

Annex

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)*

Preamble

WHEREAS the *Universal Declaration of Human Rights* recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge.

WHEREAS the *International Covenant on Civil and Political Rights* guarantees that all persons shall be equal before the courts, and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law.

WHEREAS the foregoing fundamental principles and rights are also recognized or reflected in regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions.

WHEREAS the importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice.

WHEREAS a competent, independent and impartial judiciary is likewise essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law.

WHEREAS public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society.

WHEREAS it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.

WHEREAS the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country.

AND WHEREAS the *United Nations Basic Principles on the Independence of the Judiciary* are designed to secure and promote the independence of the judiciary, and are addressed primarily to States.

THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.

Value 1:

INDEPENDENCE

Principle:

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Application:

- 1.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.
- 1.2 A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.
- 1.3 A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.
- 1.4 In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.
- 1.5 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.
- 1.6 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

Value 2:

IMPARTIALITY

Principle:

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

Application:

- 2.1 A judge shall perform his or her judicial duties without favour, bias or prejudice.

- 2.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.
- 2.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.
- 2.4 A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.
- 2.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where
- 2.5.1 the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
 - 2.5.2 the judge previously served as a lawyer or was a material witness in the matter in controversy; or
 - 2.5.3 the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:

Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

Value 3:

INTEGRITY

Principle:

Integrity is essential to the proper discharge of the judicial office.

Application:

- 3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.
- 3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

Value 4:

PROPRIETY

Principle:

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

Application:

- 4.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
- 4.2. As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.
- 4.3. A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.
- 4.4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.
- 4.5 A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.
- 4.6 A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.
- 4.7 A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.
- 4.8 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.
- 4.9 A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.

- 4.10 Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.
- 4.11 Subject to the proper performance of judicial duties, a judge may:
- 4.11.1 write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
 - 4.11.2 appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;
 - 4.11.3 serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or
 - 4.11.4 engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.
- 4.12 A judge shall not practise law whilst the holder of judicial office.
- 4.13 A judge may form or join associations of judges or participate in other organisations representing the interests of judges.
- 4.14 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.
- 4.15 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.
- 4.16 Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

Value 5:

EQUALITY

Principle:

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

Application:

- 5.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes (“irrelevant grounds”).
- 5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.
- 5.3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.
- 5.4 A judge shall not knowingly permit court staff or others subject to the judge’s influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.
- 5.5 A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

Value 6:

COMPETENCE AND DILIGENCE

Principle:

Competence and diligence are prerequisites to the due performance of judicial office.

Application:

- 6.1 The judicial duties of a judge take precedence over all other activities.
- 6.2 A judge shall devote the judge’s professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court’s operations.

- 6.3 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, to judges.
- 6.4 A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.
- 6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.
- 6.6 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.
- 6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

IMPLEMENTATION

By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

DEFINITIONS

In this statement of principles, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

"Court staff" includes the personal staff of the judge including law clerks.

"Judge" means any person exercising judicial power, however designated.

"Judge's family" includes a judge's spouse, son, daughter, son-in-law, daughter-in-law, and any other close relative or person who is a companion or employee of the judge and who lives in the judge's household.

"Judge's spouse" includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.

Explanatory note

1. At its first meeting held in Vienna in April 2000 on the invitation of the United Nations Centre for International Crime Prevention, and in conjunction with the 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Judicial Group on Strengthening Judicial Integrity (comprising Chief Justice Latifur Rahman of Bangladesh, Chief Justice Bhaskar Rao of Karnataka State in India, Justice Govind Bahadur Shrestha of Nepal, Chief Justice Uwais of Nigeria, Deputy Vice-President Langa of the Constitutional Court of South Africa, Chief Justice Nyalali of Tanzania, and Justice Odoki of Uganda, meeting under the chairmanship of Judge Christopher Weeramantry, Vice-President of the International Court of Justice, with Justice Michael Kirby of the High Court of Australia as rapporteur, and with the participation of Dato' Param Cumaraswamy, UN Special Rapporteur on the Independence of Judges and Lawyers) recognized the need for a code against which the conduct of judicial officers may be measured. Accordingly, the Judicial Group requested that codes of judicial conduct which had been adopted in some jurisdictions be analysed, and a report be prepared by the Co-ordinator of the Judicial Integrity Programme, Dr Nihal Jayawickrama, concerning: (a) the core considerations which recur in such codes; and (b) the optional or additional considerations which occur in some, but not all, such codes and which may or may not be suitable for adoption in particular countries.

