“First Study Commission of IAJ-UIM

Questionnaire 2015

“The relationship between effective management of the courts and the delivery of justice by independent judges”

In preparation of the questionnaire 2015 the presidency of the First Study Commission decided to
(a) identify possible aspects of the topic;
(b) examine already existing opinions, statements etc. on these aspects; and
(c) formulate questions regarding the different aspects (taking into account already existing
opinions, statements, etc).

a) Possible Aspects:
1. Case allocation:
   1. who allocates the cases;
   2. how they are allocated.
2. Management measures:
   1. increasing output:
   2. diminishing handling time:
   3. fostering coherence.
3. Performance appraisal:
   1. quality;
   2. quantity;
4. Working conditions
   1. in general (workload measures, office hours, regulations concerning holidays, etc.);
   2. time for writing judgments;
   3. time allocated to professional development;
   4. resources (law clerks, etc.)
   5. position / competences of the president of the court / chamber
   6. problems regarding the judicial deliberation

b) Existing Documents¹
1. 1st Study Commission Conclusions 1981
   The Bangalore Principles of Judicial Conduct, ch. 216, 217
   Recommendation CM/Rec (2010)12 of the Committee of Ministers to member states on
   judges: independence, efficiency and responsibilities, in part. ch.18, 24, 43
   ch 11

2. 1st Study Commission Conclusions 1997
   1st Study Commission Conclusions 1998
   1st Study Commission Conclusions 2000 (ad 3. coherence)
   cf. also Recommendation No. R (94) 12 of the Committee of Ministers to member states on
   independence, efficiency and role of judges, in part. ch. 17

   cf. also Opinion no 1 (2001) of the Consultative Council of European Judges (CCJE) for the
   attention of the Committee of Ministers of the Council of Europe on standards concerning

¹ The focus of the exploration was laid upon earlier Conclusions of the First Study Commission. Those
documents can be found on the website www.iaj-uim.org The opinions of the Committee of Ministers can be
found on the website https://www.coe.int/t/cm/home_en.asp The opinions of the Consultative Council of
European Judges can be found on the website www.coe.int/ccje All documents (except Op. no 17 of the
CCJE) can be found in Stephan Gass, Regina Kiener/Thomas Stadelmann, Standards on Judicial
Independence, Berne 2013 (weblaw.ch) as well.
the independence of the judiciary and the non-removability of judges;
African Commission on Human and Peoples' Rights Principles and Guidelines on The
Rights to a fair Trial and Legal Assistance in Africa, Independent Tribunal\textsuperscript{2}; in part. lit. g
Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and
Central Asia\textsuperscript{3}, in part. ch. 27;
THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT\textsuperscript{4}, in part. ch. 40, 42;
1st Study Commission Conclusions 1995;
1st Study Commission Conclusions 2000;
See also for Europe: Thomas Stadelmann/Stephan Gass/Richard McCombe, Performance

4. 1st Study Commission Conclusions 2000
1st Study Commission Conclusions 2001 (ad 2. presidents)

c) Questions:

Please answer the questions for your judicial system drawing, to the extent possible, on
your own actual experiences.

0. Preliminary Question: Are there any aspects [see a) above] missing regarding our topic for
this year, which should be treated?

1. Please specify – in note form – your case allocation system (in particular who is
responsible for case allocation and how it is done, whether account is taken of any
special abilities or interests of the judge and how the appearance of impartiality or
neutrality is maintained).
What are the advantages of your system? What are shortcomings of the system,
especially regarding judicial independence?

Under the Civil Procedure Code of Mozambique (art. 214, 215, 216, 217, 218 and 219), the
distribution is done on every Monday and Thursday for 12 hours, under the chairmanship of
judge of the respective court or turn. The distributor is aided by Secretariat staff that the
judge appoint. When Monday or Thursday are public holidays, the distribution takes place
on the first working day.
The distributor makes the classification of processes, writing in each of them, in full, the
species to which it belongs and the order number that corresponds to it.
Classified and numbered processes should be carried out to draw, which is done by means
of numbered balls, entering in an urn the numbers corresponding to the processes and
another the numbers of the sections that are unfilled in the respective class and taking up
the balls a by one, each one alternately.
When the number of sections to be completed is less than the number of processes to be
distributed, first to make the draw for the sections that are overdue and processes that
remain are then drawn for all.
When appears a single process of some kind and in it there is a single section to complete,
it is the process endorsed by sure who compete.
As the processes are distributed, the judge writes in full in the distribution protocol the
number of distributed and the section process that has, and the distributor writes in the files
the section number and the date of distribution.
After the distribution in all species, the judge signs the protocol, and the distributor quotas
released processes. Next is the distribution published through an agenda posted on the
door of the court, specifying the sections and parts.

