

Report of the Fourth Meeting of the Judicial Integrity Group

**Vienna
27-28 October 2005**

THE FOURTH MEETING OF THE JUDICIAL INTEGRITY GROUP

Vienna International Centre
Vienna, Austria
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I. INTRODUCTION

1. At the invitation of Antonio Maria Costa, Executive Director of the United Nations Office on Drugs and Crime (UNODC), the fourth meeting of the Judicial Integrity Group ("the Group") was held at the Vienna International Centre, Vienna, Austria on 27-28 October 2005. The purpose of the meeting was to review and discuss materials prepared to provide further support to Member States in strengthening judicial integrity and capacity. Foremost amongst the papers for consideration was a proposal for a draft Commentary on the Bangalore Principles of Judicial Conduct, previously adopted by the Group; a draft of a Manual on Judicial Reform; and draft Principles of Conduct for Judicial Personnel. The meeting took place under the framework of the Global Programme Against Corruption. This is the report of the meeting.

II. PARTICIPATION

2. The Group was chaired by H E Christopher Weeramantry, former Vice-President of the International Court of Justice (Sri Lanka). The members present were: Chief Justice M L Uwais (Nigeria); Chief Justice Pius Langa (South Africa); Chief Justice B J Odoki (Uganda); Deputy Chief Justice Adel Omar Sherif (Egypt); Justice John A Mroso (Tanzania); Justice P N Bhagwati (past Chief Justice of India, Member of the UN Human Rights Committee); and Justice M D Kirby (High Court of Australia). Three special guests: Chief Justice J E Gicheru (Kenya); Dr Johann Rzeszut (President of the Supreme Judicial Court of Austria); and Dr Robert Fremr (Chairman of the Senate of the Criminal Division of the Supreme Court of the Czech Republic), also participated in the meeting. Justice Kirby acted as rapporteur for the Group. Apologies were received from Chief Justice Hilario Davide Jr (The Philippines), Chief Justice B A Samatta (Tanzania), and Dr Leandro Despouy, UN Special Rapporteur on the Independence of Judges and Lawyers.

3. Other participants in the meeting included Mr Stuart Gilman (Head, Anti Corruption Unit and the Global Programme against Corruption, UNODC); Dr Oliver Stolpe (Crime Prevention Expert, Anti Corruption Unit, UNODC); Ms Sonia Cronin (Assistant to the UN Special Rapporteur on the Independence of Judges and Lawyers); Dr Dedo Geinitz (Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH); Mr Robert Husbands (Human Rights, Rule of Law and Democracy Unit, UN Office of the High Commissioner for Human Rights); and Professor Giuseppe Di Federico (Director, Research Institute on Judicial Systems, University of Bologna).

4. Dr Nihal Jayawickrama acted as co-ordinator of the Judicial Integrity Group.

III. INAUGURAL SESSION

5. In her address of welcome on behalf of the Executive Director, Ms Sumru Noyan (Deputy Executive Director, UNODC), welcomed the Members of the Group on their return to the United Nations Office in Vienna. She emphasised the vital importance of building judicial capacity and integrity in Member States. She paid tribute to the work of the Group and noted the success that had been achieved in acceptance of the Bangalore Principles of Judicial Conduct adopted by the Group. She declared that UNODC stood ready to expand its support for the Group. She said that UNODC offered the Group its services to assist in the development and dissemination of its work products; the preparation and organisation of its meetings; and the raising of funds as necessary to facilitate its activities. The Members of the Group welcomed the commitments given on behalf of UNODC by Ms Noyan.

6. In his opening statement, Mr Stuart Gilman (UNODC) declared that judicial integrity was critical for the success of a democratic society. He pointed to the guardianship role of UNODC under the proposed United Nations Convention Against Corruption. By Article 11 of that Convention, each State Party is obliged to "take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary". Such measures "may include rules with respect to the conduct of members of the judiciary". It was in this respect that UNODC envisaged that the Group had a present and future role of importance for the intended operations of the Convention.

7. The Chair, Judge Weeramantry, declared that the work which the Group was engaged in was vital for the welfare of humanity. The judiciary, he said, was the sheet anchor for humanity's welfare and survival. The need for statements on judicial conduct, the conduct of court personnel and other topics was pressing. However, such statements had to be prepared and made by judges, for the judicial branch, in accordance with the differing traditions and cultures of the world. Great progress had been made since the Group first met in Vienna five years earlier. In particular, the Bangalore Principles of Judicial Conduct had been adopted in a number of countries and used in still more in the development of domestic rules to underpin judicial integrity.