2. In preparing a draft code of judicial conduct in accordance with the directions set out above, reference was made to several existing codes and international instruments including, in particular, the following:

- (a) The Code of Judicial Conduct adopted by the House of Delegates of the American Bar Association, August 1972.
- (b) Declaration of Principles of Judicial Independence issued by the Chief Justices of the Australian States and Territories, April 1997.
- (c) Code of Conduct for the Judges of the Supreme Court of Bangladesh, prescribed by the Supreme Judicial Council in the exercise of power under Article 96 (4) (a) of the Constitution of the People's Republic of Bangladesh, May 2000.
- (d) Ethical Principles for Judges, drafted with the cooperation of the Canadian Judges Conference and endorsed by the Canadian Judicial Council, 1998.
- (e) The European Charter on the Statute for Judges, Council of Europe, July 1998.
- (f) The Idaho Code of Judicial Conduct 1976.
- (g) Restatement of Values of Judicial Life adopted by the Chief Justices Conference of India, 1999.
- (h) The Iowa Code of Judicial Conduct.
- (i) Code of Conduct for Judicial Officers of Kenya, July 1999.

- (j) The Judges' Code of Ethics of Malaysia, prescribed by the Yang di-Pertuan Agong on the recommendation of the Chief Justice, the President of the Court of Appeal and the Chief Judges of the High Courts, in the exercise of powers conferred by Article 125 (3A) of the Federal Constitution of Malaysia, 1994.
- (k) The Code of Conduct for Magistrates in Namibia.
- (l) Rules Governing Judicial Conduct, New York State, USA.
- (m) Code of Conduct for Judicial Officers of the Federal Republic of Nigeria.
- (n) Code of Conduct to be observed by Judges of the Supreme Court and of the High Courts of Pakistan.
- (o) The Code of Judicial Conduct of the Philippines, September 1989.
- (p) The Canons of Judicial Ethics of the Philippines, proposed by the Philippines Bar Association, approved by the Judges of First Instance of Manila, and adopted for the guidance of and observance by the judges under the administrative supervision of the Supreme Court, including municipal judges and city judges.
- (q) Yandina Statement: Principles of Independence of the Judiciary in Solomon Islands, November 2000.
- (r) Guidelines for Judges of South Africa, issued by the Chief Justice, the President of the Constitutional Court, and the Presidents of High Courts, the Labour Appeal Court, and the Land Claims Court, March 2000.
- (s) Code of Conduct for Judicial Officers of Tanzania, adopted by the Judges and Magistrates Conference, 1984.
- (t) The Texas Code of Judicial Conduct
- (u) Code of Conduct for Judges, Magistrates and Other Judicial Officers of Uganda, adopted by the Judges of the Supreme Court and the High Court, July 1989.
- (v) The Code of Conduct of the Judicial Conference of the United States.
- (w) The Canons of Judicial Conduct for the Commonwealth of Virginia, adopted and promulgated by the Supreme Court of Virginia, 1998.
- (x) The Code of Judicial Conduct adopted by the Supreme Court of the State of Washington, USA, October 1995.
- (y) The Judicial (Code of Conduct) Act, enacted by the Parliament of Zambia, December 1999.

- (z) Draft Principles on the Independence of the Judiciary (“Siracusa Principles”), prepared by a committee of experts convened by the International Association of Penal Law, the International Commission of Jurists, and the Centre for the Independence of Judges and Lawyers, 1981.
- (aa) Minimum Standards of Judicial Independence adopted by the International Bar Association, 1982.
- (bb) United Nations Basic Principles on the Independence of the Judiciary, endorsed by the UN General Assembly, 1985.
- (cc) Draft Universal Declaration on the Independence of Justice (“Singhvi Declaration”) prepared by Mr L.V. Singhvi, UN Special Rapporteur on the Study on the Independence of the Judiciary, 1989.
- (dd) The Beijing Statement of Principles of the Independence of the Judiciary in the Lawasia Region, adopted by the 6th Conference of Chief Justices, August 1997.
- (ee) The Latimer House Guidelines for the Commonwealth on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights to ensure the effective implementation of the Harare Principles, 1998.
- (ff) The Policy Framework for Preventing and Eliminating Corruption and Ensuring the Impartiality of the Judicial System, adopted by the expert group convened by the Centre for the Independence of Judges and Lawyers, February 2000.

