

**UNITED NATIONS OFFICE FOR DRUG CONTROL AND CRIME PREVENTION
CENTRE FOR INTERNATIONAL CRIME PREVENTION (CICP)
GLOBAL PROGRAMME AGAINST CORRUPTION**

JUDICIAL GROUP ON STRENGTHENING JUDICIAL INTEGRITY

RECORD OF THE FIRST MEETING

VIENNA

15-16 APRIL 2000

I INTRODUCTION

1.1 Context

Under the Framework of the Global Programme Against Corruption and in conjunction with the 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Vienna, Austria in April 2000, the United Nations Centre for International Crime Prevention (CICP), in collaboration with Transparency International, convened a two day preparatory meeting of Chief Justices and other senior judges from eight Asian and African countries. The meeting took place in Vienna on 15 and 16 April 2000. 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 countries and beyond. The object was to consider the design of a pilot project for judicial and enforcement reform to be implemented in relevant countries. The purpose was 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.

1.2 Membership

The Group was chaired by HE Judge Christopher Weeramantry (former Vice-President of the International Court of Justice). The participants were: Chief Justice Latifur Rahman (Bangladesh); Chief Justice Y Bhaskar Rao (Karnataka State, India); Chief Justice M L Uwais (Nigeria); The Hon F L Nyallali (former Chief Justice of Tanzania); Justice B J Odoki (Chairman of the Judicial Service Commission of Uganda); Justice Pius Langa (Vice-President of the Constitutional Court of South Africa); and Justice Govind Bahadur Shrestha (Nepal). Apologies were received from Chief Justice Sarath Silva (Sri Lanka). The rapporteurs of the Group were Justice Michael Kirby (Judge of the High Court of Australia) and Dr G di Gennaro (former President of the Supreme Court of Italy). Observers attending the meeting included Dato' Param Cumaraswamy (Malaysia: UN Special Rapporteur on the Independence of Judges and Lawyers); Mr B Ngcuka (DPP, South Africa); Dr E Markel (International Association of Judges, Austria); and Judge R Winter (Austria). The Co-ordinators of the meeting were Dr Nihal Jayawickrama and Mr Jeremy Pope (Transparency International, London), and Dr Petter Langseth (CICP, United Nations).

1.3 Introduction

An address of welcome was delivered by Professor Pino Arlacchi (Under Secretary-General and Executive Director of the United Nations Office for Drug Control and Crime Prevention, Vienna). He emphasised the importance for the rule of law and for social and economic development of strengthening integrity in the judiciary of every country. 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 emphasised. The difficulties of the project were not under-estimated. The initiative of Transparency International, and its work, was acknowledged.

1.4 *The Opening Statement*

The opening statement of the workshop was delivered by Mr Jan van Dijk (Officer-in-Charge of the Centre for International Crime Prevention in the United Nations Office for Drug Control and Crime Prevention, Vienna). Mr van Dijk outlined the initiatives of the Global Programme Against Corruption. He emphasised that the participating judges were 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 countries in which they served was specially affected by problems of judicial integrity. Instead, the participation of judges from a number of countries 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 recognised by all involved.

1.5 *Activities of the Global Programme Against Corruption*

Dr Petter Langseth outlined the activities of the Global Programme Against Corruption. He instanced initiatives taken in a number of countries to combat corruption in the judiciary. He explained the studies undertaken in connection with the Programme, including national country assessments. He outlined the possible role of the United Nations and international and regional organisations in helping countries to strengthen judicial integrity. He 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 Soviet Union. Such activities would build on the initiatives of the present Group, drawn from countries sharing the judicial traditions of the common law.

1.6 *The Judicial Integrity Programme*

Dr Nihal Jayawickrama outlined the Judicial Integrity Programme. He described the inter-governmental initiatives that had been taken both within the United Nations and elsewhere, relevant to strengthening judicial integrity. These include the adoption in 1975 by the General Assembly of the United Nations of the UN Declaration Against Corruption and Bribery in International Commercial Transactions (Resolution 3514(xxx) 15 December 1975); the Inter-American Convention Against Corruption (1996); the resolution of the Heads of Government of the Commonwealth of Nations (1999) concerning the Promotion of Good Governance and the Elimination of Corruption; the recent initiatives of the World Bank, the International Monetary Fund and the Asian Development Bank to strengthen governance; and the coming into force in February 1999 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions supplemented by the laws of member states designed to give effect to this Convention.

