

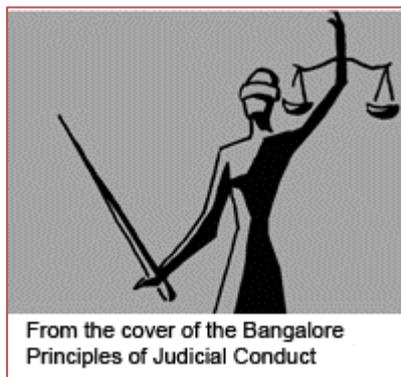


# The Road to Judicial Integrity

Stories from 15 years of implementing the Bangalore Principles



## Foreword



Peace, justice and strong institutions are at the core of sustainable development; something the 2030 Agenda for Sustainable Development captures clearly in its Goal 16. A strong national judicial system is essential in achieving the other goals of the Agenda.

On the other hand, corruption is one of the major obstacles to development. It creates legal uncertainty, thus deterring foreign investment. In addition, it impedes citizens, especially the poor and marginalized people to benefit from their rights.

A transparent, fair and accountable judiciary is foreseen in Article 11 of the United Nations Convention against Corruption. These are widely recognised values in every society, but sometimes difficult to achieve.

In 2002, i.e. 15 years ago, the internationally renowned Bangalore Principles of Judicial Conduct were adopted. Germany supported the authors and promoters of the principles: the Judicial Integrity Group – an independent group of high-ranking judges from both developing and industrialised countries.

Since taking the stage, the Bangalore Principles have been quickly acknowledged as the international standard for judicial integrity. Some states incorporated them into their law and many others have modelled their own Principles of Judicial Conduct according to them.

This journal invites experts in the field of judicial integrity to share their experiences dealing with judicial corruption, on reforms that have been successful and challenges that persist today. In our field of work, we need to know what works, where it works and why. The stories told here try to capture experiences with judicial integrity and the fight against corruption while looking at 15 years of experience in implementing the Bangalore Principles.

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Governance, Democracy, Rule of Law

## Contents

	Page
1. Introduction: Judicial integrity.....	3
2. List of interviewees.....	5
3. Stories: What stakeholders say.....	7
3.1 Judicial Integrity Group: 15 years after adopting the Principles	7
3.2 Empowering judges	10
3.3 Implementing a newly adopted code of ethics: Central Asia	14
3.4 Civil society projects on judicial reform: Côte d'Ivoire	16
3.5 Ethics through networking of European judges	19
3.6 Reforming reluctant judiciaries	22
3.7 Judicial reform projects: How it all started	25
4. Conclusion.....	28
4.1 What has been achieved?	28
4.2 What could be done in the future?	28

## 1. Introduction: Judicial integrity

Sustainable development depends on **state institutions** acting with integrity. State institutions demonstrating integrity plan and spend their budgets for the public good, provide service to citizens as foreseen by law, and take human rights as well as democratic principles into account when rendering decisions. For this reason, all international conventions against corruption reiterate that corruption jeopardizes sustainable development and the rule of law.

The **judiciary** has a key role in this regard. The judiciary has the power to review and ultimately invalidate decisions of any other state institution. Without integrity, the judiciary will remain weak in holding offenders accountable; in recovering embezzled public money; in enforcing human rights of vulnerable groups; and in protecting due rights of investors. In other words – enforcement of rules on integrity in all state bodies will remain weak if there is a lack of integrity in the judiciary; and citizens will not put their **trust** in the rule of law.

*“A judiciary complying with the Bangalore Principles is the best anti-corruption body you can*

This is why the “**2030 Agenda for Sustainable Development**” of the United Nations links “the provision of access to justice for all” with poverty reduction and inclusive growth. In other words, the Agenda sees “justice” as an indispensable ingredient for the achievement of all other goals.<sup>1</sup>

Ensuring integrity in the judiciary is the **responsibility** of the **entire society** and all three branches of power, including the judiciary itself. For example, the legislator needs to provide effective laws supporting judicial integrity, government needs to provide sufficient budgetary means, and the judiciary needs to establish a culture of integrity from inside. In this regard, judicial councils have a key role in countries that foresee bodies of judicial self-administration.

*“I think it is a myth that a corrupt judiciary will become clean from inside.”*

What are the principles needed to respond to threats against integrity? With the start of the millennium, it became more and more apparent that the development of a widely accepted concept of

judicial ethics and accountability was missing. At the same time, public confidence in the judiciary was on the decline. In 2000, as a response to this challenge, several senior judges formed the Judicial Group on Strengthening Judicial Integrity (“**Judicial Integrity Group**”). The Group set itself the task of strengthening the integrity of the judicial system world-wide.

In 2002, the Group adopted the **Bangalore Principles** of Judicial Conduct. The Principles provide a set of core values (independence, impartiality, integrity, propriety, equality, competence and diligence) and standards of ethical conduct. The Economic and Social Council of the United Nations (ECOSOC)<sup>2</sup> recognised these Principles as developing further and complementing the UN Basic Principles on the Independence of the Judiciary (1985).<sup>3</sup> In addition, in 2005, the Group adopted the “Principles of Conduct for Court Personnel”. A Commentary

<sup>1</sup> UN [website](#) on SDGs, Goal 16 (excerpt): “promote the rule of law at the national and international levels and ensure equal access to justice for all”, “develop effective, accountable and transparent institutions at all levels”, and “substantially reduce corruption and bribery in all their forms”.

<sup>2</sup> ECOSOC Res. 23, [Strengthening basic principles of judicial conduct](#), UN Doc. 2006/23 (27 July 2006).

<sup>3</sup> [Basic Principles on the Independence of the Judiciary](#), UN Doc. A/CONF.121/9 (25 April 1985).

provides additional practical guidance on the Bangalore Principles. This helped their dissemination and use in court decisions and professional discussions.<sup>4</sup>

Projects of development co-operation funded by the GIZ implement the Bangalore Principles to improve the quality of the justice systems in partner countries. To that end, GIZ has developed the **Judicial Integrity Scan**, a tool designed to assess the legal and institutional integrity framework of a judiciary in any given country.<sup>5</sup> The Bangalore Principles, together with the evaluative Framework of Article 11 of the United Nations Convention against Corruption (UNCAC), are the main benchmarks for the Scan. Until today, GIZ has applied the Scan in Georgia (2012), Cote D'Ivoire (2013), Bhutan (2015), Kyrgyzstan (2016), and Mongolia (2016).

*“We wanted to provide good, succinct guidance for judges on all matters of integrity.”*

15 years after adopting the Bangalore Principles it is time to **take stock** on their impact and on the road ahead. Eight interviews with judicial reformers from a diversity of regions and professional backgrounds provide their insight. These are stories of success of these universal principles of judicial conduct, and of the challenges they still face.



**Germany**, through GIZ, and together with the United Nations Office on Drugs and Crime (UNODC), has been supporting the work of the Judicial Integrity Group since 2005 through its “anti-corruption and integrity” advisory project.<sup>1</sup> Germany has funded the drafting of the Commentaries on the Bangalore Principles (2007), of its Implementation Measures (2010), and developed the website of the Judicial Integrity Group.<sup>1</sup> Moreover, Germany has funded the 5th (2007), 6th (2010) and 7th (2012) meetings of the Judicial Integrity Group as well as several regional and national workshops to promote judicial integrity and the Bangalore Principles. The Implementation Guide and Evaluative Framework for Article 11 of the United Nations Convention against Corruption (UNCAC) by the UNODC (2015)<sup>1</sup> rounds up the comprehensive set of materials advising integrity reforms in the judiciary.

<sup>4</sup> See documents section of the [Judicial Integrity Group](#) webpage.

<sup>5</sup> See GIZ [webpage](#) on judicial integrity scans.

## 2. List of interviewees

All interviewees have experience from more than one professional background including positions and functions as: judge, member of a judicial council, attorney general, judicial inspector, lawyer, anti-corruption agency representative, technical assistance expert.

