

INTERNATIONAL ASSOCIATION OF YOUTH AND FAMILY JUDGES AND MAGISTRATES

**REPORT OF THE COMMITTEE APPOINTED TO PROPOSE
PRINCIPLES OF JUDICIAL ETHICS FOR YOUTH AND FAMILY
JUDGES AND MAGISTRATES**

MARCH 17, 2010

* * * *

***AT ITS MEETING HELD ON APRIL 24TH, 2010, AT HAMMAMET, TUNISIA,
THE GENERAL ASSEMBLY OF THE INTERNATIONAL ASSOCIATION OF
YOUTH AND FAMILY JUDGES AND MAGISTRATES UNANIMOUSLY
RECEIVED THE REPORT AND ADOPTED THE PROPOSAL FOR PRINCIPLES
OF JUDICIAL ETHICS FOR YOUTH AND FAMILY JUDGES AND MAGISTRATES
THAT IS INCLUDED.***

A Committee was mandated by the Council of the International Association of Youth and Family Judges and Magistrates to prepare a proposal of Principles of judicial Ethics that could serve as a source of inspiration for its members as well as for other judges and magistrates involved in youth and family matters.

The following members were appointed:

Muhammad Imman ALI (Bangladesh)
 Lucien BEAULIEU (Canada)
 Andrew BECROFT (New Zealand)
 Nick CRICHTON (United Kingdom)
 Luigi FADIGA (Italy)
 Maria FONTEMACHI (Argentina)
 Bankole THOMPSON (Sierra Leone)
 Jean TRÉPANIÉ (Canada, chair)

As the Committee membership was drawn from several continents and no budget was available to finance working sessions, communications between Committee members had to rely on email exclusively. Email has its limits when exchanges and discussions are required. That is why the Committee was assisted by a local working group, based in Montreal (Canada), whose members were able to meet and discuss directly, in order to do some groundwork and prepare proposals for the Committee. The membership of the local working group was as follows:

Oscar D'AMOURS (Vice-President of the IAYFJM)
 Pierre NOREAU (Professor of law at the Université de Montréal and specialist of judicial ethics issues)
 Huguette ST-LOUIS (former Chief Judge of the Quebec Court)
 Jean TRÉPANIÉ (chair).

The local working group prepared initial proposals that were examined by the members of the Committee. This was followed with a series of exchanges between the members of the Committee and the local working group, until a final version could be established. This report presents the proposal of the Committee. It is the result of exchanges and discussions that helped to clarify a good number of issues, some of which were quite complex. The spirit of cooperation in which Committee members proceeded to their task did not mean that unanimity could be reached on all issues. It is only normal that judges and magistrates who come from very diverse backgrounds and draw their inspiration from different cultural and legal traditions may hold different views as to how principles of judicial ethics ought to be approached. The intention was to have a committee that would reflect the diversity that exists within the IAYFJM, in order to design principles that could be widely accepted by members of the Association. The Committee has aimed at designing principles that are clear and meaningful and, at the same time, adapted to diverse countries.

The Report is divided in two parts. First, the proposed principles of judicial ethics are enunciated. The second part includes some observations and explanations that may shed some light on the principles themselves.

**PROPOSAL FOR PRINCIPLES OF JUDICIAL ETHICS
FOR YOUTH AND FAMILY JUDGES¹ AND MAGISTRATES**

WHEREAS the *Bangalore Principles of Judicial Conduct*² have a universal aim and were conceived, adopted and supported in a manner which conferred upon them a unique international legitimacy³.

WHEREAS these *Bangalore Principles* are aimed at judges and magistrates as a whole, including those who work in the area of child or youth and family matters.

WHEREAS judicial practice in youth and family matters entails its own characteristic dimensions and emphases, as appears, amongst others, from the *Convention on the Rights of the Child*.

WHEREAS there is reason to reaffirm the values expressed in the *Bangalore Principles* by placing them in the particular context of the exercise of the judicial functions in child or youth and family matters.

