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Report of the Third Meeting of the Judicial Group on Strengthening Judicial Integrity

Colombo, January 2003

Report of the Third Meeting of the Judicial Group on Strengthening Judicial Integrity *_/

*_/ Prepared by Justice Michael Kirby for the Global Programme against Corruption, Centre for International Crime Prevention, Office of Drug Control and Crime Prevention, United Nations Office at Vienna. The Third Meeting of the Judicial Group on Strengthening Judicial Integrity took place in Colombo, Sri Lanka, from 11 –12 January 2003.

Abstact

The paper reviews the outcomes of the third meeting of the Judicial Group on Strengthening Judicial Integrity, convened in Colombo, Sri Lanka from 10 to 12 January 1993. The Group had before it reports of national surveys of court users and other stakeholders in the justice systems in Nigeria, Uganda and Sri Lanka. These surveys were based on instruments approved at the second meeting of the Judicial Groups in Bangalore. The participants examined systemic weaknesses identified in the surveys and considered a draft code of conduct for judicial employees.

Report of the Third Meeting of the Judicial Group on Strengthening Judicial Integrity, held in Colombo from 10 to 12 January 2003

I. Introduction

1. The third meeting of the judicial group was convened in Colombo from 10 to 12 January.[1] The meeting was funded by the Centre for International Crime Prevention of the United Nations Office on Drugs and Crime (formerly known as the United Nations Office for Drug Control and Crime Prevention) and was organized with the assistance of the Government of Sri Lanka and the Marga Institute, Sri Lanka Centre for Development Studies, Colombo.

2. The purposes of the meeting were:

(a) To review the mechanisms utilized in the pilot programmes in the three focus countries, Nigeria, Sri Lanka and Uganda, in order to diagnose systemic weaknesses in the judicial system;

(b) To share experience 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;

(c) To consider: (i) what steps ought to be taken to secure the submission of the Bangalore principles of judicial conduct to the General Assembly; and (ii) what measures should be adopted by national judiciaries to provide a mechanism to implement those principles;

(d) To consider a draft code of conduct for judicial employees;

(e) To decide on future meetings and/or activities of the judicial group.

II. Attendance

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

4. P. N. Bhagwati (Chairman, Human Rights Committee of the United Nations) and Param Cumaraswamy (Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers) participated as observers.

5. Resource persons were Jeremy Pope (Executive Director, Transparency International), Keith Mackiggan (Justice and Human Rights Adviser, Department for International Development, United Kingdom of Great Britain and Northern Ireland)

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and Petter Langseth (Global Programme against Corruption, Centre for International Crime Prevention). Nihal Jayawickrama, coordinator of the judicial integrity programme, served as secretary of the judicial group.

III. Opening of the meeting

6. The opening session of the meeting was held on 10 January 2003 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, Ranil Wickremasinghe, was the chief guest.

7. In his opening speech, the coordinator of the judicial integrity programme welcomed the members of the judicial group and explained its conception, development and activities. He emphasized 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 it to play a pivotal role in strengthening the integrity of judicial systems.

8. The Chairman drew attention to the commonalities that existed between the differing legal, religious, philosophical and social traditions of all countries of the world. He emphasized the need to reinforce integrity to ensure the acceptability of the judgements of the 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 that feature, also common in domestic jurisdiction, that laid emphasis upon the maintenance and strengthening of judicial integrity.

9. The Prime Minister of Sri Lanka congratulated the judicial group on the progress it had made so far 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 participants 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, recent history might have taken a different turn and Sri Lanka might have been spared the trauma of an armed struggle.

10. 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 the 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 States of the region were willing to join in such an endeavour, Sri Lanka would be among them.

11. The keynote address was given by the rapporteur, who stated 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 United Nations entities 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.

IV. Review of mechanisms

Survey instruments

12. The group had before it reports of the national surveys of court users and other stakeholders in the justice systems in Nigeria, Sri Lanka and Uganda.[2] The surveys had been based on instruments approved at the second meeting of the judicial group. The reports on Nigeria and Uganda were presented by Mr. Uwais and Mr. Odoki, respectively, and Basil Ilangakoon, Executive Vice-Chairman of the Marga Institute, presented the report on Sri Lanka. Mr. Davide referred to the Action Programme for Judicial Reform in the Philippines and described a blueprint developed by the judiciary in his country to combat actual and perceived problems of corruption and inefficiency in the judiciary.

