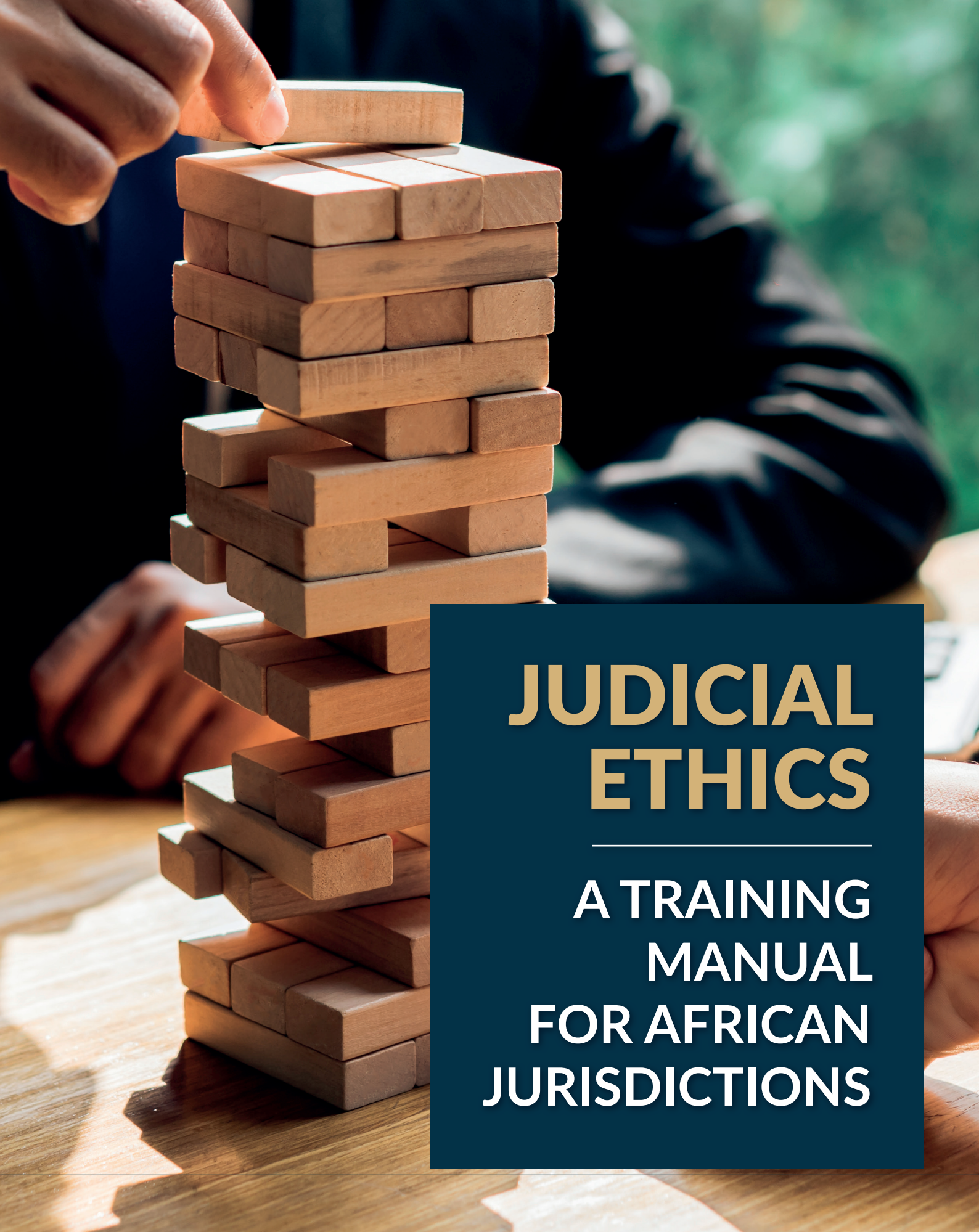




JUDICIAL ETHICS

A TRAINING MANUAL FOR AFRICAN JURISDICTIONS



REDE AFRICANA DE FORMAÇÃO JUDICIAL
L'ASSOCIATION AFRICAINE DE FORMATION JUDICIAIRE
AFRICAN NETWORK OF JUDICIAL TRAINERS



UNIVERSITY OF CAPE TOWN
IYUNIVESITHI YASEKAPA • UNIVERSITEIT VAN KAAPSTAD

JUDICIAL ETHICS – A TRAINING MANUAL FOR AFRICAN JURISDICTIONS

Developed by the African Network of Judicial Trainers (ANJT)

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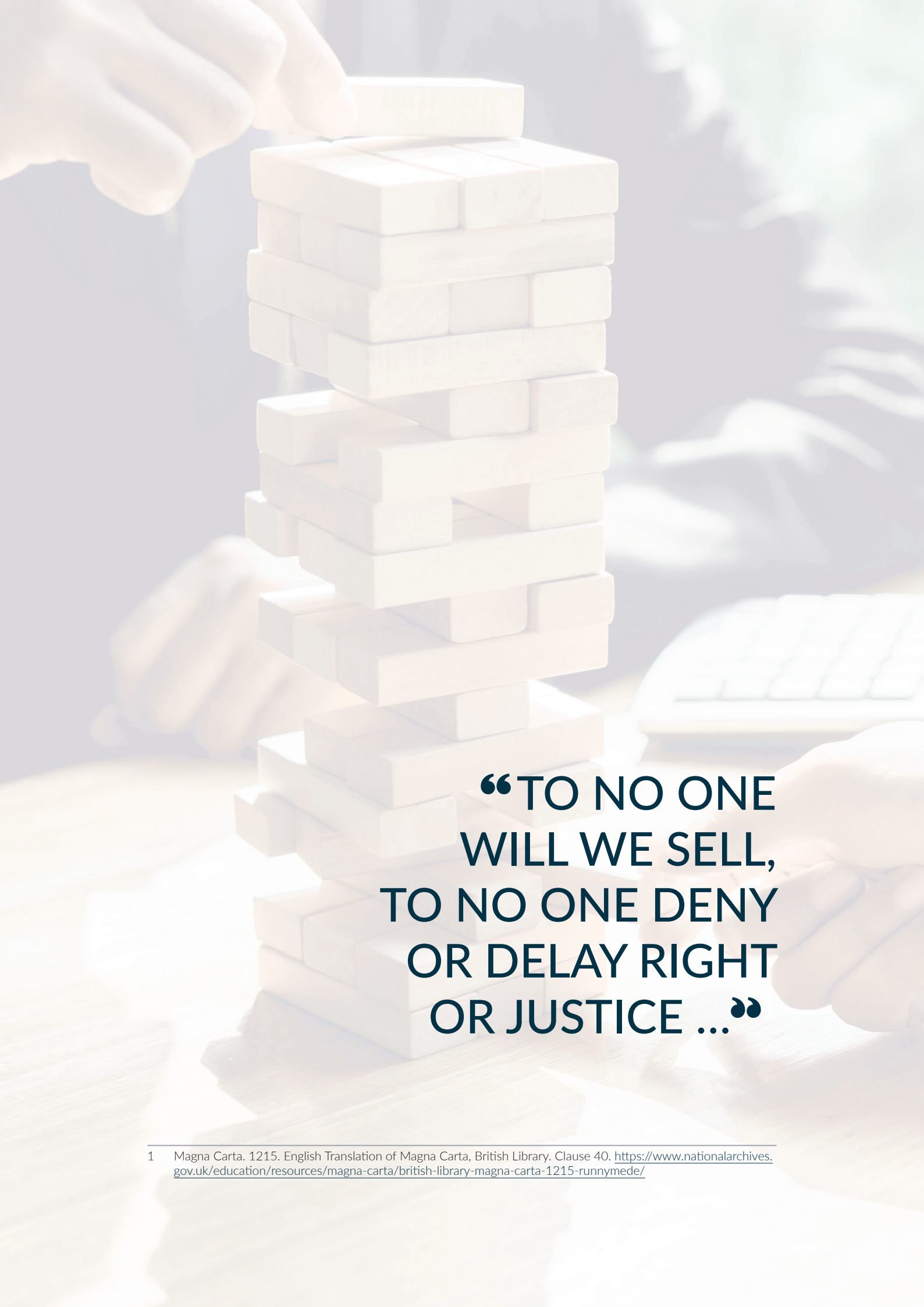
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A hand is shown placing a wooden block on top of a tall, slightly wobbly stack of similar blocks. The stack is built on a wooden desk. In the background, a white computer keyboard is visible, and the overall scene is softly lit, suggesting an office or study environment.

**“TO NO ONE
WILL WE SELL,
TO NO ONE DENY
OR DELAY RIGHT
OR JUSTICE ...”**

1 Magna Carta. 1215. English Translation of Magna Carta, British Library. Clause 40. <https://www.nationalarchives.gov.uk/education/resources/magna-carta/british-library-magna-carta-1215-runnymede/>

PRELIMINARIES

Judges play a pivotal role in upholding the rule of law and safeguarding the rights and liberties of individuals in society. Their decisions carry immense weight, and have far-reaching implications for the communities they serve. In an era marked by rapid political, social, economic and technological transformation, the need for every judge to have a solid ethical foundation is more critical than ever before.

This Training Manual on Ethics and the BANGALORE PRINCIPLES is a timely and essential resource for African judges. With its diverse legal systems and rich cultural heritage, Africa faces unique challenges in the administration of justice. As a pillar of democracy, the judiciary must not only interpret and apply the law, but also inspire public confidence and maintain the highest standards of integrity.

Ethics are the moral principles and values that guide the conduct and decision-making of individuals. For judges, ethical considerations are central to the fair and impartial resolution of disputes. The BANGALORE PRINCIPLES, a set of universally accepted ethical principles for judges, provide a comprehensive framework that encapsulates the core values of judicial integrity, independence and accountability.

This Training Manual serves as a comprehensive guide, equipping African judges with the necessary knowledge and tools to navigate the complex ethical dilemmas they may encounter in their judicial roles. It offers practical insights, case studies and thought-provoking exercises, encouraging judges to reflect on their ethical responsibilities and enhance their decision-making processes.

I commend the trainers who commit themselves to engaging with this vital resource. Their commitment to enhancing the ethical standards of African judges is commendable, and their efforts will undoubtedly contribute to the advancement of justice and the rule of law in Africa. I encourage all judicial officers to embrace the principles and knowledge presented in this manual, to strive for excellence continuously, and to uphold the highest ethical standards in the service of justice.

Dr. Mathilda Twomey-Woods

Academic Head, JIFA

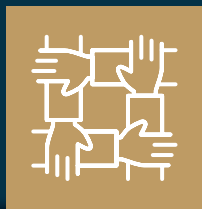
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CONTENTS

PRELIMINARIES	IV
PART 1: INTRODUCTION	2
1.1 Purpose of the manual	3
1.2 How to use this manual.....	5
1.3 Outline of indicative two-day training programme	6
1.4 Andragogical approach to training adults	8
1.5 Presentation 1: Increasing self-awareness of your values	13
1.6 Presentation 2: Universal values	16
1.7 Activities and exercises	22
1.7.1a Handout 1: Self-awareness diagnostic survey	24
1.7.1b Scoring key: Self-assessment.....	25
1.7.2 Handout 2: Creating a universal declaration of human values	25
PART 2: JUDICIAL ETHICAL PRINCIPLES	26
2.1 Presentation 3: The ideal judge.....	26
2.2 Presentation 4: History and context of deontology and judicial ethics	29
2.3 Presentation 5: The bangalore principles of judicial conduct – a judicial solution to a judicial problem	35
2.4 Presentation 6: The principles 1–6	36
2.5 Activities and exercises to embed learning.....	37
2.5.1 Handout 3: the judicial oath and what is expected of judges	38
2.5.2 Handout 4: potential ethical issues.....	40
2.5.3 Handout 5: quiz	48
PART 3: THE BANGALORE PRINCIPLES IN PRACTICE	50
3.1 Presentation 7: An additional principle – courage	50
3.2.1 Presentation 8a: Recusal.....	53
3.2.2 Presentation 8b: Test for recusal – reasonable apprehension of bias	54
3.2.3 Presentation 8c: Handy hints for dealing with recusal applications.....	56
3.2.4 Presentation 8d: Duty to disclose conflicts of interest.....	57
3.3 Presentation 9: Judicial corruption	58
3.4 Presentation 10: Conduct in court.....	60
3.5 Presentation 11: Extrajudicial activities.....	62
3.6 Activities and exercises to embed learning.....	64
3.6.1 Handout 6: Group work on recusal.....	65
3.6.2 Handout 7: Group discussion work on corruption	75
3.6.3 Handout 8: Partner work on conduct in court and extrajudicial activities	76
PART 4: PERSONAL LEARNING AND CHANGE	70
4.1 Presentation 12: Theory of change	71
4.2 Franco and Miller’s model of steps to change	72
4.3 Judicial wellness and resilience	72
4.4 Reflections.....	74
4.4.1 Handout 9: Personal reflection	75
4.4.2 Handout 10: Ethical resilience journal template.....	76
PART 5: APPENDIX: THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT	78



PART 1

Introduction

1.1 Purpose

1.2 How to use this Manual

1.3 Outline of indicative two-day training programme

1.4 Andragogical approach to training adults

1.5 Presentation 1: Increasing self-awareness of your values

1.6 Presentation 2: Universal values

1.7 Activities and exercises

- 1.7.1a Handout 1: Self-awareness diagnostic survey
- 1.7.1b Scoring key: Self-assessment
- 1.7.2 Handout 2: Creating a Universal Declaration of Human Values

In May 2022, a group of individuals from various judicial training institutes across the African continent gathered in Dakar, Senegal, and agreed that a pan-African institution was needed for the training and professional development of judges that could develop shared norms and standards, share best practices and challenges, and craft ongoing shared programmes that are responsive to Africa's needs and challenges.

In January 2023 the group reconvened in Cape Town, South Africa, where they drafted a Constitution, elected a Steering Committee, and officially established the African Network of Judicial Trainers. The founding members of the network were from the judicial training institutions of the following jurisdictions: Botswana, Guinea, Kenya, Malawi, Mauritius, Mozambique, Namibia, Niger, South Africa, Seychelles, Tanzania, Togo, Uganda, Zambia, Zanzibar and Zimbabwe.

The African Network of Judicial Trainers, now a registered non-profit organisation, designated the Judicial Institute for Africa ([JIFA](#)) at the University of Cape Town as its Secretariat.

In 2024, the Network gathered once again, in Zanzibar, for their inaugural AGM and conference. Over the course of three days they welcomed two new members (Ghana and Ivory Coast), elected a new chairperson, and engaged in discussions highlighting the significance of the BANGALORE PRINCIPLES in judicial training, the impact of data-driven decision-making, and other pertinent topics.

The Network resolved that it was imperative to familiarise all judges on the African continent with the ethical standards set by the BANGALORE PRINCIPLES, and to develop a training programme for judicial officers. To that end, I was asked to draft a training manual to be used as the basis of ethics training in judiciaries across the African continent. With input from judges from the network and legal researchers from the Judicial Institute for Africa, this Training Manual was created. I see it as only a first step in the journey of continuing education and training that is crucial for all judicial officers.

1.1 Purpose of the manual

The primary purpose of this Training Manual for judges on the African continent is to provide comprehensive guidance and instruction on ethical standards and principles to govern their conduct in their judicial roles. The Manual serves the following specific purposes:



Establishing ethical standards uniformly across all African jurisdictions: the Manual outlines the ethical principles and values that judges on the African continent are expected to uphold. It sets out guidelines on promoting and implementing the BANGALORE PRINCIPLES, namely impartiality, integrity, independence, competence, diligence and confidentiality, among other critical ethical considerations.



Ensuring consistent application: the Manual ensures that judges across different African jurisdictions have a common understanding of ethical standards. It provides uniformity in the interpretation and application of ethical principles, helping to promote fair and just outcomes in court cases.



Enhancing public trust and confidence: using the Manual to train judicial officers contributes to building public trust and confidence in the judiciary, by promoting transparency and accountability. It demonstrates the judiciary's commitment to upholding high ethical standards and maintaining the integrity of the judicial process.



Providing guidance on potential conflicts of interest: judges often face situations in which conflicts of interest may arise. The Manual offers guidance on identifying and managing such conflicts in a manner that upholds the principles of fairness, impartiality and independence.



Addressing emerging ethical challenges: the Manual addresses contemporary ethical issues that judges may encounter. It provides guidance on matters such as the use of AI and technology in the courtroom, social media usage, and the impact of cultural and societal factors on ethical decision-making.



Supporting professional development: the Manual serves as a valuable resource for judges at various stages of their careers. It provides ongoing education and training on ethical issues, helping judges stay informed about evolving ethical standards and best practices.

“

The primary purpose of this Training Manual for judges on the African continent is to provide comprehensive guidance and instruction on ethical standards and principles to govern their conduct in their judicial roles.



The Manual also addresses the various ethical challenges typically faced by African judges. While specific challenges vary, depending on the country and context, some common ethical challenges are:



Impartiality and Bias: ensuring impartiality and avoiding bias is a fundamental ethical challenge for judges. Judges must strive to make decisions based solely on the facts and the law, without being influenced by personal beliefs, prejudices or external pressures.



Corruption and Bribery: corruption can pose a significant ethical challenge for African judges. It generally arises because of poor remuneration and benefits for the office, and judges face temptation or pressure to accept bribes or engage in other forms of unethical conduct. Upholding integrity and resisting corruption is crucial to maintaining public trust in the judiciary.



Political Interference: judges often encounter political interference in their decision-making processes, particularly in politically sensitive matters or from high-profile individuals. Resisting such interference and remaining independent is vital for upholding the rule of law.



Lack of Resources: insufficient resources – due to inadequate court infrastructure, limited staff and heavy caseloads, among other factors – can present ethical challenges. Due to these constraints, judges may struggle to deliver timely and fair justice, potentially compromising the rights of litigants.



Conflicts of Interest: judges face conflicts of interest that could compromise their impartiality or create perceptions of bias. These conflicts may arise from personal relationships, financial interests or prior professional associations. Judges must be diligent in identifying and appropriately managing such conflicts.



Access to Justice: ensuring equal access to justice for all individuals, regardless of socio-economic status, can be a significant ethical challenge. Judges may need to make difficult decisions regarding pro bono representation, legal aid, or accommodating individuals with limited resources or language barriers.



Cultural and Traditional Practices: balancing cultural or traditional practices with human rights standards can present an ethical dilemma for judges. They may need to navigate situations in which customary laws, practices and sometimes official law conflict with constitutional or international human rights norms.



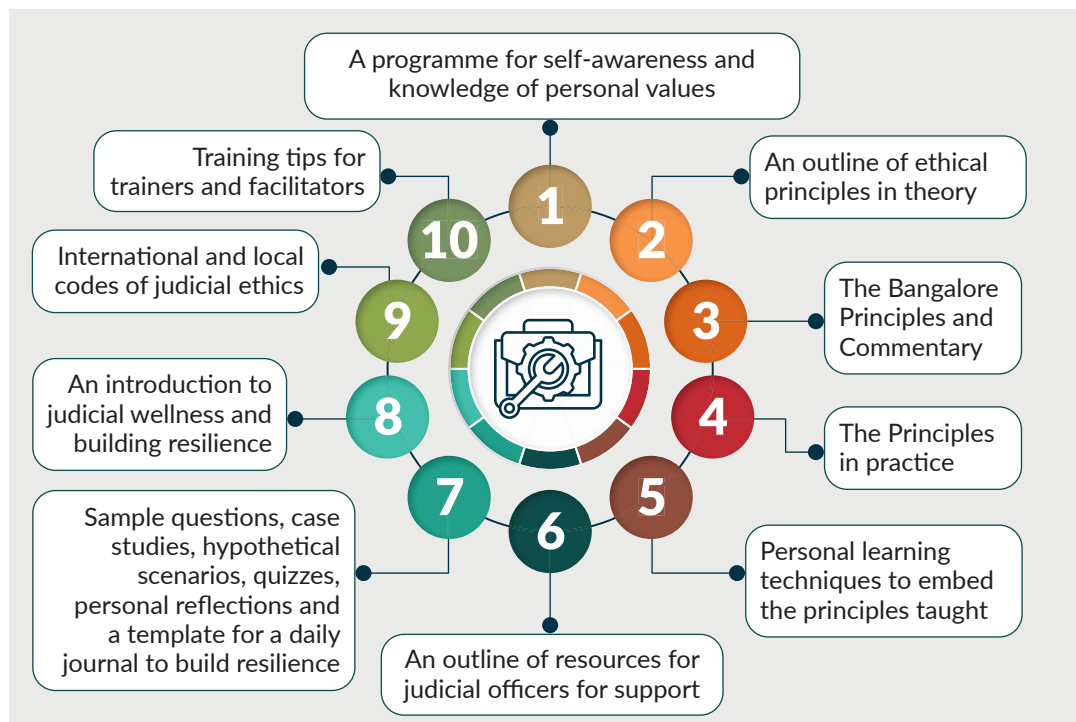
Media and Public Scrutiny: judges may face media attention and public scrutiny challenges. Their decisions and conduct may be subject to public criticism, which may impact their independence and impartiality. Upholding ethical standards amid external pressures is essential in these situations.

