

**THIRD MEETING OF THE JUDICIAL GROUP ON STRENGTHENING  
JUDICIAL INTEGRITY  
COLOMBO, SRI LANKA 10-12 JANUARY 2003**

**INTRODUCTION**

1. The Third Meeting of the Judicial Group was convened in Colombo, Sri Lanka on January 10, 11 and 12 2003.<sup>1</sup> The meeting was funded by the United Nations Centre for International Crime Prevention (UNCICP), and was organized with the assistance of the Government of Sri Lanka and the Marga Institute, Colombo. The purposes of this meeting were:

- (a) To review the mechanisms utilized in the pilot programmes in the three focus countries: Uganda, Sri Lanka and Nigeria, to diagnose systemic weaknesses in the judicial system;
- (b) To share experiences in addressing the systemic weaknesses identified in the surveys of court users and other stakeholders and through the other mechanisms employed in the focus countries;

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<sup>1</sup> Two previous meetings of the Judicial Group were held in Vienna and Bangalore in April 2000 and February 2001 respectively. A Round-Table Meeting of Chief Justices representing civil law and other legal systems was convened by the Chairman of the Judicial Group in November 2002 at the Peace Palace at The Hague. The purpose of that meeting was to review and revise the *Draft Bangalore Code of Judicial Conduct* which the Judicial Group had adopted in February 2002. The *Bangalore Principles of Judicial Conduct* emerged from that meeting.

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- (c) To consider (i) what steps ought to be taken to secure the passage of the *Bangalore Principles of Judicial Conduct* to the UN General Assembly; and (ii) what measures should be adopted by national judiciaries to provide a mechanism to implement these principles;
- (d) To consider a draft *Code of Conduct for Judicial Employees*; and
- (e) To decide on future meetings and/or activities of the Judicial Group.

### **MEMBERSHIP**

2. The Judicial Group was chaired by HE Judge Christopher Weeramantry (former Vice-President of the International Court of Justice). The other participants were Chief Justice M L Uwais (Nigeria); Chief Justice B A Samatta (Tanzania); Chief Justice B J Odoki (Uganda); Deputy Chief Justice Pius Langa (South Africa); Chief Justice N K Jain (Karnataka, India); Justice K M Hasan (Bangladesh); and Chief Justice K N Upadhyay (Nepal). On the invitation of the Judicial Group, Chief Justice Hilario G Davide Jr (Philippines) and Deputy Chief Justice Dr Adel Omar Sherif (Egypt) also participated as special guests. Chief Justice Sarath N Silva (Sri Lanka) was absent. The rapporteur was Justice Michael Kirby (High Court of Australia).

3. The Hon P N Bhagwati (Chairman of the UN Human Rights Committee) and Dato' Param Cumaraswamy (UN Special Rapporteur on the Independence of Judges and Lawyers) participated as observers.

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The resource persons were Mr Jeremy Pope (Executive Director of Transparency International), Mr Petter Langseth (Programme Manager, Global Programme Against Corruption, UNCICP), and Mr Keith Mackiggan (Justice and Human Rights Adviser, Department for International Development, United Kingdom). Dr Nihal Jayawickrama, the Coordinator of the Judicial Integrity Programme, functioned as Secretary to the Judicial Group.

### **INAUGURATION OF THE THIRD MEETING**

4. The inaugural session of the Third Meeting took place at 10.00 am on Friday 10 January 2003 in the Ballroom of the Hotel Lanka Oberoi in the presence of a large gathering of Sri Lankan judges, cabinet ministers, officials and other citizens. Representatives of the Diplomatic Corps and of civil society organizations, including the media, also attended. The Prime Minister of Sri Lanka, the Hon. Ranil Wickremasinghe MP, was the chief guest.

