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DEVELOPING A CODE OF JUDICIAL CONDUCT

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The global standard

1. In April 2003, the UN Special Rapporteur on the Independence of Judges and Lawyers, Dato Param Cumaraswamy, presented the *Bangalore Principles of Judicial Conduct* [2] to the 59th Session of the Commission on Human Rights. The Commission, by a resolution adopted without dissent, noted the *Principles* and brought them 'to the attention of Member States, the relevant United Nations organs and intergovernmental and non-governmental organizations for their consideration'.[3] Three years later, in July 2006, the Economic and Social Council of the United Nations (ECOSOC) adopted a resolution recommended to it by the UN Commission on Crime Prevention and Criminal Justice in which it recognized the *Bangalore Principles of Judicial Conduct* as representing 'a further development of, and as being complementary to, the *UN Basic Principles on the Independence of the Judiciary 1985*'. Accordingly, ECOSOC invited Member States to encourage their judiciaries to take into consideration the *Bangalore Principles* when reviewing or developing rules with respect to the professional and ethical conduct of members of the judiciary. ECOSOC also invited Member States to submit to the UN Secretary-General their views regarding the *Bangalore Principles* and to suggest revisions, as appropriate.[4]

2. Fourteen Member States submitted their views concerning the *Bangalore Principles of Judicial Conduct.* In March 2007, in his report to ECOSOC, the UN Secretary General noted as follows:

> All of the responding States welcomed the *Bangalore Principles* as a useful basis for the development of domestic standards and rules governing the professional conduct of judges. Many States regarded the guidance contained in the *Principles* as a valuable tool for

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[2] www.unodc.org/pdf/crime/corruption/ judicial_group/Bangalore_principles.pdf. The text of the document is on various websites around the world, including that of the United Nations and the World Bank.

[3] Commission on Human Rights resolution 2003/43.

[4] ECOSOC resolution 2006/23: Strengthening basic principles of judicial conduct.

> strengthening the independence, impartiality, integrity, propriety, competence and diligence of judges, as well as to ensure equality of treatment for all before the courts. Ten of the responding States informed the UN Secretary-General that their judiciaries had already adopted standards and rules that complied with the values and guidelines enshrined in the *Bangalore Principles*, while four reported that they were in the process of reviewing existing professional standards and rules of judicial conduct in the light of the *Bangalore Principles.*[5]

3. As mandated by ECOSOC, the comments submitted by Member States were placed before an Open-ended Intergovernmental Group of Experts convened by the United Nations Office on Drugs and Crime (UNODC) in Vienna in February 2007. The UN Secretary-General's report added that, having considered the proposed amendments,

> the participants were of the view that, since the text of the *Principles* had only recently been endorsed by ECOSOC, it was premature to consider amending it. In addition, as most of the comments were aimed at clarifying and developing the values and guidelines already contained in the *Principles* rather than raising new points, it was felt that it would be more appropriate to insert these comments in the commentary rather than in the text of the *Principles* itself.[6]

4. In July 2007, ECOSOC adopted a further resolution recommended to it by the UN Commission on Crime Prevention and Criminal Justice in which it noted with appreciation the report of the Secretary-General on strengthening basic principles of judicial conduct, in particular the progress reported by several Member States on the implementation of the *Bangalore Principles of Judicial Conduct*. ECOSOC invited Member States, consistent with their domestic legal systems, to continue to encourage their judiciaries to take into consideration the *Bangalore Principles of Judicial Conduct* when reviewing or developing rules with respect to the professional and ethical conduct of members of the judiciary.[7]

5. This paper seeks to describe the process by which a statement of judicial standards formulated by a group of chief justices and senior judges – the Judicial Group on Strengthening Judicial Integrity (or the Judicial Integrity Group, as this body has come to be known) – achieved the status of a global standard of judicial conduct.

The Judicial Integrity Group

6. The Judicial Integrity Group was formed in early 2000 following discussions, initiated by Jeremy Pope and me on behalf of Transparency International[8], with eight

[5] Strengthening basic principles of judicial conduct, Report of the Secretary-General, 13 March 2007, UN document E/CN.15/2007/1, paragraph 5.

[6] Strengthening basic principles of judicial conduct, Report of the Secretary-General, 13 March 2007, UN document E/CN.15/2007/1, paragraph 10.