8. The coordinator, Dr Nihal Jayawickrama, recorded appreciation for the support of UNODC; the Department for International Development, United Kingdom; and more recently GTZ Germany. He recalled the initiatives of Dr Petter Langseth in the early stages of the work of the Group, and of Dato Param Cumaraswamy, the former UN Special Rapporteur on the Independence of Judges and Lawyers. He emphasised the need for the Group to expand its membership to provide representation of the different legal systems. He identified a number of Chief Justices of relevant countries who had expressed interest in participating in the Group. The urgent need was to find an institutional base for the ongoing work of the Group. This is where the initiative of UNODC was both vital and welcome.

IV. AN UPDATE ON THE BANGALORE PRINCIPLES

9. Dr Jayawickrama referred to the 2003 Resolution of the UN Commission on Human Rights which had “noted” the Bangalore Principles and brought them to the notice of Member States, the relevant United Nations organs and intergovernmental and non-governmental organizations for their consideration. He outlined the various ways in which the Bangalore Principles had thereafter been utilised by (a) international bodies and organizations including UNODC, the European Union and the Council of Europe, the Commonwealth Secretariat, and the Brandeis Institute for International Judges; (b) at the national level by the judiciaries of several countries, notably Belize and the Philippines which now have national codes based entirely on the Bangalore Principles; and (c) by non-governmental organizations such as the International Commission of Jurists and the American Bar Association in its programmes in Central Europe, Asia and Africa. In several countries the Principles were being used to teach basic rules of ethics to trainee judges.

10. It was agreed that Members of the Group would inform the coordinator and UNODC of the use being made of the Bangalore Principles of Judicial Integrity as they became aware of such use.

11. The Members of the Group outlined, in respect of their own countries, the procedures adopted for the training or education of new judges; the existence or absence of Codes of Judicial Conduct; the differing procedures of recruitment and appointment; and the problems that had to be tackled. The rapporteur emphasised the need to recognise the different requirements of countries that recruited the judiciary from senior members of the private legal profession and those that recruited a career judiciary from young graduates following university studies.

12. It was agreed that the Members of the Group would inform the coordinator and UNODC of the arrangements for judicial education that existed in their countries and the potential for utilising, in the course of such education, the Bangalore Principles of Judicial Conduct and other Principles devised by the Group.

V. PROPOSED COMMENTARY ON THE BANGALORE PRINCIPLES

13. The participants turned to a consideration of the proposed Commentary on the Bangalore Principles of Judicial Conduct. A number of the participants emphasised the utility of examples and illustrations that would indicate the way in which the Bangalore Principles of Judicial Conduct were intended to work.

14. It was agreed that Members of the Group would inform the coordinator of illustrations of various provisions in the Bangalore Principles of Judicial Conduct taken from local case law and other examples. It was agreed that illustrations of this kind would be provided for the preparation of the Commentary and supplied within six months. The coordinator would then include such examples, as appropriate, in the draft Commentary.

15. The participants considered that the Commentary should include reference to relevant provisions of international law and in particular the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights*. The use of decisions of the Human Rights Committee, the European Court of Human Rights and of the Inter-American

Court of Human Rights and other like bodies was also agreed, so long as relevant to the Values and Principles. Other useful sources would be decisions of Constitutional Courts and of Judicial Advisory Commissions.

16. It was agreed that the Commentary should draw upon the contextual provisions of international instruments and on the decisions of courts and treaty bodies in elaborating and explaining the purposes of the Principles or analogous rules. In particular, textual analysis would be offered to explain the meaning of the rules and sub-rules contained in the Principles. It was also agreed that reference be made to the religious and cultural traditions that underpin the Values and Principles.

17. There was discussion on whether the document should include hypothetical questions. However, this idea was considered to be inappropriate to the purpose of the Commentary.

18. It was generally agreed that the Commentary should set out the history of the development of the Principles and of their elaboration.

19. It was agreed that the Commentary on the Bangalore Principles of Judicial Conduct would be prepared by the coordinator with the assistance of UNODC. However, it would be necessary for the Commentary to be approved by Members of the Group. This would require circulation of the Draft Commentary to Members of the Group in time to permit consideration and approval.