Mr Jeremy Pope emphasised that effective strategies would require initiatives at the national level but that principles could be offered by an international group which could provide guidance and stimulus to initiatives at the local level.

1.7 Summary of Discussions

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 which the Group adopted. This record is based upon those summaries.

1.8 Issues

The following issues were considered by the Group, namely:

- Public perception of the judicial system.
- Indicators of corruption in the judicial system.
- Causes of corruption in the judicial system.
- Developing a concept of judicial accountability.
- Remedial action.
- Designing a process to develop plans of action at the national level.

1.9 Distribution

The Group agreed to make the results of its deliberations available to relevant international bodies (such as the International Commission of Jurists; Centre for the Independence of Judges and Lawyers; the International Bar Association; the International Association of Judges; the International Association of Prosecutors etc). 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, 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 (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.

1.10 Authorisation of the Distribution of this Record

The Group agreed, as appropriate, to authorise the distribution of this record to national bodies with concern about the strengthening of the judicial institution, such as National

Judicial Service Commissions, National Associations of Judges, Bar Associations, Law Societies and other like bodies.

II RECOMMENDATIONS

2.1 *Suggestions for Action*

The Group resolved to note the suggestions made by members during discussion. Those suggestions included the following:

2.1.1 Addressing Systemic Causes of Corruption

(1) *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 a need to establish a mechanism to assemble and record such data and, in appropriate format, to make it widely available for research, analysis and response. In the context of the UN Global Programme Against Corruption and in initiatives for crime prevention, the establishment of an international data base of this kind, in appropriate format, should be a high priority.

(2) *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.

(3) *Monitor:* There is a need to establish in every jurisdiction an institution, independent of the judicature 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 a more general responsibility for judicial appointments, education and action or recommendation for removal from office.

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

(5) *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.

- (6) *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 breach in a serious respect of the requirements of such code, to resign from judicial or related office.
- (7) *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.
- (8) *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 actuality or perception of litigant control over the decision-maker.
- (9) *Sentencing Guidelines*: There is a possible need for the adoption of sentencing guidelines or other means to identify clearly criminal sentences and other decisions which are so exceptional as to give rise to reasonable suspicions of partiality.
- (10) *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.
- (11) *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 a National Law Day or Law Week should be considered.
- (12) *Civil Society*: There is a need to recognise that the judiciary operates within the society of the nation it serves and that it is essential to adopt every available means of strengthening the civil society of each country 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.

2.1.2 Initiatives Internal to the Judiciary

- (13) *Plan of Action*: A national plan of action to combat corruption in the judiciary should be adopted.
- (14) *Participation of Judiciary*: The judiciary must be involved in such a plan of action.
- (15) *Seminars*: Workshops and seminars for the judiciary should be conducted to consider ethical issues and to combat corruption in the ranks of the judiciary and to heighten vigilance by the judiciary against all forms of corruption.
- (16) *Computerisation of Records*: Practical measures should be adopted, such as computerisation 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 this respect, modern technology should be utilised by the judiciary to improve efficiency and to redress corruption.

(17) *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.

(18) *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.

(19) *Declaration of Assets*: Rigorous obligations should be adopted to require all judicial officers publicly to declare the assets of the judicial officer concerned and of 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.

(20) *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.

(21) *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.

(22) *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 (actual and apparent) and judicial obligations to disqualify oneself for actual or perceived partiality.

(23) *Judges' Journal*: A judge's journal should, if it does not already exist, be instituted and it should contain practical information on all of the foregoing topics relevant to enhancing the integrity of the judiciary.

2.1.3 Initiatives External to the Judiciary

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

(25) *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 complaint 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).

(26) *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 which may endanger the actuality or appearance of probity and also to report upon complaints of corruption or the perception of corruption in the judiciary.

(27) *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.

(28) *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, actual or suspected corruption in the judicial branch of government.

(29) *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 which 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.

(30) *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.

(31) *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.

(32) *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 this respect should be available.

(33) *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.

(34) *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.

2.1.4 A Basis for Future Practical Programmes

The notation 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 the foregoing suggestions should be recorded and noted as a basis for future practical programmes designed to enhance integrity in the judicial branch of government.

2.2 Action by Global Programme

The Group resolved to request the Global Programme Against Corruption to:

- (1) 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;
- (2) Collect initiatives and strategies which have already been taken to combat corruption in the judiciary and related offices; and to
- (3) Post the foregoing on the Internet and to ensure that they are widely published and known to the judiciary and others.

