INTERNATIONAL ORGANIZATION FOR JUDICIAL TRAINING

JUDICIAL TRAINING PRINCIPLES: DRAFT DECLARATION

PREAMBLE

On 8th November 2017, the members of the International Organization for Judicial Training (IOJT), representing judicial training institutions from 70 countries (exact figure to be added), have (unanimously) adopted the following declaration.

The declaration sets out guiding principles for judicial training that reflect how IOJT members conceptualize and strive to implement judicial training. The principles are both the common base and the horizon uniting judicial training institutions throughout the world, regardless of the diversity of judicial systems.

The IOJT encourages all judicial training institutions and all actors involved in judicial training to use these principles as a foundation and source of inspiration, and also as a common framework guiding their judicial training activities. The IOJT also encourages judicial training institutions to support each other in the implementation of this declaration.

Note: The term "judiciary" as used in this document may include prosecutors, defenders/defense counsel, and others, depending on the justice system.

PRINCIPLES

1. Judicial training is essential to ensure high standards of judicial competence and performance. Judicial training is fundamental to judicial independence, the rule of law, and the protection of the rights of all people.

INSTITUTIONAL FRAMEWORK

2. To preserve judicial independence, the judiciary and judicial training institutions should be responsible for the design, content, and delivery of judicial training.

3. Judicial leaders and the senior judiciary should support judicial training.

4. All states and countries should:
(i) Provide their institutions responsible for judicial training with funding and other resources to ensure sufficient to achieve their aims and objectives;
and
(ii) Establish systems to ensure that members of the judiciary are enabled to undertake training.

5. Any support provided to judicial training should be utilized in accordance with these principles, and preferably in coordination with institutions responsible for judicial training.

TRAINING AS PART OF THE JUDICIAL ROLE

6. It is the right and responsibility of all members of the judiciary to undertake training. Each member of the judiciary should have time to be involved in training as part of their normal judicial work.

7. All members of the judiciary should receive training before or upon their appointment, and should also receive regular training throughout their careers.

TRAINING CONTENT AND METHODOLOGY

8. Acknowledging the complexity of the judicial role, judicial training should be multidisciplinary and include training in law, skills, social context, values, and ethics.

9. Training should be delivered primarily by members of the judiciary who have been trained for this purpose.

10. Judicial training should reflect best practices in professional and adult training program design. It should be practical, employing a wide range of up-to-date methodologies.

JUDICIAL TRAINING PRINCIPLES
WITH EXPLANATORY COMMENTARIES

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PRINCIPLES

1. Judicial training is essential to ensure high standards of judicial competence and performance. Judicial training is fundamental to judicial independence, the rule of law, and the protection of the rights of all people.

The foundation of an impartial judiciary is the independence of the judiciary. Judicial independence embodies two principles: 1) a set of institutional arrangements so that the judiciary as a branch of government is free from improper interference; and 2) an independent unbiased mindset for individual judges. This latter principle ensures that judges do their work free from outside influences. It is also this second principle that engages with judicial education. For the public to support and protect judicial independence, it must be satisfied that judges not only act impartially and competently in understanding and applying the law, but also that they do their work effectively, efficiently, and fairly. For that reason, judicial education must encompass training in law, skills, social context, values, and ethics.

INSTITUTIONAL FRAMEWORK

2. To preserve judicial independence, the judiciary and judicial training institutions should be responsible for the design, content, and delivery of judicial training.

Judicial independence requires freedom from undue influence over judicial training. Given that education seminars and resources, such as bench books, have the potential to influence judges' conduct and decisions, the content and delivery of judicial training must be offered free from any improper influence from any entity that could benefit, including funding authorities, lawmakers, government executives, the politically and financially powerful, and others.

The Bangalore Principles of Judicial Conduct reinforce the point that the judiciary and judicial training institutes should be responsible for the design, content, and delivery of judicial training. *Value 1: Independence* states in part, "Judicial independence is a pre-requisite to the rule of law…" *Application 1.1* adds: "A judge shall exercise the judicial function independently…free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason." In addition, *Value 6: Competence and Diligence, Application 6.3*, states: "A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills, and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control (emphasis added), to judges."