Pursuant to Code of Civil Procedure the assignment of cases to Chambers should be made
taking into account the specialty of the sections (crime, labor, civil and commercial) and

\textsuperscript{2} http://www.achpr.org/english/resolutions/resolution26_en.html.
\textsuperscript{3} http://www.osce.org/odihr/73487.
\textsuperscript{4} http://www.unodc.org/pdf/corruption/corruption_judicial_res_e.pdf.
sections are the common responsibility or all of the same jurisdiction (sections Juvenile Court and sections of the police court) the distribution is made according to the number of processes and randomly. Do not allow to know what processes would be distributed to a particular section, and so we would have a transparent justice, and there is a guarantee of impartiality.

But the system is unreliable because it can be manipulated so that certain processes are distributed to a certain section depending on the judge which is assigned or based on any particular section of interest and still receive more than other processes, also compromising their performance based on the number of cases brought distributed.

The system does not undermine the independence of the judiciary, the people responsible for distributing and manipulating the system that may undermine the independence, particularly if such exercise is done in exchange for favors and can also jeopardize the safety of judges when a certain kind of processes or about a particular type of conflict is always distributed the same judge.

2. **What measures to increase output and/or diminish handling time are in use or planned in your Courts? How do these measures affect judicial independence?**

To increase the performance of judges targets were set, but this is not enough because it is necessary that working conditions are created so that the performance is high, in quantity and quality, such as increasing the number of sections (notary, judge’s office and own courtrooms), circulating means (cars, scooters and bicycles to make notifications, citations or liens), media (phone, fax, internet), staff of qualified registries and according to the court with skills and materials with which read, full satisfaction of the rights and benefits for judges (provided for in the Statute of Judicial Magistrates: security, medical assistance and medication, adequate housing, car service, risk allowance, etc), greater security in the courts and for judges ) and ensure training for all judges.

In the evaluation of judges, it is given greater emphasis the amount of decided cases in relation to quality of decisions.

It is also necessary that the judicial inspection work regularly in order to conduct verification of processes and know the conditions under which judges work. Identifying irregularities in the process is possible, through the recommendations presented at the end of each inspection, the judge concerned to improve its performance.

Performance evaluation of the advantage is that allows you to give an immediate response to the citizen who uses the courts to get an answer to conflicts, and the downside is that this rapid response may jeopardize the correctness of the decision.

3. **Do you have performance appraisal, regarding quality or quantity of judicial work performed? What are the advantages of these measures? What are disadvantages/shortcomings, especially regarding judicial independence?**

Mozambican judges are subject to a performance evaluation regarding the quality and quantity of work done, but gives greater emphasis to the amount of decided cases in relation to quality of decisions.

4. **Please identify shortcomings of the actual working conditions? What are positive effects of measures taken, regarding working conditions?**

   [Please take into consideration the different aspects mentioned above at a) 4.]

Working conditions are not the same across the courts, it depends on the availability of budgets by the executive at the provincial level, which puts into question the performance of
judges, courts and the judiciary as a whole.

The presiding judges of provincial courts have less time to devote to the process because they take care of the administrative part of the court (business plans, budgets, human resources), apart from hearing cases. The same has the responsibility to ensure the performance of the court and their individual performance.

Its performance is also affected, in quantity and quality of cases filed, when financial resources are scarce to improve the working conditions of judges and employees and still represents the judiciary in their province.

The creation of the trustee figure should relieve the presiding judge of these matters, but it continues to play a role, as is the cost of ordering your court.

The courts of performance evaluation is annual, but the trial judge's performance does not regularly occur, returning to occur after you expire the last evaluation, which is a demotivating factor for dedicated and sympathetic judges for those not dedicated.

Thus, the requirements that are imposed on judges are disproportionate existing working conditions.

Question regarding the selection of the topic for 2016

According to the guidelines of the First Study Commission, the presidency of the commission calls on the member associations for proposals for topics for the following year well in advance of the next meeting. We therefore invite you to deliver proposals within the deadline mentioned below. If proposing a topic, please add some keywords to describe your topic.

We are not proposals for topic for the following year.

Deadline: 5th of July 2015

Address: Please send your answers to first_sc@iaj-uim.org

The presidency of the First Study Commission of IAJ-UIM