2.3 Judicial Code

The Group agreed to request the Global Programme Against Corruption to analyse the Judicial Codes of Conduct which have been adopted in a number of jurisdictions and, within six months, to report to the Group concerning:

- (1) The core considerations which recur in such Judicial Codes of Conduct; and
- (2) The optional or additional considerations which occur in some, but not all, such Codes and which may or may not be suitable for adoption in particular countries.

2.4 National Involvement

The Group agreed to note that the judicial participants in the Group will inform the judiciary in their home countries of the establishment of the Group, of its work at its first meeting and of its future programme. They will consult with appropriate ministries, institutions, the Bar,

Law Society and other organisations having a concern in strengthening the integrity of the judiciary.

2.5 *Other Countries*

The members of the Group recommended to the Global Programme Against Corruption that a parallel programme should be instituted in relation to civil law countries having differing systems of law and judicial organisation. The Group recommended that eventually there should be liaison between other groups dealing with countries of differing judicial tradition and this 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.

2.6 *Future Contact*

The Group recommended that regular contact be established between the participants, observers and co-ordinators involved in the Group, and agreed to share information on action programmes and experiences. They recommended that the Group accept the invitation of the Chief Justice of Karnataka State, India (Chief Justice Y B Rao) that the second meeting of the Group should take place in Bangalore, India on 18-19 December 2000.

Annextures

- A: List of Participants
- B: Provisional Agenda
- C: Opening Statement
- D: The Judicial Integrity Programme
- E: Discussion Paper

**PREPARATORY MEETING OF CHIEF JUSTICES ON
STRENGTHENING JUDICIAL INTEGRITY**

**April 15 and 16, 2000
Austria Centre, Vienna.
Ground Floor, Room OE 2440**

LIST OF PARTICIPANTS

Chairperson

H. E. Judge Christopher Weeramantry
Former Vice-President of the International Court of Justice
17C Van Stolkweg, JM 2565
The Hague, Netherlands

Facilitator/Rapporteur

The Hon. Justice Michael Kirby
Judge of the High Court of Australia
PO Box E435, Kingston ACT 2604
Australia

Dr. Giuseppe di Gennaro
Ufficio del Consulente per l' Assistenza
All ` Albania (Stanza 346)
Largo Luigi Daga no. 2
I-00164 Rome, Italy

Participants

The Hon. Latifur Rahman
Chief Justice of Bangladesh
High Court of Bangladesh
Dacca, Bangladesh

The Hon. Y. Bhaskar Rao
Chief Justice of Karnataka

High Court of Karnataka
"Shanthi Gruha", 1 Palace Road
Bangalore, 560 001, India

Hon. Justice Govind Bahadur Shrestha
Supreme Court of Nepal
Ramshah Path
Kathmandu, Nepal

The Hon. M. L. Uwais
Chief Justice of Nigeria
Supreme Court of Nigeria
PMB 308, Abuja, Nigeria

The Hon. F. L. Nyalali
Former Chief Justice of Tanzania
P.O.Box 23331
Dar-es-Salaam, Tanzania

The Hon. B. J. Odoki
Chairman of the Judicial Service Commission
Supreme Court of Uganda
P.O. Box 7679
Kampala, Uganda

The Hon. Mr Justice Pius Langa
Vice-President of the Constitutional Court of South Africa
2nd Floor, Forum II, Braampark
33 Hoofd Street Braamfontein
South Africa

Observers

Dato Param Kumaraswamy
United Nations Special Rapporteur on the Independence of Judges and Lawyers
Level 16, Wisma Tun Sambanthan
Jalan Sulaiman
50000 Kuala Lumpur, Malaysia

Mr. Bulelani Ngcuka
National Director of Public Prosecutions
Maizeboard Building
503 Belvedere Street
Arcadia 0007, Pretoria, South Africa

Dr. Ernst Markel
Vice-President of the International Association of Judges
Presiding Justice, Supreme Court of Austria
Justizpalast, A-1016 Vienna, Austria

Judge Renate Winter
Centre for International Crime Prevention
P.O. Box 500, A-1400 Vienna, Austria

Ms. Anna Alvazzi Del Frate
Research Officer
United Nations International Crime and Criminal Justice Research Institute (UNICRI)
Viale Maestri del Lavoro 10
10127 Turin, Italy