Training institutes with responsibility for the design, content, and delivery of judicial training should, of course, be accountable to the public and funders for the integrity of their training programs and their stewardship of public funds. They should, for example, conduct regular educational needs assessments regarding what judges should know or be able to do as part of curriculum and seminar planning. The needs assessment should include what stakeholders other than judges think judges need to learn. Judicial training institutes should also evaluate their training programs to ensure their quality and effectiveness.

By using established best practices, such as conducting needs assessments and evaluations, the judiciary and judicial training institutes can preserve independence and autonomy in providing their training.

3. Judicial leaders and the senior judiciary should support judicial training.

This principle focuses on two aspects:

- Promotion of judicial training within the judiciary
- Involvement of high-level judges in judicial training

1) Promotion of judicial training by judicial leaders

"Judicial leaders" refers to the highest judicial authorities or judicial decision-making entities, such as the high judicial councils or supreme courts.

It is of utmost importance that such institutions support and promote judicial training. As leading entities, they should encourage judges to be trained throughout their time on the bench, and reaffirm that training is necessary to all judges, including the most experienced and highly skilled (who, given their position in the judiciary, can show that training is neither a sign of weakness nor simply for poorly performing judges, but rather an ongoing necessity for every judge).

Judicial leaders should also be vigilant about implementing Principle 4 (below), which enjoins that judges must collectively be given the opportunity to undertake training. When possible, these institutions should use their leadership position to make sure this principle is applied.

One way of doing this for High judicial councils or supreme courts is to take training into consideration when deciding on judicial appointments and promotions; this would constitute a good incentive for judges to get trained and therefore maintain their effectiveness. This practice would also support Principle 6, which states that training is both a right and a duty for judges.

The highest judicial authorities should be involved in the overall process of judicial training and, where relevant, in the life of their national judicial training institute. This involvement will vary depending on how the national judicial training system is organized, and on national traditions, but serves to guarantee both the respect of judicial independence (see Principle 2) and the judicial authorities' ongoing support of judicial training.

- "Judicial leaders" also refers to heads of courts.

Heads of court should also support the training of their judges by encouraging them to seek judicial education on a regular basis throughout their career (see Principle 7).

Several countries are dealing with insufficient staffing in their judiciary. The increased workload for individual judges, and the judicial backlog that can result, make it difficult for judges to take on judicial training without increasing delays. However, it is in the best interests of nations and their justice systems to have well-trained and efficient judges; time taken for training will increase the quality of rulings as well as the productivity of judges. Heads of court should not prevent judges from seeking judicial training unless there are exceptional circumstances.

2) Involvement of high-level judges in judicial training.

As individuals, high-level judges must be involved in judicial training.

Since judicial education includes training in law, skills, social context, values and ethics (Principle 8), it contains dimensions of experience-sharing and guidance by recognized professionals. High-level judges

have an important role to play in transmitting practices and traditions to less senior members of the judiciary in their country.

This does not mean that most or all judicial trainers have to be high-level judges (see Principle 9), since one does not have to be a high-level judge to be a good trainer. But high-level judges should devote their experience, moral authority, and hindsight—which are irreplaceable and necessary—to the training of their fellow judges.

4. All states and countries should:

(i) Provide their institutions responsible for judicial training with funding and other resources to achieve their aims and objectives;

and

(ii) Establish systems to ensure that members of the judiciary are enabled to undertake training.

States should ensure that judicial training institutions are provided with sufficient funding and other resources to ensure their autonomy (that is, to enable them to implement their mandate without depending on other actors for funding).

Funding and resources should cover:

- Operating costs, including (among other necessities) premises suitable for adult education and equipped with modern technological and pedagogical tools (i.e., computers and other technology)
- High-quality human resources, encompassing administrative, pedagogic, and support staff.

Judges need continual training during their professional life to enhance and add to their competencies, and perhaps to develop a specialization. This need should be reflected and anchored in the mandate of judicial training institutions.

To implement this principle, the state should enable judges to undertake training during their working hours. This can only be achieved if there are concrete mechanisms in place to: a) make it possible for judges to take days off from their work without suffering any negative impact on their position, and b) pay for judges' attendance at education seminars and other training courses.