These challenges highlight the importance of comprehensive ethical guidelines and ongoing training to navigate complex ethical dilemmas and maintain public confidence in the judiciary.

Overall, this Training Manual aims to promote judiciaries that are ethically sound, independent, and trusted by the public. It provides a framework for judges to navigate complex ethical challenges, and to ensure their decisions are grounded in fairness, integrity and the rule of law.

1.2 How to use this manual

This Manual is composed of the following tools:



Ideally, the Manual should be used for face-to-face training, especially of newly or recently appointed judges by facilitators and trainers, who typically would be more senior or experienced judges. An outline of a sample two-day programme is set out. The flexible structure can be adapted to suit local circumstances and address logistical challenges, including the number of participants attending the training.

Ideally, the entire programme would be used in the order indicated in the sample two-day training programme, as each stage builds on the previous one.

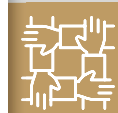
The training approach for this course is the andragogical philosophy. To put this philosophy into practice, the teaching in the Manual is based on the following principles appropriate for adult education:

- The creation of a relaxed and empathetic environment where one can explore social differences and deeply held values
- Both theoretical and practical training techniques
- Participants from a diversity of backgrounds
- Peer training
- Participative training techniques such as small groups, role-playing, and problem-solving exercises



For more details on the andragogical approach, see

Part 1.4 – Andragogical approach to training adults. →



1.3 Outline of indicative two-day training programme

Day 1

8.30–9.00	Registration
9.00–9.30	Welcome, ice breakers, introduction to the course
9.30–10.00	Presentation: Self-awareness and personal values
10.00–10.15	Individual work: Self-awareness diagnostic survey
10.15–10.45	Presentation: Universal values
11.00–11:15	Tea/coffee break
11.15–12.15	Group Work: Creating a Universal Declaration of Human Values (UDHV)
12.15–12.45	Plenary – Feedback and discussion on UDHV
12.45–13.00	Reflective exercise
13.00–14.00	Lunch
14.00–14. 00	Presentation: Deontology and the BANGALORE PRINCIPLES – the theory
14.30–15.00	Reflective exercise: The Judicial Oath and what is expected of me as a judge
15:30–15:45	Tea/coffee break
15:45–16:30	Group work: Potential ethical issues
16.30–17.00	Plenary feedback

Day 2

9.00–9.30	Presentation: Courage
9.30–10.00	Plenary discussion on courage
10.00–10.45	Presentation: Recusal
10.45–11.00	Tea/coffee break
11.00–11.45	Group Work on Recusal Hypotheticals
11.45–12.00	Plenary feedback
12.00–12.20	Presentation: Judicial corruption
12.20–12.45	Group work on a hypothetical case of judicial corruption
12.45–13.00	Plenary feedback
13.00–14.00	Lunch
14.00–14.30	Presentation: Conduct in court and extrajudicial activities
14.30–15.00	Partner discussion on Conduct in court and extraJudicial activities
15.00–15.30	Plenary feedback
15.30–15.45	Coffee/tea break
15.45–16.15	Presentation: Personal learning and change
16.15–16.45	Judicial wellness and resilience – templates
16.45–17.00	Reflection and closing



1.4 Andragogical approach to training adults

Human beings have huge psychological and mental potential at birth, but many factors can interact to enhance or obstruct the potential for development. These include genetics, nurture, education, socio-economics and environment. All these factors play a part in the development of the brain. By the time an individual reaches adulthood, their self-concept moves from being a dependent person to being a self-directed human being. They accumulate a growing reservoir of experience that becomes an increasing resource for learning. Their readiness to learn becomes increasingly oriented to the developmental tasks of their social roles, and their time perspective changes from the postponed application of knowledge to the immediacy of application. As a result, their orientation towards learning shifts from one of subject-centredness to one of problem-centredness. Finally, as a person matures, the motivation to learn becomes internal; dependent, for example, on the promise of a wage increase or a job promotion, a wish or need to improve one's skills in a relevant area or to improve one's life at home or in the workplace generally.²

An awareness of these factors can help the trainer tap into the learner's inner resources and biological tool kit to create an atmosphere in which learning and individual potential can flourish.

JIFA has adopted the andragogical approach to learning, and a summary of this approach is outlined in its Judicial Train the Trainer Manual.³ This approach to learning has profound implications for the trainer. As Tim Peterson⁴ puts it:

“Andragogy is predicated on the belief that during the span of living, humans accumulate experience. The collective experiences become an individual's identity and from that foundation, humans create their self-image. Thus, in a very real way, adults are what they have done. From an andragogical perspective, education builds on, examines, and expands the base of experience”⁵

The androgical approach to learning uses this accumulated experience in adults – which differs from the traditional pedagogical approach, which focuses on teaching children and young learners. So while *pedagogy is focused on teacher-led instruction*, andragogy is focused on student-led instruction, with the trainer as a facilitator. The concept, first mentioned by Alexander Kapp,⁶ and revisited by Malcolm Knowles,⁷ has since become widely recognised in adult education.

2 Knowles, M. 1970. *The Modern Practice of Adult Education: Andragogy versus Pedagogy*. New York, NY: Association Press.

3 Smit, H., Twomey, M. & Barnes, J. Eds. *JIFA Judicial Train the Trainer*. University of Cape Town.

4 Peterson, T. 2006. It's Called Andragogy. *Academy of Management Learning & Education*. 5(1).

5 Peterson, T. 2006. It's Called Andragogy. *Academy of Management Learning & Education*. 5(1):118.

6 Kapp, A. 1833. *Platon's Erziehungslehre als Pädagogik für die Einzelnen und als Staatspädagogik, oder dessen praktische Philosophie*.

7 Knowles, M. 1970. *The Modern Practice of Adult Education: Andragogy versus Pedagogy*. New York, NY: Association Press.

Knowles identified the following principles of adult learning:



Self-directed learning: Adult learners are autonomous and self-directed. They are motivated to learn when they need knowledge or skills to address real-life challenges or goals. Therefore, andragogy emphasises the creation of a learning environment that encourages self-motivation and gives learners a say in their learning process.



Experience-based learning: Adult learners bring a wealth of life experience, which can be leveraged in the learning process. Andragogy recognises the importance of building on learners' prior knowledge and experiences, allowing them to connect new information to what they already know. This approach encourages active participation and reflection on personal experiences.



Relevance to adult learners: Adult learners are more likely to be engaged in learning when they can see the immediate applicability of the knowledge or skills being taught. Andragogy emphasises the importance of making learning relevant to the learners' professional or personal lives. This can be achieved by relating the content to real-world examples, allowing learners to solve authentic problems, or incorporating case studies and practical activities.



Collaborative and problem-centred learning:

Andragogy encourages collaborative learning environments in which participants can learn from each other's experiences and perspectives. Group discussions, case studies and problem-solving activities promote active engagement and critical thinking. Adult learners benefit from opportunities to apply their knowledge and skills in actual or simulated contexts.

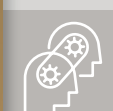


Flexibility and individualisation: Andragogy recognises the diversity among adult learners and acknowledges their individual learning styles, preferences and needs. Therefore, the andragogical approach promotes flexibility in terms of learning methods, pace and content delivery. Adult learners are encouraged to take responsibility for their own learning, and are given options to tailor their learning experiences to their specific needs.⁸

8 Knowles, M. 1970. *The Modern Practice of Adult Education: Andragogy versus Pedagogy*. New York, NY: Association Press.

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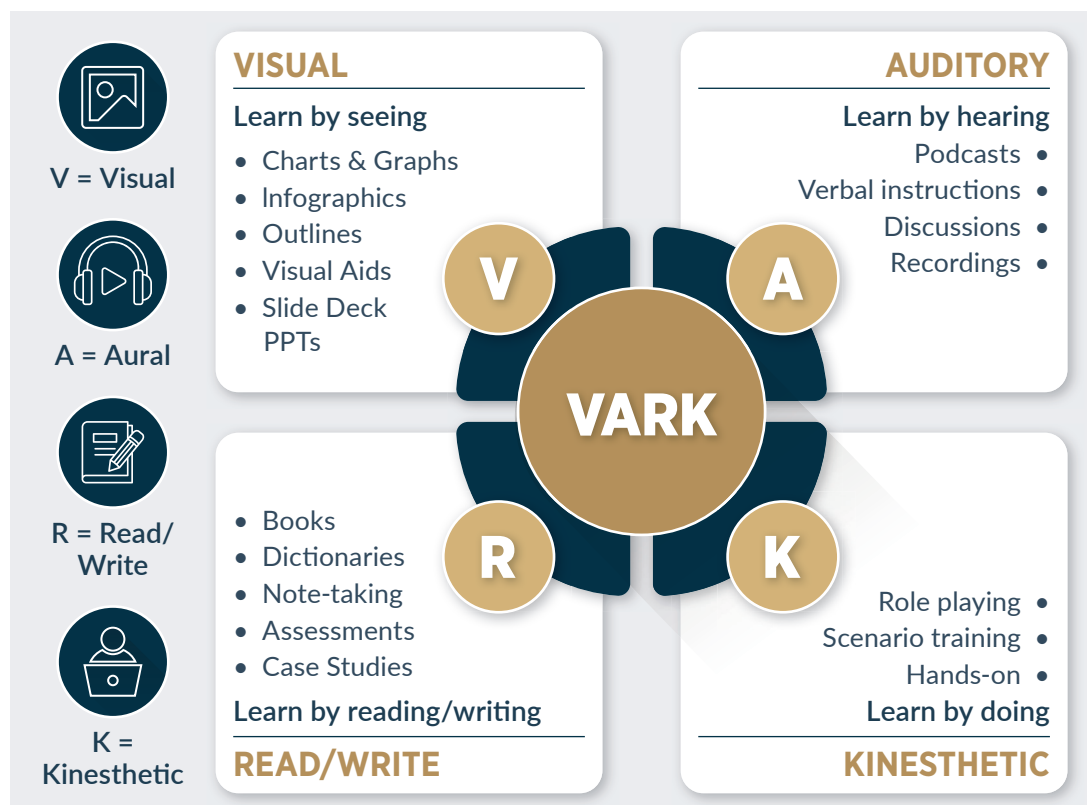
Genetics, nurture, education, socio-economics and environment are the factors that play a part in the development of the brain.



Overall, the andragogical approach recognises adult learners' unique characteristics and motivations, and aims to create a learner-centred environment that fosters active, relevant and self-directed learning.

Allied to this approach is the fact that adults have individual learning styles. Neil Fleming⁹ theorised that we are all one or more of four main types of learners: visual, auditory, reading/writing, and/or kinaesthetic learners.

The chart below illustrates Fleming's theory:¹⁰



Fleming devised a questionnaire to identify the learning type of each individual. If you wish to gain an insight into the participants' learning style, you may find it useful to ask them to complete the questionnaire, which is available at the link below. After completion of the questionnaire, results are received instantly: <https://vark-learn.com/the-vark-questionnaire/> ➔

⁹ Fleming, N. 2001. *Teaching and Learning Styles: VARK Strategies*. Neil Fleming, Christchurch.

¹⁰ Fleming, N. 2001. *Teaching and Learning Styles: VARK Strategies*. Neil Fleming, Christchurch.

The characteristics of each learner type can be more explicitly described as follows:

As the name suggests, **visual learners** understand and retain information best by seeing. They would prefer to see information presented in a visually appealing way rather than in a written format. Individuals who learn this way tend to pay close attention to detail and body language, and often imagine situations to help them process the information better.

In terms of learning, graphic displays are most effective for visual learners. Some of these include:



diagrams, charts, and infographics for understanding and remembering information.



colour coding or highlighting to emphasise important points in written materials.



videos or animations that demonstrate concepts or processes.



flashcards with visual cues or images to reinforce learning.



concept maps or mind maps for visually organising ideas.

Auditory or aural learners tend to learn information best by hearing it. Rather than getting actively involved in class or writing notes, they prefer to listen to others present the information, and then can usually recite it back to them.

This is usually through conversation, but it can also include recordings and music. Some learners also find that reading information aloud can help them recall it better.

Because auditory learners need to listen intently to lectures or information, they must be able to study in a quiet environment, away from distractions and any other noises that could distract or disrupt their learning.

However, once they've found the peace to study, some of the best ways to study which benefit aural learners include:



discussions and debates to actively process information.



recorded lectures or class discussions, podcasts and audiobooks.



mnemonic devices, rhymes or songs to remember key information.



group activities that involve verbal communication and explanations.



personal, **one-on-one tutoring** ➔.



Reading and writing learners: Those who prefer reading and writing learning styles tend to take in new information best when it is displayed as words and text. They'll often produce lists, read definitions, and enjoy summarising information in ways that best make sense to them.

In this way, reading and writing learners tend to understand and memorise new information best by:

- Active reading and highlighting or underlining key points.
- reading textbooks and summarising, with notes.
- Writing notes in lectures and highlighting essential details.
- Creating outlines or bullet-point lists to organise information.
- Rewriting or summarising information in their own words.
- Studying alone, avoiding all distractions.
- Writing and reviewing flashcards or study guides.

Kinaesthetic Learners: Those who learn best by practically touching and doing things, and who need hands-on experience to learn. They enjoy having physical practice and directly manipulating objects and materials to better understand how things work. Usually, movement and short bursts of studying are essential to keep them engaged, rather than sitting at a desk for sustained periods.

In this respect, kinaesthetic learners are most engaged while moving; therefore, facilitators should try to incorporate an activity into the training.

Some study methods for kinaesthetic learners include:

- Using manipulatives or physical objects to understand abstract concepts.
- Performing a 'physical' activity while learning, e.g. walking and reading a textbook.
- Engaging in role-playing or enacting scenarios related to the topic.
- Creating flashcards and being tested by a colleague.
- Taking regular breaks during studying to incorporate physical movement or exercise their legs.

It is important to note that these strategies are not exclusive to each learning style, and individuals often have a combination of preferences. Exploring and experimenting with different strategies is helpful for finding what works best for the individual learner. Additionally, incorporating multiple learning styles can enhance the overall learning experience.

Trainers are encouraged to familiarise themselves with the philosophy and techniques outlined above before embarking on the training programme. The andragogical approach will ensure that participants move from a fixed, closed mindset to a growth mindset that is innovative and open to possibilities. This will allow the participants to engage more deeply and retain ownership of their personal growth and development.

1.5

Presentation 1: Increasing self-awareness of your values

We make judgements every day based on our values. The values we hold inform our behaviour and give us discernment to know what is right or wrong. Values are deeply rooted and form a personal foundation that guides how we think, act and feel. Ultimately, our values help us find happiness and purpose in life.

Values are defined as “the principles or moral standards held by a person or social group; the generally accepted or personally held judgment of what is valuable and important in life.”¹¹ Therefore our values are important to us. Among other things, values may include being true to oneself; being honest, educated, religious, loyal to one’s country; working hard; and being successful.

An awareness of your values is essential. By clearly articulating your values, you can assess whether you are spending enough time on, and making decisions based on, what you consider crucial.

Another essential aspect of our values is that they do change naturally over time; and we must therefore be mindful that the values we held dear many years ago may not be right for us later in our lives. So we must pause occasionally, take stock of our values and habits, and challenge ourselves to move forward with a new set of values. This active evaluation promotes personal growth and development.

Values, morality and ethics are often conflated. Although interconnected, they are not the same thing. Values are connected to our personality; for example, a person who values friendship would drop everything to help a friend, and a person who values success might work late at night to pass an exam. Morality is a system of beliefs that emerge from your core values. They generally govern a person’s desire to be good. A larger population may share the same moral codes; but an individual’s moral code may differ from those of others, depending on their values – for example, helping a friend is a good thing to do (based on the value of friendship), working late into the night is a good thing to do (based on the value of success). Ethics are closely related to morals, and the terms are often used interchangeably; but there are differences. While morals are personal and normative, ‘ethics’ refers to the ‘good’ and ‘bad’ standards that a specific community or social setting identifies. We will be addressing ethics in more depth later; but first, we must investigate morality.

¹¹ “Values”. *Oxford English Dictionary*. 2010. 11.6.d.

“

Values are defined as “the principles or moral standards held by a person or social group; the generally accepted or personally held judgment of what is valuable and important in life.”



Enter Kohlberg:¹² Kohlberg's theory of morality is a way to understand how people develop their sense of right and wrong as they grow up. He states that individuals go through six stages of moral development.



Stage 1

Punishment and Obedience Orientation – At this stage, children focus on avoiding punishment. They believe that what is right is simply what they are told to do, and they obey rules to avoid getting into trouble.



Stage 2

Instrumental Relativist Orientation – In this stage, individuals start to think about their own interests. They understand that they can get rewards by doing things for others, but their actions are still motivated by self-interest.



Stage 3

Good Interpersonal Relationships – At this stage, individuals value being seen as good people by others. They want to maintain positive relationships and seek approval from others. They start considering other people's feelings.



Stage 4

Maintaining Social Order – Next, individuals focus on upholding social rules and maintaining social order. They believe that it is essential to follow laws and respect authority. They see rules as necessary for maintaining a functioning society.



Stage 5

Social Contract Orientation – At this stage, individuals understand that rules are not absolute, and can be changed if they are unfair or do not serve the greater good. They start thinking about the principles behind the rules, and consider the needs and rights of all individuals.



Stage 6

Universal Ethical Principles – This is the highest stage of moral development. Individuals at this stage develop their own set of moral principles, based on universal values such as justice, equality, and respect for human dignity. They act according to these principles, even if it means going against the law or social norms.

¹² Kohlberg, L. 1981. *The Philosophy of Moral Development*. Cambridge: Harper & Row.

The importance of universal ethical principles is highlighted by the Josephson Institute of Ethics in its resource pamphlet:¹³

“Most people have convictions about what is right and wrong based on religious beliefs, cultural roots, family background, personal experiences, laws, organisational values, professional norms and political habits. These are not the best values to make ethical decisions by – not because they are unimportant, but because they are not universal.

In contrast to consensus ethical values – such basics as trustworthiness, respect, responsibility, fairness, caring and citizenship – personal and professional beliefs vary over time, among cultures and among members of the same society. They are a source of continuous historical disagreement, even wars. There is nothing wrong with having strong personal and professional moral convictions about right and wrong, but unfortunately, some people are ‘moral imperialists’ who seek to impose their personal moral judgments on others. The universal ethical value of respect for others dictates honouring the dignity and autonomy of each person and cautions against self-righteousness in areas of legitimate controversy.”¹⁴

Universal values guide and motivate ethical behaviour. An awareness of values, morals and ethics has practical implications and applications for many aspects of our lives – including in our roles as judges, especially for ethical decision-making and law.

The next stage in the discussion of values and morals is their location in law. While ethics relate specifically to the guidance of behaviours, ‘the law’ is the rules established by the state and enforced by imposing penalties. However, as H. L. A. Hart points out:

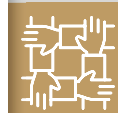
“[L]aw, at all times and places, has been profoundly influenced both by the conventional morality and ideals of particular social groups and also by forms of enlightened moral criticism urged by individuals whose moral horizon has transcended the morality currently accepted.”¹⁵

In many circumstances, the distinction between what is moral and what is legal might be easy to identify: being unkind to your spouse may be morally wrong, but not illegal. Equally, cheating in a game of Trivial Pursuit may be wrong, but not illegal. Other matters are more difficult, as morality is most often subjective. For instance, one could argue that although divorce is legal, in the eyes of some individuals it is not morally acceptable. The central discussion is whether something must be illegal to be immoral, and conversely, does something have to be immoral to be illegal? History has taught us that the validity of law does not depend on its moral rectitude; for example, although slavery was declared to be illegal, it continued to be viewed as morally acceptable by many countries and states.