[7] ECOSOC Resolution 2007/22.

[8] Both were Executive Directors of Transparency International at the time.

Chief Justices from four African and four Asian countries that applied a multitude of different laws but shared a common judicial tradition. Recognizing the existence of different legal traditions in the world, it was decided to limit the exercise, at the initial stage, to the common law legal system. The Chief Justices who responded positively to this invitation to develop a concept of judicial accountability that would complement the universally accepted principle of judicial independence were from Nigeria, South Africa, Uganda, Tanzania, Sri Lanka, Karnataka State in India, Bangladesh and Nepal. Judge Christopher Weeramantry, Vice-President of the International Court of Justice, agreed to function as chairperson, and Justice Michael Kirby of the High Court of Australia as rapporteur. The Chairman of the UN Human Rights Committee and former Chief Justice of India, P. N. Bhagwati, and the UN Special Rapporteur on the Independence of Judges and Lawyers, Dato Param Cumaraswamy, agreed to participate as observers.

7. The decision to take this initiative was made in the context of evidence that had begun to surface that, in many countries, the people were losing confidence in their judicial systems. They were dissatisfied with the escalating cost of justice. They were dissatisfied with the delays. They were dissatisfied with the complicated procedural steps that meant several gatekeepers requiring payment to facilitate movement to the next stage of judicial proceedings. And, quite naturally, they were frustrated by the failure of the authorities to address these issues. In other jurisdictions, the people saw the judiciary as not responding to societal needs, as being indifferent to contemporary values and standards, and the increasing pluralism that was beginning to characterize the global village. The frustration was such that some did not hesitate to take the law into their own hands. For example, in Venezuela, it was reported that not only were persons suspected of murder being executed by vigilante squads, but even suspected car thieves were being disposed of in the same manner. In Sri Lanka, many a litigant or accused person found it more economical to secure the disappearance of a case record or the absence of a witness than continue to retain counsel for prolonged periods. Some saw these as indicators of judicial systems in a perpetual state of crisis. Others saw them as indicators of the prevalence of corruption.

8. These public perceptions were revealed in service delivery surveys conducted by the World Bank, Transparency International and other institutions, in Latin America, Eastern and Central Europe, Africa and Asia. For example, a national household survey on corruption in Bangladesh revealed that 88.5% of those surveyed thought it was impossible to obtain a quick and fair judgment from the judicial system without money or influence; and 79.8% attributed the delay in reaching a settlement to the business interests of lawyers, the opponent's manipulations, and the court's highhandedness. Indeed, 63% of those involved in litigation in the lower courts claimed that they had paid bribes to either court officials or the opponents' lawyers.[9] In a similar survey in Tanzania, 32% of those surveyed reported payments to persons engaged in the administration of justice. In Uganda, only 9% were willing to say that

[9] *Survey on Corruption in Bangladesh*, conducted for Transparency International - Bangladesh, by The Survey and Research System, Dhaka, with assistance from the Asia Foundation, 1998.

corruption in judicial administration was a 'greatly exaggerated' problem.[10] In Argentina, 57% of those polled by Gallup said that they felt corruption was the main problem with the judiciary. In Honduras, three out of four polled believed the judiciary was corrupt. In Costa Rica, 54% of those polled believed that judicial decisions were subject to external 'pressures'.[11] According to the Geneva-based Centre for the Independence of Judges and Lawyers, out of 48 countries covered in its annual report for 1999, judicial corruption was pervasive in 30 countries.[12]

9. These figures presented a serious challenge to the administration of justice. Even if these public perceptions were incorrect, or reflected an exaggerated picture, blown up out of proportion to the real thing, the judiciary could not afford to ignore public perceptions. If the public wrongly believed that the judiciary was corrupt, the reasons for that mistaken belief, and what contributed to such negative perceptions, needed to be identified and remedied, if only for the reason that the real source of judicial power, and the real basis for its exercise, was public acceptance of the moral authority and integrity of the judiciary. Should there not be a reasonable match between what the public expects and the quantity and quality of what the courts are able to provide? The public expected from the judicial system 'efficiency and efficacy of judicial operations, equitable treatment of and accessibility to all citizens, timeliness and predictability of decisions, consistency with the formal law, common standards of interpretation, and certain broadly shared notions of justice, the absence of internal biases and susceptibility to external pressures'.[13] The principal responsibility fell on the judiciary to address this problem and endeavour to achieve higher levels of public confidence.