The Hon. Michael Donald KIRBY  
AC, CMG, former Justice of the High Court of Australia

Interview 3.1

José Igreja MATOS  
President of the European Association of Judges, Vice-President  
of the International Association of Judges

Interview 3.2

N.N. (anonymous interview)  
Senior judge from an upper level court in Central Asia\*

Interview 3.3

Ehounou Kan Laurent MANLAN  
Inspector of judicial and penitentiary services, President  
of “Transparency Justice” (Côte d’Ivoire)

Interview 3.4

Nuria DÍAZ ABAD  
President of the European Network of Councils for the Judiciary

Interview 3.5

Cristina ȚĂRNĂ  
Former Deputy Head of the National Anti-Corruption Center,  
Republic of Moldova

Interview 3.6

Dr. Lothar JAHN  
Senior Planning Officer, Rule of Law, GIZ

Interview 3.7

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\* The interviewee has asked for his/her name not to be disclosed.



### 3. Stories: What stakeholders say

#### 3.1 Judicial Integrity Group: 15 years after adopting the Principles

##### Interview with the Hon. Michael Donald Kirby, AC, CMG, former Justice of the High Court of Australia

*What has been your role in developing the Bangalore Principles?*

I was one of the three persons of the Judicial Integrity Group who was neither a member of an international court nor a chief justice. As **rapporteur** of the Bangalore Principles, I was involved in the development from the earliest days.

Originally, all members of the Judicial Integrity Group came from **Common Law**. This was conducive for initiating our work. In the English-speaking countries, we are used to coming together and exchanging our experiences. At the same time, we all share a variant of the Common Law tradition. However, the draft Principles were later reviewed and approved by senior judges of the Civil Law tradition at the Round Table Meeting of Chief Justices in The Hague in 2002. Several bodies of the United Nations have supported the draft Principles, as have the GIZ and Transparency International (through its Executive Director Dr. Nihal Jayawickrama). Until today, the Bangalore Principles are a major international achievement by the Judicial Integrity Group.

*Do you see different approaches to integrity in the Common Law and Civil Law traditions?*

One point of difference was political activities of judges, as stated in the foreword to the Bangalore Principles' Commentary. In the Anglo-tradition of Common Law, **political party** membership is seen as incompatible with judicial office, while in the United States and some civil law countries this is sometimes acceptable. However, in general, there was a high degree of consensus among Common and Civil Law judges on all core values.

*So would you say that the Bangalore Principles reflect a set of common global values?*

The job of a judge is in practice very similar, regardless of the jurisdiction. At the same time, the Judicial Integrity Group could draw on a base of international values: The International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and other **UN treaties**. They all contain only words of great generality. Spelling out these values in more detail was the task of the Judicial Integrity Group. To this end, we could draw on jurisprudence that gathered around these UN principles.

Of course, there was also the European Convention on Human Rights, which only applies to the cocoon of European countries. Similar **human rights treaties** were equally important, in particular the African Charter on Human and Peoples' Rights and the American Convention on Human Rights. The Arab Charter on Human Rights was adopted only after the Judicial Integrity Group had agreed on the Bangalore Principles.

*What expectations did you have in the Principles?*

We wanted to provide good, **succinct guidance** for judges on all matters of integrity. By doing this, we would be contributing to greater harmony on the global level in improving the standards of integrity. This could be an important response to global problems of corruption and misconduct in judicial office, and eventually, to the economic and social development of the world.

*Do you see any concrete impact on the decision-making of judges?*

The Principles gave an **international** impetus to judicial integrity. As a consequence, it soon became usual to see references to the Bangalore Principles in judicial reasoning.

One decision by the Judicial Committee of the Privy Council of the United Kingdom comes to mind.<sup>6</sup> The case arose in **Gibraltar** and concerned the removal of its Chief Justice for misconduct. The Chief Justice had permitted himself to be associated with unjustified accusations made by his wife that the Chief Minister was bent on hounding him from office. The Judicial Committee advised Her Majesty by a majority of four to three that the Chief Justice should be removed from office. It is remarkable that the decision references two Bangalore Principles quite in detail, and even the press summary mentions the Principles.<sup>7</sup> This is just one instance of a case which refers to the Bangalore Principles.

It is an advantage of the Bangalore Principles that they contain a discussion of the ways in which many of its values could be **applied** to different factual circumstances. The Commentary provides additional practical guidance. This helped the Principles in becoming used quite a bit in court decisions and professional discussions.

*Do you think the Principles cover all values or do they need to be extended?*

In some regard, the Principles **pushed forward** into areas that were not given great attention in the past. For example, in some countries the legal profession is made up of people who share the same famous family names. This leads to advocates representing cases presided by judges to whom they are related. The Bangalore Principles suggest disqualification in such cases. To a number of legal systems this was new.

*Did these “forward-pushing” values matter in practice?*

Yes. Let me illustrate this with one more example of progressive values – the principle of **non-discrimination**. Religion, private life, sexual orientation – these are aspects of non-discrimination that are not found in all legal systems. Nevertheless, they were accepted by all members of the Judicial Integrity Group, regardless of cultural and legal tradition. I thought that was a good aspect of its work.

*Ideas enshrined in the Bangalore Principles can make a difference even in difficult environments.*

We could see how the Bangalore Principles made a difference in **transporting** these **values** even into the substance of decisions. One member of the Judicial Integrity Group came from a country with a track record of discriminating gays and lesbians. This member served on the country’s highest court, when it had to decide on recognising a political group dedicated on

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<sup>6</sup> Privy Council, No. 0016 of 2009, [2009] UKPC 43, JPCPC [webpage](#).

<sup>7</sup> Press Summary, Case No. 0016 of 2009, JPCPC [webpage](#).

abolishing colonial laws criminalising same-sex sexual contact between consenting adults. The Court's decision recognised the group's rights to work towards freedom of sexual orientation. To me, this shows how ideas enshrined in the Bangalore Principles can find their way into making a difference even in difficult environments.

*What is needed to promote judicial integrity further?*

I have a strong feeling that the Bangalore Principles cover the field of integrity. However, we should make sure they are **reviewed** from time to time. The Principles are not the law of the Medes and the Persians, but of human institutions. We need to learn more from how the Principles are applied in different national contexts.

Furthermore, I don't believe the Judicial Integrity Group has ever really approached its own constitution to ensure that it is **more broadly** based and has a wider representation. The Group had four Chief Justices each from Africa and Asia. This gave it a kind of a cachet in judicial circles. However, there was a predominance of Common Law professionals within the Judicial Integrity Group. Common Law applies only in about a third of the world's jurisdictions (a fact that always comes as a terrible shock to many law students in Australia!). This aside, there are certainly not enough women in the Group. There could also be more cultural diversity. None of the members are from countries of the former Soviet Union.

Moreover, some of the members are not judges anymore and lack the daily experience of judicial office. In other words: we need a mechanism for **turnover** of membership. The very reason of the Judicial Integrity Group's initial success was owed to the seniority, integrity, and experience of judges who led it from the beginning. GIZ can be most fortunate that Judge Mellinghoff has been and is still chosen from Germany in the Group. However, in the long run, any success story cannot rely on individuals, but will have to build on institutions. Individuals come and go, and inevitably, we all become older.

*In the long run, success stories cannot rely on individuals, but will have to build on institutions.*

This not only concerns the Judicial Integrity Group, but all countries transitioning towards greater integrity in the judiciary. We need to set up **institutions** with in-built mechanisms of integrity, discipline, and self-control. In this way we can make a difference for human rights, the economy, and for global cooperation.

## 3.2 Empowering judges

### Interview with Mr. José Igreja Matos, President of the European Association of Judges, Vice-President of the International Association of Judges

*How did you get involved with judicial integrity?*

I have served in the Portuguese judiciary since 1989 while also supporting integrity and judicial reforms as expert for the Group of States against Corruption (**GRECO**) since 2012. I am Vice President of the **International Association** of Judges since 2012, and President of the **European Association** of Judges. I have travelled to quite diverse regions, taking part in workshops, trainings, and conferences. Over the last 25 years, I have witnessed significant progress. However, it is fair to say that judicial independence, a core value of the Bangalore Principles, is at risk today in a way it has not been for many years.