13 Josephson Institute of Ethics. 2015. *Making Sense of Ethics*. Available: <https://josephsoninstitute.org/med-1makingsense/>

14 Josephson Institute of Ethics. 2015. *Making Sense of Ethics*. Available: <https://josephsoninstitute.org/med-1makingsense/>

15 Hart, H. L. A. 1961. *The Concept of Law*. Oxford: Clarendon Press. 181.



Moreover, making decisions does not simply involve making right or wrong choices, choosing between good and evil, or even choosing between two equally positive values; it is about essential trade-offs or compromises. A trade-off is the process of giving up one thing for another, and is generally the action taken when you cannot satisfy two desirable options simultaneously. An example of a trade-off in your personal life might be choosing to spend time with your children instead of working: a working mother might consider taking an extended maternity break to care for her young infant, but earn less money in the process. An example of a trade-off in our work might be how we consider the delict or tort in personal injury cases. While we may be sympathetic to a particular litigant who has suffered a horrific injury, we are often asked to consider reducing the quantum of damages awarded to avoid escalating insurance costs. This illustrates the ethical tightrope we must often tread when making decisions.

The exercises that follow will help each of us to reflect on our personal values and morals.

1.6 Presentation 2: Universal values

This Presentation¹⁶ explores the existence of universal human values. Everyone has a set of values that arise from their family, social, cultural, religious and political contexts, some of which correspond to more ‘global’ and ‘universal’ frameworks. Participants are encouraged to articulate their values and put them into conversation with values from other contexts. The overarching goal is to demonstrate that it is possible to articulate universal values and yet to recognize that such standards are always open to contestation. One of the goals of this exercise is to highlight this tension between the universal nature of values, ethics and morality and the particular contexts that create those values, ethics and morals. Important themes to be addressed include ethics, morality, values, relativism, rights and responsibilities.

The term ‘value’ refers to something that an individual or community believes has a worth that merits being pursued, promoted or privileged. This can be a thing (money, food, art), a state of mind (peace, security, certainty) or a behaviour that results from those things or states of mind (protecting innocents, telling the truth, being creative).

A value is not the same as a desire. To desire something means wanting a thing without much reflection on it; that is, a desire might come from an instinct, urge or physical need. A value may originate in a desire or in a series of desires, but only arises after reflection on whether or not the thing that is desired is good. Philosophers often focus on how we get from our desires to our values by focusing on the word ‘good’. One philosopher, G. E. Moore (1873–1958), argued that the word ‘good’ cannot really be defined, because there is no standard against which we can discover what goodness means. He called this inability to define evaluative

¹⁶ These lecture notes are reproduced and adapted from the UNODC Global Resource for Anti-Corruption Education (GRACE) materials on Ethics and Universal Values: https://grace.unodc.org/grace/uploads/documents/academics/Integrity_and_Ethics_Module_2_Ethics_and_Universal_Values.pdf

terms 'the naturalistic fallacy', because it assumes that there is something in nature or in reality that evaluative terms can match. He argued that good was a *non-naturalistic* quality, because it cannot be verified by science.¹⁷

Every individual values certain things, states of minds or behaviours as these relate to his or her upbringing and social context. Every community privileges certain things, states and behaviours as a result of its geographical location, historical trajectory, or ideational background. To claim that there are universal values, however, means seeking to uncover something that applies across all persons and communities as a result of their very humanity. Such universal values might be derived from scientific investigation, social science testing, or philosophical reflection. They might also arise from more nefarious methods, such as imperial practices, ideological or religious proselytizing, or economic exploitation. To explore universal values, then, requires attention not only to the values themselves but to the ways in which they have come to appear in the current global order.

Values are the subject of ethical investigation, although sometimes the terms 'ethics', 'morality' and 'values' are conflated into one subject. In English, it is common to use these terms interchangeably; but philosophers distinguish them in the following way. Values and morals are closely related, though according to most philosophers, morals and morality result from rationality, while values might arise from social contexts, emotional dispositions, or rationality. As noted above, a value is different from a simple desire; the former is something that we want after some reflection upon whether it is actually a good thing. Ethics, on the other hand, is the study of morals, including their origins, their uses, their justifications and their relationships.

There have been efforts to articulate universal human values. Professor Hans Kung, a Catholic theologian who teaches at the University of Tübingen in Germany, helped to create a Parliament of World Religions which issued a Declaration Toward a Global Ethic.¹⁸ The Hindu spiritual leader Sri Ravi Shankar also issued a Universal Declaration of Human Values.¹⁹ Both of these documents emphasise values, and they overlap in many important ways.

How can we find universal values? There are many ways to investigate the existence of such values. Those approaches can perhaps be organised into three broad categories: scientific, historical and dialectic. These categories can be represented by three different philosophers: Aristotle, Mencius, and Jürgen Habermas.

Aristotle (384–322 B.C.) is considered one of the three great philosophers of Ancient Greece. Originally from Macedonia, as a young man he moved to Athens, where he became a student of Plato (428–348 B.C.) – another great philosopher, who himself was a student of Socrates (470–399 B.C.), perhaps the greatest Greek philosopher of antiquity. Socrates did not write anything down, but interrogated the people of Athens about what they valued. In

17 Baldwin, T. 2010. George Edward Moore. In *The Stanford Encyclopedia of Philosophy*. Edward N. Zalta, Ed. Available: <https://plato.stanford.edu/archives/sum2010/entries/moore/>

18 Parliament of the World's Religions. 1993. *Towards a Global Ethic*. Available: <https://parliamentofreligions.org/wp-content/uploads/2023/05/Global-Ethic-PDF-2020-Update.pdf>

19 Shankar, S.S.R. 2007. *Universal Declaration of Human Values*. Available: www.iahv.org/us-en/wp-content/themes/IAHV/PDF/Universal-Declaration-of-Human-Values.pdf



those interrogations he would often raise more questions than answers, pointing out how established traditions do not really reflect what is good for the human person. Plato, who wrote many dialogues using the person of Socrates as his main character, argued that ethics and values should be understood through the idea of virtues, or the standard of excellence within particular activities, as a guide for how to act. For example, being a good ship's captain means ensuring that a ship does not crash, that its goods and people arrive safely at port, and that it remains seaworthy. When it comes to universal values, however, we are talking about what it means to be not just a good pilot but a good human being.

Aristotle took Plato's main idea about the virtues and tried to ground it in empirical observations; hence, he took a scientific approach to finding out what is good, and what is a universal value. Aristotle did this by comparing people to other (non-human) animals, and comparing different political communities. So, for Aristotle, understanding the virtue of the human person means looking for those activities that the best people do that make them happy. He argued that two activities differentiate human beings from all other animals: humans think, and humans live in political communities. We do know that some other animals have some capacity for critical reflection, such as other primates, as well as dolphins. We also know that some other animals live in what look like organised political communities, such as primates, dolphins and even ants. But no other animals use language, giving humans the ability to reflect critically on what they think and do.

The Greek word *logos* means both 'language' and 'reason', and it is that word that provided Aristotle with the key to identifying the good and the values for any human person. Humans are defined by the combination of these two sets of activities. Aristotle concluded that the best possible person is one who engages in two types of activity: critical reflection, and political activity. He called the first set of activities the intellectual virtues and the second set of activities the practical virtues.

Aristotle believed that people need to be educated in handling the virtues. Individuals might desire many things which they believe will make them happy, such as wealth, food, drink, sex and power. Each of these is important, according to Aristotle; but on reflection, all of them must be enjoyed in moderation in order to become truly valued. Only by using our rationality for thinking and creating a community in which thinking is encouraged, and in which education is valued, can universal values flourish.²⁰

A second approach to discovering universal values is to focus on history and tradition. The Chinese philosopher Mencius (372–289 B.C.) lived at roughly the same time as Aristotle. Just as Aristotle was a student of Plato, who studied under Socrates, so Mencius was a disciple of the great Chinese philosopher Confucius (551–479 B.C.). Mencius is sometimes called 'the second great Confucian scholar', as he developed and improved on the ideas of Confucius in important ways. Confucius – perhaps the most famous Chinese philosopher – argued for a moral theory based on virtues. He considered one virtue in particular to be the most important:

20 Shields, C. 2016. Aristotle. In *The Stanford Encyclopedia of Philosophy*. Edward N. Zalta, Ed. Available: <https://plato.stanford.edu/archives/win2016/entries/aristotle/>

ren, or benevolence to others. But this compassion was not to be directed at all people, but rather to those within certain social systems, beginning with the family. This means that being a good person means understanding one's place in society, and understanding the traditions and rules that arise from that place. A central principle of Confucius is respect for one's elders – a respect that would then radiate outward to become respect for the leaders of a society. These relationships are the focus of Confucian ethical and political thought.

Like Aristotle's Greece, the culture in which Mencius lived had well-developed social, cultural and political structures. Mencius adapted the teachings of Confucius, proposing four virtues: benevolence, righteousness, propriety and wisdom. These expand on Confucius' central virtue of benevolence, resulting in a fuller and more comprehensive moral theory. But like Confucius, Mencius believed that the family and society provide the basis for these virtues. To find these virtues, one must understand one's place in society and have respect for tradition. Mencius argued that benevolence was most important, but he believed that cultivating wisdom to know just how to orient that benevolence was also important. Because of this, he placed a great deal of emphasis on education, as did Aristotle.²¹

There are some parallels with Aristotle, in terms of what counts as values; but also some important differences. Both Aristotle and Mencius saw critical reflection on human life to be central; for Aristotle this translated into the intellectual virtues, and for Mencius into the virtue of wisdom. However, they differed in how they saw the importance of politics. For Aristotle, the practical virtues meant cultivating a life in which one could participate directly in politics; this perhaps arises from the fact that Aristotle lived in Ancient Greece, which was a democracy. Mencius does not place as much emphasis on all humans being political actors, though he himself certainly participated in politics. Rather, because of the social and political contexts of his world, Mencius (like Confucius) placed more emphasis on respecting one's elders and rulers and recognising one's place, in society and in the family. But both believed that the human person flourishes when educated.

Comparing these two philosophers, we can see how we might come to the same conclusions about universal values (the value of education and wisdom) and yet disagree about others (the value of participating directly in politics, or of being ruled by wise rulers). We can also see how the methods of the two philosophers differ in coming to their conclusions: Aristotle sought to observe the natural world to come to his conclusions, while Mencius observed the social context to come to his. There are other philosophers from different cultures who came to similar conclusions. For instance, the Arab philosopher, al-Farabi (872–951) came to similar conclusions as Aristotle concerning the relationship between ethics and the natural world.

In today's interconnected world, there is another way of looking for universal values, which we might call 'the dialectic'. This method involves engaging in debate and dialogue with others who come from different perspectives, in order to come to some consensus about what we all agree on. One modern-day philosopher who advocates for this approach is the German

21 Van Norden, B. 2017. Mencius. In *The Stanford Encyclopedia of Philosophy*. Edward N. Zalta, Ed. Available: <https://plato.stanford.edu/archives/spr2017/entries/mencius/>



Jürgen Habermas (1929-). In his early life, Habermas was a Marxist thinker; but he moved away from strict Marxism to embrace a more nuanced critical theory. His association with a group of philosophers living in Frankfurt led him to be associated with the Frankfurt School, who sought to combine critical reflection on social and economic matters with an appreciation of democratic principles. Habermas proposed what he called “an ideal speech situation” as a way to capture how ethical and political dialogue should take place. This is an imagined approach to dialoguing about complex issues, in which all persons are equally able to discuss and debate their positions. The goal of such a situation is to find some consensus by which the community can advance its ideas and values. Habermas has written about how modern democracies can capture this approach through combining the roles of legislators and judges; the legislatures provide a space to debate the making of laws, while judiciaries provide a space for debate about legal disagreement. He has also argued that the European Union provides an example of how an international order might be designed that can lead states and their peoples to interact peacefully in order to advance certain values.

This method differs from both the scientific and the historical. Rather than relying on abstract scientific observation or respect for historical traditions, the dialectic approach points to the creation of spaces in which disagreements and differing political views can be aired in order to reach some consensus. Underlying it is the presumption that universal values do exist, but that they can only come about through finding the space to debate differences. Furthermore, there is a need to continually recreate those spaces to ensure that future disagreements can be resolved.²²

One example of how the consensus model might work can be found in the way in which the Universal Declaration of Human Rights (UDHR) was created. Rights are not the same as values, for they express a particular normative ideal that arose out of liberalism. However, underlying the UDHR are important values, such as the values of human security, free speech, and equality. These values could be expressed in language other than that of rights, but they do represent something close to a body of universal values.

More importantly, the process by which the UDHR came into existence mirrors the consensus model described above. The UDHR was proclaimed on 10 December 1948 in Paris, by the United Nations General Assembly. The idea for such a document had been proposed in the General Assembly in 1946. The United Nations Economic and Social Council (ECOSOC), one of the six main organs of the United Nations established by the United Nations Charter in 1946, was tasked with developing the document; and to this end, it created a drafting committee chaired by Eleanor Roosevelt. The drafting committee included individuals from around the world, representing very different political, religious and ideological beliefs. The drafting efforts were aided by an international commission organised by the United Nations Educational, Scientific and Cultural Organization (UNESCO), which published a book of 20 essays on whether or not there existed any shared rights, authored by intellectual leaders from

²² Bohman, J. and Reig, W. 2017. Jürgen Habermas. In *The Stanford Encyclopedia of Philosophy*. Edward N. Zalta, Ed. Available: <https://plato.stanford.edu/archives/fall2017/entries/habermas/>

around the world. The book included contributions from some of the most famous religious and philosophical figures of the day, including Mahatma Gandhi. As one of the contributors, the French Catholic philosopher Jacques Maritain, said about the deliberations of the Commission:

"It is related that at one of the meetings of a UNESCO National Commission where Human Rights were being discussed, someone expressed astonishment that certain champions of violently opposed ideologies had agreed on a list of those rights. Yes, they said, we agree about the rights, but on condition that no one asks us why. That 'why' is where the argument begins."²³

The UDHR is not a long document; it has a preamble, and 30 articles. The Declaration is not legally binding, though it did inform the language of the two binding covenants on human rights which came into existence in the 1960s, and have been signed by almost every country in the world. The Declaration focuses on rights, but it also emphasises the importance of dignity and the value of the individual person. Today, the United Nations Office of the High Commissioner for Human Rights (UNHCR) has made the promotion of the Universal Declaration of Human Rights a central element of its work.²⁴

Again, rights are not the same as values. But what this shows us is that it is possible to find some consensus on broad human values – in this case, expressed in terms of rights. It is hoped that participants will consider the Universal Declaration of Human Rights in relation to their own experiences, while also giving them the context of the document, its applications today, and its relationship to wider issues concerning universal values. The presentation will also encourage participants to critique the UDHR in the way that it gives rights greater importance than responsibilities, leaves out important questions of sexuality and the environment, and may not reflect the lived experiences of all people around the world. In addition, by focusing on the drafting of the UDHR and the role of individuals from around the world, participants can identify, assess and put into practice universal values that transcend their particular national, cultural and religious traditions.

The Presentation will enable participants to see the relationship between universal human values and concrete social and political realities. Debates about such values often take place without the debaters considering how they apply in real-life decision-making. While theoretical analysis and understanding are good as a starting point, they can prevent participants from appreciating how they could engage in practices that promote values.

²³ Ackerly, B. 2017. Interpreting the political theory in the practice of human rights. *Law and Philosophy*, 36(2):135.

²⁴ UNHRC. 2017. Universal Declaration of Human Rights [Video file]. Available: www.youtube.com/watch?v=5RR4VXNX3jA



1.7 Activities and exercises

The Introduction to the Training Programme has identified the approach to be taken in training adults. It has also highlighted the different learning styles of adults. Some of the activities in the Manual involve group work. Ideally, groups should comprise no more than eight participants (six is ideal) to permit active participation by all. Participants should stay in the same groups throughout the course, and where possible will retain the same facilitator. The reason for this is to allow a relationship of mutual trust and respect to build over the two days. The break-out groups provide an opportunity for the judges to make mistakes but learn from them, away from the public gaze. They allow the judges an opportunity to freely express their views and have those views considered and tested – again, away from the public gaze. Rapport must be built up within the group to promote an atmosphere that allows frank exchanges, but is also supportive. The facilitator plays a large part in ensuring that the right atmosphere is created.

When a group comes together for the first time, there may be an initial period of confusion, until the structure of the course starts to take shape. This is especially the case given the many different backgrounds and cultures from which the judges come. Save for their immediate colleagues, they may not know any other judges well, or at all. In order to settle them, you need to provide them with as much information as you can, so that they understand how the session is structured as well as its aims.

You may experience holding back, superficial politeness and anxiety, as they look for a structure and a guide. So, at the beginning of the first session, it is important that the participants feel as relaxed as possible. You must determine the best way to go about achieving this. You might like to tell the participants something about yourself, and then go around the room, inviting them to introduce themselves. You might remind them of an occasion on which you felt particularly vulnerable, which will make them feel that you understand how they might be feeling. You will bear in mind that people learn in different ways and at different paces. You will also bear in mind that the group may include newly appointed judges, and that there will be varying degrees of competence. It is important, therefore, to keep an eye on the group to ensure that certain members do not dominate the group discussions, leaving others to make little contribution. Going around the group for their individual thoughts is one way to deal with this, rather than picking on an individual. You might like to ask them at the beginning what they hope to get out of the course. Later in the session, you may want to ask them how they are feeling and what they are getting out of the session/course so far, and what suggestions for improvements they think could be made.

If culture allows and, if possible, use first names during the sessions, to promote an atmosphere of informality. If this is not possible, it is important to ensure that formality does not stifle debate.

You must make clear that your role as facilitator is not to judge or mark the participants in any way, but to promote discussion, offer support and guidance, and ensure that the group is focused on the task it has to achieve. You will want to remind them that it is important that

everyone gets an equal opportunity to speak, and that others should not interrupt while they do or seek to dominate the conversation.

Usually the participants will need to appoint a rapporteur, who will be responsible for reporting back to the plenary sessions. Appoint a different rapporteur for each session. You must ensure that there is an agreed list of issues to take back to plenary, so go through the issues with the rapporteur at the end of the session. Sometimes the rapporteur may miss a point, or misunderstand it. Identify the three most important points and put them at the top of the list.

Keeping a close eye on timing is very important indeed. While it is useful to have judges talking about some of their experiences, this must be controlled, and should not distract from the task at hand.

You should calculate timings for the sessions in advance, in order to ensure you complete the tasks that must be achieved. It is important that everyone has an equal time to contribute. The timing for a task will depend on the nature of the task, the number of people in the group, and the overall period allotted for the breakout session. Suggested timings for some of the courses will be set out below. However, these are not set in stone, and the person leading the course should liaise with facilitators to agree the timetable.

In **Part 1** →, the goals of the exercises that follow will help participants discover their level of self-awareness and their values, and assist them in recognising areas that need addressing for personal growth. It is an essential precursor to the primary training programme.

Use the lecture notes from **Presentation 1: Increasing self-awareness of personal values** → as an Introduction to the first activity. This is best presented as a PowerPoint presentation (30 minutes).

Participants must then work individually to answer questions from **Handout 1** → (15 minutes). The results will assist in personal evaluation and reflection.

The next activity will help participants differentiate between personal values, and work towards articulating universal values.

Use the lecture notes from **Presentation 2: Universal values** → as an introduction to the second exercise, again in the form of a PowerPoint presentation.

Participants must then work in groups of five or six for the activity from **Handout 2** → (60 minutes). In this exercise, participants are asked to create a Universal Declaration of Human Values (UDHV). This is modelled on the Universal Declaration of Human Rights (UDHR), though its focus is on values rather than rights. Participants must work together to create a 10- or 15-article declaration.

Each group must elect a spokesperson to present their Declaration in Plenary, with a discussion following.



1.7.1a Handout 1: Self-awareness diagnostic survey²⁵

Respond to the following 11 statements by writing a number from the rating scale. Your answers should reflect your attitudes and behaviour as they are now, not as you would like them to be. Be honest.