10. Corruption in the judiciary did not appear to be limited to conventional bribery. An insidious and equally damaging form of corruption arose from the interaction between the judiciary and the executive, as well as from the relationship between the judiciary and the legal profession. For example, the political patronage through which a judge acquired his office, a promotion, an extension of service, preferential treatment, or the promise of employment after retirement, could give rise to corruption if and when the executive made demands on such judge. Similarly, when a family member regularly appeared before a judge, or when a judge selectively ignored sentencing guidelines in cases where particular counsel appeared, the conduct of the judge gave rise to the suspicion of corruption, as did a high rate of decisions in

[10] In both Tanzania and Uganda, these public perceptions were confirmed by evidence; in the former by the Presidential Commission of Inquiry Against Corruption headed by J.S. Warioba, and in the latter in a paper presented to a workshop on court administration reform held in Kampala in 1997 by Chief Justice Odoki, then Chairman of the Judicial Service Commission of Uganda.

[11] Maria Dakolias and Kim Thachuk, "Attacking Corruption in the Judiciary: A Critical Process in Judicial Reform", 18 *Wisconsin International Law Journal*, No.2 Spring 2000, pp.353-406, at 366-7.

[12] Mona Rishmawi (ed.), *Attacks on Justice: March 1997-February 1999* (Geneva, Centre for the Independence of Judges and Lawyers, 1999).

[13] Linn Hammergren, "Diagnosing Judicial Performance: Toward a tool to help guide judicial reform programs", a paper presented to the workshop on "Corruption in the Judiciary" at the 9th International Anti-Corruption Conference, Durban, October 1999.

favour of the executive. In certain countries, the active involvement of judges in community organizations evoked a similar response when their civil society associates appeared as litigants before them. Indeed, frequent socializing with particular members of the legal profession, the executive or the legislature, or with litigants or potential litigants, was almost certain to raise, in the minds of others, the suspicion that the judge was susceptible to undue influence in the discharge of his or her duties.[14]

11. The decision to take this initiative also followed the outcomes of three significant legal gatherings. The first was a pilot workshop on *Strengthening Judicial Integrity* held in Durban in October 1999 during the 9th International Anti-Corruption Conference. It was attended by over 160 participants, including judges, lawyers, legal academics, justice ministry officials, members of parliament, human rights activists, and civil society representatives. One message that came through clearly from that workshop was the need to formulate and implement a concept of judicial accountability without eroding judicial independence. In the same month, at their meeting also held in Durban, the Commonwealth Heads of Government approved a *Framework for Commonwealth Principles on Promoting Good Governance and Combating Corruption*, based on the report of an expert group that had, in respect of the judiciary, recognized the need for principles of accountability and recommended the formulation of a national strategy to restore its integrity and efficiency. In February 2000, a 16-member expert group drawn from 14 countries was convened by the Centre for the Independence of Judges and Lawyers to address the issue of judicial corruption. At the conclusion of a two-day meeting held in Geneva, the expert group agreed on *The Policy Framework for Preventing and Eliminating Corruption and Ensuring the Impartiality of the Judicial System*. One of the principal elements of this policy framework was an enforceable statement of judicial ethics.

12. The Judicial Integrity Group is an independent, autonomous and voluntary entity, owned and driven by its members, all of whom are (or have been) heads of the judiciary or senior judges in their respective countries or at the regional or international level, enjoying independence from the executive, and who share common values and beliefs on the integrity of the judiciary and a determination to deepen and broaden the quality of the administration of justice in appropriate ways.