20. The Members of the Group generally agreed that the Commentary would be a supplementary document of use in teaching and applying the Bangalore Principles.

VI. IMPLEMENTATION OF THE BANGALORE PRINCIPLES

1 Disciplining Judges – The Kenyan Experience

21. Chief Justice J E Gicheru outlined the initiatives that had been taken to combat the widespread problem of corruption in the Kenyan judiciary since 1998, but more particularly since his appointment as Chief Justice in March 2003. A judicial committee on the administration of justice appointed in 1998 had found both “petty” and “grand” corruption to exist in the judiciary. When he assumed office as Chief Justice he found that corruption in the judiciary had assumed pandemic proportions. The maxim “*why pay a lawyer when you can buy a judge*” had achieved notoriety, and the majority of Kenyan judges had become “*the best judges that money can buy*”.

22. In March 2003 he appointed a committee consisting of two High Court judges and two magistrates with the following terms of reference:

- (i) investigate and report on the magnitude of corruption in the judiciary;
- (ii) identify the nature, forms and causes of corruption;
- (iii) find out the level of bribery in monetary terms;
- (iv) report on the impact of corruption on the performance of the judiciary;

- (v) identify corrupt members of the judiciary and recommend disciplinary or other measures against them;
- (vi) recommend strategies for the detection and prevention of corruption in the judiciary; and
- (vii) address any other related matter.

The committee held its hearings in camera to protect judges from ridicule and complainants from any reprisals.

23. The committee reported to him in September 2003 that corruption was prevalent in the judiciary, with 5 of 9 judges of the Court of Appeal, 18 of 36 High Court judges, 82 of 254 magistrates, and 43 of the 2910 paralegal staff being implicated. The principal forms of corruption were identified as (a) bribery (b) fraud (c) abuse of office and (d) receipt of favour without consideration. The committee concluded that corruption “reduces the temple of justice into a cave of venality and exploitation”, in consequence of which the national economy suffers and the culture of corruption in society is reinforced.

24. The Chief Justice said that, in terms of the Constitution, he advised the President that a question of the removal of the judges concerned had arisen, and the President accordingly established the relevant tribunals in October 2003. Acting in terms of the Constitution, the President also suspended the judges concerned. At that stage, 16 of the 23 superior court judges who had been implicated opted to retire from the judiciary without loss of benefits. Except for one judge who has been cleared by the tribunal and reinstated in service, the inquiries in respect of the others are pending. Meanwhile, they continue to enjoy the salary, allowances and other benefits of office. The Judicial Service Commission considered the cases of the magistrates and paralegal staff, and those who could not successfully defend themselves after receiving notice to show cause were retired in the public interest.

25. The Chief Justice pointed out that it gave him no joy to institute disciplinary procedures against colleagues and old friends. But it is the duty of a Chief Justice to take such disciplinary measures, however painful and unpleasant to himself or to the affected judges, by virtue of the position he holds as the head of the judiciary. “It comes with the territory”, he said. He observed that the unpleasantness of the action that a Chief Justice must take may be alleviated if objective procedures and principles were laid down in an enforceable code.

26. He conceded that the manner in which the committee had conducted its investigations had been criticized on the ground that the affected judges had not been notified of the allegations made against them or otherwise given an opportunity to be heard before the committee; that they were not afforded a fair trial before the publication of the committee’s report and before the establishment of constitutional tribunals to investigate their conduct. His response was that the body he had appointed was only an ad hoc internal committee akin to a criminal inquiry that is conducted before preferring charges against an accused. He cited the English House of Lords judgment in *Wiseman v. Borneman* (1971) A.C. 297 as authority for the proposition that an internal preliminary investigation need not be conducted as if it were a full-fledged trial. When they appear before the constitutional tribunals, the judges are afforded the opportunity to cross-examine their accusers, lead evidence, and make submissions in support of their defence. He referred to the recommendation of non-removal made by the tribunal in respect of one judge of the Court of Appeal as testimony to the fairness of the proceedings.