Rating scale

6 Strongly agree
5 Agree
4 Slightly agree

3 Slightly disagree
2 Disagree
1 Strongly disagree

- | | | |
|-----------|---|--------------------------|
| 1 | I seek out information from others about my strengths and weaknesses as the basis for self-improvement. | ☐ |
| 2 | When I receive negative feedback about myself from others, I do not get angry or defensive. | ☐ |
| 3 | To improve, I am willing to reveal myself (be self-disclosing) to others, i.e. share my beliefs and feelings. | ☐ |
| 4 | I am very much aware of my personal style of gathering information and making decisions about it. | ☐ |
| 5 | I am very much aware of my own interpersonal needs when it comes to forming relationships with other people. | ☐ |
| 6 | I have a good sense of how I cope with situations that are ambiguous and uncertain. | ☐ |
| 7 | I have a well-developed set of personal standards and principles that guide my behaviour. | ☐ |
| 8 | I feel very much in charge of what happens to me, good and bad. | ☐ |
| 9 | I seldom, if ever, feel angry, depressed or anxious without knowing why. | ☐ |
| 10 | I am conscious of the areas in which conflict and friction most frequently arise in my interactions with others. | ☐ |
| 11 | I have a close relationship with at least one other person in which I can share personal information and personal feelings. | ☐ |

TOTAL SCORES

- | | |
|--|--------------------------|
| ‘Self-disclosure and openness to feedback from others’ | ☐ |
| ‘Awareness of own values, cognitive style, change orientation and interpersonal orientation’ | ☐ |

²⁵ Franco, J. and Miller, K. 2004. Ethical Issues for Magistrates, Manual for Trainers. Law, Race and Gender Research Unit, Faculty of Law, University of Cape Town. Available: <https://vula.uct.ac.za/access/content/group/9bd11bce-1f06-4178-86d8-962580ee400d/index.html>

1.7.1b Scoring key: Self-assessment

Skill Area

Self-disclosure and openness to feedback from others

Awareness of own values, cognitive style, change orientation and interpersonal orientation

Question

1, 2, 3, 9, 11

4, 5, 6, 7, 8, 10



1.7.2 Handout 2: Creating a universal declaration of human values

- 1 In your groups, define what you rank as the most important values you hold.

- 2 What common values do you share in your group?

- 3 How can those values be turned into rules of behaviour?

- 4 What areas of life are most important to delimit in such a document, e.g. politics, law, economics, society, family, etc?

- 5 Now create a Universal Declaration of Human Values (UDHV) modelled on the Universal Declaration of Human Rights (UDHR), focusing on values rather than rights. A 10- to 15-article declaration is sufficient.



PART 2

Judicial ethical principles

2.1 Presentation 3: The ideal judge

2.2 Presentation 4: History and context of deontology and judicial ethics

2.3 Presentation 5: The BANGALORE PRINCIPLES of Judicial Conduct

2.4 Presentation 6: The Principles 1–6

2.5 Activities and exercises to embed learning

- 2.5.1 Handout 3: The Judicial Oath and what is expected of judges
- 2.5.2 Handout 4: Potential ethical issues
- 2.5.3 Handout 5: Quiz

In this section, we explore ethical principles. Judicial ethical principles serve as a foundation for ensuring the integrity, impartiality and fairness of the judicial system. These principles guide judges in upholding the rule of law and maintaining public confidence in the administration of justice. We shall examine key ethical principles as contained in international documents and as domesticated by some jurisdictions. By adhering to these principles, judges strive to uphold justice and protect the rights of all individuals who come before the court.

2.1 Presentation 3: The ideal judge

The role of the judge is inextricably tied to a set of characteristics and values essential for the legitimacy of the judicial function. Prominent among those are that judges should perform their functions with integrity, impartiality and independence, as well as diligence (in that justice delayed is justice denied). Judges are expected to perform their work competently, and treat the litigants, witnesses and attorneys courteously and respectfully. They are also expected to behave with honesty and propriety on the bench and in their private lives to inspire trust and confidence in the community, avoiding behaviour that demeans their high office.²⁶

In this regard, the public rightly has high expectations of the judge. These expectations align with each country's constitution and which places a significant responsibility on the judiciary and which judges willingly accept on appointment when taking their oaths of office.

²⁶ UNODC. 2011. *Resource Guide on Strengthening Judicial Integrity and Capacity*. Available: https://www.unodc.org/documents/treaties/UNCAC/Publications/ResourceGuideonStrengtheningJudicialIntegrityandCapacity/11-85709_ebook.pdf

In addressing newly appointed judges in 1996, Chief Justice Brennan of Australia stated:

*"A judge's role is to serve the community in the pivotal role of administering justice according to law. Your office gives you that opportunity, and that is a privilege. Your office requires you so to serve, and that is a duty. No doubt there were a number of other reasons, personal and professional, for accepting appointment, but the judge will not succeed and will not find satisfaction in his or her duties unless there is a continual realisation of the importance of the community service that is rendered. Freedom, peace, order and good government – the essentials of the society we treasure – depend in the ultimate analysis on the faithful performance of judicial duty. It is only when the community has confidence in the integrity and capacity of the judiciary that the community is governed by the rule of law. Knowing this, you must have a high conceit of the importance of your office. When the work loses its novelty, when the case load resembles the burdens of Sisyphus, when the tyranny of reserved judgments palls, the only permanently sustaining motivation to strive onwards is the realisation that what you are called on to do is essential to the society in which you live."*²⁷

So much is required of judges in what is, in effect, judicial discipline. What would an ideal judge look like? While acknowledging that the qualities of a model judge could vary to some degree depending on cultural, legal and societal contexts, several key qualities are often associated with an 'ideal' judge:

An ideal judge approaches each case with an unbiased and impartial mindset. They set aside personal beliefs, prejudices and external influences to ensure fair and equitable treatment for all parties involved. They uphold the highest standards of integrity and ethical conduct. They act honestly, transparently and consistently, maintaining the trust and confidence that the public has in the judiciary. They possess a deep understanding of the law, legal principles and precedents relevant to the cases they preside over. They continually update their legal knowledge and demonstrate high professional competence.

²⁷ Brennan, G. 1996. Sir Gerard Brennan, Chief Justice of Australia, addressing the National Judicial Orientation Programme, Wollongong, Australia, 13 October 1996. Available: https://www.hcourt.gov.au/assets/publications/speeches/former-justices/brennanj/brennanj_wollong.htm



An ideal judge approaches each case with an unbiased and impartial mindset.



Deontology emphasises the moral duty and intention behind an action, considering factors such as fairness, justice and the well-being of individuals and society as a whole. This is explored further in the next presentation.

The ideal judge possesses strong analytical and critical thinking skills, enabling them to evaluate complex legal issues and make well-reasoned decisions. They consider all the relevant facts, evidence and legal arguments before arriving at a judgment. They remain independent and free from any undue influence, whether political, social or personal. They make decisions based solely on the law and on the facts of the case, without fear of repercussions. They treat all individuals respectfully, regardless of their background, status or position. They maintain a courteous and dignified demeanour in the courtroom, fostering an atmosphere of fairness and impartiality.

They possess patience and attentiveness, listening carefully to all parties and considering their arguments. They are open-minded, and willing to consider different perspectives and interpretations of the law. They have excellent communication skills, both written and oral, enabling them to explain their decisions and reasoning clearly. They ensure their judgments are accessible and understandable to the parties involved and to the public. They exhibit emotional intelligence and maintain a calm and composed demeanour, even in highly contentious and emotionally charged situations. They demonstrate empathy and sensitivity, while remaining impartial and objective.

These judicial characteristics and expectations described above arise from deontological principles. Deontological standards differ from statutory and disciplinary rules in their approach to promoting the public interest. While statutory and disciplinary rules are primarily concerned with ensuring compliance with established laws and regulations, deontological standards focus on the underlying ethical principles that guide actions, with the intention of promoting the common good. Deontology emphasises the moral duty and intention behind an action, considering factors such as fairness, justice and the well-being of individuals and society as a whole. This is explored further in the next presentation.

2.2 Presentation 4: History and context of deontology and judicial ethics

Deontology focuses on the science of professional duties, providing explicit principles to guide actions.²⁸ These principles, when combined, create a model of desirable behaviour that goes beyond mere disciplinary control.²⁹ Deontology prescribes how individuals ought to behave, by emphasising duty and adherence to moral duties and obligations.³⁰ Deontology is, therefore, a theory that focuses on the intrinsic nature of actions and their adherence to moral rules or duties. It emphasises the importance of acting in accordance with ethical principles and rules, regardless of the consequences or outcomes. Deontology distinguishes between right and wrong actions, rather than evaluating them as 'good' or 'bad'. Right actions are those deemed morally required or obligatory, while wrong actions are prohibited.³¹ Deontology emphasises duties.³²

The history and context of deontology can be traced back to several influential philosophers, the most significant being Immanuel Kant.

Kant (1724–1804) was deeply concerned about the destruction and suffering caused by war. In his pleas to heads of state aimed at a more peaceful world, he authored a body of work that made him one of the most influential figures in the development of deontological ethics. His moral philosophy, outlined in works such as *Groundwork for the Metaphysics of Morals*³³ and *Critique of Practical Reason*,³⁴ provided a framework for moral guidelines. Kant was of the view that humans possess the ability to reason and understand universal moral laws that they can apply in all situations. He argued that reason allows individuals to discern moral principles and act in accordance with them, free from the constraints of personal inclination or external authority.

Kant's deontological approach emphasises the concept of duty. According to Kant, moral actions are those that are performed out of a sense of duty, rather than from personal inclination or desire. Hence, there is an internal tension in all of us between what we might *like* to do as opposed to what we *ought* to do.

Kant's deontological theory is grounded in the principle of universalisability. He argued that a moral action must be capable of being universalised; meaning that the moral principle guiding the action must be applicable to all rational beings in similar circumstances. Actions that cannot be consistently willed as universal laws are considered morally impermissible.³⁵

28 Maitrepierre, E.J. 2010. *Ethics, deontology, discipline of judges and prosecutors in France*. (Resource Material Series No. 80:255).

29 Maitrepierre, E.J. 2010. *Ethics, deontology, discipline of judges and prosecutors in France*. (Resource Material Series No. 80:255).

30 Rawling, P. 2023. *Deontology*. (Elements in Ethics). Cambridge University Press.

31 Kranak, J. 2019. Kantian deontology. In *Introduction to Philosophy: Ethics*. G. Mathews, Ed. Rebus Community.

32 Lisbon Network. N.d. *Magistrates Ethics and Deontology*. Available: https://www.coe.int/t/dghl/cooperation/lisbonnetwork/themis/Ethics/Paper2_en.asp

33 Kant, I. 1997. *Groundwork of the Metaphysics of Morals*. Translated by Mary Gregor, Ed. Cambridge University Press.

34 Kant, I. 2015. *Critique of Practical Reason*. Translated by Mary Gregor, Ed. Cambridge University Press.

35 Kant, I. 2015. *Critique of Practical Reason*. Translated by Mary Gregor, Ed. Cambridge University Press.91.



Kant's deontological framework has faced various criticisms, and has undergone development over time. Scholars such as John Rawls³⁶ and Christine Korsgaard³⁷ have offered contemporary interpretations and refinements of deontological ethics, exploring issues such as justice, fairness and the role of reason in moral decision-making.

In opposition to Kantian deontology, consequentialists take a different approach to ethical theory. They prioritise maximising impersonal value for the best outcomes,³⁸ arguing that a choice or action is to be morally assessed solely by the state of affairs it brings about. While consequentialism does not indicate the desired outcome of an action, utilitarianism – another theory of morality – focuses only on maximising overall happiness or well-being as the priority outcome for an action.

However, the central question in the debate remains whether morality is subjective or objective. No evident answer is forthcoming, and the discussion continues to evolve. Both Christine Korsgaard and John Rawls have adopted the middle ground, arguing that human beings construct moral values through reason, social agreement or shared values. They argue that moral principles are not discovered but created, and have a basis in human nature, rationality or social cooperation.

In proposing a theory of justice as fairness, Rawls provided a procedural rendering of Kant's key concepts, such as universality. He posited that there are objective principles of justice that can be rationally justified and applied universally. These principles are designed to ensure fairness, in that there is a recognition that everyone has the same entrenched basic liberties. At the same time, inequalities exist, resulting from (among other things) one's inherited characteristics, social class, personal motivation, and even luck. Even so, Rawls insisted that a just society should find ways to reduce inequalities in areas where it could act.³⁹

Current theorist Thomas Hill⁴⁰ provides a foundation for the development and motivation of Kant's deontological ethical framework and its relevance in contemporary ethical discourse. He considers issues such as moral dilemmas, conflicts of duties, and the role of moral emotions in deontological reasoning. On the issue of moral dilemmas, for example, where individuals face conflicting moral obligations or duties, he recognises that in certain situations, it may not be possible to fulfil all moral duties simultaneously, leading to a dilemma. He explores the complexities of resolving such moral conflicts within a deontological framework, and provides insight into how we can navigate and make decisions when faced with conflicting duties.

36 Rawls, J. 1999. *A Theory of Justice*. Harvard University Press.

37 Korsgaard, C. 2010. *The Sources of Normativity*. Cambridge University Press.

38 Barrow, J.M. & Khandhar, P.B. 2024. *Deontology*. StatPearls Publishing. Available: <https://www.ncbi.nlm.nih.gov/books/NBK459296>; Rawling, P. 2023. *Deontology*. (Elements in Ethics). Cambridge University Press.30.

39 Rawls, J. 1999. *A Theory of Justice*. Harvard University Press.

40 Hill, T.E. 1992. *Dignity and Practical Reason in Kant's Moral Theory*. Cornell University Press.

To give a practical example of how the approaches differ: suppose a junior judge becomes aware of unethical practices being carried out by their judge president or senior judge. The junior judge is torn between their duty to be honest and report the wrongdoing, on the one hand, and on the other, their duty to maintain confidentiality and their loyalty to their superior.

In this situation, the junior judge can apply the principle of *moral priority* to determine which duty should take precedence. Here is how it could be approached:

Evaluate the moral significance: The junior judge can assess the moral significance of each duty. Honesty is a fundamental ethical principle, as it promotes trust, integrity and the overall well-being of individuals and society. Confidentiality, on the other hand, is important for fostering trust and maintaining professional relationships; but it may not hold the same moral weight as honesty when it comes to exposing unethical behaviour.

Consider potential consequences: The junior judge can examine the potential consequences of both courses of action. If they prioritise honesty and report the unethical practices, it may lead to short-term negative consequences, such as potential conflicts or repercussions within the judiciary. However, in the long run it could contribute to the overall welfare of litigants and other stakeholders, the judiciary's reputation, and the prevention of further harm. On the other hand, if confidentiality is strictly maintained, it may allow unethical practices to persist, potentially causing harm to others and compromising the integrity of the judiciary.

The above example serves to explain how ethics can serve as a bridge connecting the judge's personal attributes with their role as dispensers of justice. Ethical considerations guide judges in navigating the complexities of their personal beliefs and biases, ensuring that their decisions are fair, impartial and in accordance with legal principles. It is through ethical reflection, moral accountability and adherence to professional standards that judges can harmonise their personal inclinations with their duty to dispense justice.

In the African context, it must be noted that tradition and religion are generally inseparable from the concept of morality.⁴¹ This explains why, within the framework of traditional African settings, generally what is deemed immoral and prohibited by the community's moral and religious principles is also prohibited in the legal framework. In this context, law, morality and religion are not distinct entities; their interconnectedness serves as a social and communal regulation mechanism.

41 Elias, T. 1956. *The Nature of African Customary Law*. Sweet and Maxwell.7.



In this regard, Nwachukwuike Iwe⁴² explains that among other things, institutional religion in Nigeria is the repository and custodian of human and social values, serves a “priestly conservative and stabilising role, [and] stands as an indispensable agent of social control, functioning as the custodian and defender of established norms and values in all human arenas – personal and spiritual, domestic and political, social and cultural – against all threats and violations”.⁴³ He adds that religion is also an indispensable agent of social control and the defender of established norms and values, and is essentially “the prophet and conscience of the society ... the dynamic conscience of the society”.⁴⁴

Some examples include Igbo culture (Nigeria), where the concept of *chi* represents a person’s personal deity or guardian spirit. The moral principles upheld by the community are considered divinely ordained, and violating them is seen not only as immoral but also as a transgression against the spiritual realm. The Igbo legal or ‘authority’ system, known as *ofọ*, incorporates moral and religious considerations in its decision-making processes.⁴⁵ Similarly, the Yoruba people have a complex system of moral and religious beliefs known as *ase*.⁴⁶ This concept encompasses the idea of divine power and the ethical principles that govern human conduct. The Shona of Zimbabwe and the Nguni people of Southern Africa emphasise the interconnectedness and interdependence of individuals within the community in the concept of ‘ubuntu’. Ubuntu is both a moral philosophy and a religious belief system that highlights the importance of compassion, empathy and communal harmony.⁴⁷ In Akan Society (Ghana and Ivory Coast), the belief in a supreme being called *Nyame* is integral to both the religious and the moral framework. The moral code, known as *nton*, emphasises principles such as honesty, respect for elders and communal harmony. Transgressions against these moral principles are seen not only as violations of societal norms but also as offences against the divine. The Akan legal system, known as *asesegua*, considers both moral and religious perspectives when resolving disputes.⁴⁸ In Maasai society (Kenya and Tanzania), there is a strong sense of communal identity and adherence to a set of moral and religious beliefs. The moral code known as *enkai* encompasses concepts of hospitality, bravery and respect for nature. Violations of these moral principles are considered not only societal transgressions but also offences against the supreme god, *Enkai*.⁴⁹

42 Iwe, N. 2014. The inseparable social trinity: Religion, morality and law. *Journal of Integrative Humanism*. 4(1):103.

43 Iwe, N. 2014. The inseparable social trinity: Religion, morality and law. *Journal of Integrative Humanism*. 4(1):9.

44 Iwe, N. 2014. The inseparable social trinity: Religion, morality and law. *Journal of Integrative Humanism*. 4(1):9.

45 Oko Elechi, O. 2008. The Igbo indigenous justice system. In *Colonial systems of control*. Viviane Saleh-Hanna, Ed. University of Ottawa Press. Available: https://www.jstor.org/stable/pdf/j.ctt1ckph37.26.pdf?ab_segments=0%252Fbasic_SYC-4929%252Ftest&refreqid=excelsior%3A243d119849fb90b57a77940207789d03
See also Oriji, J. 2007. The end of sacred authority and the genesis of amorality and disorder in Igbo mini states. *Dialectical Anthropology* 31:263–88.

46 Balogun, O. 2004. A comparative study of ‘ase’ in traditional Yoruba thought and ‘anointing’ in Judeo-Christian thought. *Sophia: an African Journal of Philosophy*, 7(1):46–53.

47 Stanlake, J.S. & Samkange, T.M. 1980. *Hunhuism or Ubuntuism: a Zimbabwe indigenous political philosophy*. Graham Publishing; Metz, T. 2014. Just the beginning for ubuntu: reply to Matolino and Kwindigwi. *South African Journal of Philosophy*, 33(1):65–67.

48 Gyekye, K. 1987. *An essay on African philosophical thought: the Akan conceptual scheme*. Cambridge University Press; Osei, J. 2023. The philosophy of human rights: the Akan model. In *Handbook of African philosophy*. B. Freter, E. Imafidon & M. Tshivhase, Eds. Springer.

49 Tarayia, G.N. 2004. The legal perspectives of the Maasai culture, customs, and traditions. *Arizona Journal of International & Comparative Law*. 21:183.

In addition, the majority of francophone countries in Africa have inherited the doctrine of *laïcité*, a French approach to secularism under which religious customs can inform formal laws; although religious law itself is not accepted as part of the formal legal order.⁵⁰

These examples illustrate how in certain African traditional societies the boundaries between law, morality and religion are blurred, and are perceived as interwoven factors that contribute to promoting social harmony and cohesion.

However, the application of moral values and ethics to both Western and African settings resonates with and transcends cultural boundaries. The universality of these values was widely recognised and gained prominence after the Second World War.