13. Following a review of the surveys, their methodology and outcomes, the judicial group agreed as follows:

(a) Since the nature and extent of the problems would vary between the countries in which a survey was to be undertaken, design and implementation should normally be planned and carried out in close consultation with the chief justice or a body responsible for strengthening integrity in the judiciary in the particular country;

(b) It might be useful to supplement 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 with hearsay or assumptions. It was important, in questions and investigations related to the survey, to ensure that presuppositions were avoided;

(d) Four principles should govern the conduct of a survey, namely:

(i) Judges should normallly be involved in the design of the survey and be invited to comment on the survey instrument before its distribution;

(ii) The survey should 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;

(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 Department for International Development of the United Kingdom and the Centre for International Crime Prevention, 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, preferably within a period of six months and by a body specializing in survey analysis.

Focus group consultations

14. Mr. Odoki described the focus group consultations that had been conducted in Uganda by the Judicial Integrity Committee, 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 and police and prison officers. The objective of the exercise had been 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 those discussions, the Judicial Integrity Committee in May 2002 had proposed a plan of action for strengthening judicial integrity. The plan of action included several short-, medium- and long-term measures that the judiciary could undertake to address concerns regarding: (a) judicial conduct; (b) corruption in the judiciary; (c) delays in the disposal of cases; (d) lack of transparency of the judicial process; (e) execution of court process; and (f) administration of the estates of deceased persons. The Judicial Integrity Committee also proposed a revised code of judicial conduct based on the Bangalore draft. Mr. Odoki explained that the exercise had brought problems affecting the judiciary into the public domain and had proved more effective than questioning by an external investigator conducting a survey.

National workshop of stakeholders

15. Mr. Odoki described the national workshop of stakeholders held in Jinja, Uganda, from 15 to 17 December 2002 to examine the survey report. He presented the report of the workshop and its recommendations. He said that the workshop had amplified and refined the survey findings and, while also validating them, had made the report more concrete. The follow-up would be a conference of judges in January 2003.

Case audit

16. The coordinator informed the judicial group that a case audit would be carried out shortly in Sri Lanka in order to identify the stages in judicial proceedings at which inordinate delays occurred. A checklist had been prepared for that purpose.

V. Remedying systemic weaknesses

17. The judicial group examined systemic weaknesses identified in the three surveys of court users and other stakeholders. They noted that areas needing attention included:

(a) Lack of adequate training for judges;

(b) Delays and lethargy in the judicial system;

(c) Length of court proceedings;

(d) Lack of skill in the English language among some judges;

(e) The disappearance of court records;

(f) Prejudice;

(g) Inappropriate socializing of judges and lawyers;

(h) Variations in sentencing;

(i) Delays in delivering judgements;

(j) Expensive private legal service of documents;

(k) Unofficial payments required for various administrative activities inherent in the judicial process.

18. In response to the above, the members of the judicial group made the following recommendations:

(a) Given 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 owing 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 would be invited. In that 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 (law reports, appellate judgements, etc.) was different from the language of legal education, it was 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 that cause undue delay. Judicial officers should set up 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 judgements.) Where no legal requirements already existed, 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 computerization of court records. They should also introduce systems for the investigation of the loss and disappearance of court files. Where wrongdoing was suspected, they should ensure the investigation of the loss of files, which was always to be regarded as a serious fault. In the case of lost files, they should institute action to reconstruct the records and establish procedures to avoid such loss;

(d) Where they did 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;

(iii) By judicial education, including the introduction of a judicial handbook concerning sentencing standards and principles (such as 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) Recognizing the fundamental importance of access to justice in ensuring 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 might 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;

(iii) The provision of permission to appropriate non-qualified persons to represent parties before a court. Judges should take appropriate opportunities to emphasize 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, obtaining bail, provision of a certified copy of a judgement, 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 oversight officers and users' committees, together with appropriate systems of inspection to combat such informal payments;

(iii) The introduction of computerization of court records, including of the court hearing schedule;

(iv) The introduction of fixed time-limits to prescribe the legal steps that must be taken in the preparation of a case for hearing;

(v) The prompt and effective response by the court system to complaints by the public.

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.

19. It was generally agreed that the Bangalore principles and the above recommendations 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.

VI. Bangalore principles of judicial conduct

20. The Chairman presented the Bangalore principles of judicial conduct, which had been the outcome of the round-table meeting of chief justices held in The Hague in November 2002. Represented at that meeting were the judiciaries of Brazil, the Czech Republic, Egypt, France, Mexico, Mozambique, the Netherlands, Norway and the Philippines. Also participating were the judges of the International Court of Justice, from Brazil, Egypt, Germany, Hungary, Madagascar, Sierra Leone, the United Kingdom of Great Britain and Northern Ireland and the United States of America. The meeting was preceded by extensive consultations, undertaken with the cooperation of the Special Rapporteur, with judges from over 60 countries, including members of the Consultative Council of European Judges established by the Council of Europe and of the judiciaries of Central and Eastern European countries, as well as with judges from countries in Africa, Asia and the Pacific and the Caribbean. The Chairman described the discussions at the meeting.