*Why so?*

Let me give you an example: A European country recently managed to put my name on the alert system of the border control. The underlying reason was certainly that the European Associations of Judges had spoken out against the mass dismissal and arrest of more than 4,000 judges in Turkey.

The Council of Europe's Parliamentary Assembly sent a strong signal to Turkey by awarding the **Václav Havel Human Rights Prize** for 2017 to Murat Arslan, a former Constitutional Judge and a President of the now dissolved Association for the Union of Judges and Prosecutors of Turkey. Where does this leave us? Judge Arslan is still in prison. As a result of my border control-listing, I cannot – and I refuse to – enter that country or connect via its airports. This, happening in Europe in the 21<sup>st</sup> century, is a disgrace and a scandal.<sup>8</sup>

*Is this a very particular case?*

It is not a singular one. "Terrorism" is only a pretext in this particular case. The real motivation of the government – as in many other countries – is **control** over the judiciary. Between 2012-2015, various Turkish courts of first and higher instances happened to decide cases against the government. This is a strong indicator of an independent judiciary. Turkey has now hired about 1,000 new judges – I presume that obedience towards the government is one of the new informal selection criteria.

*How do governments in other countries and regions infringe judicial independence?*

It is a usual pattern for governments to go after the **top leaders** of the judiciary: Supreme Court judges, Chief Justices, Constitutional Court judges. If you control the upper levels, you have supremacy over the judiciary.

*Are judicial councils the panacea to this threat?*

Judicial councils are important and they often worked well in **Eastern Europe**, for example. Governments there are now "victims" of reforms they implemented – willingly or reluctantly – with help of the international community 10, 20 years ago: they can no longer easily control

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<sup>8</sup> J. I. Matos (January, 2017), "[Turkey: A Test for European Values](#)", Centre for Policy and Research on Turkey.

judges. By contrast, in **Latin America** many of the judicial councils have been failures. Between the 1970s and the early 2000s we saw a sharp rise of the number of judicial councils in that region; only few achieved true independence.

*What is the reason for this failure?*

There is a long tradition in many Latin America countries whereby upper levels of the judiciary remain “**loyal**” to the political elites. This might be a leftover from colonial times, where the Portuguese and Spanish crown would make sure to install loyal judges at the top.

In some Latin American countries, judicial councils were set up, often only against much resistance. However, appointments to the councils were largely based on **political affiliations**. Both, the methods of appointment as well as the culture of judicial independence have not changed.

For example, I went to a conference in a Central American country. The power of the President of the inviting court of second instance was impressive. He had organised this wonderful conference with many international guests. He acted in the manner of an important politician. These kinds of court presidents move from politics to the judiciary and back. They have all financial means they need, if they only apply one simple rule: do **not disturb** the ruling elite.

I can tell you as a rule of thumb – the **financial** capacity of a judiciary is often in reverse proportionality to its independence. Once I visited Guinea Bissau. The association of judges had no financial means. The judges were poor, low wages, which they would sometimes not even receive for months. But – most of them showed independence, especially the younger ones.

*They have all financial means if they only apply one rule: do not disturb the ruling elite.*

*Does integrity differ among generations?*

In most cases yes. The younger judges often had training abroad. They are receptive and access the **internet** a lot: they see that a judiciary can work out in a very different way than they know it at home.

The older ones usually have paid their price already for moving up the system, they are captured by their own **history**. They may be able to deliver nice speeches on the Bangalore Principles, but they are not up for real change. To them, transparency and accountability only impinge upon judicial independence.

For an organisation such as GIZ it will be more useful to work with younger generations: Bring awareness of integrity during their **first years** in office; awaken their ambition to change something. After 10 years in office it is usually too late, they will have been caught in the system.

However, there are exceptions. Especially in some Latin American and Asian countries, where young judges are all sons and daughters of a **judicial caste**, perpetuating their own power. I can close my eyes and see already the auditorium of some judicial conferences in Latin America: white people; top education; their parents were rich, their grandparents were rich; they meet politicians at wedding parties. These young judges are aware of the social inequality and of the corruption surrounding them, but they float atop society. This is how the game has been played for centuries.

*How does one break these patterns of judicial dependence?*

First, where you have a closed judicial caste, it is important to install mechanisms allowing **diversity**. A few years ago, I met this young lawyer in Latin America. He had been a brilliant law student and recipient of a scholarship. While a large part of the population in his country is black, a very small percentage of judges was. The young lawyer was black, though, and did not come from a rich family. So judicial appointment committees in two states of this federal republic refused to nominate him as judicial candidate. He tried a third time – and was finally accepted. Why? The third state had just passed a new law which based judicial appointments largely on written tests so oral interviews could not be abused to filter out candidates. Still today though, every time he has a hearing, the parties address as judge the white assistant sitting next to him. But this will change over time because a smart hiring mechanism opened up the judiciary for diversity.

*The Principles deal with the real, major issues judges have in daily life.*

Second, **internal independence** of judges is equally or maybe even more important than external independence. In many countries, judges receive these notorious phone calls by court presidents or judges of higher instances: “Tomorrow there is this case, it is very sensible. I trust you to do the right thing...” What will the judge do? The court president is often the key stakeholder for any future promotion. If you control promotions, you can more easily control judges. There will be always judges that will prefer not to be promoted and stay detached from such pressures but others can be susceptible. This is why the recent draft law by the Polish government sought control not only over the Constitutional Court and the Judicial Council, but also over nominating presidents of courts of first instance.

Third, and related to internal independence, is the point of **empowering** judges. Judges need empowerment. They know they have an important impact in the daily life of common people: crimes, contracts, or divorces. But on the social and political level, they often do not see any power; they do not want to mess with the powerful people.

*If you control promotions, you control the judges.*

Showing them how they can make a **difference** is important. For example, one year ago I was responsible for organizing the programme of a seminar in Peru. In agreement with our hosts, I invited Judge Sérgio Moro, who is overseeing the prosecution of the USD 3 billion Petrobras corruption scheme in Brazil. 700 Peruvian judges, prosecutors, and other jurists came to see him – can you imagine? They understood: If this judge can do it, I can do it. And they understood that if they do not act, corruption will destroy democracy.

I sometimes like to tell the story of the **Prussian King** who tried to buy a windmill from a poor miller, who refused the deal. The King told him: “But you know, right, I can take this windmill away from you without paying?” The miller replied: “Yes, but there are still judges in Berlin”. It is a simple story, but it always has an effect on the audience. It encapsulates the essence of why their job and their integrity matter.

The **impact** of empowerment is visible. During or after events, participants come to me or to other speakers. Their faces are open with curiosity, they want to stay in touch, get more information. They tell me how important it is to hear that integrity is possible.

*What road ahead do you see for the Bangalore Principles?*

I continue to see a promising future for the Bangalore Principles and their implementation. For the judicial sector, problems and solutions are **similar** no matter which country or region. With the globalisation of everything – the internet, web tools, social forums, e-learning, networking – the values of Bangalore Principles will spread even faster.

When speaking about the Bangalore Principles these days and in the future, we will have to address the issue of **social media**. Each time I go somewhere, the question comes up: What limits exist for a judge to interact with social media? Can a judge be friends with a lawyer on Facebook? Can he share a picture of him attending the lawyer's wedding?

The Bangalore Principles are not just words on paper. They deal with the real, **major issues** judges have in daily life. We will have to continue discussing what they mean and promoting them as we will be facing new challenges over and over again.