The application of universal deontological rules or ethics to judges emerged from the general ratification of the Universal Declaration of Human Rights. The Declaration demanded of the judiciary the crucial role of protecting human rights and freedoms, prescribing that each individual has the right to full equality and a fair and public trial in front of an independent and impartial court. As a result, the necessity arose for judges to embrace the contemporary social dynamics that were interwoven with these universal values.

The first declaration in this respect – the Singhvi Declaration, a Resolution of the United Nations, titled ‘Fundamental Principles of the Independence of Justice’,⁵¹ in 1985 – called for the independence of the judiciary. The declaration focused on key aspects of judicial independence, including judges’ selection and appointment, tenure security, impartiality, and freedom from external interference. It highlighted the need for an objective and transparent process in selecting and appointing judges, and for ensuring that they possess the necessary qualifications and expertise. It stressed the importance of security of tenure for judges, emphasising that they should not be subject to arbitrary removal or transfer. It called for safeguards to protect judges from improper influence, coercion and threats, and highlighted the need for adequate remuneration and working conditions to ensure their independence.

50 Camara, F.K. & Seck, A. 2010. Secularity and freedom of religion in Senegal: between a constitutional rock and a hard reality. *Brigham Young University Law Review*. 859; Diéye, A. 2009. La laïcité à l’épreuve des faits au Sénégal. In *Droit Sénégalais: droit, politique et religion*. Presses de l’Université des Sciences Sociales de Toulouse. 51.

51 Singhvi, L.M. 1985. *Draft Universal Declaration on the Independence of Justice: final report*. (E/CN.4/Sub.2/1985/18/Add.5/Rev.1). Available: <https://digitallibrary.un.org/record/139884?ln=ar>



In addition, the majority of francophone countries in Africa have inherited the doctrine of laïcité, a French approach to secularism under which religious customs can inform formal laws; although religious law itself is not accepted as part of the formal legal order.



It also underscored the importance of an impartial judiciary free from bias or prejudice, and called for mechanisms to address conflicts of interest. It emphasised the need for judges to have the freedom to exercise their functions without fear of reprisal or intimidation.

The Singhvi Declaration was followed in 1993 by two Resolutions of the United Nations on Human Rights and the Judiciary.⁵² These resolutions recognised the judiciary's critical role in safeguarding human rights, ensuring justice, and upholding the rule of law within states. They stressed the importance of maintaining the independence of the judiciary from political influence or interference, ensuring fair and impartial adjudication of human rights cases. They highlighted the necessity for providing judges with adequate training and education, to enhance their capacity to adjudicate human rights cases effectively. They emphasised the importance of ensuring access to justice for all individuals, including marginalised and vulnerable groups, by removing barriers such as discrimination and providing legal aid services.

This was followed in 1999 by the Declaration on the Rights and Responsibilities of Individuals, Groups and Social Bodies for the Permission and Protection of the Accepted Human Rights and Fundamental Freedoms,⁵³ which again emphasised the need for access to an autonomous and independent judiciary.

On the African continent, the African Charter on Human and Peoples' Rights (Banjul Charter) was adopted on 27 June 1981 by the Organisation of African Unity (now the African Union); it guarantees the human rights and freedoms of entire peoples across Africa. Under Article 45 (2) of the African Charter, the protection of these rights was entrusted to the African Commission on Human and Peoples' Rights (ACHPR). In April 1996, the Commission adopted the Resolution on the Respect and the Strengthening on the Independence of the Judiciary – ACHPR/Res.21(XIX)96.⁵⁴ This resolution, like the UN resolutions, emphasises the importance of judicial independence in upholding the rule of law and protecting human rights. It calls on African governments to respect and uphold the independence of the judiciary, ensuring that judges can perform their duties without fear of interference or reprisal. The resolution also urges states to provide adequate resources and support to the judiciary, to ensure its effectiveness and impartiality.

The ultimate response from judicial officers was the codification of universal judicial ethics into the BANGALORE PRINCIPLES.⁵⁵

52 Resolution 50/181 and Resolution 48/137, 1993.

53 United Nations. 1998. *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: resolution/adopted by the General Assembly*. Available: <https://digitallibrary.un.org/record/265855?ln=en>

54 ACHPR. 1996. Resolution on the respect and the strengthening on the independence of the judiciary. ACHPR/Res.21(XIX)96. Available: <https://achpr.au.int/en/adopted-resolutions/21-resolution-respect-and-strengthening-independence-judic>

55 *The Bangalore Principles*, 1 DEVELOPING HUM. RIGHTS JURISPRUDENCE (Commonwealth Secretariat ed., 1988); Kirby, M. *The Road from Bangalore: The first ten years of the Bangalore Principles on the Domestic Application of International Human Rights Norms*. Available: https://www.hcourt.gov.au/assets/publications/speeches/former-justices/kirbyj/kirbyj_bang11.htm

2.3 Presentation 5: The bangalore principles of judicial conduct – a judicial solution to a judicial problem

While the UN and other international bodies were making declarations regarding ethics and the judiciary, judges seized the occasion to formulate – for themselves – ethical standards applicable to their roles.⁵⁶ The BANGALORE PRINCIPLES emerged from a suggestion by two leading members of Transparency International, Professor Nihal Jayawickrama and Dr Jeremy Pope. As a result, following discussions between Transparency International and eight chief justices from four African and four Asian countries, a first meeting of the Judicial Group on Strengthening Judicial Integrity (or JIG, the Judicial Integrity Group, as this body has come to be known) was held at the United Nations Office in Vienna on 15 and 16 April 2000. The founding members' shared values and commitment to judicial integrity drove them to work towards enhancing the quality of justice administration in different ways. The Group had several objectives, including:



Formulating and developing the concept of judicial accountability.



Designing mechanisms that the judiciary could utilise to strengthen the judicial system's integrity.



Creating and promoting standards, guidelines and instruments related to crucial aspects of the judicial system.



Identifying and supporting the implementation of effective measures for judicial reform, aimed at eliminating corruption within judicial systems and providing improved, expedited and cost-effective access to justice.

The JIG also agreed that it was the responsibility of the judiciary, particularly the senior judiciary, to establish a definitive set of core principles of conduct and ethics for judges. These principles were intended to be universally applicable, and not subject to regional variations.

The Principles established standards for the ethical conduct of judges, offering guidance and a regulatory framework for judicial behaviour.

The UN Commission on Human Rights adopted the BANGALORE PRINCIPLES in 2003, in resolution 2003/43. They were then also adopted by the UN Economic and Social Council ('ECOSOC') in 2006, in resolution ECOSOC 2006/23. In turn, ECOSOC invited the UN Office on Drugs and Crime (UNODC) to support the Judicial Integrity Group in preparing a detailed Commentary. In 2007 the JIG completed the Commentary, which was published by the UNODC.⁵⁷

⁵⁶ See the website of the Judicial Integrity Group, <https://www.judicialintegritygroup.org/> for the history and the development of the Bangalore Principles.

⁵⁷ UNODC. 2007. *Commentary on the Bangalore Principles*. Available: https://www.unodc.org/conig/uploads/documents/publications/Otherpublications/Commentry_on_the_Bangalore_principles_of_Judicial_Conduct.pdf



2.4 Presentation 6: The principles 1–6

The BANGALORE PRINCIPLES consist of a preamble and six key principles aligned with six core values: independence, impartiality, integrity, propriety, equality, and competence and diligence. They also include detailed provisions for their application.⁵⁸

A full text of the Principles and Commentary is available in **Appendix 1** →. Here is a very brief description of the 6 Principles:

6 Principles

- 1 **Independence** Judges should uphold and exemplify judicial independence, ensuring they are free from external influences, pressures or improper interference. Their judicial decision-making should be based on the law and facts, and free from external influences. The judiciary should be financially independent, and free from financial or other interests that might compromise their impartiality. Judges should have security of tenure, allowing them to act without fear of reprisal or undue pressure.
- 2 **Impartiality** Judges should be impartial, and avoid any bias, prejudice or personal interest that may affect their judgment. They should apply the law objectively and without favouritism. They should engage in fair and unbiased adjudication, with the obligation to treat all parties before them with fairness, avoiding any bias or prejudice. They should avoid putting themselves in positions of competing interests, disclosing and resolving any conflicts of interest to maintain their impartiality. They should commit themselves to providing equal access to justice for all individuals, regardless of their background or status.
- 3 **Integrity** Judges should exhibit integrity, honesty and probity in their personal and professional conduct, and avoid conduct that undermines public confidence in the judiciary. They should act with honesty and candour, both inside and outside the courtroom. They should never engage in acts of corruption, bribery or any other form of misconduct that undermines judicial integrity. With regard to their personal conduct, they must maintain a high standard of personal conduct to enhance public confidence in the judiciary. Integrity is the opposite of hypocrisy. Integrity is absolute.
- 4 **Propriety** Judges should behave properly, both inside and outside the courtroom, and avoid any conduct that may compromise their integrity or impartiality. They must not engage in any improper relationships that may compromise their integrity or create the appearance of impropriety. They must treat fellow judges, court staff, litigants and others with respect and courtesy. They must at all times preserve the dignity of the judicial office.

⁵⁸ https://www.unodc.org/res/ji/import/international_standards/commentary_on_the_bangalore_principles_of_judicial_conduct/bangalore_principles_english.pdf

6 Principles

- 5 **Equality** Judges should treat all individuals who come before them with equality, dignity and respect, regardless of their social status, race, gender, religion, background, characteristics, or other factors. They must be culturally aware and sensitive to diverse cultural perspectives, to ensure fair and impartial treatment. They must endeavour to eliminate all forms of discrimination.
- 6 **Competence and Diligence** Judges should strive to maintain and enhance their professional knowledge, skills and competence. They should handle cases efficiently and expeditiously, ensuring timely resolution while upholding due process. They must be accountable for their decisions and actions, fostering public confidence in the judiciary.

2.5 Activities and exercises to embed learning

- 1
 - Use the lecture notes from **Presentation 3: The ideal judge** → to construct a PowerPoint presentation as an introduction to the following activity in **Handout 3: The judicial oath and what is expected of judges** →.
 - Participants must then work individually to answer the questions from Handout 3 (15 minutes).
 - A feedback session should follow, with a discussion on the individual answers offered (30 minutes).
- 2
 - Use the lecture notes from **Presentation 4: History and context of deontology and judicial ethics** → and **Presentation 5: The bangalore principles of judicial conduct – a judicial solution to a judicial problem** → to create a PowerPoint presentation as the theoretical material for the activity in **Handout 4: Potential Ethical Issues** →. Participants should work in groups of no more than six to answer five questions each from Handout 4.
 - A feedback session must follow, with a spokesperson from each group summarising the group's findings.
- 3
 - **Quiz** – The questions on **Handout 5** → should be answered individually (15 minutes), with a feedback session of 30 minutes.



2.5.1 Handout 3: the judicial oath and what is expected of judges

In 2010, the Judicial Integrity Group issued a significant statement (The Lusaka Statement)⁵⁹ urging judiciaries worldwide to provide proper training on the content and significance of the BANGALORE PRINCIPLES. In pursuit of this goal, they extended an invitation to the judiciary, irrespective of their location, to:

- 1 Adopt a set of principles governing judicial conduct, taking into account the BANGALORE PRINCIPLES of Judicial Conduct.
- 2 Ensure the dissemination of such principles among judges and within the community.
- 3 Incorporate judicial ethics, based on the Principles, as an integral component of initial and ongoing judicial training.
- 4 Utilise their authority to organise, conduct or oversee the training of judges. In jurisdictions lacking adequate training facilities, the judiciary were to seek assistance from appropriate national and international bodies and educational institutions through the appropriate channels. This assistance would enable access to such facilities or aid in the development of local judiciaries.

The BANGALORE PRINCIPLES have found domestication in the provisions of many Judicial Oaths and Codes of Conduct across the African continent. They may also be involved in public service legislation, personnel regulations (workplace rules) and judiciary staff handbooks. Most judicial oaths across African jurisdictions predate the BANGALORE PRINCIPLES, and if anything, the Principles find resonance in their wording. All judges swear oaths of office when appointed to the judiciary, but the wording varies.

Let us explore the judicial oath you have taken, and reflect on whether swearing an oath affects a judicial officer's reasons for action after becoming a judge.

Now answer the following questions:

- 1 To whom does a judge make promises when they swear their oath?

⁵⁹ Kirby, M. 2010. Judicial integrity – what has been achieved? *The Judicial Integrity Group, Sixth Meeting, Lusaka, Zambia*. 23 January 2010. Available: https://www.michaelkirby.com.au/images/stories/speeches/2000s/2010_Speeches/2427.JudicialIntegrityGroup-Lusaka%2CZambia%2C23January2010.pdf

2.5.1 Handout 3: the judicial oath and what is expected of judges

(continued ...)

2 What does the judge promise to do?

3 What reasons for action does the judge acquire when making these promises?

4 Do you, as an oath-taker, acquire moral obligations that others lack?

5 Are you of the view that training is necessary to acquire the ethical qualities necessary to be a judge?



2.5.2 Handout 4: potential ethical issues

Discuss the scenarios below in your groups and provide answers to the questions posed, to be shared in the plenary discussion that will follow. For each of the questions, consider the following:

- What is the ethical issue? What heading would it fall under?
- Are there specific rules that are relevant to the issue?
- What test would you apply when looking at the issue?
- In light of the facts, rules, guidance, etc, what are the options open to you?
- Which option would you choose, and why?

A. Government

- 1** You are due to hear a case involving the Prime Minister of the country and a local farmer in a personal dispute. The Prime Minister's office has telephoned your clerk and asked that the Prime Minister be treated in a manner befitting his office.

- i. What do you do? Say?

- ii. Would your answer be different if the Prime Minister was giving evidence before you on behalf of the Government?

- iii. Would your answer be any different if it was hinted that it might benefit your career to favour the Prime Minister?

- 2** You are hearing a case involving the wife of a judge who is senior to you. He is also very well-connected politically. Your son has become involved in politics, and has a promising career ahead of him in the ruling party. At the end of the first day, it becomes apparent that your colleague's wife sees the trial as a mere formality. There have been some off-the-cuff comments which smack of familiarity, and she has been quite patronising in her attitude to you. On the morning of the second day, you are approached by a close friend of the judge, a minister in the cabinet, who says to you, "I hope that you will not come down with 'judge-itis' on this one. Just remember your son's career. You know who I know, and it would be a shame for him to fail."

- i. What do you say
- a. to the minister, and
 - b. to the judge?

- ii. What do you do/say in court?

2.5.2 Handout 4: potential ethical issues

(continued ...)



3 A case comes before you involving a cabinet minister who has been charged with drink-driving. On the evening before the trial is due to start, you are telephoned at home by the Judge President of the court. He would like to remind you that the Government pays the courts' bills, and that if a finding were to be made against the minister, the court can expect to have its funding cut and benefits to judges stopped.

i. What, if anything, do you say to the Judge President?

ii. What, if anything, do you do?

iii. Would your decision be different if you were telephoned by the minister himself, or

iv. by a senior civil servant in the minister's department?

4 You are sitting in your room writing a judgment in a case you have just heard involving the brother-in-law of a fellow judge. The judge approaches you and enquires how you are doing. He expresses a sentiment to the effect that he hopes that you will 'take care' of his brother-in-law. He also indicates that he would be happy to return the favour one day, and is sure his brother-in-law – a wealthy businessman – will show his gratitude. What do you say/do?

5 You are trying an important case – your first such case. The senior judge tells you that s/he looked at the papers before the case was allocated, and that there is only one possible conclusion, namely that the defendant (if a civil case)/prosecution (criminal) should lose the case. He gives you a short note listing the reasons why. What do you say/do?

2.5.2 Handout 4: potential ethical issues*(continued ...)***B. Court Staff**

6 You are about to start your morning list. The Court Manager/Registrar comes into your room and says that Mr. Brilliant, a well-known advocate, has contacted the court through his secretary saying that he has a matter listed before Judge Snooty, and that he would prefer it to be heard by you because Judge Snooty is a hard judge and always convicts; and although the matter is a small one, he is being paid well by his client, who expects a result. The Court Manager/Registrar informs you that s/he has taken the liberty of moving the case from Judge Snooty's list into yours, so that you can 'go easy' on Mr Brilliant's client. What, if anything, do you say or do about

a. the decision of the Court Manager/Registrar, and

b. the actions of the advocate?

7 You have an important case involving the government due to be heard next week. A member of the court staff comes to see you, and says that the Minister of Justice (the respondent in the case) has sent a message to indicate that the matter should be stood out of the list, as the Minister fears that the government may lose and he wants to see if he can rush through legislation to get around the problem; because if the government were to lose, it would have to pay out compensation, which it does not want to do. The member of staff says that because he has sympathy for the government's position, he has just phoned the applicant party to tell them that the case is to be adjourned indefinitely. What do you do?

8 The Court Manager/Registrar tells you that he has assigned a case to you that he has taken away from another judge. The reason he has taken the case away from the other judge is because that judge is married with children. You are single with no children. The case involves a suspected drug baron, and it is thought that he uttered threats against the previous judge and his family. The Court Manager/Registrar points out that you were a former prosecutor, so you are used to dealing with that kind of defendant. Must you take the case? Can you ever take personal risk into account when allocated a case to try? Is fear of personal harm a reasonable justification for saying no?

2.5.2 Handout 4: potential ethical issues

(continued ...)



C. The parties include NGOs and corporations

- 9 You are trying a case of medical negligence. The plaintiff suffered serious brain damage, allegedly as a result of negligence by a young surgeon. The plaintiff is represented by an NGO that specialises in mental health issues. Liability is denied. On the first day of trial and thereafter, people surround the courthouse waving placards showing pictures of brain-damaged persons and signs saying 'Save those who are unable to save themselves'. The public gallery of the courtroom is packed with people, all wearing T-shirts saying 'Do the right thing: Justice for X' (the plaintiff). How, if at all, do you react?

- 10 In the same case, counsel for the plaintiff holds a press conference on the steps of the court; setting out his view of the case, and also making comments about you, the judge – saying that you are known to be a sympathetic judge; that when you were a lawyer, you fought hard for the rights of the underprivileged; and that he knows that you will do the right thing and find in favour of the plaintiff. What do you do, if anything?

- 11 You have started a long case. The defendant company – a foreign company – is reported in the papers as saying that it intends to close down its factory, with the consequent loss of hundreds of local jobs, should the court rule against them in the present case. The MD is quoted as saying: "The fate of many of the country's workforce lies in the hands of Justice Y. He must bring in the right decision to prevent both the country sliding further into recession, and the unemployment figures escalating." What do you do?

2.5.2 Handout 4: potential ethical issues*(continued ...)***D. Media and the public**

12 You are about to sentence a notorious drug lord for his part in an international drug smuggling operation. The defendant, though a drug lord, is well known for his strong links and charity in the local community. The weekend before the Monday you are due to sentence him, a group of citizens writes an open letter addressed to you in the most popular local paper, urging leniency and threatening retribution in court if the court passes a sentence of imprisonment.

i. What do you do?

ii. On Monday when you attend court, there are large crowds of the defendant's supporters present, and many journalists requesting your comments on the open letter and the presence of so many of the defendant's supporters. What do you do?

iii. In the meantime, one of the broadcasters has carried stories about the defendant's alleged crimes that have not been before the courts, including murder, rape and money laundering. You saw this as you were getting ready to go to work. What do you do?

iv. The local press – having found out about the defendant's other alleged crimes – clamour for a severe sentence and the confiscation of all of the defendant's property, claiming that anything less would be a travesty of justice. There is an underlying threat that the newspaper will expose something about you that happened in the past, although it is not clear to what they allude. What, if anything, do you do in response?

2.5.2 Handout 4: potential ethical issues

(continued ...)



- 13 At a social function, a judge who is conducting a preliminary hearing of a widely publicised fraud case is informed by a friend who works in the media that in the event of the case not going to trial, the local newspaper is poised to publish a big article about the failure of the judiciary to convict white-collar criminals, and also to demand that there be a public inquiry into all the recent failed prosecutions of large-scale fraud where, in the opinion of many, the evidence was overwhelming. How should the judge react?

- 14 A local newspaper publishes a letter signed by several citizens criticising a recent decision by a judge. The judge's family believes that the letter was written to discredit the judge and attack his personal integrity. The family urges the judge to write to the newspaper explaining his decision. They say that if he won't write to the paper, they will. What should the judge do?