5. The proceedings began with the lighting of the ceremonial lamp. In his introductory speech, Dr Nihal Jayawickrama welcomed the members of the Judicial Group and explained its conception, development and activities. He emphasised the importance of the timing of the meeting given the concurrent negotiations designed to bring an end to civil conflict in Sri Lanka. He referred to the long tradition of the judiciary of Sri Lanka and to the need in Sri Lanka and elsewhere for the judiciary to play a pivotal role in strengthening the integrity of judicial

systems. Judge Weeramantry, in his remarks from the chair, drew attention to the commonalities that existed between the differing legal, religious, philosophical and social traditions of all countries of the world. He emphasised the need to reinforce integrity to ensure the acceptability of the judgments of courts. He pointed, in the context of the work of the International Court of Justice (of which he had until recently been a member) to the absence of coercive enforcement save for respect and compliance with the law. It was this feature, also common in domestic jurisdiction, that laid emphasis upon the maintenance and strengthening of judicial integrity.

6. Inaugurating the meeting, the Prime Minister of Sri Lanka, the Hon Ranil Wickremasinghe MP, congratulated the Judicial Group on the progress it had so far achieved, and referred in particular to the *Bangalore Principles of Judicial Conduct*. He referred to the survey of court users and other stakeholders conducted in Sri Lanka by the Marga Institute, and assured that his government, which was committed to good governance, would recommend to parliament such remedial action as might be warranted. He insisted that the integrity of the judiciary should be seen in the wider context of good governance. Without integrity in government, at all levels and in all branches, efforts to secure peace and security and to promote economic development, would founder. He lauded the role of the Supreme Court of India in nation building, and observed that if the Supreme Court of his own country had similarly fulfilled its mission of protecting the rights of different groups,

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recent history might have taken a different turn, and Sri Lanka might have been spared the trauma of an armed struggle.

7. The Prime Minister emphasized the importance of sustaining judicial independence by means of regional human rights arrangements. He proposed the consideration of an Asian Convention on Human Rights, which would include principles supporting judicial independence. He envisaged the establishment of a regional court or tribunal with jurisdiction to resolve issues arising between the citizen and government after national remedies had been exhausted, thereby applying and enforcing a common standard. He acknowledged that such an idea might have opponents at the start and seem controversial. However, he said that if five or six like-minded countries of the region were willing to join in such an endeavour, Sri Lanka would be amongst them.

8. The keynote address was given by the Judicial Group's rapporteur, Justice Michael Kirby (Australia). He said that the work of the Judicial Group constituted an alternative vision for humanity to that of the power of capital and weapons. The rule of law, constitutionalism and defence of human rights depended on a judiciary of courage and integrity. He paid tribute to the work of the International Court of Justice and other international tribunals and to the UN agencies that supported work such as that of the Judicial Group. He speculated on the future activities of the Group and ways to make the *Bangalore Principles* more effective in countries of differing legal and social traditions. Chief Justice Uwais (Nigeria) proposed the vote of thanks and recalled that his

previous visit to Sri Lanka had been in the height of the armed conflict, as a member of an international commission invited to inquire into the circumstances leading to the death of two army generals.

## REVIEW OF MECHANISMS

9. **Survey instruments:** The Group had before it reports of national surveys of court users and other stake-holders in the justice systems in Nigeria, Uganda and Sri Lanka.<sup>2</sup> These surveys were based on instruments approved at the Bangalore meeting. The reports were explained by Chief Justice Uwais and Chief Justice Odoki and, in respect of Sri Lanka, by Mr Basil Ilangakoon, Executive Vice-Chairman of the Marga Institute. Chief Justice Davide (Philippines) referred to the Action Programme for Judicial Reform in his country, and explained a *Blueprint* developed by the Philippines judiciary to combat actual and perceived problems of corruption and inefficiency in the judiciary.

