

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



Vienna, April 2000

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Judicial Integrity^{*/}

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Abstract

In April 2000, the Centre for International Crime Prevention, in collaboration with Transparency International, convened a workshop for chief justices and senior judges from eight Asian and African countries. The judicial group considered means by which to strengthen judicial integrity and effect judicial reform across legal systems. This paper overviews the recommendations made by the chief justices during the discussion underlining the need for an integrated and evidence based approach to the problem of judicial corruption.

Report of the First Meeting of the Judicial Group on Strengthening Judicial Integrity, held in Vienna on 15 and 16 April 2000*

I. Introduction

A. Context

1. Within the framework of the Global Programme against Corruption and in conjunction with the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Vienna in April 2000, the Centre for International Crime Prevention (CICP) of the United Nations Office for Drug Control and Crime Prevention (now known as the United Nations Office on Drugs and Crime), in collaboration with the non-governmental organization Transparency International, convened a meeting for chief justices and other senior judges from eight Asian and African States in Vienna on 15 and 16 April 2000.

2. The purpose of the meeting was to consider means of strengthening judicial institutions and procedures as part of strengthening the national integrity systems in the participating States and beyond. The object was to consider the design of a pilot project for judicial and enforcement reform to be implemented in relevant countries and also to provide a basis for discussion at subsequent meetings of the group and at other meetings of members of the judiciary from other countries, stimulated by the initiatives taken by the group.

B. Attendance

3. The Group was chaired by Christopher Weeramantry (former Vice-President of the International Court of Justice). The participants were Latifur Rahman (Chief Justice, Bangladesh), Y. Bhaskar Rao (Chief Justice, Karnataka State, India), M. L. Uwais (Chief Justice, Nigeria), F. L. Nyallali (former Chief Justice of the United Republic of Tanzania), B. J. Odoki (Chairman of the Judicial Service Commission of Uganda), Pius Langa (Vice-President of the Constitutional Court of South Africa) and Govind Bahadur Shrestha (Nepal). Apologies were received from Sarath Silva (Chief Justice, Sri Lanka). The rapporteurs were Michael Kirby (Judge of the High Court of Australia) and G. Di Gennaro (former President of the Supreme Court of Italy).

4. Observers attending the meeting included Param Kumaraswamy (Malaysia), Special Rapporteur on the independence of judges and lawyers, B. Ngcuka (Director of Public Prosecutions, South Africa), E. Markel (International Association of Judges, Austria) and R. Winter (Austria).

5. The coordinators of the meeting were Nihal Jayawickrama and Jeremy Pope (Transparency International, London) and Petter Langseth (CICP).

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C. Opening of the meeting

6. An address of welcome was delivered by the Executive Director of the United Nations Office for Drug Control and Crime Prevention, who emphasized the importance for the rule of law and for social and economic development of strengthening integrity in the judiciary of every State. In some parts of the world, extensive levels of corruption existed in the judiciary. It was therefore important to assist in the establishment of accountability and integrity so that judicial officers who were corrupt could be identified and removed from office and judicial officers of integrity could be supported. The role of the United Nations as a facilitator was emphasized. The difficulties of the project were not underestimated. The initiative of Transparency International, and its work, was acknowledged.

7. The opening statement of the meeting was delivered by the Officer-in-Charge of CICP, who outlined the initiatives of the Global Programme against Corruption. He emphasized that the participating judges had been chosen in their personal capacity. The involvement of judges in the group and subsequent activities of the Global Programme did not indicate a conclusion or suggestion that any of the States in which they served was specially affected by problems of judicial integrity. Instead, the participation of judges from a number of States would ensure consideration of a wide range of difficulties and solutions. The proceedings would be managed and controlled by the participating judges. The delicate task of ensuring accountability of judicial officers in a context of upholding judicial independence was fully recognized by all involved.

8. The representative of CICP outlined the activities of the Global Programme against Corruption. He cited initiatives taken in a number of countries to combat corruption in the judiciary and explained the studies undertaken in connection with the Global Programme, including national country assessments. He outlined the possible role of the United Nations and international and regional organizations in helping countries to strengthen judicial integrity and explained the possible future activities of similar judicial groups involving other countries with differing judicial traditions, including in Latin America, Eastern Europe and the countries of the former Union of Soviet Socialist Republics. Such activities would build on the initiatives of the present group, drawn from States sharing the judicial traditions of the common law.