### 3.3 Implementing a newly adopted code of ethics: Central Asia

#### Interview with a senior judge from an upper level court in Central Asia\*

*What has been your role in judicial integrity?*

I have worked over the last 10 years as an **expert** in legal and judicial reforms in my country. I have also worked in several international projects, particularly in the areas of promoting the training for judges and judicial staff, legal reforms in the judiciary, as well as the establishment of a self-governance body and of an independent budget for the judiciary in the Constitution of my country.

Today, I am a judge at one of the upper level courts of my country. In my role as judge, I have been involved in the discussions of the draft Code of Ethics.

*Did the Bangalore Principles influence judicial ethics in my country?*

A “**Code of Ethics** for Judges” exists already for several years. However, until 2010, the Bangalore Principles were known only to some experts. The Bangalore Principles became known more widely only after a few years: A few years ago, with the initiative and support of international donors, our judges have been trained and have become familiar with the international standards on judicial integrity, including the Bangalore Principles. After a period of discussion within the judiciary, the Code of Ethics was recently adopted in a revised version. I would estimate that about 90% of the Code’s wording is influenced by the Bangalore Principles.

*What are the expectations on the benefits of the new Code?*

Expectations of our citizens are very high. One of the major challenges – as in any Asian country – is how private or **personal relations** of judges with parties or other stakeholders influence the judicial process. Another challenge is to establish a culture, where each judge will feel independent, even within the judiciary. For example, there may be a call from a higher court and – at least until today – the judge from the lower instance will feel he/she cannot refuse the request from the higher court.

*What is needed for establishing a culture of ethics?*

The new Code of Ethics needs to be widely **disseminated** among judges. They should be trained on these standards, its requirements and the corresponding sanctions in the event of breaches of the Code. Judges need to understand their role and responsibilities. This has the potential of allowing the Judiciary to overcome influences.

A point of optimism for me is the fact that 75% of the judges have been replaced. When I meet **new judges**, I see their eagerness to raise the trust of society in the judiciary, and in working ethically and according to the law.

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\* The interviewee has asked for his/her name not to be disclosed.

*Do you think sanctions matter?*

In certain cases, we will have to apply sanctions to judges which do not abide by the Code. In this context, I should mention that the setup of the **Disciplinary Commission**, responsible for reviewing the ethical behaviour of judges, has been revised. Before, this commission was comprised only of judges. Now along with judges the Disciplinary Commission also comprises representatives of the Presidency and Parliament. This Commission is entitled to bring judges to disciplinary responsibility, including the right to make a submission on early dismissal of judges and grant consent for criminal prosecution against judges. The activities of this Commission are aimed at reducing the level of violations of the Code of Ethics for judges.

*When I meet new judges, I see their eagerness to raise the trust of society in the judiciary.*

*Is guidance available to judges on the interpretation of the newly adopted Code?*

At the moment, there is no established **case-law** binding the Disciplinary Commission. Thus, it is able to freely interpret the Code of Ethics. This is one of the reasons why the Disciplinary Commission is perceived as a penalising body. I overheard some talk among judges who said: "Why should we comply with the Code of Ethics when in reality it can be interpreted in any possible way?"

The Judicial Council might take on a stronger role in the future, also by being the competent body for the binding interpretation of the Code, for building up a set of case-law, and for providing active **ethical advice** and guidance to judges in specific cases. Good commentaries to the Code of Ethics would be helpful, based on international good practices and on the commentaries to the Bangalore Principles, but taking into consideration specificities of my country.

**Advocates** and **citizens** would also better understand the role and functions of judges, their roles, of the Judicial Council, and of the Disciplinary Commission.

*What else could be done to support implementation of the Code and its principles?*

One tool which is currently missing is the ability for judges to **network** nationally and internationally among themselves, to share their experiences and practice in aspects of judicial integrity. Networking would help judges from different jurisdictions to compare their different practices. For our judiciary, this networking would enable our judges to adapt the Bangalore Principles to our context and to facilitate their implementation.

In that sense, I have helped establish in my country the Organisation of Women Judges. We are planning on arranging a conference to discuss our role and participation in the Judiciary. Such interaction will help inspire **female judges** and give them the feeling that they are not alone.

The judiciary should also establish good cooperation with other **state bodies** and with **civil society**. However, this should only be done after the judges themselves have understood their role. Once this has been done, the Judiciary should work on a communication strategy with other state bodies and civil society and reach out to them.

### 3.4 Civil society projects on judicial reform: Côte d'Ivoire

#### Interview with Mr. Ehounou Kan Laurent Manlan, Inspector of judicial and penitentiary services, President of “Transparency Justice”

*How can civil society organisations promote judicial integrity?*

“Transparency Justice” is an organization that brings together the main stakeholders of the judicial system and aims to support accessible, transparent, independent, effective, and efficient justice.<sup>9</sup> I am convinced that initiatives from the **inside** – coming from judicial stakeholders – can better identify the problems and make solutions sustainable.

Stakeholders from inside the judiciary search for solutions to the real problems, that is to say those experienced daily by Magistrates and the various other stakeholders of justice. By contrast, when judicial reforms are imposed only by politicians, they may not be effective. **Politicians** often have their own agenda which might not fit well with the independence and impartiality of justice.

*But wouldn't a judiciary with a high level of corruption also have its own agenda?*

Stakeholders inside the judiciary who condone corruption have their own agenda. They will try to push their agenda. This is why it is important that those who believe in integrity **stick together**. This is what happened in July 2003 when a dozen of young judges and lawyers founded Transparency Justice.

It was a bold move, in a country where justice remains the stepchild of one government after the other. Our approach was **unprecedented**: for the first time in our country, and even on our continent, public officials from within had the courage to criticise.

We are a **civil society** organisation. So we include not only judges, but also other stakeholders in the judicial process and we are open to input from, and engage with citizens.

*How did you address reforms?*

In an initial **action plan**, Transparency Justice identified the main reform steps needed to build a justice system in line with the values we believed in. We envisaged reforms at the institutional level (e.g. building up genuine judicial institutions), structural level (e.g. improving access to justice) and functional level (e.g. reducing delays in issuing decisions).

*To what extent did the Bangalore Principles influence your work?*

Only about 7 months after the Principles were adopted at the end of 2002, Transparency Justice was founded in July 2003. We believed in the six **values** which the Principles convey (independence, impartiality, integrity, propriety, equality, and competence as well as diligence). They are indispensable for establishing justice of quality, pledging democracy, guaranteeing the rule of law, and catalysing development. This is why Transparency Justice has invested itself above all into weaving these Principles into the actual fabric of our judicial system and practice.

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<sup>9</sup> <http://transparencyjustice.org>.

Less than two years after the founding of Transparency Justice, in April 2005, we held a **seminar** at the seaside city of Grand-Bassam looking into the topic of magistrates and their ethics. The Minister of Justice of that time chaired the seminar which brought magistrates together, including all Court Presidents, as well as lawyers and all other actors in the judicial system.

The question of integrating the Bangalore Principles into our legal corpus was the focus of our debate. The proceedings of the seminar were submitted to the Director of the Cabinet, who fed them into the drafting process for a new **Judicial Statute**, by giving them adequate priority.

*Which incentives for ethics do you see?*

We have committed our members to promoting the Bangalore Principles by embodying them in their actions, behaviour, and decisions. Despite all difficulties we face, we are convinced that us members must be role models and examples of credibility, competence and impartiality: It is by good example that we will **seduce** our environment to replicate good practices. Ethics is infectious, not just corruption.

For example, in 2008, for the first time in the history of the justice system of Côte d'Ivoire, a judge decided to sign judicial decisions on the spot at the very hearing in which those decisions were taken. The litigants could then receive their decisions to be executed within a record time of a few days. This was unprecedented because in most cases, it takes months or even years for litigants to receive the decisions. The local press echoed it to describe my colleagues and I as "**Incorruptible Judges**". We put this as a slogan on a picture reminiscent of the movie-poster "The Untouchables", and use it on our Facebook page: "Transparency Justice – Les Incorruptibles".