10. At the close of a searching review of the surveys, their methodology and outcomes, the Judicial Group agreed as follows:

- (a) Since the nature and extent of the problems will vary as between each country in which a survey is intended to be undertaken, the

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<sup>2</sup> Centre for Basic Research, *Final Draft Report on Integrity in Uganda* (November 2002); The Marga Institute (Sri Lanka Centre for Development Studies), *A System Under Siege – An Inquiry into the Judicial System of Sri Lanka* (September 2002); Nigerian Institute of Advanced Legal Studies, *Summaries of Findings of Surveys conducted in Lagos and Borno States* (September 2002).

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design and implementation of the survey should ordinarily be planned and carried out in close consultation with the Chief Justice or other body responsible for strengthening integrity in the judiciary in that country.

- (b) It may be useful to integrate the survey with the statements contained in the *Bangalore Principles*.
- (c) The survey should be concerned with the reality of integrity and not simply with perceptions. It should be concerned with facts and not mere gossip or assumptions. It is important, in questions and in investigations related to the survey, to ensure that presuppositions are avoided.
- (d) Four principles should govern the conduct of a survey, namely:
  - (i) Judges should ordinarily be involved in the design of the survey and be invited to comment on the survey instrument before distribution;
  - (ii) The survey should be conducted to explore data on judicial performance and should not be confined to issues of corruption only;
  - (iii) The results of the survey should be integrated into the education and training of judges and other court personnel; and
  - (iv) The conduct of the survey should be transparent and the public should be informed of it and of its outcome and significance.
- (e) With funds provided by the DFID-UK and by UNCICP, desirably within a period of six months, and through a body that specializes in survey analysis, the survey instruments employed and the data

gathered in Nigeria, Sri Lanka and Uganda should be assessed and evaluated in order to maximize their utility.

11. **Focus Group Consultations:** Chief Justice Odoki described the focus group consultations which were conducted in Uganda, with the Judicial Integrity Committee (JIC) headed by a Supreme Court Judge travelling throughout the country meeting groups of civic leaders, court users, judicial officers and other actors in the judicial system including lawyers, the police and prison officers. The objective of that exercise was to ascertain and understand the causes of the negative public image of the judiciary, and to solicit suggestions on measures that could be employed to reverse that image. Based on these discussions, the JIC proposed a Plan of Action.<sup>3</sup> These included several short, medium and long-term measures which the judiciary could undertake to address concerns regarding (a) judicial conduct, (b) corruption in the judiciary, (c) delay in the disposal of cases, (d) mysticism of the judicial process, (e) execution of court process, and (f) administration of the estates of deceased persons. The JIC also proposed a revised code of judicial conduct based on the Bangalore Draft. The Chief Justice explained that this exercise brought problems affecting the judiciary into the public domain, and proved more effective than questioning by an external investigator conducting a survey.

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<sup>3</sup> Judicial Integrity Committee, *Plan of Action for Strengthening Judicial Integrity* (30 May 2002).

12. **National Workshop of Stakeholders:** Chief Justice Odoki described the national workshop of stakeholders held in Jinja, Uganda, in December 2002 to examine the survey report. He tabled the report of the workshop containing its recommendations.<sup>4</sup> He said that the workshop of 80 participants amplified and added quality to the survey findings, and while also validating them, made the report “more realistic, more living”. The next step would be a Judges Conference which was scheduled for three days in late January 2003.

13. **Case Audit:** The Coordinator informed the Judicial Group that a case audit will commence shortly in Sri Lanka for the purpose of identifying the stages in a judicial proceeding at which inordinate delays take place. A checklist had been prepared for this purpose.

## REMEDYING SYSTEMIC WEAKNESSES

14. **Systemic weaknesses:** The Judicial Group examined systemic weaknesses identified in the surveys of court users and other stakeholders conducted in the pilot studies. They noted that areas for attention included:

- (a) Lack of adequate training for judges;
- (b) Delay and lethargy in the judicial system;
- (c) Length of court proceedings;

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<sup>4</sup> *Workshop on Judicial Integrity in Uganda* (Jinja, 15-17 December 2002).

