

**Measures to promote integrity and combat corruption within the judiciary:  
address to the delegation from Kenya**

The Hon Justice RG Atkinson AO, Supreme Court of Queensland, Australia

My role this afternoon is to address you on measures taken or recommended by judges from independent judiciaries around the world to promote integrity and combat corruption in the judiciary. These were the subject of papers from judges' associations who are members of the International Association of Judges. I am the President of the First Study Commission of the IAJ which concentrates on issues concerning the independence of the judiciary.

I shall discuss best practice to promote transparency of judicial selection, court proceedings, and judicial administration; methods for supporting judicial integrity and non-corrupt practices; and major threats to these ideals.

***Transparency of Judicial Selection***

The first matter to be considered is appointment of judges. The First Study Commission endorsed two anti-corruption propositions. First, that the process for judicial selection must incorporate merit-based criteria and be publically accessible; that is, that the method by which selection takes place must be known and not secret. Second, that it is desirable for candidates to be short-listed and recommended for appointment by a panel or committee independent of the executive, or at least consisting of a clear majority of judicial members.<sup>1</sup> These approaches are desirable in order to promote a diversified judiciary of the highest order, with selection to be free from discrimination, political influence or other

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<sup>1</sup> The preferred or actual composition of such a body varied among responses. Some had a greater role for the Executive than others; some did not specify a preferred composition beyond stating that it should be "independent". However, as a general proposition, many responses expressed a preference for strong representation by the judiciary in the selection process.

bias<sup>2</sup> and to ensure that those appointed are not corrupt nor susceptible to corruption.

### ***Transparency of Court Proceedings***

There must be transparency in court proceedings to ensure public confidence and combat corruption. There were two main elements of best practice reported to enhance transparency. First, transparency is enhanced when court proceedings are publicly accessible, as far as possible. Members of the public and the media should be able to attend and report on court proceedings, with only limited exceptions.

The next most commonly reported element of best practice amongst courts worldwide was the publication of reasoned judicial decisions.<sup>3</sup>

All the suggestions made in response to the issue of transparency of court proceedings support undertaking measures that, *as far as possible*, permit the accountability of court participants, including judges, by ensuring proceedings are heard and determined in public and are a matter of public record.

### ***Transparency of Administration of the Judiciary***

Two of the most significant patterns of responses to this issue included, first, the desirability of making publically accessible the ways in which courts are run and, second, the need for sound procedures for the investigation and disposition of

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<sup>2</sup> Australia; France; Ireland; Japan; United Kingdom. France made the point that “competition” as part of a selection process facilitates equal access to an appointment opportunity.

<sup>3</sup> For example, Spain referred, with approval, to the constitutional requirement to publish reasons for decisions in that jurisdiction. Throughout the responses to each item of the questionnaire, many jurisdictions referenced requirements, in law, to put certain best practice measures in place. As noted by Ireland, different ways of guaranteeing such measures are possible: constitutional guarantees (strongest), laws changeable by majority of Parliament, and customary practice (weakest). For each measure referred to in this summary, consideration of how best to ensure it is implemented will be relevant, balancing considerations of strength of protection, flexibility and practicality.

complaints made against judges in a way that balances transparency with protection from frivolous, malicious, politically motivated or otherwise unfounded complaints.

In relation to the first theme, a number of jurisdictions advocated promoting the public's understanding of the court's work by communicating the roles of different judges within a court;<sup>4</sup> periodically reporting decisions reached regarding operational or governance related issues;<sup>5</sup> and engaging in dialogue with the media about matters of judicial administration.<sup>6</sup> There were also a number of jurisdictions that supported specific public education activities, whether delivered through the use of a Court press office or website;<sup>7</sup> through activities organised by the National Judicial Council;<sup>8</sup> or through the use of public debates and roundtables involving members of the judiciary.<sup>9</sup>

A number of countries made reference to the process by which judges are allocated to hear particular cases. Some responses favoured the allocation process being randomised – one stating that it should be akin to a lottery.<sup>10</sup> Another response saw no difficulty with a practice whereby senior judges assigned junior judges on the basis of perceived skills or experience.<sup>11</sup> Whichever process of case

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<sup>4</sup> Australia; Brazil; Ireland; Portugal.

<sup>5</sup> Australia; Brazil; Croatia; Georgia; Ireland; Portugal; Serbia; Slovenia; Switzerland. Japan refers to its access to information rules, permitting access to documents relating to judicial administration on request. Israel referred to the practice of annually compiling a public file with statistics capturing the nature of proceedings heard throughout the year. It also proposed that regulations and standards regarding administrative procedure be published and open to the public.

<sup>6</sup> Croatia; Slovenia. Canada referred to the practice of its National Judicial Council engaging in “public education activities”. Switzerland suggested that figures and statistics resulting from “court controlling measures” should be accessible, though with safeguards to protect judicial independence.

<sup>7</sup> Brazil.

<sup>8</sup> Canada.

<sup>9</sup> Slovenia.

<sup>10</sup> Brazil. Italy and Spain also thought that there should be a randomisation element to the allocation of judges and, moreover, that the allocation process should strictly adhere to a pre-established allocation protocol.

