

## Report of the Second Meeting of the Judicial Group on Strengthening Judicial Integrity



Bangalore, February 2001

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Judicial Group on Strengthening Judicial Integrity  
Record of the Second Meeting \*/

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### **Abstract**

The following paper summarizes the discussions among participants in the Second Meeting of the Judicial Group on Strengthening Judicial Integrity, which took place in Bangalore, India from 24-26 February 2001. The meeting was particularly devoted to the draft Code of Judicial Conduct prepared by the Secretariat.

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## **1. INTRODUCTION**

### **1.1 Context**

In April 2000, under the framework of the United Nations Global Programme Against Corruption and in conjunction with the tenth United Nations Congress on the Prevention of Crime and Treatment of Offenders, a two day workshop for Chief Justices and other senior judges from eight Asian and African countries was convened in Vienna. The initiators of the Judicial Group were the United Nations Centre for International Crime Prevention and Transparency International. A second meeting of the Judicial Group took place in Bangalore, India between 24-26 February 2001. On this occasion, the meeting was facilitated by the Department for International Development (DFID), United Kingdom, and organized with the assistance of the High Court and the Government of Karnataka State, India, and supported by the United Nations High Commissioner for Human Rights (UNHCHR). The purposes of the meeting were:

- to continue the work of the Judicial Group begun in Vienna;
- to consider, and agree upon, the elements of a draft Code of Judicial Conduct;
- to investigate ways of authenticating this Code for use throughout the world to secure judicial accountability and promote judicial integrity;
- to consider methodologies for diagnosing systemic weaknesses, including corruption, in the judicial system; and
- to agree upon focus countries in which to undertake pilot programmes designed to strengthen judicial integrity.

### **1.2 Membership**

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 President of the Constitutional Court, Justice Pius Langa (South Africa); Chief Justice S N Silva (Sri Lanka); Chief Justice P V Reddi (Karnataka, India); Justice M R Chowdhury (Bangladesh); Chief Justice K P Upadhyaya (Nepal).

The rapporteur of the Group was Justice Michael Kirby (High Court of Australia). A specially invited participant at the meeting was Madame Justice Claire L'Heureux Dubé (Supreme Court of Canada and President of the International Commission of Jurists). The observers were the Hon P N Bhagwati (Vice-Chairman of the UN Human Rights Committee, representing UNHCHR); Dato' Param Cumaraswamy (UN Special Rapporteur on the Independence of the Judges and Lawyers); Justice Vishwanatha Shetty (High Court of Karnataka, India); Justice G C Bharuka (High Court of Karnataka, India); Hon A N Jayaram (Advocate-General, Karnataka, India). The

resource persons included Mr Jeremy Pope (Executive Director, Transparency International); Hon Y Bhaskar Rao (former Chief Justice of Karnataka, India); Mr David Wood (Deputy Chief Governance Adviser, DFID, UK); and Dr Nihal Jayawickrama (Coordinator, Programme on Strengthening Judicial Integrity).

### **1.3 Introduction**

The inaugural session of the Bangalore meeting took place at the Karnataka Judicial Academy, Bangalore. The participants were welcomed by Chief Justice P V Reddi. The inaugural address was given by Justice S P Bharucha (Supreme Court of India). He described the procedures and protocols observed in India for considering complaints against judges. He emphasised the importance of education of the public concerning judicial independence and the vital causes served by the judge. He favoured procedures for the disclosure of assets by judges and made suggestions for the consideration of the Judicial Group.

The presidential address was delivered by Judge Weeramantry. He placed the work of the group in the context of other developments of international law. He emphasised the universality of the expectation of judicial integrity. He explained that it was important to be alert not only to financial corruption but to intellectual corruption, given the choices which it falls to judges to make in the discharge of their judicial duties.

Dr Jayawickrama described the origins of the Judicial Group and the purposes of the meeting. He mentioned many initiatives which had been taken in Bangalore in the past and viewed the venue as propitious for the success of the second meeting.

## **2. DRAFT CODE OF JUDICIAL CONDUCT**

### **2.1 Secretariat draft**

Much of the second meeting was devoted to consideration of a draft Code of Judicial Conduct prepared by the Secretariat and considered by the participants. This draft was introduced by Dr Jayawickrama who described the way in which it had had been developed after study of codes of judicial conduct accepted by the judiciary in many countries in all parts of the world. The participants agreed to proceed by way of examination of the draft. They agreed to the reorganisation of some of the concepts and the addition of others.

### **2.2 Adoption of the Bangalore Draft**

By the conclusion of deliberations the Judicial Group adopted as a draft the draft Code of Judicial Conduct which is Annexure A to this record.



## **2.3 Explanatory note**

The participants agreed that Dr Jayawickrama would prepare an explanatory note to accompany the draft Code. This would set out the origins of the project and describe the way in which the Code had been developed by reference to operative codes adopted elsewhere. The Chief Justice of Nepal and the Chief Justice of Karnataka insisted, and the participants agreed, that the explanatory note would make it clear (as is in any case the law which judges would fully understand) that the judicial duty is to conform to any code of conduct which, by law or practice, is already in force in a judge's jurisdiction. The development and existence of an international code cannot relieve judges of their duties under municipal law to comply with currently operating codes of conduct applicable to their jurisdiction. Nevertheless, the present Code is designed:

- to spread the example of codes of judicial conduct to those jurisdictions which do not yet have them;
- to encourage deliberation amongst judges and others concerning the terms of the code and the improvement of codes of judicial conduct already in force; and
- to develop the broad principles appropriate to a code drawing on the best practice and precedents in many jurisdictions of the world.