- (d) Lack of skill in the English language amongst some judges;
- (e) The disappearance of court records;
- (f) Prejudice;
- (g) Inappropriate socialising of judges and lawyers;
- (h) Variations in sentencing;
- (i) Delay in delivering judgments;
- (j) Expensive private legal services; and
- (k) Unofficial payments required to be made for various administrative activities inherent in the judicial process.

15. ***Remedying systemic weaknesses:*** In response to these reports the members of the Judicial Group agreed as follows:

- (a) The Judicial Group noted that in many jurisdictions, the quality of legal education was not of an acceptable standard; that one could graduate without any knowledge of legal philosophy, international law, international human rights and humanitarian law, or environmental law; that judges who were products of such law schools would be inadequately equipped; that due to lack of training many judges were unaware of what went on in other jurisdictions; and that judges of superior courts often felt that they did not require continuing legal education. Accordingly,
  - (i) It was necessary to institute training programmes for judges on a regular basis, while senior judges should conduct seminars to which junior judges were invited. In this connection, reference was made to the Philippines Judicial

Academy, where attendance was mandatory and performance in courses was taken into account in promotions.

- (ii) Where the language of legal literature (ie law reports, appellate judgments, etc) is different from the language of legal education, it is imperative that instruction in the former should be provided to both lawyers and judges.
- (iii) Those responsible for judicial and legal education should be informed of the need for legal instruction in such areas as International Law, including International Human Rights and Humanitarian Law; International Environmental Law; and Legal Philosophy.

(b) Judicial officers must take responsibility for reducing delay in the conduct and conclusion of court proceedings and discourage activities of the legal profession causing undue delay. Judicial officers should institute transparent mechanisms to allow the judiciary, the legal profession and litigants to know the status of court proceedings. (One method suggested was the monthly circulation among judges of a list of pending judgments). Where no legal requirements already exist, standards should be adopted by the judges themselves and publicly announced in order to ensure due diligence in the administration of justice.

(c) Judicial officers must take necessary steps to prevent court records from disappearing or being withheld. Such steps should include the computerisation of court records. They should also institute systems

for the investigation of the loss and disappearance of court files. Where wrong-doing is suspected, they should ensure the investigation of the loss of files, which is always to be regarded as a serious default. In the case of lost files, they should institute action to reconstruct the record and institute procedures to avoid such loss.

(d) Where they do not already exist and within any applicable law, the judiciary should introduce means of reducing unjustifiable variations in criminal sentences in like cases including:

- (i) By the introduction of sentencing guidelines and like procedures;
- (ii) By securing the availability of relevant sentencing statistics and data; and
- (iii) By judicial education, including the introduction of a judicial handbook concerning sentencing standards and principles (Reference was made to the Bench Book in the Philippines).

Such initiatives should observe due respect for the proper role of judicial discretion in sentencing and should be transparent so as to be known to the judiciary, the legal profession and to litigants.

(e) Recognising the fundamental importance of access to justice to ensure true equality before the law, the high costs of private legal representation and the typical limits on the availability of public legal aid, Judges should consider, in accordance with any legal provisions that may apply and with the consent of any unrepresented party but

acting in cooperation with the legal profession, various initiatives including:

- (i) The encouragement of pro bono representation by the legal profession of selected litigants;
- (ii) The appointment of *amici curiae* or other representatives to protect interests that would otherwise be unrepresented in proceedings; and
- (iii) The provision of permission to appropriate non-qualified persons to represent parties before a court.

Judges should take appropriate opportunities to emphasise the importance of access to justice, given that such access was essential to true respect for constitutionalism and the rule of law.

- (f) Having regard to reports of unofficial payments for purposes such as the calling up of files, the issuing of summonses, the service of summonses, securing copy of evidence, the obtaining of bail, the provision of a certified copy of a judgment, expedition of cases, the delay of cases, the fixing of convenient dates and the rediscovery of lost files, Judges should consider:
  - (i) The display of notices in court buildings and elsewhere where they might be seen by relevant persons, forbidding all such payments.
  - (ii) The appointment of court vigilance officers and users committees together with appropriate systems of inspection to combat such informal payments;

- (iii) The introduction of computerisation of court records including of the court hearing schedule;
- (iv) The introduction of fixed time limits to prescribe legal steps that must be taken in the preparation of a case for hearing; and
- (v) The prompt and effective response by the court system to public complaints.