*Ethics is infectious,  
not just corruption.*

*Do ethics work without control?*

Some of the values contained in the Bangalore Principles, such as propriety and integrity, were already part of the 1978 Judicial Statute. However, **oversight** was weak on whether Magistrates enshrined this value, since the "Inspection Générale des Services judiciaires et Pénitentiaires"<sup>10</sup> did not function well. Today, its controls are more frequent, which is also the result of calls by civil society (in particular Transparency Justice) and of the support by development partners such as the GIZ.<sup>11</sup> Every judicial year, inspections cover all jurisdictions in the country; breach of rules is sanctioned, merit is rewarded.

*Which role has civil society in controlling the judiciary?*

Transparency Justice has established itself as a sentinel of respect for the Bangalore Principles. It **denounces** whenever necessary through public statements and press conferences the behaviour and decisions of Magistrates, judicial staff, and members of government violating the values contained within the Bangalore Principles. We have spoken out against arbitrary transfer of judges, against the removal of certain lawyers by the Bar Council, or against Court Presidents abusing their power.

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<sup>10</sup> English: "General Inspection of Judicial and Penitentiary Services", [www.inspection.justice.ci](http://www.inspection.justice.ci).

<sup>11</sup> In line with recommendations of the Judicial Integrity Scan, conducted by GIZ in Côte d'Ivoire in 2013.

*What is the impact of your “sentinel” position?*

While not all **impact** of our work is directly visible, some is. For example, the President of the Republic replaced one of our Court Presidents after we spoke out against an unethical interference with an ongoing procedure for private interests. So, Transparency Justice became the mirror and men at arms for ethics in the judiciary of Côte d’Ivoire.

*Why should countries shy away from the Principles?*

An independent and impartial justice system (which is ultimately the result of the implementation of the Bangalore Principles) is a real obstacle to the **absolute power** of the executive. Thus the proponents of such a power have every interest in not sawing the branch on which they sit.

*What is needed for a wider use of the Principles further in the future?*

15 years after they were adopted, these Principles are still little known to the main target group, Magistrates. So it would be desirable for each country to teach the Bangalore Principles in their **Judicial Schools**, so that the new magistrates know their content and are impregnated by them. Thus, they can better implement them once in office, even when these Principles are not (fully) integrated yet into national law.

Second, the importance of the Bangalore Principles in strengthening judicial integrity and the quality of justice must be emphasized during **vocational** trainings.

Third, each year a **debate** on judicial ethics should take place identifying obstacles and encouraging good practices.

In the end, the only obstacle being in the way of the Principles can be the **willingness** or unwillingness of sovereign states and their public authorities to integrate the Principles into the existing legal framework one way or other, and to create genuine mechanisms for their implementation.

*The Bangalore Principles are still little known to the main target group: Magistrates.*

### 3.5 Ethics through networking of European judges

#### Interview with Ms. Nuria Díaz Abad, President of the “European Network of Councils for the Judiciary” (ENCJ)

*What has been your role in judicial reforms so far?*

Since 2013, I am a non-judicial member of the “Consejo General del Poder Judicial” of Spain. Since 1992, I have worked as State’s Attorney (“Abogado del Estado”) in Spain and as Agent for the Kingdom of Spain to the European Court of Justice (CJEU). In 2016, I was elected President of the ENCJ.

Founded in 2004, the ENCJ unites the Judicial Councils of European Union Member States. Countries without Judicial Councils may be granted observer status and are represented by their Ministries of Justice. Judicial Councils from EU Candidate Member States and non-EU members of the European Economic Area may also be granted observer status. Currently, we have 24 members out of 20 member countries.<sup>12</sup> Judicial Councils from Albania, the former Yugoslav Republic of Macedonia, Montenegro and Serbia have currently observer status as Candidate Member States.<sup>13</sup> The CJEU is also an observer to our network.

*How is the ENCJ’s work related to judicial integrity?*

The work of the ENCJ gives a good **overview** of what the issues are in Europe on the independence, integrity and impartiality of justice. Let me give you three examples: In 2010, the General Assembly of the ENCJ approved the “Judicial Ethics Report 2009-2010” and the “London Declaration on Judicial Ethics”.<sup>14</sup> Furthermore, after two years of research by the ENCJ, the General Assembly adopted the “Report on Independence and Accountability 2013-2014 of the Judiciary” and established a methodology for performance indicators which support measuring the independence and accountability of the justice systems of the EU.<sup>15</sup> The ENCJ also undertook surveys in 2014/2015 and 2016/2017 among judges in Europe on the perception of their own independence.<sup>16</sup>

*What difference did the Bangalore Principles make in reforming judiciaries?*

The Bangalore Principles have been **crucial** in bringing the issue of integrity to the table. All judges around the world had to start thinking: What are our values? Do ethics also cover the private life of a judge? Is it ok for a judge to accept an invitation by the president of a soccer club to watching a game? Where do we draw a line on ethics, integrity and discipline? Not every ethical breach is a disciplinary breach, so what can we do in order to improve ethics?

Ethics is a culture which lives from constant **debate**. The Bangalore Principles triggered a larger debate and they gave all countries around the world common standards and values. These must be and can be fulfilled in every country, so it pulled national stakeholders into implementation. The ENCJ’s work is a direct result of the international debate triggered by the

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<sup>12</sup> ENCJ [webpage](#) on member countries.

<sup>13</sup> ENCJ [webpage](#) on observer status.

<sup>14</sup> ENCJ [webpage](#) on publications.

<sup>15</sup> ENCJ [webpage](#) on performance indicators.

<sup>16</sup> ENCJ [webpage](#) on survey results.

Bangalore Principles. The Spanish “Principles of Judicial Ethics” of 2016 are also modelled inter alia on the Bangalore Principles.

*What do you find most important in making judicial ethics work?*

First, judicial ethics should not work as negative reinforcement (e.g., sanctions and other disciplinary measures), but positively strengthen **values**, aiming for excellence in the Judiciary.

Second, code of ethics need to reflect the values ascribed by the **professional community**. They should not come top-down; they need to be developed by people on the ground. For example, in Spain, the General Council for the Judiciary merely facilitated the process: a committee was composed of representatives from judicial associations, non-associate members of the judiciary, and a number of experts. Delegates from each High Court of Justice participated in the process. The committee formed working groups around several topics such as independence, integrity, impartiality, etc. The aim was to reflect the plurality of opinions that exist in the judicial profession. The committee took the Bangalore Principles into account as well as ENCJ’s London Declaration.

Third, ethics needs **guidance** in daily work. It is essential that a commission is in place that can answer ethical questions by judicial professionals. The composition, functioning and procedure of such commission should guarantee confidentiality in consultations and its opinions should provide guidance only. Over the years, these opinions will form a body of doctrine. A perspective from outside the judiciary seems important to me. For example, in Spain, the commission includes a non-judicial member. All in all, such an ethics commission ensures that ethics are subject to dialogue and that judges are not alone in their ethical dilemmas.

*It is essential that a commission is in place that can answer ethical questions.*

*How can international stakeholders impact judicial ethics within countries?*

The ENCJ is a wide network of judges, so we see and know from inside what is really going on in the countries; and we are in constant exchange with each other on this. So for me, the networking aspect at the ENCJ is probably most important. Integrity systems often seem to work from the outside, but once you look inside, you see they don’t. This is the case where laws and institutions are formally in place, but without proper implementation. So you need to get **information first-hand**.

Networking is also important in terms of **mutual support**. In the end, integrity does not come from changing systems, it comes from reaching out to and changing people. The ENCJ can link to judges in all its member states: the judges can link back to us, and among each other. Whenever we have the integrity or independence of an individual judge or an entire judiciary under threat, the ENCJ can step in, if only by connecting to the right stakeholders that can provide support, for example an international body to raise its voice. It is important that judges who believe that integrity is possible know and see that the entire network of ENCJ is there to help. A typical thought of a judge will be: “I will not be promoted if I insist on complying with integrity rules”. But this perception changes if they see they are not alone. My most important message to judges is always – and we have to keep repeating it: “Integrity is possible”.