27. Chief Justice Gicheru stated that a standing Ethics and Governance Sub-Committee had now been established to continuously address all integrity and performance issues in the judiciary and to hold comprehensive biennial reviews. An appropriate disciplinary procedure, which would provide affected parties an opportunity to be heard whenever an allegation is being examined at the committee stage, is also being developed. In upholding the principle of accountability without compromising judicial independence, he emphasized the need to remove impunity from investigation; to establish proper mechanisms, principles and procedures for receiving and dealing with complaints; and to determine which offences would justify removal and which may be redressed by other penalties; and whether such decisions should be subject to judicial review.

28. In conclusion, Chief Justice Gicheru paid tribute to the work of the Group and the "immense value" of developing "truly universal principles and approaches to address the common concerns of the independence, competence, authority and effectiveness of the judiciary". He urged that a "permanent partnership" be formalised by which UNODC "will facilitate projects through which the partnership will pioneer the formulation of judicial reform initiatives" and implement them in pilot schemes where they could be tested before being adopted by judiciaries throughout the world.

29. Reference was made during discussion to the importance of ensuring due process for judicial officers subject to accusation. The vulnerability of judges to malcontents and false accusations was noted. The Members of the Group considered the differing models for the removal of corrupt judges that had been observed in other countries represented at the meeting. The need for transparency and fairness in the process had to be balanced with the need to defend the judicial institution and protect judges under accusation until a stage was reached in the investigation warranting suspension from duty and response to a charge. The participants thanked Chief Justice Gicheru for his candid report on the situation in Kenya.

2. Appropriate Procedures

30. The Members of the Group considered the procedures that would be appropriate for investigating complaints of corruption against judges and also complaints that judges had breached principles of judicial conduct. It was recognised that breach of some principles would be regarded as much more serious than breach of others. The procedures to be adopted for investigating and sanctioning breaches were considered. In some instances an informal letter from the designated disciplinary authority would be sufficient. In others, a formal investigation would be required, carried out by judges, or retired judges.

31. The coordinator suggested that it was important to establish within each national judiciary mechanisms for the enforcement of a national code of judicial conduct. Otherwise, such a code might have little or no effect in practice. On the other hand, participants reminded themselves of the debates that had occurred in the discussions of the Group with judges of the civil law tradition, held at The Hague and in Strasbourg. Differentiating between broad principles of judicial conduct and effective mechanisms of judicial discipline was a point that had been insisted upon by the latter.

32. Mr Gilman (UNODC) suggested that any mechanism for the implementation of a national code of judicial conduct would require consideration to be given to such factors as:

(a) respect for a scale of seriousness of the complaint; (b) respect for the risk of permanent damage to the name and effectiveness of a judicial officer charged, even if later acquitted; and (c) respect for the principle of transparency in the handling of such complaints. The desirability of the State providing legal representation to a judge who is being disciplined was raised by a participant.

33. There was general discussion of whether a Chief Justice could adequately perform all of the functions of upholding the Principles of Judicial Conduct or whether a more elaborate system was required. In some jurisdictions, the institution would be a parliamentary committee. In others it would be a statutory commission, perhaps with a lay component. In still others it would involve nothing but an internal committee comprising judges investigating judges. To the complaint that the last procedure was out of step with contemporary values of transparency and civic equality, the point was made that, to some extent, obstacles against a too easy system of complaints might be required in order to defend the overwhelming majority of judges in the courageous decisions they are required to make, thereby tolerating at least occasional minor infractions lest heavy-handed investigative procedures undermine the effectiveness and dent the courage of members of the judicial branch. On the other hand, reference was made to the view held by some that the complaints system in the United States of America actually enhanced the reputation of the judiciary; the public satisfaction resulting from allowing complaints better protected the judge. Some participants saw the response to such issues as inter-related with the adoption of greater transparency in the appointment of judges and hence with their accountability to stated standards and subjection to discipline in the event of proved infractions.

34. The Members of the Group also discussed issues such as judicial appointment mechanisms, and whether an independent commission would be preferable to appointment by the Head of State; the provision of adequate judicial salaries and allowances, and how the judiciary could be made a more attractive option to bright young lawyers; training mechanisms; and protection of whistle-blowers who make complaints. Based on analogies with United States experience, Professor Di Federico explained that the great majority of complaints against judges were not concerned with breach of the principles of integrity, as such, but with alleged error in the judicial outcome arrived at in a particular case. This statistic led one participant to point to the particularly difficult subject presented by erroneous fact-finding by a judge. Whereas errors of law are generally more readily capable of being corrected on appeal, errors of factual finding are less readily susceptible to appellate correction. It is in decisions of this kind, and particularly incompetent, neglectful or corrupt decisions on matters of fact that the judicial branch faces one of its greatest challenges in affording effective redress.