Co-ordinators

Dr. Nihal Jayawickrama, Executive Director
Transparency International Secretariat (London Office)
Unit 6, 16-18 Empress Place
London SW6 1TT, United Kingdom

Mr. Jeremy Pope, Executive Director
Transparency International Secretariat (London Office)
Unit 6, 16-18 Empress Place
London SW6 1TT, United Kingdom

Dr. Petter Langseth
Programme Manager
Global Programme against Corruption
Centre for International Crime Prevention
P.O. Box 500, A-1400 Vienna, Austria

United Nations Centre for International Crime Prevention
Global Programme Against Corruption
In collaboration with Transparency International

**PREPARATORY MEETING OF CHIEF JUSTICES ON
STRENGTHENING JUDICIAL INTEGRITY**

**April 15 and 16, 2000
9.00 a.m.
Austria Centre, Ground Floor, Room OE 2440**

PROVISIONAL AGENDA

1. ADDRESS OF WELCOME
Professor Pino Arlacchi
Under Secretary-General and Executive Director,
United Nations Office for Drug Control and Crime Prevention, Vienna.
2. OPENING STATEMENT
Jan van Dijk
Officer-in-Charge, Centre for International Crime Prevention,
United Nations Office for Drug Control and Crime Prevention, Vienna.
3. THE GLOBAL PROGRAMME AGAINST CORRUPTION
Dr Petter Langseth
Programme Manager, Global Programme Against Corruption,
Centre for International Crime Prevention, Vienna.
4. THE JUDICIAL INTEGRITY PROGRAMME
Dr Nihal Jayawickrama
Executive Director
Transparency International, London.
5. OBJECTIVES AND GROUND RULES FOR THE MEETING
Jeremy Pope
Executive Director,
Transparency International, London
6. ADOPTION OF THE AGENDA

Item 1: PUBLIC PERCEPTIONS OF THE JUDICIAL SYSTEM

Item 2: INDICATORS OF CORRUPTION IN THE JUDICIAL SYSTEM

- Item 3: CAUSES OF CORRUPTION IN THE JUDICIAL SYSTEM
- Item 4: DEVELOPING A CONCEPT OF JUDICIAL ACCOUNTSIBILITY
- Item 4: REMEDIAL ACTION
- Item 5: DESIGNING A PROCESS TO DEVELOP PLANS OF ACTION AT THE NATIONAL LEVEL
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EXPECTATIONS

1. THAT there will be general agreement that judicial integrity and public confidence in the judiciary are central to the maintenance of the rule of law.
2. THAT there will be general agreement that the judiciary has a constructive role to play in asserting and protecting its integrity and the integrity of the processes over which they preside.
3. THAT eternal vigilance is required to build and sustain a credible judiciary of integrity and high public standing.
4. THAT in working at the national level it is advantageous to be able to draw on the support and experience of like-minded colleagues in other jurisdictions.
5. THAT the participants will wish to explore practical ways in which to address integrity issues in their own systems and devise approaches suitable for adaptation and implementation in their own countries, and to develop a framework for continuing co-operation

GROUND RULES

1. This meeting is essentially a meeting of Chief Justices and other senior serving and retired Justices, and only Judges may ordinarily speak. Others may do so only on the invitation of the Chair.
2. The Plan of Action will be one which the Chief Justices agree among themselves to adopt and implement. The UN/CICP and TI will assist to the extent that their assistance is sought by the national judiciary.

**PREPARATORY MEETING OF CHIEF JUSTICES ON
STRENGTHENING JUDICIAL INTEGRITY**

15 April 2000

9.00 a.m.

Austria Centre, Ground Floor, Room OE 2440

OPENING STATEMENT

PROFESSOR PINO ARLACCHI

Under Secretary General and Executive Director
United Nations
Office for Drug Control and Crime Prevention.

Honourable Chief Justices, Ladies and Gentlemen,

May I first welcome you all to Vienna.

The Rule of Law, we can all at once agree, occupies a central place in the systems under which we are governed. It underwrites and guarantees our human rights, our personal security and our societies' processes of social and economic development. It also ensures that governments govern not merely by law, but under law. Without judicial accountability, just and honest government is unattainable.

And at the heart of the Rule of Law lies an independent judiciary of integrity.