*Where do you see most potential for future implementation of judicial integrity?*

So far, we managed to establish regional cooperation and networks. What we need as a next step, is a **global network**. I very much welcome UNDOC's efforts in this regard.<sup>17</sup>

Such a network should also collect what has been done in the area of ethics so far. The internet is a marvellous instrument for **sharing information** globally. Research conducted should be translated into English, and members of the global network should translate their resources into English and/or other international languages. Everybody would profit from this information sharing.

In the past, research often focused on standards and principles from a somewhat theoretical point of view. Future research should be in-depth, focusing on **concrete experiences**. They should elaborate on what has worked in a country and why it worked. For example, the ENCJ has published a 219-page report on "Minimum Judicial Standards V, Disciplinary proceedings and liability of judges 2014-2015".<sup>18</sup> It is a comprehensive, comparative resource on the disciplinary framework in 24 European countries. As a next step, it would be good to know from practitioners the stories and lessons learned on the various models available.

*My most important message to judges: "Integrity is possible".*

The network should also collect **ethics decisions** from around the world, translate them into English, and compile them in a structured database. We have all similar questions around the world, so we should share our answers.

A continuous challenge for the future will be the **training** of judges. We should not only educate them on ethics once they are appointed. This aspect of training has to continue throughout their career. The global network could collect experiences on trainings: Which training methods work best and attract professionals most? As we share many or most ethical principles globally, training modules by the network could even be a basis for trainings in different countries. A global network could also support the availability of online training modules in different languages.

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<sup>17</sup> Global Judicial Integrity Network [webpage](#).

<sup>18</sup> ENCJ [webpage](#) on the report on "Minimum Judicial Standards".

### 3.6 Reforming reluctant judiciaries

#### Interview with Ms. Cristina Țărnă, Former Deputy Head of the National Anti-Corruption Center, Republic of Moldova

*What has been your involvement in judicial integrity?*

For 11 years, national and international organisations have engaged me as an anti-corruption expert in Moldova and abroad, including for projects focusing on the judiciary. From 2013 until 2017, I was Deputy Head of the anti-corruption agency of the Republic of Moldova, the National Anti-Corruption Center (NAC). The NAC is in charge of preventing and investigating corruption in all sectors of society, including the judiciary.

*To what extent does judicial integrity matter in Moldova?*

My small country was at the core of the world's biggest money-laundering scheme, the so-called Russian Laundromat.<sup>19</sup> Between 2010 and 2014, public officials moved USD 20 to 80 billion out of Russia, much of it through Moldovan banks. The scheme depended on the collusion of numerous corrupt judges in Moldova. If you look at it from the positive side: 14 judges were arrested in 2014. However, the sheer volume of judges apparently involved in just one single case does not throw a good light on the judiciary: we may never know what the real extent of the case was.

*What impact had reform projects in the Moldovan judiciary?*

Ever since Moldova became independent 25 years ago, **surveys** continually confirm a high level of corruption within the judiciary.<sup>20</sup> National, foreign, and international organisations have worked on judicial reforms in Moldova. GIZ just completed a three-year project with the judiciary.<sup>21</sup>

The Superior Council of Magistracy adopted a “Judicial Code of Ethics” for the first time in 2007, and revised it into the “Code of Professional Conduct and Ethics” in 2015. The **Code** was recognised to be in line with the Bangalore Principles.<sup>22</sup> However, many people in Moldova question whether enough judges truly want to implement these integrity principles, or whether they personally profit too much from the status quo.

*A corrupt judiciary which does not want to get rid of its corrupt colleagues – how can one solve this dilemma?*

I think it is a myth that a corrupt judiciary will become clean from inside. **Protection by peers** – that is a problem not only in Moldova. I have seen many countries where corrupt judges wall themselves into a fortress they call “independence”. They monopolise all integrity work while corruption levels remain high. Around this fortress, Parliament, Government, or civil society often try to “scratch the walls” without much success. For example, the Moldovan Superior

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<sup>19</sup> See The Guardian (20 March 2017), [The Global Laundromat: how did it work and who benefited](#).

<sup>20</sup> [Global Competitiveness Report 2015-2016](#): Moldova ranks lowest out of 140 countries in terms of “Irregular payments and bribes: Obtaining favourable judicial decisions” – 1.9 points out of 7 (best).

<sup>21</sup> Project on “Increased efficiency, accountability and transparency of courts in Moldova” (2014-2017), financed by the European Union.

<sup>22</sup> See [GrecoEval4Rep\(2016\)6](#), Rn. 115: The “robust set of rules, takes international standards into account”.

Council of Magistrates blocked legal amendments in 2014 which would have allowed the prosecution of judges suspected of passive bribery, money laundering or illicit enrichment. The main argument against the amendments: judicial independence.<sup>23</sup> The last joker for such judiciaries is always the Constitutional Court striking down any unwanted reform from outside.

In Moldova, but also internationally, I often see a huge misunderstanding of what judicial **independence** means. In particular, corrupt judges – especially those “left over” from old regimes – misinterpret independence as a personal privilege. International standards are clear on this: “In the decision-making process, judges should be independent”;<sup>24</sup> independence is not a “privilege granted in judges’ own interest”.<sup>25</sup> So not every stakeholder outside the judiciary fighting corruption in the judiciary is automatically a threat to judicial independence.

*What could be done concretely?*

As recommended by several international organisations, the National Anticorruption Center introduced **integrity tests** in the public administration. Integrity tests involve undercover testers, pretending to be ordinary citizens, going around the country and applying for public services to see whether public officials would request a bribe. Before the testing began, all public officials were warned. The NAC undertook the tremendous effort of 472 trainings sessions for public officials on how to properly respond to bribe offers.

The **success** was striking. Public officials became hesitant in asking for bribes: From one day to another, any citizen in front of them could be a potential integrity tester. For this reason, public officials started reporting bribe offers from citizens. We saw a sharp increase in these numbers.<sup>26</sup> Talk-shows, social media, the newspapers, civil servants, citizens – all were abuzz with the new tool. It created what I would call a healthy paranoia among corrupt public officials.

And for the first time in the history of Moldova, **judges** reported bribes offered to them. One can only imagine how judges responded to bribe offers before integrity testing had started... The irony – the law on integrity testing did not even cover judges and not one test had been applied to them.

The integrity tests also had one more effect: The judiciary suddenly showed interest in establishing **proper rules** on gift acceptance in order to draw a clear delineation to bribes. My experience, not only in the judiciary, is: Integrity does not work just with sanctions only, but without sanctions, it will not work either.

*Integrity does not work just with sanctions only; but without sanctions, it will not work either.*

*What has been the longer-term effect?*

The **GIZ** had generously funded the drafting of the first law on integrity testing in 2012. The Secretary General of the Council of Europe supported adoption of the draft law in 2013.

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<sup>23</sup> See Bertelsmann *BTI 2016, Moldova*, Chapter 3, Rule of Law: “This shows the strong internal opposition to reform of the judiciary.”

<sup>24</sup> Council of Europe *Recommendation (94)12* on the Independence, Efficiency and Role of Judges, Principle I.2.d, replaced by Recommendation CM/Rec(2010)12.

<sup>25</sup> Council of Europe *Recommendation CM/Rec(2010)12*.

<sup>26</sup> NAC, *Report on integrity testing* (2015).

However, any successful anti-corruption measure applied in a corrupt environment will meet resistance. So we also had our ups and downs. Two members of the Communist Party challenged the law and the **Constitutional Court** struck down some provisions in 2015. Integrity tests came to a halt and levels of reporting on bribery soon died down again.

European Union representatives were upset, not least since jurisprudence by the European Court of Human Rights of 2014 had confirmed already integrity tests to be in line with human rights.<sup>27</sup> In November 2016, the Moldovan Parliament finally adopted a **new law** on integrity tests. Now it even covers judges.