To ensure the effectiveness of such measures and the prohibition of informal payments by users of the court system, Judges should, as far as possible, address the issue of the adequacy of the remuneration of court officers.

16. It was generally agreed that the *Bangalore Principles* and the foregoing resolutions in response to the pilot surveys should be made known by the members of the Judicial Group to their judicial colleagues and to other judges in participating and non-participating countries through judicial meetings, conferences and suitable publications.

#### **THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT**

17. The chairman tabled the *Bangalore Principles of Judicial Conduct*, which had emerged from the Round-Table Meeting of Chief Justices held in the Peace Palace at The Hague in November 2002. Represented at that meeting were the Judiciaries of Mexico, Brazil, Norway, Netherlands, France, Czech Republic, Egypt, Mozambique and the Philippines. Also participating were the Judges of the International Court of Justice from Madagascar, Hungary, Germany, Sierra Leone, United

Kingdom, Brazil, Egypt, and the United States of America. The Hague Meeting was preceded by extensive consultations, undertaken with the cooperation of the UN Special Rapporteur, with Judges from over sixty countries, including the Consultative Council of European Judges established by the Council of Europe, and the Judiciaries of Central and Eastern European countries, as well as of other Asian, African, Pacific and Caribbean countries. The chairman described the course of the deliberations at The Hague.

18. Dato' Param Cumaraswamy informed the Judicial Group that *The Bangalore Principles* (translated into the United Nations languages) were annexed to his report to the forthcoming session of the United Nations Commission on Human Rights. He intended to urge the Commission to give "careful consideration" to *The Bangalore Principles* and either "endorse" or "note" them. His report will shortly be posted on the United Nations Website and thus made accessible throughout the world. The Judicial Group welcomed this development. Meanwhile, suggestions were made that:

- (a) Discussions be held with receptive Foreign Ministries with a view to *The Bangalore Principles* being presented for "adoption" by the United Nations General Assembly.
- (b) *The Bangalore Principles* be forwarded to the Crime Commission of the United Nations with a view to securing a resolution requesting member states to implement it.

The Judicial Group agreed that whichever route was followed to secure universal acceptance of *The Bangalore Principles*, their “ownership” must remain with national judiciaries and, accordingly, no part of the text should be amended except by representatives of national judiciaries.

19. Deputy Chief Justice Sherif (Egypt) informed the meeting that the Chief Justice of Egypt would be presenting *The Bangalore Principles* to the meeting then in progress in Mauritius of the Arab Federation of Constitutional Courts and Councils. Dr Jayawickrama reminded the meeting that *The Bangalore Principles* had already been presented by the Chief Justice of Mexico to a similar gathering of Chief Justices from Spanish-speaking countries held in Cancun in November 2002. It was agreed that *The Bangalore Principles* be disseminated at forthcoming legal and judicial meetings, including the Commonwealth Law Conference (Melbourne, April 2003), World Jurists Association (Sydney, August 2003), and LAWASIA (Tokyo, September 2003). Chief Justice Davide undertook to present it to the forthcoming Conference of Asian-Pacific Chief Justices in Tokyo in September 2003.

20. The Judicial Group agreed that the Chairman, assisted by the Coordinator, should write to national Chief Justices in all countries, informing them of *The Bangalore Principles* and of the work of the Judicial Group, and inviting comments thereon. In this connection, it was agreed that an appropriate letterhead for the Judicial Group be prepared containing the names of its members, etc., the address and contact information being that of the Coordinator.

