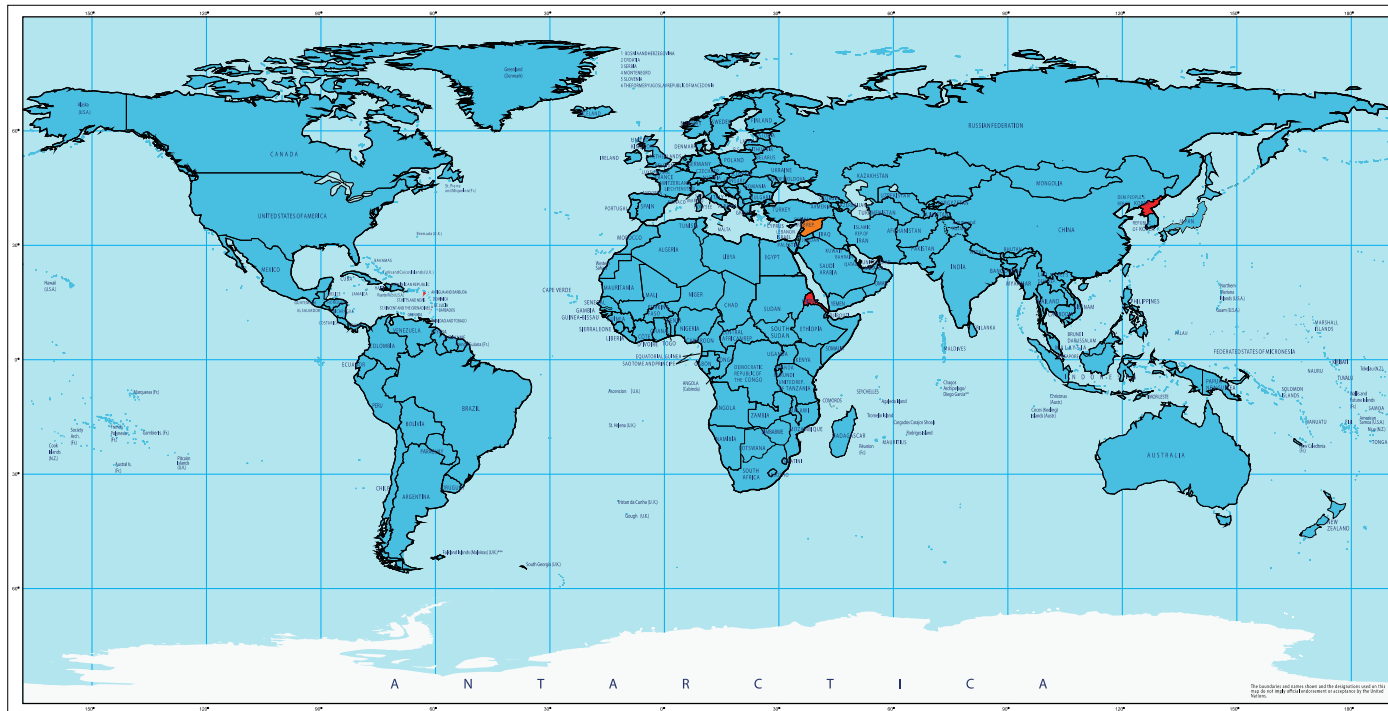
Papua New Guinea  
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## Article 11 of the United Nations Convention Against Corruption (UNCAC)



- (1) Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. **Such measures may include rules with respect to the conduct of members of the judiciary.**
- (2) Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

## UNCAC Signature and Ratification Status



- States Parties
- Signatories
- Countries that have not signed or ratified the UNCAC

**Parties: 190**

Source-UNODC Website



No one doubts that judges are expected to behave according to certain standards both in and out of court. Are these mere expectations of voluntary decency to be exercised on a personal level, or are they expectations that a certain standard of conduct needs to be observed by a particular professional group in the interests of itself and the community? As this is a fundamental question, it is necessary to make some elementary observations.