*What is needed in the future for moving judicial reforms ahead?*

International stakeholders need to press for reforms and to engage with national judiciaries in countries such as Moldova. However, colleagues from “Western countries” need to understand one thing: Enhancing judicial integrity in a country like Germany is not the same as breaking corruption in **Eastern European** courts or similar regions.

In these regions, each day you fail to fight corruption means that thousands of corruption victims suffer terrible **human rights** violations. One needs to take this into account when deciding on the constitutionality of new reform measures. However, in decisions of national and international courts I only read about the human rights of the (defending) corrupt public officials, but nothing about the human rights of the victims. Who is their advocate in court? Why do the victims and their immense harm not appear in the equation?

I also see a huge potential in specialised **anti-corruption courts**.<sup>28</sup> Why haven't international organisations looked more into and supported this option?

First, it is important to create an **island of integrity** within a corrupt judiciary. Such an anti-corruption court could break the vicious circle of protecting corrupt peers in a corrupt judiciary. These judges would probably make enemies among their colleagues. But I am always saying: anti-corruption is anti-friendship. You cannot fight corruption and be friends with everybody. So such a court requires carefully selected judges, with financial and other protections, in a separate court, and with fully transparent procedures. Second, these courts can **specialise** on corruption case.

*It is important to create an island of integrity within a corrupt judiciary.*

Why don't we have more of these courts in other countries? One reason for sure is – such courts would become dangerous to any corrupt public official in the country, not only judges.

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<sup>27</sup> ECtHR, *Rotaru v. Roumanie*, [Application no. 27797/10](#), Decision of 15 April 2014: a “fake” bribe equalling EUR 105 offered by undercover testers to a randomly met police officer who just indicated some initial lack of integrity is no provocation.

<sup>28</sup> See also the respective recommendation to Ukraine by the Venice Commission [CDL-AD\(2017\)020-e](#), Opinion on the Draft Law on Anticorruption Courts.

### 3.7 Judicial reform projects: How it all started

#### Interview with Mr. Dr. Lothar Jahn, Senior Planning Officer, Rule of Law, GIZ\*

*Do you remember when judicial integrity became a topic in your work?*

Until the mid-1990s, the concept of rule of law hardly existed. We had of course isolated activities in this field, but rather randomly and not as a **coherent concept**. Fighting corruption was not discussed as it is today. For example, in 1982, in a project on extractive industries, we supported an African country in negotiating with foreign oil companies without the government being pulled over the barrel. This was how far rule of law, integrity went back then.

*What brought the change?*

In the 1990s, something happened in the history of this World which had never happened before, and probably will never happen again: In a single blow we suddenly had several **new states** after the Soviet Union had collapsed. New countries which had a huge administrative apparatus, not based on the rule of law, but rather on political instructions; and which had no judiciary anywhere close to as how we understand the term today.

*But didn't other regions also have a problem with "fake" judiciaries?*

Yes, we had seen weak judiciaries in Africa and other regions, with well-decorated **facades**, big court houses, presidents, stately speeches. But at least they had already the scenery of a functioning judiciary and of rule of law, even if implementation was weak.

The Soviet Union was an **empty stage** without even the scenery. They called it judiciary, but it wasn't one. The concept of human rights was unknown. The communists decided what was right and wrong, and they had created the communist human being. Regulations were orientations and often worded in very broad terms. Law as a tool for steering a market and private stakeholders was a concept unknown.

*How did donors react to this new phenomenon?*

These new countries turned existing categories upside down: They had functioning education and medical systems, so they did not fit under the known definitions of "developing countries". The donor countries even made up a **new term** for these countries: "countries with characteristics of developing".

*What were the initial challenges?*

We had to invent everything, starting with **interpretation**. We told interpreters certain terms, but there was no translation for these words. I remember saying two sentences, and the interpreters would speak for 10 minutes in Russian, because the terminology did not exist.

So we developed technical **dictionaries**, for interpreters and for the practicing lawyers: What does "contract" mean, or "law", or "cadastre" or "judicial independence"? We had to make sure we were not talking past one another on this empty stage.

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\* This interview expresses the personal opinions of the interviewee and does not necessarily reflect the official views of the GIZ.

*How did you fill this void?*

We listed what is needed in order to establish a modern justice system. The Bangalore Principles did not exist back then. But we worked towards their **direction**, applying the values and principles, and supporting them through tools which later became part of the Implementation Measures. We needed a set of laws, but also institutions and organisations for the training and appointment of judges, and for their later independence in office.

Once we had the **Bangalore Principles** and Implementation Measures in 2002, it became much easier. Through both documents, the Judicial Integrity Group provided us with a full set of what is needed in order to install a functioning judiciary. We then used this standard frame of reference for our programs on judicial reform in Central Asia, and in Central, East, and South East Europe.

*Which element was key to reforms?*

**Separation of powers** was a revolutionary idea in these countries. The political apparatus had told courts what to do. As we have seen also in African countries, the judiciary was nothing more than a department of the executive. Judges were underlings of the government.

Therefore, **judicial councils** were our main pivot for ensuring external judicial independence. However, politicians tried to put people on the councils who belonged to the political elite. Introducing democracies does not make networks disappear. Appointments for judicial councils need to be immune against networks. Transparency of the appointment process is essential.

*The judiciary was  
nothing more than  
a department of the  
executive.*

Working against the **networks** was a major challenge. In one country of the Western Balkans, we supported the introduction of notaries – an important institution for the justice system. Qualifications and performance were the main criteria for becoming a notary and we tried hard to ensure compliance of candidates with these criteria. However, the Ministry of Justice was in the driver's seat and I was surprised how many staff of the Ministry of Justice were selected to the rather profitable positions of notary.

*What should one do about judges from old regimes?*

After the Rose Revolution in 2003, Georgia quickly had a judiciary which **formally** complied with most criteria of the Bangalore Principles. The judiciary had judges who were close to the governing party, and it had judges who were close to the opposition.

So the government started fighting “corruption” in the judiciary. Many argued that more or less all judges had been corrupt, had skeletons in their basement. But only judges close to the opposition were prosecuted. In addition, all judges were **vettted**; but this led to mostly judges close to the governing party being reappointed – a clear abuse of “fighting corruption”. One lesson learned for me was: The old networks are strong, and international stakeholders can only try to be stronger.

Many judges started liking western values and wanted to become like their colleagues in France or Germany. Would it have been better to grant an **amnesty** to all judges? I don't know. I know that vetting brings progress, but not always in ways you would anticipate. In any case, we need more testimonies and analysis from insiders in countries who tried vetting and dealt with changes of regimes.

*Which part of judicial reforms is particularly important for integrity?*

I always say: Judicial reform equals **anti-corruption**. Each time I hear “anti-corruption in the judiciary” I am a bit annoyed. What is meant by this expression? Each and every aspect of judicial reform is anti-corruption: access to courts, appointment of judges, legal aid, or distribution of cases. I do not need an anti-corruption commission in the judiciary; on the contrary, it might weaken the process by taking up resources without added value.

A judiciary by and large complying with the Bangalore Principles is the best anti-corruption body you can have for the entire state. With judicial independence, externally and internally, you might not need much more anti-corruption measures for the executive branch. At the core of each anti-corruption strategy is a functioning judiciary.

*Which conditions would you set before providing assistance to judicial reforms?*

First, a country without freedom of the **press** and freedom of **opinion** will never see progress in judicial reforms. Being able to express opinions in court decisions, and being able to report on these decisions in the media is essential. A lower court must be able to deviate from higher instances and have its own opinion.

*I always say:  
Judicial reform  
equals anti-  
corruption.*

Second, a country's **ruling elite** should demonstrate that it is willing to accept an independent judiciary. For example, out of the 55 member states of the African Union, only 8 recognised the competence of the African Court on Human and Peoples' Rights to receive cases from NGOs and individuals (Benin, Burkina Faso, Côte d'Ivoire, Ghana, Mali, Malawi, Rwanda, and Tanzania). Apparently, Rwanda had made a bet that the Court would not dare to upset its supporting states. However, the Court managed to decide in an impartial way several cases brought by individuals. As soon as an individual brought a complaint against Rwanda in 2016, the Rwandan government withdrew its recognition of the Court's competence. This story exemplifies how many ruling elites are not yet ready to accept judicial independence as an irrefutable value. The recent ruling by the Kenyan Supreme Court on annulling elections is a beacon of hope. However, a judge “disturbing” the elite in this way gambles with his/her own life.