## **3. IMPLEMENTATION**

### **3.1 Civil law jurisdictions**

The participants considered the way in which the project of the Judicial Group should be taken further. They recalled the deliberations at the first meeting at which it had been proposed that the draft Code, developed by judges from common law countries, should be scrutinized by judges of other legal traditions. Dato' Param Cumaraswamy emphasised the need to take the draft Code to other regions of the world. He indicated his own interest and that of the UN High Commissioner for Human Rights to promote the eventual adoption by the UN General Assembly of a duly authenticated international code of judicial conduct.

### **3.2 Institution of Chief Justices**

Justice L'Heureux Dubé mentioned the desirability of organising a body representative of Chief Justices from all countries around the world. She said that such a body could promote a draft international Code, test local codes by reference to the international draft, and speak on behalf of the judiciary when attacks occurred on judges and the judicial institutions anywhere in the world.

### **3.3 African Chief Justices Meeting**

Chief Justice Uwais (Nigeria) mentioned a meeting of African Chief Justices that would take place in September 2001 in Nigeria, supported by the World Bank. It was agreed that the Bangalore Draft should be available for distribution and discussion at that meeting. Judge Weeramantry offered to take the draft to the International Court of

Justice and to provide it to the judges of that Court who were interested in such themes. They in turn, might choose to pass it on to judicial authorities in their own countries.

### **3.4 Commonwealth Chief Justices Meeting**

Chief Justice Odoki (Uganda) reported that a meeting of Chief Justices of the Commonwealth in April 2001 was designated for Uganda. It was agreed that the Bangalore Draft should be distributed at that meeting.

### **3.5 The World Bank**

The Hon P N Bhagwati emphasised the importance of consulting judges of the civil law tradition, given that they sometimes approached issues of judicial organisation and conduct in ways different from the approach of common law. He indicated that he would bring the work of the Group and the Bangalore Draft to the notice of the International Advisory Council of the World Bank, upon which he served, concerned with matters of legal reform. The participants agreed to this.

### **3.6 Home Jurisdictions**

The participants also agreed that they would bring the work of the project to the notice of judicial and governmental authorities in their own jurisdictions, as appropriate. They agreed that it was important to promote consideration of the project, understanding of its objects and study of the Bangalore Draft with a view to its refinement, improvement and final adoption.

## **4. SURVEY INSTRUMENTS AND CASE AUDITS**

The participants agreed that the Secretariat should continue to develop the survey instruments proposed at the meeting. It was noted that trial implementation of such surveys in a number of jurisdictions would take place provided appropriate funding was forthcoming. The participants noted the offer of Chief Justice Silva (Sri Lanka), of Chief Justice Uwais (Nigeria) and Chief Justice Odoki (Uganda) to facilitate the administration of pilot studies for the implementation of the survey in their countries. It was agreed that the surveys would need to be carefully revised by the judges concerned to ensure that they were appropriate to their particular jurisdictions. It was to be emphasised that the conduct of the survey, and the priority given to particular jurisdictions, was not to be interpreted as indicating any special concern about the judicial institutions in those jurisdictions.

The participants agreed that the survey instruments and case audits should proceed with a view to reinforcing and supporting the efforts of the judiciary in the countries concerned, in their attempt to address the improvement of judicial standards and the effective implementation of codes of judicial conduct.

The participants noted that reports on the implementation of the survey instruments and case audits would be received at the third meeting of the Judicial Group.

## **5. EXISTING BEST PRACTICE**

The participants were briefed on existing practice observed in a number of jurisdictions. In particular, Chief Justice P V Reddi and his two colleagues, Justice Bharuka and Justice Vishwanatha Shetty, briefed the participants on two initiatives adopted in the Karnataka High Court, building upon those instituted by Chief Justice Bhaskar Rao, namely the use of information technology to refine the judicial process, and the structure and activities of the Karnataka Judicial Academy. The participants expressed their interest in the developments reported in Karnataka and elsewhere.

## **6. NEXT MEETING**

The participants noted with thanks the offer of Chief Justice Uwais to convene the third meeting of the Judicial Group in Nigeria. They agreed, in principle, that this meeting should be held in a country in which a pilot programme had been undertaken and completed. The Secretariat will liaise with the members of the Judicial Group concerning the timing of the third meeting.

## **7. THANKS**

On behalf of the participants, the President of the Judicial Group, Judge Weeramantry, expressed thanks to the Governor of Karnataka, Her Excellency Smt V S Rama Devi and for the official dinner given to the participants on 24 February 2001; to the Chief Justice and judges of the High Court of Karnataka for the official reception given to the participants on 25 February 2001. Thanks were also expressed to the Government of Karnataka, the Advocate General, the Director of the Judicial Academy, the Registrar-General and Senior Protocol Officer of the High Court of Karnataka, and others who had contributed to the success of the second meeting. The meeting closed at 5 p.m. on 26 February 2001.

## 8. ANNEX

### The Bangalore Principles of Judicial Conduct

*(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.