9. A representative of Transparency International outlined the judicial integrity programme of that organization. He described the intergovernmental initiatives that had been taken both within the United Nations and elsewhere that were relevant to strengthening judicial integrity. These included the adoption by the General Assembly in its resolution 51/191 of 16 December 1996 of the United Nations Declaration against Corruption and Bribery in International Commercial Transactions; the Inter-American Convention against Corruption, adopted by the Organization of American States in 1996;¹ the resolution of 1999 of the Heads of Government of the Commonwealth of Nations concerning the promotion of good governance and the elimination of corruption; the recent initiatives of the Asian Development Bank, the International Monetary Fund and the World Bank to strengthen governance; and the coming into force in February 1999 of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 1997 of the Organization for Economic Cooperation and

Development, supplemented by the laws of member States designed to give effect to that Convention. A representative of Transparency International emphasized that effective strategies would require initiatives at the national level but that principles could be offered by an international group that could provide guidance and stimulus to initiatives at the local level.

10. The Chairman stressed the sensitivity of proposals involving the judiciary because of the need to protect the judicial institution and its members from inappropriate external interference. He acknowledged that corruption in public life manifested itself in various forms and was not limited to bribery. He and the rapporteurs provided summaries during the discussion by the group of the items contained on the draft agenda adopted by it. The present report is based upon those summaries.

D. Issues

11. The following issues were considered by the group:
- (a) Public perception of the judicial system;
 - (b) Indicators of corruption in the judicial system;
 - (c) Causes of corruption in the judicial system;
 - (d) Developing a concept of judicial accountability;
 - (e) Remedial action;
 - (f) Designing a process to develop plans of action at the national level.

E. Distribution

12. The group agreed to make the results of its deliberations available to relevant international bodies (such as the Centre for the Independence of Judges and Lawyers, the International Association of Judges, the International Association of Prosecutors, the International Bar Association and the International Commission of Jurists). The group had before it a number of publications of such bodies, including the recent report of the Centre for the Independence of Judges and Lawyers within the International Commission of Jurists, entitled *Policy Framework for Preventing and Eliminating Corruption and Ensuring the Impartiality of the Judicial System*; and the Standards for the Independence of the Legal Profession adopted by the International Bar Association in 1990. The group was also provided with numerous reports of other relevant international bodies, including the draft working paper of the United Nations expert group meeting held in Vienna in April 2000 on implementation tools for the Global Programme against Corruption.

13. The group agreed to authorize, as appropriate, the distribution of the present report to national bodies concerned with the strengthening of the judicial institution, such as national judicial service commissions, national associations of judges, bar associations, law societies and other similar bodies.

II. Recommendations

A. Recommendations for action

14. The group resolved to note the suggestions made by members during its discussion. Those recommendations included the following:

(a) *Addressing systemic causes of corruption: data collection.* There is a need for the collection and national and international exchange of information concerning the scope and variety of forms of corruption within the judiciary. There is also a need to establish a mechanism to assemble and record such data and to make it widely available, in an appropriate format, for research, analysis and response. In the context of the Global Programme against Corruption and initiatives for crime prevention, the establishment of such an international database, in an appropriate format, should be a high priority;

(b) *Remuneration.* There is a need to improve the low salaries paid in many countries to judicial officers and court staff. Where it exists, there is a need to abolish the traditional system of paying “tips” to court staff on the filing of documents and the replacement of such salary supplements by conventional remuneration;

(c) *Monitoring.* There is a need to establish in every jurisdiction an institution, independent of the judiciary itself, to receive, investigate and determine complaints of corruption allegedly involving judicial officers and court staff. Such an institution should include serving and past judges. It should possibly have a wider mandate and, where appropriate, be included in a body having more general responsibility for judicial appointments, education and action or recommendation for removal from office;

(d) *Judicial appointments.* There is a need to institute more transparent procedures for judicial appointments to combat the reality or perception of corruption in judicial appointments (including nepotism or politicization) and in order to expose candidates for appointment, in an appropriate way, to examination concerning allegations or suspicion of past involvement in corruption;

(e) *Codes of conduct.* There is a need for the adoption of judicial codes of conduct, for the inclusion of instruction in such codes in the education of new judicial officers and for information to the public about the existence and provision of such codes against which the conduct of judicial officers may be measured;

(f) *Adherence.* There is a need to enhance requirements for newly appointed judicial officers formally to subscribe to such a judicial code of conduct and to agree, in the case of proved and serious breach of the requirements of such a code, to resign from judicial or related office;