However, opinion polls record a belief amongst the public at large that their judiciaries lack integrity. This may be the result of actions by court officials, by individual lawyers, or by members of the judiciary. We can argue about figures and details, but the big picture is, inescapable. The sad state of affairs today is that the public feels betrayed. They have no avenues through which to complain, and no expectation of remedial action being taken if they do.

As a result, the temptation for governments to intervene has, in some countries, been overwhelming. Some have dismissed entire judiciaries; others have required their judges to sit examinations and be screened for competence. These actions may have been unavoidable, but at the same time they have created precedents for governments to interfere with the judiciary in ways which may have helped restore their integrity but will, almost certainly, have undermined their independence. In doing so, the Rule of Law itself is eroded.

The situation would be worrying enough were it to end here. However, throughout the world, governments are struggling with an epidemic of corruption, and in any successful strategy to contain and combat corruption, an effective and reliable court system is essential. Fighting corruption wherever it is occurring means, among other things, the enforcement of laws. Where the courts themselves have fallen victim to the plague, any anticorruption campaign is placed gravely at risk. Thus, corruption in the judiciary can poison the integrity of all our institutions.

Never has the integrity of the courts been more important for the well-being of societies than it is today.

Until now, the preoccupation both at the international and at the national levels has been on endeavouring to secure the independence of the judiciary through constitutional provisions. The dialogue has avoided the more practical questions of also ensuring the accountability of individual judges, or of meeting the challenge of developing methodologies to sustain a judicial service of integrity.

Constitutional provisions rightly focus on the protection of the independence of judges by guaranteeing security of tenure, their non-removal except for proven misbehaviour or incapacity, the non-reduction of their salaries, and by offering them appropriate immunity from civil or criminal process.

There is no doubt that this independence is crucial to protect judges from undue influence while handling cases involving senior public servants and politicians. However little has been done to ensure the equally important issue of their accountability in ways which ensure that judges who act corruptly are identified and removed from office, without intruding on judicial independence. Clearly training courses for judges are important, but simply lecturing adults on the virtues of honesty has its limits. Integrity is a way of life, and it has to be lived.

Bilateral and multilateral donor agencies have been active in building the capacity of courts and providing necessary equipment, yet they have been hesitant when it comes to addressing the key issue of integrity. Regardless of the various donor-driven reform initiatives to increase the number of courts, improve their equipment and raise the salaries of judges and magistrates, in the public perception at least the judiciary remains as untrustworthy and as corrupt as ever. They have focused on capacity. It is important that we start to focus on integrity too.

There are, of course, matters which may be beyond your reach. If political considerations are driving appointments – and we can all, I am sure, agree they should not – then judicial systems have to contain the consequences. If those appointees are acting corruptly, they must be identified and removed in accordance with constitutional procedures. It is of over-riding importance that the judiciary defend its own integrity effectively, minimising any call for outside interference and building public confidence by creating a framework for judicial accountability.

I want to assure you that we have a lively awareness that nothing a governmental or inter-governmental institution does, should even be capable of being seen as undermining the independence of the judiciary. It is a core value of national integrity systems which we not only respect but work to realise. This is why, in convening this meeting, we have decided that the appropriate role for us to adopt is that of facilitator. Your proceedings should be wholly conducted and owned by yourselves.

It is in this spirit that you have come here today to discuss practicalities. Theoretical models are not on your agenda, but what you can actually do to strengthen the integrity, and to increase the trust of the public, within the judiciary.

This is an immensely difficult task. You will have to find the right measures that will on the one hand respect the independence of the judiciary, and on the other hand ensure increased accountability, transparency and integrity.

I am proud, too, that these ground-breaking consultations should be taking place at this venue, and I am honoured to associate our institution with what I believe may come to be seen as an historic initiative. I am pleased, too, that this undertaking should be carried out with Transparency International, a non-governmental organization that most of you know and respect for its work to achieve anti-corruption reforms.

I wish you all the best for a constructive and fruitful two days meeting and I follow your conclusions and the actions that result with the keenest interest.

**PREPARATORY MEETING OF CHIEF JUSTICES ON
STRENGTHENING JUDICIAL INTEGRITY**

15 April 2000

9.00 a.m.

Austria Centre, Ground Floor, Room OE 2440

The Judicial Integrity Programme

Nihal Jayawickrama

Executive Director

Transparency International.