*In which reform tool do you see most potential?*

In Mongolia, every citizen can read **online** any **decision** by any court; not only upper courts, but also courts of first instances. This was a result of a consequent digitalisation of the whole judiciary in Mongolia. Even in a wealthy country like Germany we are not that far yet. If you concentrate only on this transparency of decisions, you will set changes in motion, incredible changes; changes, you might not achieve in 10 or 20 years of “integrity reforms”.

A judge who made a decision based on a bribe will have difficulties justifying the outcome. Everybody can read the **inconsistency** of arguments. It becomes a mark of shame.

Furthermore, once decisions started going online, judges started to implore us for **training**. But not the kind of trainings we sometimes notice, that do not show any impact even after years of practicing legal reasoning. No, they wanted trainings where they would be quickly able to draft decisions that would stand scrutiny even to a critical eye: showing the statutory basis, following a logical flow of arguments, and referencing sources of legal authority. This transparency of decisions contributes so much to fighting corruption, you cannot imagine.

## 4. Conclusion

### 4.1 What has been achieved?

It is clear from all eight interviews that the Bangalore Principle served as the main **catalyst** for judicial ethics. They brought all core values of judicial integrity into one standard, and then helped to spread these values globally. The mere presence of the Principles triggered discussions around the globe on what judicial integrity is. They gave a boost to all stakeholders within and outside the judiciary who believe in these values and who can now call for their application with even more confidence.

*“All judges around the world had to start thinking: What are our values?”*

Today, they are the main **reference point** for judges, reformers, legislators, civil society organisations, and technical assistance experts. There are judicial codes of conduct modelled after the Principles. National courts increasingly use them as reference for their judgements. Furthermore, the Principles are quoted in advisory opinions by ethical commissions or in disciplinary decisions by panels of judicial self-administration.

The Bangalore Principles also were a driver for **institution building** related to integrity. The Implementation Measures support reformers in each country with concrete guidance where needed. Among the visible outputs are **judicial councils** that have been established around the globe supporting independence. Another output are judicial **networks**, which formed closer ties together around these integrity values, who provide research and support around their implementation, and who stand by judges in difficult environments.

*“Once we had the Bangalore Principles, it became much easier.”*

A broad variety of **stakeholders** were inspired and affected by the Bangalore Principles: not only judges, but also internal inspection services of judiciaries, national anti-corruption bodies, legislators, non-governmental organisations, the media, and technical assistance providers. As an internationally recognised standard, the principles are also important for the (German) development cooperation with partner countries. They provide the necessary details for general values enshrined in international standards, such as the UNCAC.

### 4.2 What could be done in the future?

The fight for judicial integrity is **not yet over**. The fact that one judge spoke only on the condition of anonymity – despite being a senior judge at an upper level court – speaks for itself; so does the fact that the Vice-President of the International Association of Judges is put on the alert system of the border control of one country because he spoke out against a mass-arrest of judges.

*“Ethics is a culture which lives from constant debate.”*

All interviewees emphasise the need for further **training** and awareness measures on the Bangalore Principles. Investing in particular in the “younger generation” is a recurrent theme in this regard. Training modules will have to aim for active involvement of participants, engage them in the reflection of what judicial integrity means, and how it appears in their daily tasks. Training modules will also have to empower judges to withstand pressures from inside the

*“Would it have been better to grant an amnesty to all judges?”*

judiciary. The notorious “phone call” to judges from court presidents or higher courts is a risk to **internal independence** frequently cited in the interviews.

It is commendable that many national and international organisations have been increasingly engaged in judicial integrity reforms during the last 15 years. They produced a myriad of handbooks, analytical reports, recommendations, surveys, and other outputs all around the world. These outputs have been shared at regional or international conferences and other forums. However, knowledge sharing is still **fragmented** to some extent. As more than one interviewee pointed out: The internet is a strong driver in reaching and winning over in particular the younger generation of judges. Furthermore, there is no need to reinvent the wheel in different corners of this world. Ideally, one **central platform** would collect and share all experiences and wisdom accumulated across different countries and regions during reforms of the past 15 years.<sup>29</sup> This “global institutional memory” of judicial integrity should be made available in one or more internationally frequently spoken languages (such as English or Russian). The need for **knowledge sharing** concerns in particular the following: case law on ethics; success stories; lessons learned from reforms going wrong; experiences with delicate reform tools such as reducing immunities of judges.

*“We have all similar questions around the world, so we should share our answers.”*



In 2018, the United Nations Office on Drugs and Crime (UNODC) will launch the **Global Judicial Integrity Network**, a platform to provide assistance to judiciaries in strengthening judicial integrity and preventing corruption in the justice system. Through the Network, global guidance and technical materials on judicial integrity and anti-corruption will be developed or updated and technical assistance will be provided to support judiciaries in the development and implementation of strategies, measures and systems to strengthen integrity and accountability in the justice system. Furthermore, the Network will promote peer-learning activities among judges and support further development and effective implementation of principles of judicial conduct. The German Development Cooperation is determined to support the success of this Network.

As much as has been done during these past 15 years, **research** is not exhausted yet. Practitioners have made similar or differing experiences with reform tools, but their stories have not yet been told or written. There are important aspects of judicial reforms which the international community has heard about but no systematic research exists on. Such research would be needed for any systematic review of the Bangalore Principles. One example for future comparative analysis is the vetting of judges appointed under the old regime after the fall of dictatorial systems. If one wants to share with another country to what extent vetting worked (or not) and why, one depends on finding professionals who were involved first-hand and, in addition, who are willing and able to travel and share this experience with colleagues in another country and context. Vetting of judges has taken place in countries such as Georgia, Serbia,

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<sup>29</sup> For more information see for example the [Global Programme of the Doha Declaration on the Promotion of a Culture for Lawfulness](#).

and Ukraine. Where is the comparative research in this regard, including advice on potentials and limits for this tool under international constitutional law?

Since 2002, several technological developments influenced how the judiciary and its personnel conduct its profession. This refers mainly to the introduction of **social platforms** such as Facebook and Twitter. What limits exist for a judge to interact with such social platforms? The Bangalore Principles do not yet give a concrete answer to this question.

Reform practitioners also often cite a lack of comparative research based on first-hand **accounts of practitioners** and telling the reform story in a detailed and step-by-step manner.<sup>30</sup> This concerns for example: effective complaints mechanisms; effective disciplinary procedures; testing the integrity of candidates for judicial office; testing the integrity of sitting judges; breaking corruption schemes where judges use intermediaries such as lawyers for the collection of bribes; protecting whistle-blowers in the judiciary; preventing lobbying and other undue influence of judges; procedural models of solving conflicts of interest; specialised anti-corruption courts (as islands of integrity in a corrupt judiciary); good practices of investigating judicial discipline; and transitioning a judiciary to full online transparency of decisions.

*“Why haven’t international organisations looked more into specialised anti-corruption courts?”*

The key objective of this journal was to give voices to stakeholders that identify contemporary issues of judicial integrity and ways of how to best address them. If one takes a step back, and looks at what has been achieved during the past 15 years, one can see with satisfaction that national and international bodies and networks seized on the idea of judicial integrity and brought it to life around the world. However, the reform process is far from over. It will continue, also in the face of new challenges, not only for the **next 15 years**, but certainly beyond.

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<sup>30</sup> See for an example: World Bank (2012), *Fighting Corruption in Public Services: Chronicling Georgia’s Reforms*, 126 pages, available in English, Georgian, Russian, and Ukrainian.

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