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 someday 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.

**(J.B. Thomas, *Judicial Ethics in Australia* (Sydney, Law Book Company, 1988), p.7)**



# **Disclosure of financial interests**

# United Nations Implementation Guide and Evaluative framework for Article 11



44. The disclosure by judges of their financial and other interests is an increasingly common approach for addressing both conflicts of interest and potential cases of embezzlement or illicit enrichment amongst members of the judiciary. Such declarations can also be useful with respect to the assignment of cases. “Financial interest” means ownership of a legal or equitable interest, however small, or a relationship as director, adviser or other active participant in the affairs of an institution or organization. The declaration of financial interests may be filed in court, and be accessible to parties to litigation in the judge’s court and/or their legal representatives. Figures produced by the World Bank show that of those countries with an asset declaration system in place, 56 per cent require members of the judiciary to make such declarations, rising to 58 per cent for Supreme Court members.



## **Bangalore Principles**

4.7 A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.

## Commentary

141. If consequent to his or her decision in a proceeding before the court, it appears that the judge, or a member of the judge's family, or other person in respect of whom the judge is in a fiduciary relationship, is likely to benefit financially, the judge has no alternative but to stand down. Therefore, it is necessary that the judge should be always aware of his or her personal and fiduciary financial interests as well as those of his or her family. "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian.

## Commentary

68. Similarly, a judge must not allow his or her financial activities to interfere with the duty to preside over cases that come before the court. Although some disqualifications will be unavoidable, a judge must reduce unnecessary conflicts of interest that arise when the judge retains financial interests in organizations and other entities that appear regularly in court, by divesting himself or herself of such interests. For example, the mere ownership of one per cent or less of the outstanding stock in a publicly held corporation is usually considered to be a de minimis interest<sup>64</sup> not requiring the disqualification of a judge in a case involving that corporation. But often the issue of recusal implicates several considerations, any of which might require disqualification. The stock owned by a judge may be of such significance to him or her, regardless of its de minimis value when viewed in light of the size of the corporation, that recusal is warranted. Likewise, the judge should be aware that the public might view stock ownership as a disqualifying interest. Nevertheless, the judge should not use obviously de minimis stock holdings as a means to avoid the trial of cases. If a judge is frequently recused because of stock ownership, he or she should divest himself or herself of such stock.

## Commentary

169. A judge has the same rights as an ordinary citizen with respect to his or her private financial affairs, except for any limitations required to safeguard the proper performance of the judge's duties. A judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should not serve as an officer, director, active partner, manager, advisor, or employee of any business other than a business closely held and controlled by members of the judge's family. A judge's participation in a closely held family business, while generally permissible, should be avoided if it takes too much time, if it involves misuse of judicial prestige, or if the business is likely to come before a court. It is, however, inappropriate for a judge to serve on the board of directors of a commercial enterprise, in other words, a company whose objective is to make a profit. This applies to both public and private companies, whether the directorship is executive or non-executive, and whether it is remunerated or not.



# **Assignment of cases**

# United Nations Implementation Guide and Evaluative framework for Article 11



101. The assignment of cases among the judges of a court is a potential source of corruption in the judicial system. For example, the practice of “judge shopping” in which the process of the assignment of cases is manipulated is a common feature in some jurisdictions. Governments have been known to have influenced the appointment of judges to hear politically sensitive cases. The principle that the assignment of cases is a judicial function is clear and long established. **However, it is certainly the case that the assignment of cases could be manipulated even when that task is performed by a judge.**

104. Whichever model is adopted, the assignment of cases should not be influenced by the wishes of any party to a case or any person concerned with the results of the case. **Nor should it be within the absolute discretion of a judicial officer.** The division of work among the judges of a court, including the distribution of cases, should ordinarily be performed under a predetermined, transparent arrangement provided by law **or agreed by all the judges of the relevant court.** Such arrangements may be changed in clearly defined circumstances such as the need to have regard to a judge’s special knowledge or experience. The allocation of cases may, by way of example, be made by a system of alphabetical or chronological order or other random selection process.