<sup>11</sup> United Kingdom. This is also the current practice in many Australian courts.

allocation is used, allocation should be based on pre-established objective criteria.<sup>12</sup>

There were also some best practice suggestions made in relation to transparent measures for improving the efficiency of court administration. Courts should have a right to propose and manage their own budgets.<sup>13</sup> Judges should be responsible for, and in control of, court administration.<sup>14</sup>

### ***Supporting Integrity and Preventing Corruption***

Three main themes emerged in relation to this issue. First, there must be secure and adequate working conditions for judges. Judicial salaries, pensions and entitlements should be reasonably generous, in order to reduce the likely effectiveness of bribery.<sup>15</sup> These conditions should be safeguarded from reduction by the executive during the tenure of the judge, in order to avoid threats to judicial independence.<sup>16</sup> Similarly, judges should have security of tenure.<sup>17</sup>

Second, there should be ongoing judicial education that reinforces standards of appropriate conduct. This should desirably be peer-group led to encourage and foster a culture of integrity within the judiciary and staff of the courts. Judges must conform to the highest standards and avoid any inappropriate behaviour in their public and private lives. Being a judge is an obligation to society and not

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<sup>12</sup> Austria; France; Italy; Ireland; Switzerland. Ireland also suggested that the procedure for allocation of judges should be open to public scrutiny. Norway indicated that there should be “transparent systems for case allocation/reallocation”.

<sup>13</sup> Ireland.

<sup>14</sup> France.

<sup>15</sup> Armenia; Australia; Austria; Croatia; Denmark; France; Georgia; Germany; Ireland; Liechtenstein; Sweden; United Kingdom. France also noted that judicial remuneration should not be fixed and not associated with performance metrics (“quantitative results”). Norway indicated that a judge’s salary and pension should reflect the judge’s responsibilities and position.

<sup>16</sup> Australia; France; Georgia; Ireland; Liechtenstein; Japan; United Kingdom. Greece advocated for the establishment of an institutional framework that made provision for all aspects of judicial functioning, including working conditions, salaries and pensions. Israel proposed that financial benefits should be paid directly to the judge, but not as an “employee”, to ensure judges are not perceived as beholden to the executive.

<sup>17</sup> Australia; Greece; Ireland; Italy; Japan; Liechtenstein; United Kingdom.

only a job, but a way of life.<sup>18</sup> Finally, the IAJ endorsed the view that the obligation of judges to take an oath or affirmation to adhere to the fundamental principles of independence and impartiality has more than just ceremonial significance; it is an important practical step in ensuring a culture of independence and integrity be maintained.<sup>19</sup>

Third, it is desirable to have a fair process for responding to complaints of judicial misconduct.

### ***Threats to Integrity & Non-Corruptibility***

Many of the major threats identified are implicit from the suggested best practice procedures identified for resolving them.<sup>20</sup> However, two threats, in particular, were explicitly identified.

The first key threat relates to court resourcing. This could manifest as inadequate working conditions for judges, potentially increasing their susceptibility to bribes.<sup>21</sup> It could also manifest as inadequate resourcing of the court system more generally and an excessive workload for judges.<sup>22</sup> Finally, it might manifest in a lack of financial independence for the courts and the opportunity for the Executive to abuse its power by using decisions around funding as a threat to secure or influence a particular court outcome.<sup>23</sup>

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<sup>18</sup> Israel. See also Georgia, which noted that judges should act in a manner that promotes public confidence in their integrity.

<sup>19</sup> Bermuda; Israel; Italy.

<sup>20</sup> Serbia's response to this item illustrates the point well by denoting the following as threats, in counterpoint to its best practice suggestions: interference by the executive and legislative branches of government in the operations of the judiciary; lack of argumentation leading up to decisions affecting the judiciary such as selection and advancement of judges; absence of a judicial code of conduct; lack of training for judges on integrity and corruption; inadequate working conditions for judges; and, more broadly, lack of systemic measures for prevention of corruption.

<sup>21</sup> Armenia; Austria; Denmark; France; Ireland; Israel; Portugal; Sweden; Switzerland; United Kingdom. The threat Taiwan refers to, of illegal lobbying through offers of money or sexual favours, would be more pronounced if judges were poorly remunerated.

<sup>22</sup> Austria; Denmark; France; Georgia; Ireland.

<sup>23</sup> Georgia; Greece; Ireland; Switzerland; United Kingdom.

The second key threat relates to attempts by external parties to exert influence over the exercise of judicial functions. There is a particular threat attendant upon excessive proximity between judges and those who exercise political or economic power.<sup>24</sup> The politicisation of judicial appointments is a particular area of concern.<sup>25</sup> The IAJ also expressed concern about corrosive commentary by politicians or the media, seeking to influence the determination of cases.<sup>26</sup> Pressure to conform to a particular ideological or political view, particularly when backed with vigorous press reporting, is an insidious threat which is as much a threat to the integrity of the judiciary as bribery or secret representations.<sup>27</sup> Related to this is the concern about inaccurate publicity of court sessions<sup>28</sup> and the impact of social media.<sup>29</sup>

A further source of threat was expressed to be the conditions of the society in which the court system operates. Wide-scale corruption in daily life, especially in politics, can have a flow-on effect to the operation of the courts,<sup>30</sup> perhaps because such behaviour can become normalised.

## ***Conclusion***

A strong and independent judiciary should receive the vocal and open support of the other institutions of government and of civil society so that citizens can have confidence in the integrity of all who exercise power in their community.

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<sup>24</sup> Austria; Brazil; France; Greece; Portugal. France referred specifically to concerns expressed by the European Court of Human Rights regarding the lack of independence of French prosecutors, who are appointed, transferred and promoted by the Executive.

<sup>25</sup> Australia; Ireland.

<sup>26</sup> France; Portugal; Slovenia; United Kingdom. Canada referred to the issue of micro-management by government and the media, particularly where the judiciary is not in a position to make public comment on the issues raised. Japan referred to the threat of 'unjustifiable internal or external interference.'

<sup>27</sup> United Kingdom.

<sup>28</sup> Georgia.

<sup>29</sup> Canada.

<sup>30</sup> Germany.