The Bangalore Draft

13. At its first meeting held in Vienna in April 2000 on the formal invitation of the United Nations Centre for International Crime Prevention, the Judicial Integrity Group took two important decisions. First, the Chief Justices recognized that the principle of accountability demanded that the national judiciary should assume an active role in strengthening judicial integrity by effecting such systemic reform as was within its competence and capacity. Second, they recognized the urgent need for a

[14] In a paper presented at the workshop on "Corruption in the Judiciary" at the 9th International Anti-Corruption Conference, Durban, October 1999, Farouk Al-Khilani, a former President of the Supreme Court of Jordan, provided several illustrations from his own personal experience of this form of judicial corruption.

universally acceptable statement of judicial standards which, consistent with the principle of judicial independence, was capable of being enforced at the national level by the judiciary, without the intervention of either the executive or legislative branches of government. They believed that, by adopting and enforcing appropriate standards of judicial conduct among its members, the judiciary had it within its power to take a significant and enduring step towards earning and retaining the respect of the community. As Co-ordinator of the Group, I was requested to analyse existing judicial codes of conduct and prepare a report on: (a) the core considerations that recurred in such codes and (b) the optional or additional considerations that occurred in some, but not all, such codes and which might or might not be suitable for adoption in other jurisdictions.

14. For the second meeting, which was hosted by the High Court of Karnataka in Bangalore in February 2001, I prepared a draft code of judicial conduct in compliance with the instructions I had received from the Judicial Integrity Group. It was not an attempt to reinvent the wheel. Instead, it drew on the rules and principles already articulated in several national codes and in regional and international instruments. Over two days, this document was very carefully scrutinized, analysed, criticised, and revised by the Group. Apart from being more comprehensive, the *Bangalore Draft* that emerged from that meeting differed from its source materials in at least one significant respect, namely, its structure. It sought to identify the core values and then proceeded to state the principle derived from each value, followed by a code of conduct designed to give effect to each principle. The Group recognized that since the *Bangalore Draft* had been developed by judges drawn principally from common law countries, it was essential that it be scrutinized by judges of other legal traditions to enable it to assume the status of a duly authenticated international code of judicial conduct.

The consultation process

15. Over the next twenty months, the *Bangalore Draft* was disseminated widely among judges of both common law and civil law systems. It was presented to, and discussed at, several judicial conferences and meetings attended by Chief Justices and senior judges from over 75 countries of both common law and civil law systems. On the initiative of the UN Special Rapporteur on the Independence of Judges and Lawyers and through the American Bar Association, the *Bangalore Draft* was translated into the national languages of Central and Eastern European countries, and then reviewed by judges, judges' associations and constitutional and supreme courts of these countries. A significant contribution towards its evolving form was made by the Consultative Council of European Judges. That body, which functions within the Council of Europe and represented at that time the judicial systems of 30 European countries, commissioned an expert study of the *Bangalore Draft*. Thereafter, at a meeting held in Strasbourg in June 2002 to which the UN Special Rapporteur and I were invited, it conducted a full and frank discussion from the perspective of the civil law system, and then adopted a comprehensive report on specific provisions of the draft.

The Bangalore Principles of Judicial Conduct

16. At the end of the consultation process, in the light of the comments and criticisms received, and with a view to ensuring that the final document faithfully reflected the position of civil law jurisdictions as well, the *Bangalore Draft* was extensively revised. The revised draft also took note of more recent national codes and the Opinions of the Consultative Council of European Judges. It was then placed before a Round-Table Meeting of Chief Justices from the civil law system, held in November 2002 at the Peace Palace at The Hague – the seat of the International Court of Justice. The Chief Justices (or their representatives) were drawn from Brazil, Czech Republic, Egypt, France, Mexico, Mozambique, Netherlands, Norway and the Philippines. Eight Judges of the International Court of Justice representing the legal systems of Madagascar, Hungary, Germany, Sierra Leone, United Kingdom, Brazil, Egypt and the United States of America also participated. The *Bangalore Principles of Judicial Conduct* emerged from that meeting. The core values recognized in that document were: Independence, Impartiality, Integrity, Propriety, Equality, and Competence and Diligence. These values were followed by the relevant principles and more detailed statements of their application.

17. In the course of the consultation process and at the final meeting, there was a significant consensus among judges of the common law and the civil law systems in regard to the core values, although there was some disagreement on the scheme and order in which they ought to be placed and on the application of the values and principles. Concern was also expressed by the civil law judges on the use of the word 'code', which was understood in continental Europe as a legal instrument that was complete and exhaustive, and hence it was replaced by the word 'principles'. The final document, therefore, reflects the minimum standards of judicial conduct as approved, adopted and accepted by judges of all legal systems.