21. Mr. Cumaraswamy informed the judicial group that the Bangalore principles (translated into the official languages of the United Nations) were annexed to his report to the Commission on Human Rights at its fifty-ninth session. He intended to urge the Commission to give careful consideration to the Bangalore principles and either to endorse or to take note of them. He noted that his report would shortly be posted on the United Nations web site and thus made accessible throughout the world. The judicial group welcomed that development. Meanwhile, it was suggested that discussions be held with receptive foreign ministries with a view to presenting the Bangalore principles for adoption by the General Assembly; and that the Bangalore principles be forwarded to the Commission on Crime Prevention and Criminal Justice with a view to securing a resolution requesting Member States to implement them. 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.

22. Mr. Sherif informed the meeting that the Chief Justice of Egypt would be presenting the Bangalore principles to the meeting in progress in Mauritius of the Arab Group of Constitutional Courts and Councils. Mr. 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 principles should be disseminated at forthcoming legal and judicial meetings, including the 13th Commonwealth Law Conference, to be held in Melbourne, Australia, in April 2003, the World Jurist Association, to be held in Sydney, Australia, in August 2003, and the 18th Biennial Conference of the Law Association for Asia and the Pacific, to be held in Tokyo in September 2003. Mr. Davide undertook to present them to the conference of Asian-Pacific chief justices to be held in Tokyo in September 2003.

23. 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 that connection, it was agreed that an appropriate letterhead for the judicial group should be prepared containing the names of its members, the address and contact information being that of the coordinator.

24. 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.

VII. Proposed code of conduct for judicial employees

25. The coordinator introduced 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 currently in operation in the United States.

26. The judicial group considered the draft code of conduct and suggested amendments, including a number proposed by Mr. Davide. The judicial group agreed that:

(a) The document should be reformulated as guidelines rather than as a code;

(b) The guidelines should contain a preamble explaining how the integrity of the conduct of court employees was related to the promotion of judicial integrity, which could not be the concern of judges only, but involved all those engaged in judicial proceedings;

(c) The 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;

(e) The draft guidelines should be considered at a future meeting of the judicial group, before which the group would invite the chief justices, the Special Rapporteur and other interested parties (including representatives of court employees) to propose amendments and additions.

VIII. Future meetings and activities of the judicial group

27. The judicial group considered a document entitled "A possible way forward" containing suggestions for intensifying the work of the group and widening its participation. The judicial group agreed that:

(a) Enquiries should be made to establish a web site on the Internet for the judicial group, which would serve, inter alia, as a documentation centre;

(b) Action should be taken to identify and exchange emerging best practice on judicial reform, including case management, sentencing guidelines and computerization of case records;

(c) Continuing education material for judges should 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 (e.g. judicial independence) should be further developed or updated;

(e) A manual on the judicial reform process should be developed, building on experience gained to date;

(f) The feasibility of institutionalizing the judicial group and establishing a secretariat should 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 the Department for International Development of the United Kingdom, the exploration of funding from the Utstein Group (Germany, Netherlands, Norway and United Kingdom) for the future activities of the judicial group was authorized;

(h) A fourth meeting of the judicial group should be convened, the date and venue of which and participation in which would be determined by the Chairman in consultation with the coordinator.

IX. Composition of the judicial group

28. At the invitation of the judicial group, Mr. Davide and Mr. Sherif agreed to serve as members of the judicial group. The judicial group noted the absence of Mr. Silva (Sri Lanka), who would be taken to have retired from the judicial group.

X. Closing of the meeting

29. 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 had

inaugurated the meeting; to the Minister for Foreign Affairs and the Minister for Constitutional Affairs 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 Sri Lanka.

Notes

[1] The first and second meetings of the judicial group were held in Vienna in April 2000 and in Bangalore, India, in February 2001. A round-table meeting of chief justices representing civil law and other legal systems was convened by the Chairman of the judicial group in The Hague in November 2002. 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 were the outcome of that meeting.

[2] Centre for Basic Research, "Final draft report on integrity in Uganda", November 2002; Marga Institute, "A system under siege: an inquiry into the judicial system of Sri Lanka", September 2002; and Nigerian Institute of Advanced Legal Studies, "Summaries of findings of surveys conducted in Lagos and Borno states", September 2002.