5. Any support provided to judicial training should be utilized in accordance with these principles, and preferably in coordination with institutions responsible for judicial training.

There is a wide range of possible funding sources for judicial training activities. In addition to their own resources, judicial training institutions can receive financial support from: local public or private sector agencies (such as executive branches or non-governmental organizations), other judicial branches in the region, multilateral or international cooperation agencies, and state agencies from other countries, among others.

Preferably, the institutions responsible for judicial training should coordinate the design and development of the activities. There are two reasons for this. One, the aforementioned external sources are not necessarily familiar with the local reality; the courses and content they deliver might not align with the more pressing training needs on the ground. Two, it is possible that funding agencies have their own agendas through which they wish to project influence locally; this would be counterproductive to the planning and goals established by the judicial training institution.

Preferably, coordination between funding sources and the institutions responsible for judicial training should include: oversight of the identification of training needs; development of the methodology and teaching profile; the delivery of the course; and evaluation of participants and the course itself. There should be appropriate mechanisms to ensure that the training institute maintains control over donors' work, including through reports that donors would be required to submit, all so as to preserve judicial independence.

TRAINING AS PART OF THE JUDICIAL ROLE

6. It is the right and responsibility of all members of the judiciary to undertake training. Each member of the judiciary should have time to be involved in training as part of their normal judicial work.

Ongoing education must be considered an integral component of judicial duties. The responsibility for ensuring satisfactory judicial training rests with three bodies: the state; judicial leaders; and judges themselves. The state must ensure that the infrastructure is in place to permit judges to attend judicial education seminars throughout their time on the bench. In practical terms, this means appointing enough judges to give each judge time to undertake training, and providing financial support to the judicial training institutes or other bodies providing judicial education.

Judicial leaders must advocate with the executive branch so that the latter fulfills its responsibilities. In addition, the judicial leadership must support and encourage judges by giving judges sufficient time away from their sitting schedule to attend judicial education events and to participate as faculty at those events. Judicial leaders must support the judicial training institute by taking part in governance in whatever way is locally suitable, and by encouraging judges to become involved in the design and teaching of judicial education.

Judges have the responsibility to attend education events and, where possible, to volunteer to work on judicial education as a designer, presenter, or facilitator, or in some other capacity. Judges must be lifelong learners, identifying their education needs throughout their judicial career and participating in education to meet those needs.

7. All members of the judiciary should receive training before or upon their appointment, and should also receive regular training throughout their careers.

This principle acknowledges the importance of pre-service and in-service training for judges.

1) Pre-service training

Beyond having pure legal knowledge, judges must master specific professional skills. Those skills may vary according to country and era, but include some universal competencies, such as the ability to: analyze a situation or a case; identify and apply ethical rules; and make a sensible, enforceable decision that is adapted to its context.

Whatever the professional background of newly appointed judges or future judges, it is necessary to train them on those essential skills, which cannot all have been acquired during their academic studies or previous work. That is why Principle 7 acknowledges the necessity of pre-service training for all judges.

This principle does not intend to standardize the training judges receive before or upon their appointment, as this will differ according to country and legal system.

In most civil law countries, future judges are recruited from among the best legal students or young professionals in the field. Their lack of experience is compensated for by the length of their training, which usually lasts several years and nowadays is regarded as an utmost necessity in those countries.

In common law countries, judges are appointed or elected from among recognized lawyers with an extensive professional background and experience in handling judicial cases. Pre-service training usually lasts for a few weeks and aims to provide judges with the fundamentals skills they did not have the opportunity to put into practice as lawyers.

Despite the experience and qualifications of newly appointed judges in common law countries, those skills have to be acquired before or upon appointment, as this principle states.

Ideally, pre-service training should take place before the judge first sits. This is the case in most countries. However, in some common law countries where judges are not numerous, pre-service training can be

organized in the first months after judges take on their new role. This principle takes a practical approach by using the wording "before or upon their appointment."

2) In-service training

Given that societies and their legal landscapes are constantly evolving, pre-service judicial training cannot be regarded as sufficient to ensure judges work effectively and efficiently throughout their time on the bench, no matter the quality and duration of this initial training.