Professor Arlacchi, Mr Jan van Dijk, Honourable Judges, Ladies and Gentlemen,

The project on strengthening judicial integrity was conceived by Transparency International but is now being carried and will, hopefully, be delivered, by UN/CICP. It was the major component of a larger project on formulating anti-corruption strategies consistent with the rule of law and respect for human rights. Two factors led to its formulation.

The first was that national surveys conducted in different regions of the world indicated with alarming regularity that, in the perception of the people, the judiciary was one of the most corrupt institutions in the country. They were probably referring to the lower judiciary which impacts most with the largest number. These perceptions may be incorrect. But even if incorrect, something surely needs to be done to change those perceptions. The problem is compounded by the fact that, in some instances, the people surveyed were actual litigants, and they were therefore claiming to speak from their own experience. If indeed the judiciary is corrupt, then it means that the legal and institutional mechanism designed to curb corruption, is totally immobilized.

The second reason was that, from a series of workshops held to identify the weaknesses, if any, of national integrity systems, one message has come through from all regions and all countries; and that is, that if the rule of law does not prevail, the integrity system is fatally undermined. This message has been underscored, year after year, in the Corruption Perception Index which TI has published since 1995. The one significant element which the group of countries at the bottom of the list lack, and which the group of countries at the top possess, is a commitment to the principles of the rule of law.

I must express my gratitude to the judges present today for having agreed to participate in this programme. I must record the fact that each of them responded positively right at the outset, and the sentiments they expressed in doing so provided us with a great deal of encouragement. I know many of them have come here at tremendous personal inconvenience. Justice Kirby, for instance, sat in court in Canberra until last afternoon and then travelled backwards in time to be with us today. The Chief Justice of Sri Lanka was not able to leave Colombo in time to be here for this meeting, but he has asked me to convey to you not only his best wishes, but also his firm commitment to participate in this programme with Sri Lanka as one of the focus countries.

**PREPARATORY MEETING OF CHIEF JUSTICES ON
STRENGTHENING JUDICIAL INTEGRITY**

April 15 and 16, 2000

9.00 a.m.

Austria Centre, Ground Floor, Room OE 2440

Discussion Paper

A. Public perceptions of the judicial system

1. Evidence is steadily and increasingly surfacing of widespread corruption in judicial systems in many parts of the world. A recent national household survey on corruption in Bangladesh, conducted by the national chapter of Transparency International in that country, revealed that 63% of those involved in litigation in the lower courts had paid bribes to either court officials or the opponents' lawyers, while 89% of those surveyed were convinced that judges were corrupt. In a similar survey in Tanzania, 32% of those surveyed reported payments to persons engaged in the administration of justice. In Uganda, only 9% were willing to say that corruption in judicial administration was "greatly exaggerated". In one district in Uganda, 100% of the people surveyed reported that they had paid bribes to the judiciary. According to the Geneva-based Centre for the Independence of Judges and Lawyers, out of 48 countries covered in its annual report for 1999, judicial corruption was pervasive in 30 countries.

2. These public perceptions may be incorrect, but can the judicial system afford to ignore public perceptions? Who contributes to such negative perceptions? If the public wrongly believes that the judicial sector is corrupt, the reasons for that mistaken belief need to be identified and remedied. Who other than the judiciary itself should address this problem and endeavour to achieve higher levels of public confidence?

B. Indicators of corruption in the judicial system

3. The surveys referred to above and others indicate that, in many countries, the people are also dissatisfied with the cost of justice. They are dissatisfied with the delays. They are dissatisfied with the cumbersome and daunting procedures involved in going to court. For example, in Colombia some years ago, the backlog of cases exceeded four million; yet around 70% of the typical judge's time was consumed by paperwork. In other countries with similar problems, governments do not hesitate to ask judges to undertake non-judicial work, such as sitting on commissions of inquiry, sometimes with a distinct political flavour, and the judges concerned rarely decline to do so. Many see these as indicators of judicial systems in a perpetual state of crisis.