Impact of the Bangalore Principles

United Nations

18. The endorsement of the *Bangalore Principles* by three principal agencies of the United Nations – the Commission on Human Rights, the Commission on Crime Prevention and Criminal Justice, and the Economic and Social Council - has been referred to above.

19. In April 2004, in his report to the 60th session of the Commission on Human Rights, the new UN Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, stressed the importance of disseminating and implementing the *Bangalore Principles of Judicial Conduct* in order to restore the trust that the courts must inspire in those who are brought before them. He recommended that the *Bangalore Principles* be made available, preferably in national languages, in all law faculties and professional associations of judges and lawyers. In his 2006 report presented to the Human Rights Council and the United Nations

General Assembly, the Special Rapporteur 'strongly urged States to adopt and subscribe to the *Bangalore Principles of Judicial Conduct.*'[15]

20. The UNODC, in a background paper prepared for the 11th United Nations Congress on Crime Prevention and Criminal Justice, highlighted the issue of judicial integrity as a key prerequisite for the rule of law, economic growth and the eradication of poverty and, in that context, brought to the attention of delegates the work of the Group and the *Bangalore Principles of Judicial Conduct.* Meanwhile, UNODC has since 2003 provided support to several countries in strengthening judicial integrity, using the *Bangalore Principles* as guidance. As part of these efforts, the *Bangalore Principles* have been translated into several national languages. Their relevance in strengthening judicial integrity is now underscored in the United Nations Convention Against Corruption. Article 11(1) of that Convention requires States to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. 'Such measures may include rules with respect to the conduct of members of the judiciary.'[16]

Use by other international bodies and organizations

21. In July 2003, judges from international courts and tribunals who met at a workshop in Austria to develop ethics guidelines for international courts used the *Bangalore Principles* as a basic document for their discussions. It was described in the report as 'a set of principles developed over several years by the Judicial Integrity Group, a multi-national committee of high court judges, with additional input from judges of the International Court of Justice'.

22. In October 2004, Senior Officials of Commonwealth Law Ministries meeting in London recommended that Law Ministers should commend to national judiciaries that a judicial code of conduct based on the values set out in the *Bangalore Principles of Judicial Conduct* be established, and training based on those values be conducted.

23. The European Commission and the Council of Europe introduced the *Bangalore Principles of Judicial Conduct* (through a paper presented by the Coordinator of the Group) to the State Duma of the Federal Assembly of the Russian Federation at an expert meeting held in Moscow in October 2005. Similarly, the Organization for Security and Co-operation in Europe recommended the *Bangalore Principles* for adoption by the judiciary of Armenia at a workshop held in Yerevan in November 2005. The Office of the United Nations High Commissioner for Human Rights has also made several references to the *Bangalore Principles* in the course of its activities.

[15] A/HRC/4/25, paragraph 19.

[16] ECOSOC Resolution 2007/22 requested the Secretariat "to submit the Bangalore Principles of Judicial Conduct and the Commentary on the Bangalore Principles to the Conference of the States Parties to the United Nations Convention against Corruption at its second session".

Use at the national level

24. In March 2003, the Judiciary of Belize adopted a Code of Judicial Conduct and Etiquette that was a mirror image of the original Bangalore Draft Code of Judicial Conduct. In April 2004, the Supreme Court of the Philippines promulgated (and published in newspapers of general circulation) the New Code of Judicial Conduct for the Philippine Judiciary which, as its preamble stated, was based on the *Bangalore Principles of Judicial Conduct*.

25. According to available information, the *Bangalore Principles* have also been used, or are being used, as the basis or as a guide for developing their own national codes of judicial conduct or to revise existing codes, by the judiciaries of Afghanistan, Belarus, Bolivia, Bulgaria, Burkina Fasu, England and Wales, Ecuador, Germany, Greece, Hungary, Indonesia, Iraq, Jordan, Latvia, Lithuania, Marshall Islands, Mauritius, Mexico, Namibia, Netherlands, Nigeria, Serbia, Slovenia, Uzbekistan, and Venezuela, as well as of several countries in East Africa,.