- 15 The press publish information that is both inaccurate and defamatory about a certain judge, suggesting that there are many other judges who have skeletons in their cupboards. Their reporting of the cases being tried by that particular judge and other judges has been consistently inaccurate. What can be done to deal with this problem, and who is responsible for doing so?

E. Social networking

- 16 Your daughter comes into your study and says "You should see what they are saying about your case on X!" (Twitter). Apparently the witness has previous convictions; but no one in court seems to know that. They also say that the witness was paid by the newspapers to make up the allegations. What do you do?

2.5.2 Handout 4: potential ethical issues*(continued ...)*

- 17** Your son rushes to you, very excited, and says that he is sure that one of your colleagues is on the internet and is on a dating site used for young people. He is using a very similar name but pretending to be a teenager. Some of the comments he is making are designed to persuade young girls to send him pictures of themselves in inappropriate poses. What do you do?
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-

- 18** Your children send you an email with links to the press reporting on your current case. Under the summary of the proceedings are the usual comments from those who have read the summary. There are some very strong and disrespectful comments about you, and some that say they will find out where you live and come around to your home to “sort out you and your family”. What do you do?
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F. Family

- 19** An employee at your brother’s company has been severely injured when a wall collapsed on him while he was working. Attempts to settle the case failed. The case is now to be tried, the issue being both liability and damages. Your brother asks you to see if you can find out which judge is to try the case, so that he can carry out some background investigations on that judge. He also asks you to speak to the judge, to put in a good word for him, but also to let the judge know that many jobs could be lost (including the job of one of your sons, who is a middle-ranking manager in the company) if the judge finds in favour of the employee. How do you respond to your brother?
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- 20** Your spouse is a trustee of a charity that supports victims of domestic violence. You are involved in a divorce case involving a wealthy businessman who
- is alleged to have beaten his wife repeatedly over the years (one of the bases for the divorce), and
 - is alleged to have moved most of his assets to another jurisdiction to avoid paying alimony.

Since your spouse found out that you were going to be dealing with this case, they have been putting pressure on you, on a daily basis, to find in the woman’s favour and to make a substantial award of damages for the violence committed over the years, in addition to a significant alimony award. You insist that you must try the case on the evidence, and that it seems that the businessman is in fact a man of straw. Relations between you and your spouse become very tense, as they threaten to leave you should you find in the businessman’s favour. How do you handle this?

2.5.2 Handout 4: potential ethical issues

(continued ...)

21

Your spouse is a member of a prestigious golf club. There is a judicial review of the decision of the Minister of Energy to allow a foreign company to carry out exploration work in an area that conservationists contend is a protected area. A significant amount of money is at stake. You are aware that the Minister is a member of the golf club and that your spouse knows him, but you consider that you are able to try the case. Your spouse approaches you and tells you the Minister is their golfing partner. The Minister has told your spouse that a favourable decision would be very beneficial both to the government and also to you and your family. It is intimated that you would get promotion; that your spouse would have business put his or her way by the government; and that a special bursary would be set up to allow your two children to go to one of the top universities in the US. Your spouse begs you to “do the right thing”, pointing out that the family’s lives could be transformed for the better, and that this was a “once in a lifetime opportunity”. How do you handle this?

22

You are due to try a high-profile murder case involving a well-known drug baron. Your family plead with you not to take the case. They are worried that the family might be targeted by the drug baron’s employees if you were to reach an adverse decision. They have no faith in the ability of the police to protect you and them. The children say that they are too frightened to go to university, as they have already received threats via social media. The children implore you not to go ahead with trying the case. What do you do?



2.5.3 Handout 5: quiz⁶⁰**1** Which of the statements below is correct?

- Article 11 of the United Nations Convention against Corruption is the only provision in the Convention directly relevant to integrity in the judiciary. ☐
- Many provisions of the United Nations Convention against Corruption are of direct relevance to strengthening judicial integrity and preventing corruption in the judiciary. ☐

2 Which of the below are BANGALORE PRINCIPLES of Judicial Conduct?

- Independence ☐
- Impartiality ☐
- Professionalism ☐
- Propriety ☐
- Confidentiality ☐
- Competence and diligence ☐
- Fairness ☐
- Equality ☐

3 Which of the following issues are not covered by the BANGALORE PRINCIPLES?

- Conflict of interest ☐
- Sexual harassment ☐
- Recusal ☐
- Diversity in society ☐
- Independence from other judges ☐

4 True or false: Judicial independence is the most fundamental right and privilege of every judge?

⁶⁰ Adapted from UNODC, 2011. *Resource Guide on Strengthening Judicial Integrity and Capacity*. Available: https://www.unodc.org/documents/treaties/UNCAC/Publications/ResourceGuideonStrengtheningJudicialIntegrityandCapacity/11-85709_ebook.pdf

2.5.3 Handout 5: quiz

(continued ...)

- 5 True or false: The BANGALORE PRINCIPLES seek to guide a judge's conduct in the exercise of his or her judicial functions. They have no direct relevance to the judge's private life?

- 6 Do the BANGALORE PRINCIPLES apply to retired judges?

- 7 List the specific aspects of diversity and difference in society to which a judge should be sensitive when carrying out his or her duties.

- Race
- Colour
- Sex
- Religion
- National origin
- Caste
- Disability
- Age
- Marital status
- Sexual orientation
- Social and economic status

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- 8 Should a judge take appropriate action when he or she becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by another judge?





PART 3

The Bangalore principles in practice

3.1

Presentation 7: An additional principle – courage

- 3.2.1 Presentation 8a: Recusal
- 3.2.2 Presentation 8b: Test for recusal – reasonable apprehension of bias
- 3.2.3 Presentation 8c: Handy hints for dealing with recusal applications
- 3.2.4 Presentation 8d: Duty to disclose conflicts of interest

3.3

Presentation 9: Judicial corruption

3.4

Presentation 10: Conduct in court

3.5

Presentation 11: Extrajudicial activities

3.6

Activities and exercises to embed learning

- 3.6.1 Handout 6: Group work on recusal
- 3.6.2 Handout 7: Group discussion work on corruption
- 3.6.3 Handout 8: Partner work on conduct in court and extrajudicial activities

The practical application of the BANGALORE PRINCIPLES is vital, due to its profound implications for the effective functioning of the judiciary and the administration of justice. Moreover, their practical application enables judges and legal professionals to navigate complex ethical dilemmas, maintain high standards of professional conduct, and enhance the overall quality and credibility of the judicial process.

While the extent of their implementation may vary by jurisdiction or legal system, the specific application and impact of the principles can also depend on local laws, legal traditions, and institutional frameworks.

Nevertheless, the dilemmas faced by judicial officials worldwide are not dissimilar. In this part of the Manual, we will look at some of these common circumstances, and explore solutions to the challenges they pose.

3.1

Presentation 7: An additional principle – courage

Judicial courage refers to the willingness of judges to make difficult decisions, uphold the rule of law, and protect fundamental rights even in the face of potential challenges, resistance and political interference. While it can be expressed as a worthy addition to the existing six Principles, it can also find application through all the existing principles:



Judicial courage can manifest through the independence and impartiality of judges. It involves the courage to resist external pressures, including political or societal influences, and make decisions based solely on the law and on evidence. Judges who demonstrate courage are not swayed by popular opinion or fear of reprisal.



Integrity and Propriety: Judicial courage requires judges to act with integrity and propriety, even when faced with difficult ethical dilemmas. It involves the courage to adhere to ethical standards and resist any temptations or conflicts of interest that could compromise the integrity of the judiciary.



Equality and Non-Discrimination: Judicial courage can be seen in commitment to equality and non-discrimination. It involves the courage to challenge discriminatory practices or laws and ensure equal treatment for all individuals, even if doing so is met with resistance, controversy or unpopularity.



Competence and Diligence: Judicial courage requires judges to demonstrate competence and diligence in handling cases. It involves the courage to thoroughly examine complex legal issues, engage in robust legal analysis, and make decisions that may have significant implications, even if they are unpopular or controversial.

In the performance of judicial duties there are many examples⁶¹ of judges being called on to decide issues that may result in outcomes in cases before a court that are likely to be unpopular with large numbers (perhaps a majority) in the community; or with members of parliament, or members of the executive and officials, or with other judges. When a judge concludes that such a decision should be reached, it will sometimes be the duty of the judge to display courage. He or she should do so in the face of popular antagonism, governmental antipathy, judicial animosity, personal disadvantage or widespread complaint. Progress in the law sometimes moves from one decision to another. Not infrequently, where significant breaches of human rights have been denied redress, it may sometimes be the duty of a judge to uphold arguments to this effect. This may require courage on the part of the judge. In the particular case, whether the matter is one requiring a 'mechanical' application of past expositions of the law or a re-exposition of the law that requires courage is a matter for the decision of the individual judge; so long as reasons and an explanation are given by the judge for adopting any new approach. Progress in the law and amelioration of injustice is sometimes the result of judicial courage; it should be exhibited, with explanation, when the judge considers that to be necessary. Ultimately, then, the correctness or otherwise of such a judge's opinion will rest with history and be considered by the community or expert assessment; which is not always the opinion of judges, or of a majority of judges in appellate courts. The judicial function is often lonely and individual. Courage is thus a hallmark of judging. Where appropriate, a judge must express justice and explain the reasons for pursuing its requirements.

⁶¹ These examples are provided by Michel Kirby, international jurist, academic, former justice of the High Court of Australia and member of the JIG. Notes with the author.

“

Progress in the law and amelioration of injustice is sometimes the result of judicial courage; it should be exhibited, with explanation, when the judge considers that to be necessary.



In *S v. Makwanane*, The President of the Constitutional Court of South Africa stated:

“The question before us, however, is not what the majority of South Africans believe a proper sentence should be. It is whether the Constitution allows the sentence. Public opinion may have some relevance to the inquiry, but in itself, it is no substitute for the duty vested in the Courts to interpret the Constitution and to uphold its provisions without fear or favour. If public opinion were to be decisive, there would be no need for constitutional adjudication The Court cannot allow itself to be diverted from its duty to act as the independent arbiter of the Constitution by making choices on the basis that they will find favour with the public. Independent of colleague”

Judicial courage must be distinguished from judicial activism. While the two concepts may occasionally overlap, they are different. Judicial courage encompasses the ethical and moral qualities expected of judges, whereas judicial activism is a judicial approach that involves an expanded role for judges in shaping legal and social issues.

Judicial courage involves judges demonstrating bravery and fortitude in applying the law impartially and independently, without succumbing to external pressures or influences. It is rooted in the ethical duty of judges to act with integrity and uphold the principles of justice, fairness and equality. It is about making principled decisions that align with the rule of law, even if they involve challenging or difficult choices. Judicial activism, on the other hand, refers to a judicial approach in which judges actively interpret and apply the law with a broad and expansive scope, often going beyond the traditional boundaries of judicial authority. It involves judges taking an active role in shaping public policy or legislating from the bench. Judicial activism is characterised by judges interpreting the law creatively, sometimes filling gaps or addressing perceived injustices, and actively influencing social or political change through their decisions. Judicial activism can be seen as a more proactive and assertive role for the judiciary in shaping legal and social outcomes.

It is important to note that the perception of judicial activism can be subjective, with differing views on whether it is a positive or a negative development in the judicial system, depending on one’s perspective on the appropriate role of the judiciary. Exploring the works of jurists on this topic can provide valuable insights into the theoretical and practical aspects of these concepts.⁶²

⁶² In this context see: Ronald Dworkin, who explores the role of judges in interpreting and applying the law, discussing the concept of judicial activism and the importance of judicial integrity and courage in *Law’s Empire* (Hart Publishing; 1st edition, 1998); Mark Tushnet, who provides insights into the debates surrounding judicial activism and offers a nuanced perspective on the role of courts in shaping social and political change in his work *Taking the Constitution Away from the Courts* (Princeton University Press, 2000); Richard Posner, who in *The Problematics of Moral and Legal Theory* (Harvard University Press, 2002) explores the challenges faced by judges in making difficult moral and legal decisions, and addresses the need for judicial courage; David A. Strauss, in *The Living Constitution* (Oxford University Press, 2010), who discusses the potential for judicial activism in shaping constitutional law; and Albie Sachs, in *The Strange Alchemy of Life and Law* (Oxford University Press, 2011), who writes about the transformative role of the judiciary in post-apartheid South Africa and the importance of judicial activism in promoting social justice.

3.2.1 Presentation 8a: Recusal⁶³

At the heart of a judicial officer's ethical duties lies the duty to be independent and impartial. The judiciary's independence is negatively affected if litigants or the public perceive judges as partial, biased or conflicted. It is therefore crucial for judges to uphold the integrity of the judicial process, by ensuring fairness and avoiding even the appearance of bias.

Sometimes, judicial officers must step aside voluntarily and disqualify themselves from participating in a particular case or legal proceeding. The term used for this disqualification from hearing a case is called recusal. It is typically based on grounds that could potentially compromise the judge's impartiality, fairness, or the appearance of bias.

The law has devised a set of principles that govern recusal and the duty to disclose conflicts of interest. These concepts are closely intertwined.

The law on recusal has been described as having three objectives. The first is that the court system must not be paralysed by frivolous claims for recusal – hence the presumption of impartiality, and the duty to hear matters. The second is that those who sit in judgment over others must not promote their own or others' interests or causes. The third is that everything possible must be done to not leave a nagging feeling in the public's mind that one party to a dispute did not get a fair hearing because of who the judge is or was.⁶⁴ All three objectives serve to promote confidence in the administration of justice, and no one objective is less important than the other.

It is difficult to list all the types of examples where a situation or issue may arise that will affect a judge's impartiality. A useful guideline would be to always ask yourself whether you have a personal or financial interest in or a close relationship with a party or a legal practitioner in a case on which you are to adjudicate. Another question to ask yourself is whether you would derive any direct or indirect interest, were you to find in favour of a particular party.

⁶³ The notes and exercises on recusal have been provided by Esi Schimming Chase, Judge of the Supreme Court of Namibia.

⁶⁴ *Per Damaseb DCJ in Minister of Finance and another v Hollard Insurance Co of Namibia Ltd and others* 2019 (3) NR 605 (SC) at 619 D-E.



At the heart of a judicial officer's ethical duties lies the duty to be independent and impartial.



If the answer to the above is in the affirmative, you would have to disclose the issue and recuse yourself, so that another colleague who has no interest in the matter can hear the case.

In certain circumstances, the duty of recusal arises when it appears that the judicial officer has an interest in the case, or where there is some other reasonable ground for believing that the judicial officer is likely to be biased; that is, that he will not adjudicate impartially.

There may be instances in which your interest in the matter is minimal, and will not affect your judgment – for example, if you have a distant familial relationship with a party to litigation. In such instances your responsibility would be to disclose your interest, so that the parties appearing before you are aware and can make a decision as to whether there is an apprehension of bias or a conflict.

Also, it is important to remember that parties may bring an application for your recusal at the beginning of, during, or even after proceedings.

3.2.2 Presentation 8b: Test for recusal – reasonable apprehension of bias

A duty of recusal arises where it appears that the judicial officer has an interest in the case, or where there is some other reasonable ground for believing that there is a likelihood that the judge will not adjudicate impartially.⁶⁵

In civilist jurisdictions, the laws on recusal are stated in both organic laws and ordinary statutes⁶⁶ and regulations. In Senegal, for example, Article 9 of the *Loi organique n°92-26 du 30 mai 1992 sur l'organisation et le fonctionnement du conseil supérieur* provides that judicial functions are incompatible with any public or private activity (and with any other elective office), with the exceptions of scientific, literary or artistic work that is not contrary to the interest of the judicial service. They must declare such activities to the president of the court who authorises them.

⁶⁵ *S v Stewe and Three Similar Matters* 2019 (2) NR 359 (SC) paras 12–13.

⁶⁶ Ordinary statutes are those enacted by parliament and are distinct from organic laws, which must be referred to the Constitutional Council if they are passed.

Article 11 of the same law states that any failure by a judicial officer to fulfil the duties of his office or uphold its honour, integrity or dignity constitutes a disciplinary offence. Further, the *Loi n°65-61 du 21 juillet 1965 portant Code de procédure pénale modifié* sets out the circumstances in which judicial officers should recuse themselves. These include close parental links to the litigants, or when the judicial officer or their spouse has interests in companies or associations that are parties to the litigation; if they or their spouse is in a situation of dependence on one of the parties; or if there is enough evidence to suspect the impartiality of the judicial officer.⁶⁷

In common law jurisdictions, the law is set out in case law. The rationale behind the rules for recusal has been described as follows:

*'The fundamental principle is that a man may not be a judge in his own cause. This principle, as developed by the courts, has two very similar but not identical implications. First it may be applied literally: if a judge is in fact a party to the litigation or has a financial or proprietary interest in its outcome then he is indeed sitting as a judge in his own cause. In that case, the mere fact that he is a party to the action or has a financial or proprietary interest in its outcome is sufficient to cause his automatic disqualification. The second application of the principle is where a judge is not a party to the suit and does not have a financial interest in its outcome, but in some other way his conduct or behaviour may give rise to a suspicion that he is not impartial, for example because of his friendship with a party. This second type of case is not strictly speaking an application of the principle that a man must not be judge in his own cause, since the judge will not normally be himself benefiting, but providing a benefit for another by failing to be impartial.'*⁶⁸

Impartiality is that quality of open-minded readiness to persuasion – without unfitting adherence to either party, or to their own predilections, preconceptions and personal views – that is the keystone of a civilised system of adjudication. In short, impartiality requires a mind open to persuasion by the evidence and the submissions of counsel; and in contrast to neutrality, this is an absolute requirement in every judicial proceeding.

Different circumstances may result in instances of perceived bias. For instance, bias can result from outside factors, or when a litigant complains about the judge's conduct during the trial itself.⁶⁹

67 See also *Décret n°64-572 du 30 juillet 1964, portant Code de procédure civile modifié* (D 2013-1071 du 06 aout 2013, which have similar recusal provisions with regard to civil litigation.

68 *R v Bow Street Magistrate; Ex parte Pinochet Ugarte* (No 2) [1999] 1 All ER 577 at 587E – F and 588E – J; *Minister of Finance and Another V Hollard Insurance Co of Namibia Ltd and Others* 2019 (3) Nr 605 (Sc)at 618 D-E.

69 *R v Silber* 1952 (2) SA 475 (A) at 481C – H; *S v Khala* 1995 (1) SACR 246 (A) at 252E and *S v Basson* 2007 (1) SACR 566 (CC) at 594H.



The departure point is that a judicial officer is presumed to be impartial in adjudicating disputes. A mere apprehension of bias, therefore, is not sufficient to rebut the presumption.⁷⁰ This presumption is not easily dislodged; and indeed, the instances in which bias is claimed as a result of the conduct of the judge during the trial itself are rare.

The test for recusal is whether a reasonable, objective, and informed person would *reasonably apprehend*, on the correct facts, that a judge has not or will not bring an impartial mind to bear on the adjudication of the case. The test is objective, and the onus of establishing those facts rests upon the applicant.⁷¹

The requirement of *reasonableness* is two-pronged. It must be shown that the apprehension is of a reasonable person, and that it is based on reasonable grounds. In other words, not only must the person apprehending bias be a reasonable person, but the apprehension itself must be reasonable in the circumstances.

Conversely, a judge should not recuse him/herself where the reasons for recusal are frivolous.⁷²

3.2.3 Presentation 8c: Handy hints for dealing with recusal applications

In civilist jurisdictions, the stages of the procedure for recusal are set out in statute. Generally, the request for recusal is made in writing and submitted to the registrar of the court to which the judge belongs, or by a declaration which the registrar records in a report. Then this request is transmitted to the judge concerned, who makes known, in writing, either his acquiescence to the challenge, or the reasons for his refusal to recuse. In the latter case, the request for recusal must be judged without delay by the president of the court.

In common law countries the rules are set out either in practice directions or in case law.

In both civilist and common law countries, it must be recognised from the outset that an applicant and his counsel who find it necessary to apply for the recusal of a judge have an unenviable task. Where the grounds are reasonable, it is counsel's duty to advance those grounds without fear.

⁷⁰ *Minister Of Finance And Another V Hollard Insurance Co of Namibia Ltd and Others* 2019 (3) NR 605 (SC) at 614 F (S v SSH 2017 (3) NR 871 (SC) at 878A – F; F SARFU at 175; S v Lameck and Others 2017 (3) NR 647 (SC) at 664, para 52).