IT IS PROPOSED that the following principles be adopted:

1. The role of a judge is to dispense justice within the rule of law, including conventions, international and regional declarations and rules regarding children, youth⁴ and families.
2. A judge shall exercise the judicial function so as to maintain his or her personal independence and the independence of the judiciary.
3. A judge shall be manifestly impartial, which must not be construed as being in contradiction with his or her statutory or legislative obligation to take into account the best interest of the child or youth or, should such be the case, to harmonize the latter's interest with those of society and the victim.
4. In performing his or her judicial duties, a judge shall act with integrity.
5. A judge shall ensure that the process allows for the views of all those affected by the process to be heard, including the views of the child or youth, his or her family and, as the case may be, the defendant and the victim.

¹ In the present text, the word “judge” shall be construed as including “magistrate”.

² *The Bangalore Principles of Judicial Conduct*, 2002 (The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002).

³ See The Judicial Integrity Group, *Commentary on the Bangalore Principles of Judicial Conduct*, March 2007. <http://www.coe.int/t/dghl/cooperation/ccje/textes/BangalorePrinciplesComment.PDF>.

⁴ In these principles, the expression “child or youth” or its equivalent refers to the same notion as that of the “child” in the *Convention on the Rights of the Child*.

6. A judge shall strive to explain clearly the reasons of his or her decisions and to ensure that his or her decisions are understood by the child or youth and the adults into whose charge the child or youth is entrusted.
7. A judge shall manifest sensitivity and shall communicate with the child or youth and other persons involved in a manner adapted to their levels of understanding.
8. A judge shall respect the confidential character of information acquired in his or her judicial capacity and the disclosure or use of which could infringe the private life of the child or youth, of his or her family or of other persons concerned in a judicial proceeding.
9. In court and in public, a judge shall conduct himself or herself in a manner consistent with his or her judicial office and shall at all times manifest appropriate restraint.
10. A judge shall ensure that everyone before the court is treated equally and with respect, taking into account the specific characteristics of every person, particularly age, gender, social condition, or other relevant circumstances.
11. A judge shall maintain his or her professional competence, both in law and in other disciplines relevant to the performance of his or her judicial duties.
12. A judge shall act with promptness and diligence that are suited to the particular perceptions of the child or youth with regard to time.

OBSERVATIONS AND EXPLANATIONS

Preamble

WHEREAS the Bangalore Principles of Judicial Conduct⁵ have a universal aim and were conceived, adopted and supported in a manner which conferred upon them a unique international legitimacy⁶.

WHEREAS these Bangalore Principles are aimed at judges and magistrates as a whole, including those who work in the area of youth and family matters.

WHEREAS judicial practice in youth and family matters entails its own characteristic dimensions and emphases, as appears, amongst others, from the Convention on the Rights of the Child.

WHEREAS there is reason to reaffirm the values expressed in the Bangalore Principles by placing them in the particular context of the exercise of the judicial functions in youth and family matters.

IT IS PROPOSED that the following principles be adopted:

The Preamble refers to the *Bangalore Principles of Judicial Conduct*. These principles were adopted in their current form in 2002, following extensive consultations. They have received international endorsement or recognition from such bodies as the UN Social and Economic Council, the UN Office on Drugs and Crime, the International Commission of Jurists and the American Bar Association. They have a legitimacy that is unique. They are aimed at judges and magistrates of all jurisdictions, including those who deal with youth and family matters. They cover much of the ground that had to be covered. Referring to them in the Preamble involves an acknowledgement of their relevance for youth and family judges and magistrates.