At its second meeting held in Bangalore in February 2001, the Judicial Group (comprising Chief Justice Mainur Reza Chowdhury of Bangladesh, Justice Claire L’Heureux Dube of Canada, Chief Justice Reddi of Karnataka State in India, Chief Justice Upadhyay of Nepal, Chief Justice Uwais of Nigeria, Deputy Chief Justice Langa of South Africa, Chief Justice Silva of Sri Lanka, Chief Justice Samatta of Tanzania, and Chief Justice Odoki of Uganda, meeting under the chairmanship of Judge Weeramantry, with Justice Kirby as rapporteur, and with the participation of the UN Special Rapporteur and Justice Bhagwati, Chairman of the UN Human Rights Committee, representing the UN High Commissioner for Human Rights) proceeding by way of examination of the draft placed before it, identified the core values, formulated the relevant principles, and agreed on the Bangalore Draft Code of Judicial Conduct. The Judicial Group recognized, however, 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 Bangalore Draft was widely disseminated among judges of both common law and civil law systems and discussed at several judicial conferences. In June 2002, it was reviewed by the Working Party of the Consultative Council of European Judges (CCJE-GT), comprising Vice-President Reissner of the Austrian Association of Judges, Judge Fremr of the High Court in the Czech Republic, President Lacabarats of the Cour d’Appel de Paris in France,

Judge Mallmann of the Federal Administrative Court of Germany, Magistrate Sabato of Italy, Judge Virgilijus of the Lithuanian Court of Appeal, Premier Conseiller Wiwinius of the Cour d' Appel of Luxembourg, Juge Conseiller Afonso of the Court of Appeal of Portugal, Justice Ogrizek of the Supreme Court of Slovenia, President Hirschfeldt of the Svea Court of Appeal in Sweden, and Lord Justice Mance of the United Kingdom. On the initiative of the American Bar Association, the Bangalore Draft was translated into the national languages, and reviewed by judges, of the Central and Eastern European countries; in particular, of Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo, Romania, Serbia and Slovakia.

The Bangalore Draft was revised in the light of the comments received from CCJE-GT and others referred to above; Opinion no.1 (2001) of CCJE on standards concerning the independence of the judiciary; the draft Opinion of CCJE on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality; and by reference to more recent codes of judicial conduct including the Guide to Judicial Conduct published by the Council of Chief Justices of Australia in June 2002, the Model Rules of Conduct for Judges of the Baltic States, the Code of Judicial Ethics for Judges of the People's Republic of China, and the Code of Judicial Ethics of the Macedonian Judges Association.

The revised Bangalore Draft was placed before a Round-Table Meeting of Chief Justices (or their representatives) from the civil law system, held in the Peace Palace in The Hague, Netherlands, in November 2002, with Judge Weeramantry presiding. Those participating were Judge Vladimir de Freitas of the Federal Court of Appeal of Brazil, Chief Justice Iva Brozova of the Supreme Court of the Czech Republic, Chief Justice Mohammad Fathy Naguib of the Supreme Constitutional Court of Egypt, Conseillere Christine Chanet of the Cour de Cassation of France, President Genaro David Gongora Pimentel of the Suprema Corte de Justicia de la Nacion of Mexico, President Mario Mangaze of the Supreme Court of Mozambique, President Pim Haak of the Hoge Raad der Nederlanden, Justice Trond Dolva of the Supreme Court of Norway, and Chief Justice Hilario Davide of the Supreme Court of the Philippines. Also participating in one session were the following Judges of the International Court of Justice: Judge Ranjeva (Madagascar), Judge Herczegh (Hungary), Judge Fleischhauer (Germany), Judge Koroma (Sierra Leone), Judge Higgins (United Kingdom), Judge Rezek (Brazil), Judge Elaraby (Egypt), and Ad-Hoc Judge Frank (USA). The UN Special Rapporteur was in attendance. The "Bangalore Principles of Judicial Conduct" was the product of this meeting.