(g) *Delay.* There is a need for the adoption in such a code and in practical administration of publicly available standards for the timely delivery of judicial decisions and for appropriate mechanisms to ensure that such standards are observed;

(h) *Assignment.* There is a need for the adoption of a transparent and publicly known (and possibly random) procedure for the assignment of cases to

particular judicial officers to combat the reality or perception of litigant control over the decision maker;

(i) *Sentencing guidelines.* There is a possible need for the adoption of sentencing guidelines or other means to identify clearly criminal sentences and other decisions that are so exceptional as to give rise to reasonable suspicions of partiality;

(j) *Case loads.* There is a need for attention to excessive case loads for individual judicial officers and the maintenance of job interest and satisfaction within the judiciary;

(k) *Public knowledge.* There is a need to improve the explanation to the public of the work of the judiciary and its importance, including the importance of maintaining high standards of integrity. The adoption of initiatives such as national law days or law weeks should be considered;

(l) *Civil society.* There is a need to recognize that the judiciary operates within the society of the State it serves and that it is essential to adopt every available means of strengthening the civil society of each State as a means of reinforcing the integrity of the judiciary and the vigilance of the society that such integrity is maintained. To combat departures from integrity and to address the systemic causes of corruption, it is essential to have in place means of monitoring and auditing judicial performance and of the handling of complaints about departures from high standards of integrity in the judiciary;

Initiatives internal to the judiciary

(m) *Plan of action.* A national plan of action to combat corruption in the judiciary should be adopted;

(n) *Participation of judiciary.* The judiciary must be involved in such a plan of action;

(o) *Seminars.* Workshops and seminars for the judiciary should be conducted to consider ethical issues, to combat corruption in the ranks of the judiciary and to heighten vigilance by the judiciary against all forms of corruption;

(p) *Computerization of records.* Practical measures should be adopted, such as computerization of court files, in order to avoid the reality or appearance that court files are “lost” to require “fees” for their retrieval or substitution. In that respect, modern technology should be utilized by the judiciary to improve efficiency and to redress corruption;

(q) *Direct access.* Systems of direct access should be implemented to permit litigants to receive advice directly from court officials concerning the status of their cases awaiting hearing;

(r) *Peer pressure.* Opportunities for proper peer pressure to be brought to bear on judicial officers should be enhanced in order to help maintain high standards of probity within the judiciary;

(s) *Declaration of assets.* Rigorous obligations should be adopted to require all judicial officers to declare publicly the assets of the judicial officer concerned and of his or her parents, spouse, children and other close family members. Such

publicly available declarations should be regularly updated. They should be inspected after appointment and monitored from time to time by an independent and respected official;

(t) *Judges' associations.* Associations of judges and equivalent bodies should be involved in the setting of standards for the integrity of the judiciary and in helping to rule on best practices and to report upon the handling of complaints against errant judicial officers and court staff;

(u) *Internal procedures.* Internal procedures should be adopted within court systems, as appropriate, to ensure regular change of the assignment of judges to different districts having regard to appropriate factors, including the gender, race, tribe, religion, minority involvement and other features of the judicial office-holder. Such rotation should be adopted to avoid the appearance of partiality;

(v) *Law of bias.* Judicial officers in their initial education and thereafter should be regularly assisted with instruction in binding decisions concerning the law of judicial bias (real and apparent) and judicial obligations to disqualify oneself for real or perceived partiality;

(w) *Judges' journal.* A judges' journal should, if it does not already exist, be established and it should contain practical information on all of the foregoing topics relevant to enhancing the integrity of the judiciary;

Initiatives external to the judiciary

(x) *Media.* The role of the independent media as a vigilant and informed guardian against corruptibility in the judiciary should be recognized, enhanced and strengthened by the support of the judiciary itself;

(y) *Media liaison.* Courts should be afforded the means to appoint and should appoint media liaison officers to explain to the public the importance of integrity in the judicial institution, the procedures available for complaints concerning and investigation of corruption and the outcome of any such investigations. Such officers should help to remove the causes of misunderstanding of the judicial role and function, such as can occur (e.g. in a case involving an ex parte proceeding);

(z) *Inspectorate.* An inspectorate or equivalent independent guardian should be established to visit all judicial districts regularly in order to inspect and report upon any systems or procedures that are observed that may call into question the reality or appearance of probity and also to report upon complaints of corruption or the perception of corruption in the judiciary;