It is a judge's duty to keep informed of changes to legislation and relevant case-law. Judicial training can help judges stay up-to-date, especially given the heavy workload judges face in some countries.

A dedicated judicial training framework also makes it possible for judges to exchange with their peers about ethics and best practices, and to deepen their knowledge and understanding of the society they serve. Such a framework is necessary for the judiciary to evolve at the same pace as society.

For judges to stay up-to-date, develop and hone their judicial skills, and exchange ideas with their peers, regular judicial training should continue throughout their entire career.

TRAINING CONTENT AND METHODOLOGY

8. Acknowledging the complexity of the judicial role, judicial training should be multidisciplinary and include training in law, skills, social context, values, and ethics.

Although it is clearly essential for every judge to know and understand the relevant law, it is also critical to acknowledge that the law and legal principles do not exist in a vacuum. Judges operate publicly within society, and interact on a day-to-day basis with other human beings—litigants, witnesses, and legal representatives. Judicial training should therefore not be limited to addressing principles of law.

To ensure confidence in the judicial process, judicial training should assist all members of the judiciary to acquire and develop the skills needed to adopt an inclusive approach. Social context training is an important facet of judicial education, providing an appreciation of the human condition and the society within which judges operate. This includes the tenet that judges must deal fairly with everyone, whether or not they have legal representation. To that end, judicial training should be multidisciplinary.

Judges enter the judiciary with their own prejudices, values, opinions, and preconceptions. Judicial training should instill within members of the judiciary a degree of open-mindedness—and readiness to acknowledge and address their own preconceptions and prejudices to ensure that these do not taint the judicial process.

9. Training should be delivered primarily by members of the judiciary who have been trained for this purpose.

Judicial education should be judge-led, meaning that members of the judiciary have control over the design, content, and delivery of the training. As such, any judge who is involved in the creation and delivery of judicial education should themselves be trained by their judicial training institution in the principles of adult learning and the wide range of learning formats. This is known as a program of Train the Trainers.

Adhering to this principle will enhance and protect judicial independence and ensure training is directly relevant to the professional needs of judges.

Judge-led training does not preclude the involvement of experts, academics, and other specialists who can enhance and supplement training, providing that any such external involvement is at all times under the control and management of judges.

10. Judicial training should reflect best practices in professional and adult training program design. It should be practical, employing a wide range of up-to-date methodologies.

Developing a judicial education program should follow a cycle with set stages: 1) needs assessment; 2) design and implementation; and 3) evaluation.

The initial, and most critical, is the needs assessment, to determine the training needs of individual judges and of the judiciary as a whole. The next stage involves setting training objectives, preparing a plan, designing the program (methodology), and implementing it. The final stage is evaluation, to gauge the reaction of trainees and to measure learning results, i.e., increase in knowledge or skill, changes in approach or behaviour, and effects on environment or society as a result of the trainee's participation. The evaluation demonstrates to what extent training needs have been met, and identifies further training needs.

Implementation of such a cycle should be a systematic, robust, and comprehensive process, regularly reviewed and updated. In addition, best practices—techniques or strategies proven to have the highest degree of effectiveness, supported by objective and comprehensive research—should be sought and used at all stages of the training cycle.

The education should be trainee-oriented. It is vital that judges have a confidential forum at judicial education seminars, to be able to exchange ideas freely and develop skills in a safe space. Adult education is understood to involve learning through concrete experience, through observation and reflection, and by forming abstract concepts and testing them in new situations. Findings in andragogy (the way adult professionals learn) have generated the need for new modes of training: practical, experiential, and in-person. This includes coaching and mentoring, on-the-job learning, and learning by doing.

Judicial training must employ a range of methodologies, making use of a variety of up-to-date training formats with a tailor-made approach, which means selecting a format that meets the needs of the participants, and having a set group of learning outcomes. The educational principles behind the various training methods should be well understood in order to apply them effectively. In such a multifaceted approach, electronic tools and information technology play an important role. Judicial training should make optimum use of new technologies, distance/online learning (complementary when appropriate), and electronic media.