Yet, youth and family judges and magistrates work in a fairly specialized environment, which has its specificities. Consequently, specific principles of ethics may be desirable. Adding such complementary elements may serve several purposes. Values that underpin the *Bangalore Principles* may be reaffirmed in a way that places more emphasis on dimensions that are particularly relevant to youth and family matters. It may bring about a stronger allegiance to the principles among youth and family judges and magistrates. It may also foster a better understanding of the role and work of those who sit in youth and family jurisdictions, thus helping to promote the understanding of judicial ethics for such specialized jurisdictions with third parties (such as States, persons who are in contact with youth and family courts and the public in general). If such complementary principles are adopted, it may be important to ensure that they include a reference to all of the essential values of the *Bangalore*

⁵ *The Bangalore Principles of Judicial Conduct*, 2002 (The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002).

⁶ See The Judicial Integrity Group, *Commentary on the Bangalore Principles of Judicial Conduct*, March 2007. <http://www.coe.int/t/dghl/cooperation/ccje/textes/BangalorePrinciplesComment.PDF>.

Principles, even if this may involve occasional repetitions: many judges and magistrates may not be familiar with the *Bangalore Principles* and are likely to find it helpful to have a document that essentially stands on its own, despite its reference to the *Bangalore Principles*.

Consequently, complementary principles should aim primarily at reaffirming values or principles that may be already present in the *Bangalore Principles* but that may have the advantage of being rephrased so as to be closer to the specific role of youth and family jurisdictions. As a secondary consideration, one may also find it appropriate to refer to some of the values underpinning the *Bangalore Principles*, even in terms that are not specific to youth and family matters, if the presence of such references is deemed important to provide a minimal degree of autonomy to the proposed body of principles.

Principle 1:

The role of a judge is to dispense justice within the rule of law, including conventions, international and regional declarations and rules regarding children, youth⁷ and families.

This principle does not have its equivalent in the *Bangalore Principles*. Still, it is clearly in line with the values that underpin the *Bangalore Principles*. This is highlighted by the reference that is made in the fifth paragraph of the Preamble of the *Bangalore Principles* to the fact that the judiciary must uphold the rule of law. It was felt desirable to include a statement to that effect and to ensure that it be specifically adapted to youth and family jurisdictions.

The expression “children and youth” that is used in this principle as well as in some others refers to the same notion as that of the “child” in the *Convention on the Rights of the Child*. Thus, from a purely international law standpoint, the addition of “youth” does not enlarge the concept subsumed under “children”. This addition has been felt desirable in view of the fact that, in usual vocabulary as well as in the laws of some countries, children and youth may be viewed as referring to different age categories – children being the younger group and youth referring to adolescents, the latter group forming a most important share of those who come into contact with children, youth and family courts.

Principle 2:

A judge shall exercise the judicial function so as to maintain his or her personal independence and the independence of the judiciary.

Principle 1 of the *Bangalore Principles* refers to various aspects of judicial independence. Still it was thought fit to include this principle here, even if its formulation does not carry any specific reference to the work of youth and family judges. Our principles refer to some aspects of most other values of the *Bangalore*

⁷ In these principles, the expression “children and youth” refers to the same notion as that of the “child” in the *Convention on the Rights of the Child*.

Principles (impartiality; integrity; propriety; equality; competence and diligence). In view of its importance, it was felt appropriate to include a reference to independence as well, were it only to avoid creating the impression that it might be viewed as less important than the other values and to ensure that the most important values are embodied in the our principles.

Principle 3:

A judge shall be manifestly impartial, which must not be construed as being in contradiction with his or her statutory or legislative obligation to take into account the best interest of the child or youth or, should such be the case, to harmonize the latter's interest with those of society and the victim.

The central element of the principle is impartiality: a judge has to be manifestly impartial.

A specific issue may arise in youth and family matters concerning this value: some might think that the obligation to take into account the best interest of the child or youth might carry some form of partiality. The second part of the principle is there to affirm that this obligation must not be construed as introducing a form of partiality. The principle is not there to affirm the place of the best interest of the child in judicial decisions – which may be viewed as a matter of substantive law rather than judicial conduct – but to qualify the meaning of impartiality in youth and family cases.