4. More particularly, indicators of corruption as perceived by the public include the following:

Pre-trial

- (a) Delay in implementing/executing orders of court, eg. issue of summons, grant of bail, listing for hearing

- (b) Prisoners not being brought to court

In the Court Registry

- (c) Lack of public access to records of court proceedings
- (d) Files disappearing

In the Lower Courts

- (e) Variations in sentencing
- (f) Delay in delivering judgment
- (g) Delay in giving reasons for judgment
- (h) High acquittal rate (was prosecutor/judge bribed)
- (i) Apparent conflict of interest
- (j) Prejudice for/against a party to proceedings, witness, or lawyer, whether individually or as a member of an ethnic, religious, social, gender or sexual group
- (k) Immediate family members regularly appearing in court before the judge
- (l) Prolonged service in a particular judicial station

In the Superior Courts

- (m) High rate of decisions in favour of the executive
- (n) Appointment perceived as resulting from political patronage
- (o) Preferential/hostile treatment by the executive or legislature

Outside and After Court

- (p) Frequent socializing with particular members of the legal profession, the executive or the legislature
- (q) Socializing with litigants or potential litigants
- (r) Post-retirement placements.

C. Causes/sources of corruption in the judiciary

5. The very low salaries paid to judges in some jurisdictions is often cited as one of the principal reasons for the existence of judicial corruption. The lack of essential facilities, such as an official residence and an official car, may also be contributory factors. What are the other causes?

D. Developing a concept of judicial accountability

6. Power is given on trust. It was Edmund Burke who observed that ‘All persons possessing a portion of power ought to be strongly and awfully impressed with an idea that they act in trust and that they are to account for their conduct in that trust’. In a society based on the Rule of Law and democratic principles of governance, every power holder is, in the final analysis, accountable to the people. It is the people who are the source of power, and through the constitution they delegate that power to different organs. We have no difficulty in accepting that both the legislature and the executive are accountable to the people. Is there any reason why the judiciary alone should be exempt? The judiciary has been entrusted by the people with the exercise of judicial power and, individually and collectively, the judiciary ought to account to the people for the due performance of the functions vested in it.

7. How does a community hold the judiciary accountable without, at the same time, compromising its independence? One method of doing so would be through a code of judicial ethics drafted by the judges themselves, and enforced by the judiciary with the participation perhaps of representatives of the community. Such a code of ethics ought to prescribe standards of conduct both in and out of court, including the relationship of the judiciary to the executive and legislative branches of government, as well as to the legal profession, litigants, and members of the community. It is potentially a valuable instrument that could be profitably employed to buttress and strengthen the concept of judicial independence.

E. Remedial action

8. In addition to the code of judicial ethics referred to above, and having regard to public perceptions which have been noted, other avenues for remedial action within the competence and capacity of the judiciary itself (i.e. without the need for legislative action) appear to include the following:

Procedural

- (a) More effective handling of records within the court registry
- (b) Provide authenticated copies of court proceedings and documents to all the parties and thereby end the monopoly created by the single file and the consequence of its disappearance
- (c) Random selection of judges to hear cases
- (d) Expeditious implementing of court orders

Legal Profession

- (e) Effective disciplining of the legal profession

Judiciary

- (f) A code of ethics to be drafted, overseen and enforced by the judiciary or by an independent judicial commission (with lay representation?)
- (g) Independent mechanism for receiving complaints, investigating and dealing with public complaints

- (h) Regular payment of salaries, and regular revision of entitlements
- (i) Declaration of assets and liabilities of judges on first appointment, and thereafter annually
- (j) Protection against victimization for informants, complainants, and witnesses in respect of corruption in the judicial system
- (k) Orientation and continuing legal education for judges and court officers to include ethical issues relating to the judicial system
- (l) Sentencing guidelines developed by the judiciary and monitored as necessary

F. Designing a process to develop plans of action at the national level

9. The content of any plan to be implemented at the national level will necessarily vary from country to country, depending on many factors peculiar to each country. However, it is likely that each plan will contain the following common elements:

- (a) The establishment of local ownership of the programme through a national leadership or steering group
- (b) The need to assess levels of corruption in the judicial system by reviewing the results of existing surveys, conducting new surveys, and/or using focus groups
- (c) A peer evaluation, including in the evaluation teams, as appropriate, not only judges but also representatives of the legal profession, the business community, human rights organizations, and civil society
- (d) An examination of the evaluation report at a national workshop attended by court users and other stakeholders in the judicial system
- (e) The development, adoption and execution of an action plan
- (f) The publication and dissemination of reform measures, codes of conduct and methodologies, followed by a phase of implementation
- (g) A review of experiences and progress after an interval of about 24 months with a view to deciding on the next phase of the programme
- (h) Throughout the programme, an exchange of information with others engaged in the same process.

10. At the regional level, it is expected that an attempt would be made to draft a model code of judicial ethics capable of being adopted, with appropriate modifications, by countries in that region.

12 April 2000