# **Relations with media**



## Bangalore Principles

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

## Commentary

74. **It is the function and right of the media to gather and convey information to the public and to comment on the administration of justice, including cases before, during and after trial, without violating the presumption of innocence.** This principle should only be departed from in the circumstances envisaged in the International Covenant on Civil and Political Rights [Article 4- Public emergency situations can restrict Article 19]. If the media or interested members of the public criticize a decision, the judge should refrain from answering such criticism by writing to the press or making incidental comments about such criticism when sitting on the bench. A judge should speak only through his or her reasons for judgments in dealing with cases being decided. It is generally inappropriate for a judge to defend judicial reasons publicly.



## **Bangalore Principles**

1.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

## Commentary

28. A case may excite public controversy with extensive media publicity, and the judge may find himself or herself in what may be described as the eye of the storm. Sometimes the weight of the publicity may tend considerably towards one desired result. However, in the exercise of the judicial function, the judge must be immune from the effects of such publicity. A judge must have no regard for whether the laws to be applied, or the litigants before the court, are popular or unpopular with the public, the media, government officials, or the judge's own friends or family. A judge must not be swayed by partisan interests, public clamour, or fear of criticism. Judicial independence encompasses independence from all forms of outside influence.

# United Nations Implementation Guide and Evaluative framework for Article 11



136. **Legitimate public criticism of judicial performance is a means of ensuring accountability. States should therefore seek to ensure that criminal law and contempt proceedings cannot be used to restrict such criticism of the courts.** A better approach is to raise awareness amongst the media of the potential conflict between judicial independence and excessive pressure on judges, to ensure that the media shows restraint in reporting on pending cases where such publication may influence the outcome of the case.

## Commentary

59. The contempt jurisdiction, where it exists, enables a judge to control the courtroom and to maintain decorum. Because it carries penalties that are criminal in nature and effect, contempt should be used as a last resort, only for legally valid reasons and in strict conformity with procedural requirements. It is a power that should be used with great prudence and caution. **The abuse of contempt power is a manifestation of bias.** This may occur when a judge has lost control of his or her own composure and attempts to settle a personal score, especially in retaliation against a party, advocate or witness with whom the judge has been drawn into personal conflict.



## **Bangalore Principles**

2.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

## Commentary

62. The expectations of litigants are high. Some will be quick to perceive bias quite unjustifiably when a decision is not in their favour. **Therefore, every effort should be made to ensure that reasonable grounds for such a perception are avoided or minimized.** A judge must be alert to avoid behaviour that may be perceived as an expression of bias or prejudice. **Unjustified reprimands of advocates, insulting and improper remarks about litigants and witnesses, statements evidencing prejudgments and intemperate and impatient behaviour may destroy the appearance of impartiality, and must be avoided.**



## **Bangalore Principles**

2.3 A judge shall, as far as is reasonable, so conduct himself or herself as to minimize the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.

## Commentary

87. A judge should not be unduly sensitive and ought not to regard an application for recusal as a personal affront. If the judge does take recusal as a personal affront, his or her judgment is likely to become clouded with emotion. Should the judge openly convey that resentment to the parties, the result will most probably be to fuel the applicant's suspicion. Where a reasonable suspicion of bias is alleged, a judge is primarily concerned with the perceptions held by the person applying for the recusal. It is equally important that the judge should ensure that justice is seen to be done, which is a fundamental principle of law and public policy. The judge should therefore so conduct the trial that open-mindedness, impartiality and fairness are manifest to all those who are concerned in the trial and its outcome, especially the applicant. Accordingly, a judge whose recusal is sought should bear in mind that what is required, particularly in dealing with the application for recusal, is conspicuous impartiality.



Thank You