(aa) *National training centres.* National training centres should be established for the education and training of officers involved in inspecting courts in relation to allegations of corruption. Such training centres should include the participation of judicial officers themselves at every level so as to ensure that the inspectorate is aware of the functions and requirements of the judiciary, including the importance of respecting and maintaining judicial independence;

(bb) *Alternative resolution.* Systems of alternative dispute resolution should be developed and made available to ensure the existence of alternative means to

avoid, where they exist, real or suspected corruption in the judicial branch of government;

(cc) *Bar associations.* The role and functions of bar associations and law societies in combating corruption in the judiciary should be acknowledged. Such bodies have an obligation to report to the appropriate authorities instances of corruption that are reasonably suspected. They also have the obligation to explain to clients and the public the principles and procedures for handling complaints against judicial officers. Such bodies also have a duty to institute effective means to discipline members of the legal profession who are alleged to have been engaged in corruption of the judicial branch;

(dd) *Disbarment.* In the event of proof of the involvement of a member of the legal profession in corruption whether of a judicial officer or of court staff or of each other, in relation to activities as a member of the legal profession, appropriate means should be in place for investigation and, where proved, disbarment of the persons concerned;

(ee) *Prosecutors.* The role of public prosecutors in the investigation of allegations of judicial corruption should be acknowledged and appropriate training should be available to such officers;

(ff) *Judicial administrators.* The proper function of judicial administrators to establish systems that help to combat the possibility or appearance of judicial corruption should be acknowledged. Appropriate training for such administrators in that respect should be available;

(gg) *Involving others.* Procedures that are put in place for the investigation of allegations of judicial corruption should be designed after due consideration of the viewpoint of judicial officers, court staff, the legal profession, users of the legal system and the public. Appropriate provisions for due process in the case of a judicial officer under investigation should be established bearing in mind the vulnerability of judicial officers to false and malicious allegations of corruption by disappointed litigants and others;

(hh) *Criminal law.* It should be acknowledged that judges, like other citizens, are subject to the criminal law. They have, and should have, no immunity from obedience to the general law. Where reasonable cause exists to warrant investigation by police and other public bodies of suspected criminal offences on the part of judicial officers and court staff, such investigations should take their ordinary course, according to law.

15. The listing by the members of the group of the above suggestions does not signify that all of them will be appropriate in every country represented in the group. In some cases, the initiatives mentioned have already been taken and appropriate laws, procedures and institutions are in place. However, the group agreed that its recommendations should be recorded and noted as a basis for future practical programmes designed to enhance integrity in the judicial branch of government.

B. Action by the Global Programme against Corruption

16. The group resolved to request the Global Programme against Corruption:

(a) To make recommendations concerning the collection of data relevant to enhancing judicial integrity and relevant to surveys about allegations of judicial and other official corruption in particular countries;

(b) To collect initiatives and strategies that have already been taken to combat corruption in the judiciary and related offices;

(c) To post that information on the Internet and to ensure that it is widely published and known to the judiciary and others.

1. Judicial codes

17. The group agreed to request the Global Programme against Corruption to analyse the judicial codes of conduct that had been adopted in a number of jurisdictions and, within six months, to report to the group concerning:

(a) The core considerations that recur in such judicial codes of conduct;

(b) The optional or additional considerations that occur in some, but not all, such codes and that may or may not be suitable for adoption in particular States.

2. National involvement

18. The group agreed to note that the judicial participants in the group would inform the judiciary in their respective countries of the establishment of the group, of its work at its first meeting and of its future programme. They would consult with appropriate ministries, institutions, the bar, law society and other organizations having a concern in strengthening the integrity of the judiciary.

3. Other countries

19. The members of the group recommended to the Global Programme against Corruption that a parallel programme be instituted in relation to civil law countries having differing systems of law and judicial organization. The group recommended that eventually there should be liaison between other groups dealing with countries of differing judicial tradition and the present group with a view to deriving principles common to all groups for adoption at the international level in recognition of the universal importance of strengthening the integrity of the judiciary.

4. Future contact

20. The group recommended that regular contact be established between the participants, observers and coordinators involved in the group and agreed to share information on action programmes and experience. They recommended that the group accept the invitation of the Chief Justice of Karnataka State, India, Y. B. Rao, that the second meeting of the group take place in Bangalore, India, on 18 and 19 December 2000.

Notes

¹ E/1996/99, annex.