Conflicting views exist as to the weight of the best interest of the child or youth in criminal cases. In order to make the formulation of the second part of the principle acceptable in diverse legal traditions, the principle is phrased so as to acknowledge that, in some cases, the interest of the child or youth may have to be harmonized with those of society and the victim (without going into the issue of their relative weights in the decisions). This is in line with the spirit of the *Beijing Rules* (see particularly Rules 5 and 17).

Principle 4:

In performing his or her judicial duties, a judge shall act with integrity.

The issue of integrity is covered in the *Bangalore Principles* (see Principle 3). It was nonetheless deemed appropriate to include it among the present principles for the same reasons as those stated for Principle 2.

Principle 5:

A judge shall ensure that the process allows for the views of all those affected by the process to be heard, including the views of the child or youth, his or her family and, as the case may be, the defendant and the victim.

This principle has no equivalent in the *Bangalore Principles*. Although it bears some relationship with procedural law, it may be viewed from a judicial conduct standpoint. It is central in conducting child, youth and family court cases.

Principle 6:

A judge shall strive to explain clearly the reasons of his or her decisions and to ensure that his or her decisions are understood by the child or youth and the adults into whose charge the child or youth is entrusted.

A favourable impact of a judicial decision on a child, a youth or a family is less likely to occur if that decision is not understood by them. Those who appear before youth and family jurisdictions are very often people with poor backgrounds; they are unfamiliar with the courts and may not understand what is happening in the proceedings in which they are involved. Particular attention is required to ensure that sufficient explanations are provided to them so that they understand the decisions that concern them and the reasons on which they are based.

Principle 7:

A judge shall manifest sensitivity and shall communicate with the child or youth and other persons involved in a manner adapted to their levels of understanding.

This principle is particularly important in relation with youth and family matters, because of the issues in question and the people who are involved in the cases. It does not have its equivalent in the *Bangalore Principles*.

Principle 8:

A judge shall respect the confidential character of information acquired in his or her judicial capacity and the disclosure or use of which could infringe the private life of the child or youth, of his or her family or of other persons concerned in a judicial proceeding.

This principle adapts to the circumstances of youth and family matters the principle of confidentiality that is affirmed in *Bangalore Principle 4.10*.

Principle 9:

In court and in public, a judge shall conduct himself or herself in a manner consistent with his or her judicial office and shall at all times manifest appropriate restraint.

Several paragraphs (4.1 ss.) of the *Bangalore Principles* deal with specific aspects of “propriety”. It was felt appropriate to summarize in one brief principle the essential of what may be relevant for youth and family judges, even if the formulation is not specific to the latter.

Principle 10:

A judge shall ensure that everyone before the court is treated equally and with respect, taking into account the specific characteristics of every person, particularly age, gender, social condition, or other relevant circumstances.

This principle deals with two values: equality and respect.

The issue of equality is dealt with in several paragraphs (5.1 ss.) of the *Bangalore Principles*. Principle 10 adds to the *Bangalore Principles* by stating that the judge ought to take into account some specific characteristics of every person, which appears particularly relevant in youth and family matters.

The issue of respect is not dealt with as such in the *Bangalore Principles*, although it is implied in Principle 6.6. It is relevant to mention it clearly for youth and family matters, particularly in view of the vulnerability of children.

Principle 11:

A judge shall maintain his or her professional competence, both in law and in other disciplines relevant to the performance of his or her judicial duties.

The *Bangalore Principles* deal with the issue of competence (Principles 6.3 ss.). However they do not address the need for maintaining a competence in disciplines other than law. Yet this need appears particularly relevant for youth and family judicial practice, where there is a constant interaction with professionals such as psychologists, psychiatrists, social workers, criminologists and so on. Hence the need for an adapted version of the principle.

Principle 12:

A judge shall act with promptness and diligence that are suited to the particular perceptions of the child or youth with regard to time.

The issue of promptness and diligence is only minimally addressed in the *Bangalore Principles* (Principle 6.5). It is a key concern in youth and family matters, in view of the perception of children and youth with regard to time. Hence the need to have a principle adapted to youth and family work.