⁷¹ *Sikandar v Government of the Republic of Namibia and Another* (1) 2001 NR 67 (HC) at 83I – J; *Christian v Metropolitan Life Namibia Retirement Annuity Fund and Others* 2008 (2) NR 753 (SC) at 769H – 770A; *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* 1999 (4) SA 147 (CC) (1999 (7) BCLR 725; [1999] ZACC 9) at 173, 175 B-C, 177B-C; S v Malindi and Others 1990 (1) SA 962 (A) at 969G – I.

⁷² *S v Munuma and Others* 2013 (4) NR 1156 (SC).

For the judge hearing a matter in which recusal is sought, it is fully accepted that this process is challenging on a number of levels. That said, it has been held that a judge should “not be unduly sensitive”⁷³ and ought not to regard such an application as a personal affront. A judge whose recusal is sought should accordingly bear in mind that what is required, particularly in dealing with the application for recusal itself, is “conspicuous impartiality”.⁷⁴

3.2.4 Presentation 8d: Duty to disclose conflicts of interest

A judge’s duty to disclose conflicts of interest is foundational to ensuring the integrity and impartiality of the judicial system. This duty stems from the principle that justice must not only be done, but be seen to be done. When a judge has a conflict of interest, whether real or perceived, it undermines public confidence in the fairness of the legal process.

Disclosing conflicts of interest upholds the principle of impartiality, and also allows parties to assess whether they believe the judge can adjudicate the case fairly and impartially. After all, judges are expected to adjudicate cases based solely on the facts presented and on the applicable law, without bias or prejudice.

This is essential for maintaining public trust. When judges fail to disclose conflicts of interest, it erodes confidence in the judiciary and raises concerns about the integrity of court proceedings. By being transparent about potential conflicts, judges demonstrate their commitment to the integrity of the judicial process, and maintain public confidence in the judiciary.

The basic rule (and to avoid having to adjudicate on an application for recusal) is that a judge should at the outset disclose any fact that may lead to a litigant having an apprehension that there may be some form of personal or other interest that the judge has in the case that will lead to bias. This disclosure should be made as early as possible in the proceedings.

The duty to disclose is only in respect of those circumstances that the judge considers would give rise to reasonable doubts about his/her impartiality and independence. The full facts must be considered. A general guideline would be to consider whether there is any fact or circumstance which may place your impartiality in issue; it is your duty to notify the parties.

It is acceptable to make the disclosure in chambers. In fact, it is proper practice for an issue relating to a recusal application to be dealt with by an applicant in chambers before the application is launched, so that the judge has an opportunity to consider the basis for the recusal application.

⁷³ *Moch v Nedtravel (Pty) Ltd t/a American Express Travel Service* 1996 (3) SA 1 at 23.

⁷⁴ *Moch v Nedtravel (Pty) Ltd t/a American Express Travel Service* 1996 (3) SA 1 at 13H and 14B approved in *President of the Republic of South Africa v South African Rugby Football Union* 1999 (4) SA 147 (CC) at par 10; *Sikunda v Government of the Republic of Namibia and Another* 2001 (1) NR 67 (HC) at 85F-G.



3.3 Presentation 9: Judicial corruption

Transparency International⁷⁵ defines corruption as “the abuse of entrusted power for private gain”.⁷⁶ Corruption threatens democracy, the rule of law, and respect for human rights. It undermines the principles of good governance, social equity and justice. It distorts competition, prevents economic development, and jeopardises the stability of democratic institutions and the moral foundation of society.⁷⁷

‘Judicial corruption’ is a form of institutionalised behaviour by those who exploit their institutionalised positions to influence institutionalised processes.⁷⁸ It is defined as the use of public authority for the private benefit of court personnel, when this use undermines the rules and procedures to be applied in the provision of court services.⁷⁹ Judicial corruption affects not only the integrity of judicial professionals, but the judicial institution as a whole. It encroaches on the impartiality that ought to define a judicial officer’s duties, and in general, on responsibility at all levels.⁸⁰

Corruption in the judicial sector damages the right to a fair trial, as it erodes the judiciary’s independence, impartiality and integrity. The United Nations Convention against Corruption emphasises the role of the judiciary in the fight against corruption; but when the keepers of justice themselves become corrupt, the consequences are far-reaching.⁸¹ A judicial officer who has received a bribe from any of the parties in a trial is incapable of conducting a fair trial within the meaning of the law.

In a study conducted by the UK Department for International Development, the evidence analysed across developing countries suggested a negative correlation between corruption and confidence in public institutions and the political system. Citizens lacking confidence in public institutions are more likely to accept bribery and less likely to participate in political processes, generating a feedback mechanism that further recreates and reinforces this perverse dynamic. Specifically, the study found that if businesses perceive other businesses to be corrupt or to enjoy unfair or privileged access to the state, they tend to have less confidence in the judiciary, are more likely to pay bribes, and are less likely to pay taxes.⁸²

75 Transparency International is a global movement whose mission is to stop corruption and promote transparency, accountability and integrity at all levels and across all sectors of society.

76 Transparency International. Available: <https://www.transparency.org/en/what-is-corruption>

77 Group of States against Corruption, Council of Europe statement. Available: <https://www.coe.int/en/web/greco/about-greco/priority-for-the-coe>

78 Ibid.

79 Buscaglia, E. 2001. An analysis of judicial corruption and its causes: an objective governing-based approach. *International Review of Law and Economics*. 21(2):235.

80 Danilet, C. 2009. *Corruption and anti-corruption in the justice system*. Konrad-Adenauer-Stiftung. 52

81 Article 11(1) of UNCAC.

82 Kolstad, I., Fritz, V. & O’Neil, T. 2008. *Corruption, anti-corruption efforts and aid: do donors have the right approach?* Overseas Development Institute, London.

It must be remembered that the BANGALORE PRINCIPLES were born out of an initiative of the United Nations Centre for International Crime Prevention: the Global Programme Against Corruption. The Commentary on the BANGALORE PRINCIPLES highlights the fact that the perception of corruption is as important as the act of corruption itself. When a member of the judiciary is perceived to be corrupt, it undermines the confidence of the public in the court's ability to handle cases fairly.⁸³ The test of the independence of the judiciary includes the perception regarding its independence.⁸⁴ Therefore, a judiciary which is perceived to be corrupt cannot be effective; even less so in the fight against corruption.

Apart from the rules contained in the BANGALORE PRINCIPLES, there are also domestic laws against corruption that are equally applicable to judicial officers. Generally, the provisions in these domestic laws establish the crime of corruption, with regard to the judicial officer, if the officer's intention was to commit some act in the exercise of their official duties on receipt of some benefit from the gift- or bribe-giver.

What must be noted is that even when such intention cannot be established and a crime has not been committed, it may still be unethical to accept a gift. This may extend in some circumstances to a judge using their office to advance the interests of a member of their family, or someone else.

Note however that both local Codes of Judicial Conduct and the Bangalore Principles make it clear that judges may receive a gift or benefit provided that the same might not reasonably be perceived to influence the judge in the performance of judicial duties, or otherwise give rise to an appearance of partiality. An example of such circumstances might be the acceptance of a book or a bottle of wine for giving a lecture or a speech at an educational establishment or at an event.

In summary, the following are the guiding principles to be observed:

- Corruption is a criminal offence: A judicial officer must never accept or seek any benefit that violates the provisions of anti-corruption legislation. Engaging in such acceptance or solicitation of benefits constitutes an offence.
- Corruption is misconduct in ethical terms: It interferes with a judicial officer's official duties. A judicial officer must avoid accepting or procuring any benefit that may or may not amount to a criminal offence, but can still influence the performance of their official duties.
- Corruption creates a perception in the minds of the reasonable and informed public that such influence exists.

83 UNODC. 2007. *Commentary on the Bangalore Principles*. 35. Available: https://www.unodc.org/conig/uploads/documents/publications/Otherpublications/Commentry_on_the_Bangalore_principles_of_Judicial_Conduct.pdf

84 UNODC. 2007. *Commentary on the Bangalore Principles*. 35. Available: https://www.unodc.org/conig/uploads/documents/publications/Otherpublications/Commentry_on_the_Bangalore_principles_of_Judicial_Conduct.pdf



3.4 Presentation 10: Conduct in court

In the courtroom, judges are specifically required to observe the principles of integrity, propriety, diligence and competence. They set the tone for the proceedings and for those who appear in their court. This means maintaining order and decorum, and creating an environment in which everyone feels heard and respected. By doing so, judges establish the foundation for a fair and impartial hearing.

Ultimately, the goal of the judge is to ensure that justice is done. Depending on the jurisdiction in which they sit, this may sometimes require the judge to deviate from strict adherence to the principles of the adversarial system or the inquisitorial system. While the adversarial system encourages zealous advocacy, judges must remember that their primary duty is to seek the truth and deliver a just outcome. This may involve actively seeking evidence, questioning witnesses, or considering alternative perspectives. For the inquisitorial system, judges must especially ensure that both sides are equally heard.

It is essential to recognise that judicial officers are often the first and only representatives of the justice system that many people will encounter. As the ‘coalface’ of justice, they bear a significant responsibility in shaping public perception and confidence in the legal system. Therefore, they must conduct themselves with professionalism, integrity and fairness at all times.



To earn respect, the law must embody fundamental values such as fairness, justice and equality.

To quote Louis Brandeis,⁸⁵ “If we require respect for the law, we must first make the law respectable...” Brandeis emphasised the importance of recognising the interdependent nature of the law and the reverence it receives. To earn respect, the law must embody fundamental values such as fairness, justice and equality. This necessitates an ongoing assessment of the judge’s behaviour, to ensure their compatibility with the reasonable expectations of society. Therefore judges must not only uphold the law, but also ensure that the law is just, and worthy of respect. They should interpret and apply the law in a manner that reflects the values and principles of a just society.

⁸⁵ Louis Brandeis was Associate Justice of the United States Supreme Court from 1916 to 1939. The quote attributed to him is in the *Cleveland Plain Dealer* of 15 October 1912, as cited in *A Treasury Of Jewish Quotations*. 1996. J. Baron, Ed. Rowman & Littlefield. 269.

The public's assessment of judges is often based on their level of professionalism. This assessment encompasses not only their knowledge of the law but also their manner, appearance and decorum in the courtroom. In this regard, judges must strive to create an atmosphere of dignity and respect, treating all parties equally and without bias.

Furthermore, a judge's competence in dealing with the parties, the law and the submissions of those who appear before them is a crucial aspect of their ethical behaviour. They must demonstrate a deep understanding of the law, exercise sound judgment, and provide clear and reasoned decisions. By doing so, judges inspire confidence in their ability to administer justice fairly.

Here are some specific ways judges can demonstrate professionalism and integrity in the courtroom:



Impartiality: Judges must approach each case with an open mind, and remain impartial throughout the proceedings. They should refrain from showing bias or favouritism towards any party, and base their decisions solely on the evidence and the law.



Respectful demeanour: Judges should maintain a respectful and dignified demeanour towards all participants in the courtroom, including the parties, attorneys, witnesses and court staff. They should listen attentively, avoid interrupting unnecessarily, and refrain from using disrespectful or derogatory language.



Active listening: Judges should actively listen to the arguments, testimonies and submissions presented by the parties. This includes asking relevant and clarifying questions to ensure a complete understanding of the issues at hand.



Knowledge of the law: Judges must possess a thorough understanding of the law and legal principles relevant to the case. They should stay updated with legal developments and precedents to make informed decisions and provide reasoned judgments.



Timeliness and efficiency: Judges should strive to manage their caseload effectively and ensure that proceedings are conducted in a timeous manner. This includes being punctual, adhering to scheduled hearing times, and avoiding unnecessary delays.



Judicial decorum: Judges should maintain appropriate courtroom decorum by dressing professionally, displaying proper courtroom etiquette, and setting a tone of seriousness and respect for the legal process.



3.5 Presentation 11: Extrajudicial activities

Value 5 of the BANGALORE PRINCIPLES states that:

“Propriety and the appearance of propriety are essential to the performance of all of the activities of a judge.”

This presupposes and imposes a specific type of conduct on a judge for 24 hours a day and 365 days a year. Hence, “judging is not merely a job, but a way of life.”⁸⁶ At the time of swearing the oath of office, a judge takes on this vocation and adopts many restraints on their personal behaviour. This has broad ramifications on how a judge interacts with their community.

Value 4 finds application in some very specific ways, as set out in the Principles:

“4.2 As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen, and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.”

Concerns about impropriety arise most often around the issues of membership of institutions, the holding of other remunerated positions, public and social behaviour, and judicial activism.

With regard to institutional membership, judges must be cautious about any affiliations that may create a perceived bias or conflict of interest. While judges have the right to personal associations, they should avoid membership of groups that could compromise their impartiality or create the perception of favouritism. It is generally advised that judges refrain from associations that may be potential litigants or involve controversy.

⁸⁶ Barak, A. 2006. *The Judge in a Democracy*. Princeton University Press. 110.

It cannot be overemphasised that judges ought to focus their time, attention and expertise on their judicial responsibilities. Moreover, holding other positions – particularly in private entities or organisations – can give rise to conflicts of interest or divided loyalties. Judges should also refrain from engaging in outside employment or receiving remuneration that could compromise their independence or create conflicts with their judicial duties.

A judge's public and social behaviour, actions or engagements that may undermine the dignity and impartiality of the judiciary must be avoided. This includes refraining from participating in activities that could be perceived as prejudicial, discriminatory, political, or contrary to the principles of justice and fairness.

When we explored judicial courage, we stated that it is an additional principle to be adhered to. We also looked briefly at activism and nuanced perspectives in its applications. This issue raises the most concerns by far, in that it is difficult to make a firm and definite statement about it. Engaging in excessive judicial activism can have several potential consequences, including undermining the separation of powers. Judicial activism may encroach on the powers of the legislative and executive branches of government, potentially disrupting the delicate balance of checks and balances that underpin democratic systems. It may create a perception of bias in that it might appear as if judges are pursuing personal or ideological agendas, rather than impartially applying the law. This can erode public trust and confidence in the judiciary, as individuals may question the fairness and objectivity of judicial decisions.

Equally, making decisions on contentious social, political or moral issues can spark intense debate, political controversy and public divisions.

Another critique of unbridled judicial activism is that it diminishes the predictability of the law, in that it may cause uncertainty by departing from established legal principles and precedents. This unpredictability can make it challenging for individuals and businesses to understand and comply with the law, potentially leading to confusion and inconsistency in legal outcomes.

On the other hand, when exercised judiciously and within appropriate limits, judicial activism can play a positive role in advancing justice and protecting individual rights. Some examples of judicial activism that have had positive impacts include the areas of civil rights and equality – such as *Brown v. Board of Education*,⁸⁷ in which the United States Supreme Court struck down racial segregation in public schools and played a crucial role in advancing civil rights and promoting equality, by challenging discriminatory practices and laying the foundation for desegregation efforts. In terms of the protection of human rights, an example is the Indian case of *Vishaka v. State of Rajasthan*,⁸⁸ in which the Indian Supreme Court's activism led to the establishment of guidelines to combat sexual harassment in the workplace, providing crucial protections for women's rights and setting an important precedent for other jurisdictions.

87 347 U.S. 483(1954).

88 1997 AIR SCW 3043.



Activism by the judiciary also resulted in ensuring access to healthcare and promoting public health interests in the South African case of *Minister of Health v Treatment Action campaign (TAC)*,⁸⁹ specifically in compelling the government to provide antiretroviral drugs to pregnant women with HIV, preventing mother-to-child transmission and saving numerous lives.

These examples demonstrate how judicial activism, driven by a commitment to justice, equality, and human rights, can bring about positive societal change and uphold fundamental values. It showcases the potential of courts to address critical issues and fill gaps in legislation, leading to lasting benefits for individuals and communities.

3.6 Activities and exercises to embed learning

- 1 Use the lecture notes from **Presentation 7: Courage** → for an interactive session on judicial courage. The presentation should lead to reflection and engagement on the issue of judicial courage in the context of each judge's jurisdiction. The discussion with the participants should last about 30 minutes.
- 2 Use the lecture notes from **Presentations 8: Recusal** → as an introduction to the next group exercise contained in **Handout 6: Groupwork on Recusal Hypotheticals** →. Ideally, groups of six participants should discuss the hypotheticals for about 45 minutes.
- 3 Use the lecture notes from **Presentation 9: Judicial corruption** → to engage the participants in a discussion on this topic. Again, they should return to their groups and discuss the hypothetical for twenty-five minutes, after which they share their findings in plenary.
- 4 Use the lecture notes from **Presentation 10: conduct in court** → and **Presentation 11: Extrajudicial activities** → for the next activity, in which the participant must turn to his or her neighbour and discuss the hypotheticals for 30 minutes.

⁸⁹ (2002) 5 SA 721 (CC).

3.6.1 Handout 6: Group work on recusal

1

In a matter in which you preside, your second cousin has been appointed junior counsel to lead senior counsel who appears for one of the parties in the matter. It is not envisaged that junior counsel will present any arguments.

- a. Is there a duty to disclose your familial association with junior counsel to the parties?

- b. If the answer to the above is in the affirmative, when do you believe is the best time to make the disclosure?

- c. If an application was brought for you to recuse yourself as presiding judge, would you grant or refuse the application? Please provide reasons for your decision.

2

You are seized as presiding judge with an application for sequestration. The petitioner's attorney in the sequestration proceedings launches an application for your recusal after close of pleadings. The basis of the application is that during your tenure as an advocate of the court, the petitioner's attorney represented a colleague in a complaint against you which the latter had lodged with the local Bar Council, in connection with professional fees charged by you as practising advocate. During the complaint, the petitioner's attorney cross-examined you regarding your fees. Evidence is presented that you indicated after your cross-examination that you were going to 'get him one day'. The petitioner's apprehension in the recusal application is that she might not get a fair and impartial hearing because of the strained relationship between you and the petitioner's attorney.

- a. Is there a duty to disclose in this instance?

- b. If you did not disclose this information and an application for your recusal is brought on the above grounds, would you recuse yourself or not?

- c. Please give reasons.



3.6.1 Handout 6: Group work on recusal*(continued ...)*

- 3** You are allocated a commercial dispute between two holding companies, the respective owners of the two largest competing banks in your jurisdiction. You own a minority shareholding in one of the banks that is a party to the case.
- Does a duty to disclose your minority shareholding arise in the above scenario?

 - If the answer to the above is in the affirmative, at what stage should you disclose and what will your procedure be?

 - If an application for your recusal is brought after your disclosure, will you recuse yourself or not? Please give reasons.

- 4** You have heard closing arguments in an application to declare certain provisions of legislation relating to the insurance industry unconstitutional. You have not yet delivered judgment. Some time before your appointment as a judge (some six years ago) you represented one of the many respondents, an insurance company, to declare similar provisions unconstitutional. You lost this case, and the provisions were held to be constitutional. That particular respondent is also a party in this case before you. The legal practitioner representing the government (the author of the legislation sought to be impugned) discovers that you previously represented one of the respondents and brings an application for your recusal, based on a reasonable apprehension of bias that your judgment may be clouded by your failure to succeed in the case where you represented one of the parties to this case.
- What will be the outcome of the recusal application before you?

 - Please give reasons.

3.6.1 Handout 6: Group work on recusal

(continued ...)

5 You are assigned a case, and you discover from the pleadings that it involves a well-known politician accused of corruption. The case has already attracted significant media attention and public scrutiny due to its potential impact on the political landscape. The accused politician is affiliated with a particular political party, and the case has become highly politicised. Unknown to everyone, you have a close personal relationship with a key member of the accused politician's party. You and the party member have been friends for many years, attending social events together and even vacationing as families.

a. What, if anything, do you do?

b. Why?



3.6.2 Handout 7: Group discussion work on corruption⁹⁰

Judge Akbaje presides over a high-profile criminal case. The defendant, a local businessman, faces serious charges related to financial fraud. The case has drawn significant attention due to its potential impact on the community. The defendant's girlfriend, who is also a key witness, has approached Judge Akbaje privately. She claims that Judge Akbaje hinted at a favourable outcome for the defendant if she provided certain 'personal favours'. These alleged favours were never explicitly discussed, but were implied to be of a sensitive nature. The girlfriend alleges that Judge Akbaje suggested expediting the trial date in exchange for her cooperation. She felt pressured and uncomfortable by the judge's insinuations. When questioned by law enforcement authorities, Judge Akbaje denied any wrongdoing.