Use by non-governmental organizations

26. In February 2004, in a letter addressed to then US Chief Justice Rehnquist, the Secretary-General of the International Commission of Jurists questioned the impartiality of a Judge of the Supreme Court in an appeal before the Supreme Court filed by the Vice-President. The secretary-general drew attention to the *Bangalore Principles* and quoted extensively its elaboration of the concept of impartiality.[17]

27. The American Bar Association uses the *Bangalore Principles of Judicial Conduct* as the authoritative text in its programmes that seek to improve awareness and understanding of judicial ethics in Central Europe, Eurasia and Africa. The *Bangalore Principles* are also being used in assisting judges associations to formulate statements of judicial ethics. ABA-Asia prepared a paper on the relationship of the *Bangalore Principles* to the implementation responsibilities of signatories to the United Nations Convention Against Corruption (UNCAC) and the efficacy of those principles in promoting an independent judiciary. The ABA 2005 report on international rule of law initiatives contains the following paragraph:

> One important lesson of the ABA's work on judicial ethics has been the recognition of a need for greater reliance on international standards in assisting the developing nations with creating judicial conduct codes, as opposed to principles of conduct borrowed from the national legal systems of other countries. In this respect, the *Bangalore Principles of Judicial Conduct*, which were drafted by the Judicial Group on Strengthening Judicial Integrity and endorsed by the UN Commission on Human Rights, have proved a valuable resource. The *Principles* played a prominent role in the development of the Jordanian Code of Judicial Conduct and the Serbian Standards of Judicial Ethics, but it was the Philippines that became one of the first countries to adopt a judicial ethics code that is virtually identical to the *Bangalore Principles*. The Philippines adopted this new ethics code as part of a larger reform effort in recognition of the value of applying internationally recognized ethical

[17] The letter may be accessed at www.icj.org

standards, and in appreciation of the fact that the Bangalore Principles was one of the few judicial ethical models written by judges for judges.

Commentary on the Bangalore Principles

28. Following requests from judges, lawyers and law reformers, the Judicial Integrity Group agreed at its 4th meeting in Vienna in October 2005 to prepare and publish a Commentary on the Bangalore Principles of Judicial Conduct. The Commentary is designed to enable judges and teachers of judicial ethics to understand not only the drafting and cross-cultural consultation process of the *Bangalore Principles* and the rationale for the values and principles incorporated in it, but to also facilitate a wider understanding of the applicability of those values and principles to issues, situations and problems that arise or emerge. A draft Commentary prepared by me was submitted in March 2007 to a joint meeting of the Group and of an Open-ended Intergovernmental Group of Experts convened by UNODC in terms of ECOSOC resolution 2006/23, and was examined paragraph by paragraph and approved subject to certain amendments.

29. In July 2007, ECOSOC unanimously adopted a resolution recommended to it by the UN Commission on Crime Prevention and Criminal Justice in which it commended the work of the Group and requested UNODC to translate the Commentary 'into all official languages of the United Nations and to disseminate it to Member States, international and regional judicial forums and appropriate organizations.'[18] In September 2007, UNODC published the 175-page Commentary.

Procedures for the Effective Implementation of the Bangalore Principles

30. The need for procedures for the effective implementation of the *Bangalore Principles of Judicial Conduct* was emphasized at several legal and judicial conferences. Indeed, it was pointed out that without such procedures, the *Bangalore Principles* would remain mere aspirations and public expectations would remain unfulfilled. Accordingly, at its 5th Meeting in Vienna in February 2007, the Group agreed to undertake the preparation of a statement of procedures for the effective implementation of the *Bangalore Principles*, and requested me, as the Coordinator of the Group, to prepare a comprehensive draft statement for discussion. A report containing a draft statement has now been prepared and will be considered by the Group at its next meeting.

Conclusion

31. The *Bangalore Principles of Judicial Conduct* (named after the city in which the drafting process commenced) are now recognized and accepted by the United Nations and by several national judiciaries on all the continents as a statement of

[18] ECOSOC Resolution 2007/22.

principles of universal relevance and applicability. The *Bangalore Principles* are unique in that they were crafted not by governments or diplomats, as international instruments usually are, but by senior judges representative of all the major legal systems of the world, on the basis of their own judicial experience. They are also intended to be applied, and their application overseen, not by the executive or legislative branches of government but by the judiciary. It is principally an instrument of self-regulation.