21. A discussion on what measures ought to be recommended for the implementation of *The Bangalore Principles* was deferred, pending the preparation of a report on mechanisms already in existence at the national level for the implementation of codes of judicial conduct.

### **PROPOSED CODE OF CONDUCT FOR JUDICIAL EMPLOYEES**

22. The Coordinator tabled a Draft Code of Conduct for Judicial Employees. He explained that this was based on the Model Code of Conduct for Non-judicial Employees prepared by the American Judicature Society. He had also drawn upon three other state codes now in operation in the United States.

23. The Judicial Group considered the draft. It noted suggested textual amendments, including a number proposed by Chief Justice Davide (Philippines). The Judicial Group then resolved that:

- (a) The document should be reformulated as guidelines and not as a code.
- (b) Such guidelines should contain a preamble explaining how the integrity of the conduct of court employees is related to the promotion of judicial integrity which cannot be the concern of judges only but involves all those engaged in judicial proceedings.

- (c) Any such guidelines should be in addition to, not in derogation of, any legal, regulatory or contractual undertakings given by court employees concerning integrity in the performance of their duties.
- (d) Members of the Judicial Group should take steps to distribute the amended version of the guidelines to court registrars and other appropriate officers for comment by them.
- (e) The draft guidelines should be considered at a future meeting of the Judicial Group when the Group invited the Chief Justices, the UN Special Rapporteur and other interested parties (including those representative of court employees) to submit suggested amendments and additions.

#### **FUTURE MEETINGS AND ACTIVITIES OF THE JUDICIAL GROUP**

24. The Judicial Group considered a document on "A Possible Way Forward" which was tabled at the meeting containing suggestions for intensifying the work of the Group and widening its participation. The Judicial Group agreed that:

- (a) enquiries be made to establish a Website on the Internet for the Judicial Group which would serve, inter alia, as a documentation centre;
- (b) action be taken to capture and exchange emerging best practice on judicial reform, including case management, sentencing guidelines, and computerization of case records;
- (c) continuing education material for judges be developed, focusing on the need to sensitize them, in particular, to

international law, international human rights and humanitarian law, environmental law, and philosophical perspectives;

(d) principles, standards and instruments relating to the judicial process (eg. Judicial independence) be further developed or updated;

(e) a manual on the judicial reform process be developed, capturing the experience gained to date;

(f) the feasibility of institutionalizing the Judicial Group and establishing a secretariat be examined. The advantages of locating the secretariat in a developing country were noted;

(g) while expressing appreciation for the support that had been provided to its work by DFID, UK, the exploration of funding from the "Utstein" Group (Germany, Netherlands, Norway and the United Kingdom) for the future activities of the Judicial Group was authorized;

(h) A Fourth Meeting of the Judicial Group be convened, the timing, venue and participation in such meeting to be determined by the chairman in consultation with the Coordinator.

## **COMPOSITION OF THE JUDICIAL GROUP**

25. On the invitation of the Judicial Group, Chief Justice Davide (Philippines) and Deputy Chief Justice Dr Adel Omar Sherif (Egypt) agreed to serve as members of the Judicial Group. The Judicial Group

noted the absence of Chief Justice S N Silva (Sri Lanka) who would be taken to have retired from the Judicial Group.

## **ACKNOWLEDGEMENTS**

26. The Third Meeting of the Judicial Group closed with expressions of appreciation to the Government of Sri Lanka, and in particular to the Prime Minister who inaugurated the meeting; the Minister of Foreign Affairs, the Hon. Tyrone Fernando, MP PC, and the Minister of Constitutional Affairs, Professor G. L. Peries MP, for their hospitality; and to the Ministry of Foreign Affairs and the Ministerial Security Division of the Police Department for the assistance and courtesies afforded to the participants on their arrival and during their stay in the country. Appreciation was also expressed to the Marga Institute for their secretarial assistance; to the Colombo Hilton and the Lanka Oberoi Hotels for providing excellent meeting facilities; to the resource persons, the chairman, the coordinator and all participants.

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