In light of the various themes presented in the scenario, discuss:

- What procedures and protocols should the judicial system implement to address allegations of corruption involving judicial officers?

⁹⁰ The exercise on judicial corruption has been provided by Ghati Nyehita, Senior Researcher, DGRU, University of Cape Town and advocate at the High Court of Kenya.

3.6.2 Handout 7: Group discussion work on corruption *(continued ...)*

- What measures can be implemented to promote transparency and accountability within the judiciary, particularly in cases of alleged misconduct?

- How can judges navigate and uphold impartiality in their decision-making processes when faced with personal interests or external pressures?

3.6.3 Handout 8: Partner work on conduct in court and extrajudicial activities

- 1 You are due to try a very large financial case in three months' time, involving one of the largest corporations in the country. You agreed some time ago to deliver a lecture on financial crime for the Local Chamber of Commerce. The lecture is to take place the following day. You become aware that the corporation involved in your large case is sponsoring the event, because the lecture is to take place at the Company's headquarters. What do you do? Would it make any difference:

- a. if the event was not taking place at the company's headquarters;

3.6.3 Handout 8: Partner work on conduct in court and extrajudicial activities

(continued ...)

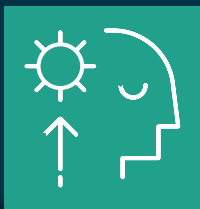
- b. if the company was one of a number of companies sponsoring the event; or

- c. you knew about this event and its sponsor when you were asked to take on the case?

- 2 When on a trip abroad to a country where paying for sexual services is legal, Judge Olioka visits a massage parlour. On leaving the establishment he is recognised, and his photograph ends up in his local paper with the caption "How our Judges Relax!" He is a very efficient, popular judge, with a reputation for integrity and fairness. The local press calls for his dismissal or resignation. What should happen?

- 3 One of your colleagues is on a social networking site on which the issue of immigration is being discussed. He expresses very strong views about the undesirability of immigration, and how immigrants always bring crime in their wake. What do you do?





PART 4

Personal learning and change

4.1 Presentation 12: Theory of change

4.2 Franco and Miller's model of steps to change

4.3 Judicial wellness and resilience

4.4 Reflections

4.4.1 Handout 9: Personal reflection

4.4.2 Handout 10: Ethical resilience journal template

This final module is designed to facilitate the transfer of the knowledge and learning obtained in this course to the lives of judicial officers, both in their courtrooms and in their communities.

In the Manual for training magistrates, Franco and Miller observe that

"Often participants attend a training course which they might enjoy, but which has no further impact on their behaviour or effectiveness. Self-reflection is seen as a foundation for change and application in the world outside the training room.

*Therefore, change and an understanding of its dynamics is crucial to improvement in any field. The awareness that results from honest reflection can motivate an individual to consider changes in [their] behaviour that result in greater effectiveness."*⁹¹

It is hoped that the pause for reflection in this module and the tools provided will equip judges with the ethical values necessary for their roles, despite the huge and burdensome personal restrictions imposed on their lives.

⁹¹ Franco, J. and Miller, K. 2004. Ethical Issues for Magistrates, Manual for Trainers. Law, Race and Gender Research Unit, Faculty of Law, University of Cape Town. Module 6:1. Available: <https://vula.uct.ac.za/access/content/group/9bd11bce-1f06-4178-86d8-962580ee400d/index.html>

4.1 Presentation 12: Theory of change

Franco and Miller state that an individual must go through different stages in order to change. Studies have categorised at least six different stages in this process. We will confine ourselves to Franco and Miller's four-stage model,⁹² described below, which is best suited to ethics training for judicial officers.

In the first step, there is overwhelming resistance to change because we are unaware of our unethical behaviour, and there is a natural tendency to stay with what is familiar – for example, accepting a free cup of coffee from a shop on the way to work every morning, or accepting a bottle of whiskey from an old client every Christmas.

In the second step, even though we are conscious of our behaviour, we are resistant to changing our habits; because we are unsure of how the change will be effective, and also because when we start to apply the new skills, we may feel insincere or fake. So, for example, after attending this course, we should think about the problems that could occur if the café owner or the old client ever appeared before us.

The third step is the stage of assimilation: we are beginning to feel less insincere or fake and becoming more comfortable with the new skill. So, in our examples, we pay for the coffee, or refuse to take it or the Christmas gift.

The fourth stage is the final one in terms of integrating and consistently applying the new skill, which now becomes a new habit. You budget for buying your morning cup of coffee at the café, or you go to another café to buy it, or you wait until you get to your office so as not to be seen as receiving a favour from a possible plaintiff. Similarly, you return Christmas gifts from all potential litigants, avoiding conflicts of interest and recusal applications; and this becomes widely known, so that gifts are no longer offered to you.

The stages or steps to change are summarised in the chart below.

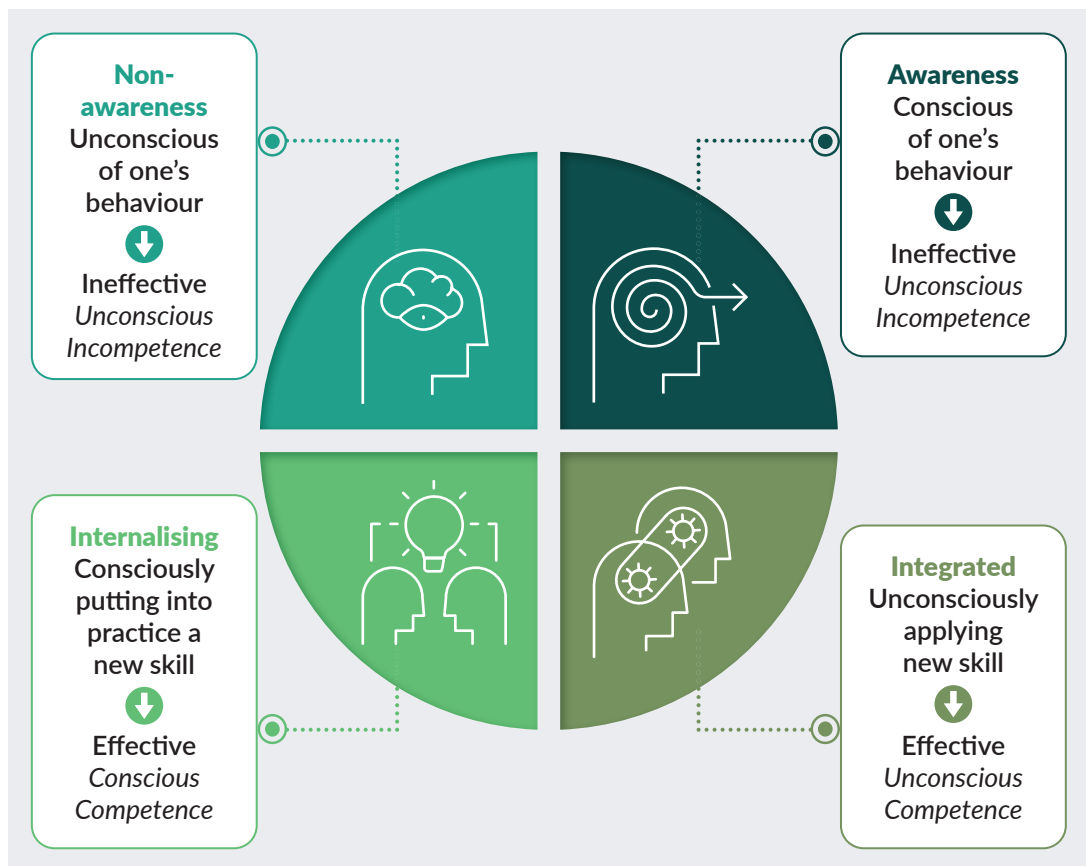
⁹² Franco, J. and Miller, K. 2004. Ethical Issues for Magistrates, Manual for Trainers. Law, Race and Gender Research Unit, Faculty of Law, University of Cape Town. Module 6:4–5. Available: <https://vula.uct.ac.za/access/content/group/9bd11bce-1f06-4178-86d8-962580ee400d/index.html>

“

Franco and Miller state that an individual must go through different stages in order to change.



4.2 Franco and Miller's model of steps to change



4.3 Judicial wellness and resilience

In this part of the Manual, we explore judicial wellness. There are several studies that have reported symptoms of burnout, heightened anxiety and depression among judicial officers.⁹³ Judges are responsible for making critical decisions that can have a significant impact on people's lives, but also on their own lives. They deal daily with the most horrific trauma and adverse events, from which other people are shielded. They see the very worst that humanity does to itself. It is difficult to maintain a distance between the cases we deal with and our personal lives. On top of this regular exposure to distressing material, judges face the stressors of an intellectually demanding job, a high workload, and intense media scrutiny. Everything we do is public.⁹⁴

⁹³ See Schrever, C., Hulbert, C. & Sourdin, T. 2019. The psychological impact of judicial work: Australia's first empirical research measuring judicial stress and wellbeing. *Journal of Judicial Administration*. 28:141; Rossouw, E. & Rothmann, S. 2020. Well-being of judges: a review of quantitative and qualitative studies. *SA Journal of Industrial Psychology*. 46(1):1.

⁹⁴ Schrever, C., Hulbert, C. & Sourdin, T. 2019. The psychological impact of judicial work: Australia's first empirical research measuring judicial stress and wellbeing. *Journal of Judicial Administration*. 28:65.

An Australian study⁹⁵ in 2019 found that one-third of judges and magistrates were in the 'moderate to severe' range for secondary traumatic stress, the level at which it may be advisable to have someone tested for symptoms of post-traumatic stress disorder. Nearly 20 per cent reported feeling as if they had relived the traumas of people they saw in the courtroom in the past week. In an American study,⁹⁶ nearly half of the judges surveyed reported having had trouble sleeping in the past week. Their occupational stress was manifested in physical and emotional problems, such as sleep disturbances, muscle tension, eating problems, hypertension, diabetes, irritability and burnout.

It is lonely for judges who have limited opportunities to interact with colleagues. Once appointed to judicial office, our relations with our lawyer friends and colleagues become constrained by the rules of professional propriety and impartiality.⁹⁷

Moreover, judges are not meant to display emotions. Barry et al,⁹⁸ writing about Irish judges, stated that:

"Emotions have been 'formally excised' from the application of judicial authority. This is because the law itself has been regarded as rational in nature, which in turn has produced a dichotomised view of reason and emotion. Thus, legal rationality is perceived to be impervious to emotional influences, which reinforces its link to rationality, reason and impartiality. Such interpretations of the law have been central to judicial reasoning, thus making 'an emotional judge ... by definition a bad judge.'"⁹⁹

Strategies should be adopted by judiciaries in an endeavour to promote mental and emotional well-being and to avoid individual burnout. It is also important to establish support networks and peer groups among like-minded individuals. Importantly, continuous training and professional development should be prioritised and supported. This goes a long way towards developing skills in conflict management and inculcating self-awareness. Most importantly, and specifically in relation to this course, it also allows the building of a strong ethical compass.

In this regard, maintaining a resilience journal can be a valuable tool for enhancing a judge's well-being, to help cope with the challenges of the profession and improve our decision-making abilities. Here are some of the reasons judges may benefit from keeping a resilience journal.

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- 95 Schrever, C., Hulbert, C. & Sourdin, T. 2019. The psychological impact of judicial work: Australia's first empirical research measuring judicial stress and wellbeing. *Journal of Judicial Administration*. 28:65.
- 96 Flores, D.M., Miller, M.K., Chamberlain, J., Richardson, J.T. & Bornstein, B.H. 2009. Judges' perspectives of stress and safety in the courtroom: an exploratory study. *Court Review: The Journal of the American Judges Association*. 293(3):6-89.
- 97 Flores, D.M., Miller, M.K., Chamberlain, J., Richardson, J.T. & Bornstein, B.H. 2009. Judges' perspectives of stress and safety in the courtroom: an exploratory study. *Court Review: The Journal of the American Judges Association*. 293(3):6-89.
- 98 Barry, C., Westaby, C., Coen, M. & Howlin, N. 2023. The emotional labour of judges in jury trials. *Journal of Law and Society*, 50(4):477-499.
- 99 Maroney, T.A., Gross J. J. 2014. The Ideal of the Dispassionate Judge: An Emotion Regulation Perspective' *6 Emotion Review*, 142:



A resilience journal provides an emotional outlet, allowing judges to have a private space to express and process their emotions, thoughts and reactions to cases involving human suffering, conflict and tragedy. Writing can serve as a therapeutic outlet, and help judges manage their emotional well-being.

Journaling also provides an opportunity for judges to reflect on their own performance, decision-making process and professional growth. By regularly documenting their experiences, judges can gain insights into their strengths, weaknesses, biases and areas for improvement. This self-reflection fosters self-awareness, and enables judges to make more informed decisions.

Additionally, we must acknowledge that the judicial profession can be highly demanding and impose significant stress and pressure on judges; writing in a resilience journal allows us to unload our stress and anxieties while reducing the emotional burden. It can serve as a coping mechanism, helping us manage stress and maintain a healthier work-life balance.

Importantly, keeping a resilience journal enables judges to capture lessons learned from their experiences. By documenting the challenges we encounter, the decisions we make and the outcomes of those decisions, we can identify patterns, evaluate their effectiveness, and learn from both successes and failures. This reflective practice contributes to our professional development and can lead to improved decision-making in the future.

Finally, we are expected to uphold high ethical standards and maintain impartiality. Journaling provides a space for judges to contemplate ethical dilemmas we encounter, explore different perspectives, and analyse our own biases. By examining our thoughts and feelings in writing, we can better understand our own ethical reasoning and make more objective and fair decisions.

Writing a resilience journal can foster resilience, which is crucial for judges to navigate the challenges and adversities they encounter. By documenting our experiences and reflecting on our coping strategies, we can identify what helps us bounce back from difficult situations. This self-awareness allows us to develop resilience skills and maintain our well-being in the face of ongoing challenges.

However, it is important to note that keeping a resilience journal is a personal choice and depends on individual preferences. Some judges may find it helpful, while others may adopt alternative methods to support their well-being and professional growth.

4.4 Reflections

Trainers should encourage participants to pause at this juncture and engage in meaningful reflection as to whether the introductory part of the course was successful in achieving the goals set out.

Reflection is an important part of experiential learning. It helps participants connect what they experienced (the practical experience) with what they learned (the learning experience). It also helps them to understand how what they learned in class applies to the real-world situations they encounter. The template below can be used for this exercise.

4.4.1 Handout 9: Personal reflection

Details of activity

Provide details of the activity you undertook.

What were your intended learning outcomes from the activity?

What goals were met during the experience?

What goals were not met, and why?

Describe how the activity contributed to the development of your knowledge and skills.

What were the learning needs or objectives that were addressed?

What skills do you still need to improve, and how can improvements be made?



4.4.2 Handout 10: Ethical resilience journal template

Remember, this ethical resilience journal is a tool for self-reflection and growth. Adapt and modify it as needed to align with your personal ethical framework and professional obligations. Regularly engaging in this practice can help you navigate ethical challenges with integrity and contribute to a just and ethical judicial system.

Date: _____

1 Ethical Dilemma

Describe an ethical dilemma or challenging situation you encountered today in your role as a judicial officer. This could involve conflicting values, moral considerations, or professional responsibilities that required careful decision-making.

2 Values Reflection

Reflect on the values that were at play during the ethical dilemma. Consider your personal values, as well as the ethical principles and standards that guide your profession. Write about how these values influenced your decision-making process.

3 Decision Analysis

Analyse the decision you made in response to the ethical dilemma. Reflect on the factors, considerations, and reasoning that led you to your choice. Consider the potential consequences and impacts of your decision.

4 Ethical Response Evaluation

Evaluate the ethical response you provided to the dilemma. Assess the strengths and weaknesses of your decision and consider whether there were alternative courses of action that could have been pursued. Reflect on the ethical implications of your response.

4.4.2 Handout 10: Ethical resilience journal template

(continued ...)

5 Personal Growth

Identify any personal growth or learning that emerged from navigating the ethical dilemma. Reflect on how this experience has contributed to your ethical development as a judicial officer. Consider any insights or lessons learned that can enhance your ethical decision-making skills.

6 Professional Accountability

Reflect on your professional accountability and responsibility in addressing ethical dilemmas. Consider the importance of maintaining integrity, upholding ethical standards, and fostering public trust in the judicial system. Write about any actions you can take to further promote ethical conduct in your role.

7 Seeking Guidance and Support

Acknowledge the importance of seeking guidance and support when faced with ethical challenges. Identify any individuals, resources, or professional networks you can turn to for advice and assistance in navigating ethical dilemmas. Reflect on the significance of collaboration and consultation in promoting ethical resilience.

8 Commitment to Continuous Improvement

Recommit yourself to continuous improvement in ethical decision-making. Set goals or action steps for further enhancing your ethical resilience. Consider any training, education, or self-reflection practices you can engage in to strengthen your ethical competence.





Part 5

Appendix: The bangalore principles of judicial conduct

PREAMBLE

Value 1: Independence

Value 2: Impartiality

Value 3: Integrity Principle

Value 4: Propriety

Value 5: Equality

Value 6: Competence and Diligence

Implementation

Definitions

PREAMBLE

WHEREAS the Universal Declaration of Human Rights recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge.

WHEREAS the International Covenant on Civil and Political Rights guarantees that all persons shall be equal before the courts, and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law.

WHEREAS the foregoing fundamental principles and rights are also recognized or reflected in regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions.

WHEREAS the importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice.

WHEREAS a competent, independent and impartial judiciary is likewise essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law.

WHEREAS public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society.

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

WHEREAS the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country.

AND WHEREAS the United Nations Basic Principles on the Independence of the Judiciary are designed to secure and promote the independence of the judiciary, and are addressed primarily to States.

THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.

Value 1 Independence

Principle:

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Application:

- 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.
- 1.2** A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.
- 1.3** A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.
- 1.4** In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.
- 1.5** A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.
- 1.6** A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.



Value 2 Impartiality

Principle:

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

Application:

- 2.1 A judge shall perform his or her judicial duties without favour, bias or prejudice.
- 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.
- 2.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.
- 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.
- 2.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where
 - 2.5.1 the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
 - 2.5.2 the judge previously served as a lawyer or was a material witness in the matter in controversy; or
 - 2.5.3 the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy: Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

Value 3 Integrity

Principle:

Integrity is essential to the proper discharge of the judicial office.

Application:

- 3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.
- 3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

Value 4 Propriety

Principle:

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

Application:

- 4.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
- 4.2 As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.
- 4.3 A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.
- 4.4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.
- 4.5 A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.
- 4.6 A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.



Value 4 Propriety*(continued ...)*

- 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.
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- 4.8** A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.
-
- 4.9** A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.
-
- 4.10** Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.
-
- 4.11** Subject to the proper performance of judicial duties, a judge may:
- 4.11.1** write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
 - 4.11.2** appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;
 - 4.11.3** serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or
 - 4.11.4** engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.
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- 4.12** A judge shall not practise law whilst the holder of judicial office.
-
- 4.13** A judge may form or join associations of judges or participate in other organisations representing the interests of judges.
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- 4.14** A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.

Value 4 Propriety

(continued ...)

- 4.15** A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.
- 4.16** Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

Value 5 Equality

Principle:

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

Application:

- 5.1** A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").
- 5.2** A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.
- 5.3** A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.
- 5.4** A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.
- 5.5** A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.



Value 6 Competence and Diligence

Principle:

Competence and diligence are prerequisites to the due performance of judicial office.

Application:

- 6.1 The judicial duties of a judge take precedence over all other activities.
- 6.2 A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.
- 6.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.
- 6.4 A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.
- 6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.
- 6.6 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.
- 6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

Implementation

By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

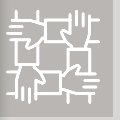
Definitions

In this statement of principles, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

“Court staff” includes the personal staff of the judge including law clerks. **“Judge”** means any person exercising judicial power, however designated.

“Judge’s family” includes a judge’s spouse, son, daughter, son-in-law, daughter-in-law, and any other close relative or person who is a companion or employee of the judge and who lives in the judge’s household.

“Judge’s spouse” includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.





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