35. It was agreed that the coordinator will prepare a note on existing mechanisms both for disciplining judges and for the enforcement of national codes of judicial conduct, identifying the principles underlying these mechanisms, and circulate it among the Members of the Group.

VII. DRAFT MANUAL ON THE JUDICIAL REFORM PROCESS

36. On the second day of its meeting the Judicial Integrity Group turned to an examination of the Draft UNODC Manual on the Judicial Reform Process: A Guide to

Strengthening Court Integrity and Capacity. The Guide was presented and explained by Mr Stolpe (UNODC). He explained that the document in its present form was based principally on a study of the Singaporean experience.

37. Whilst expressing appreciation for the draft Guide, some participants indicated reservations about aspects of it. The reservations included (a) the apparent acceptance in the draft Guide of competitiveness and economic considerations as the sole, or major, criterion for an acceptable judiciary; and (b) the concern expressed in some quarters over inadequate protection for human rights in the financially uncorrupted judiciary of Singapore. Reference was made to the manner in which the Singapore judiciary facilitates very rapid mediation of disputes. It was important to distinguish between “facilitating” and “forcing” a settlement. The growing use of plea bargaining in criminal cases, which was a debatable issue, was also a reflection of the economic costs and uncertainties of lengthy trials. The imposition of incentive payments for judges who get through more trials was considered although some participants expressed disagreement with such procedures and concern about the risks that they introduced.

38. It was the view of the participants that the concentration on Singapore was a weakness of the present draft Guide. A regionally more balanced approach should be applied to the collection and documentation of good practices. It was suggested that attention should be paid to the judiciaries of Europe which had enjoyed success in supporting judicial integrity according to the criteria mentioned in the draft Guide. Thus, attention to the judiciaries of, for example, Austria, Finland and the Netherlands, would be appropriate and, if necessary, the study tour technique should be broadened to include an examination of the procedures used in such countries, including for handling complaints about judicial integrity. Professor Di Federico observed that lessons could be learnt from failed attempts at reform too.

39. It was agreed that Members of the Group would send any additional comments on the draft Guide to Mr Stolpe so that he could take them into account in a revision. Such comments are to be sent within three months and to be accompanied by any examples considered helpful.

VIII. EVALUATION OF JUDICIAL PERFORMANCE

40. Professor Di Federico tabled his report *Recruitment, Professional Evaluation and Career of Judges and Prosecutors in Europe: Austria, France, Germany, Italy, the Netherlands and Spain* (Report of the Research Centre for Judicial Studies, University of Bologna, Italy, 2005) in leading the discussion on the evaluation of judicial performance, which was included in the agenda at the request of Chief Justice Odoki.

1. Recruitment, Advancement and Evaluation

41. Professor Di Federico distinguished between *bureaucratic* (civil law) and *professional* (common law) judicial systems. In the “bureaucratic” system, judges are recruited at a young age by public competition based on exams in which the theoretical knowledge of various branches of the law is verified. They are subjected to judicial training

courses varying initially from three to five years in Germany to six years in the Netherlands. In some countries trainee judges are obliged to undergo psychological testing to demonstrate suitability for judicial office. Judges remain in service for their entire working life (65 years in Austria and Germany, 70 in Spain and 75 in Italy), and are expected to be functionally omni-competent. Since recruitment is without previous professional experience, recurrent evaluations are provided for in order to satisfy a plurality of functional needs: for example, to verify that young magistrates have actually acquired the necessary professional competence; and to choose those most qualified to fill vacancies at higher levels. He said that the greatest problem for the judiciary in most European countries was not financial corruption but mediocrity, poor and delayed performance. He also explained the movement for the recruitment of more women to the European judiciary.

42. In contrast, in the “professional” judicial system, judges are recruited only after having acquired professional legal experience, and are appointed to specific positions in specific courts. Consequently, there are no formal procedures for professional evaluation related to career advancement. The manner of recruitment, codes of judicial ethics, discipline, and continuing education are the instruments available to support high standards. The rapporteur noted that one of the strengths of the common law recruitment of judges from the private legal profession in middle years was securing a Bench of talented lawyers of high independence and experience who were *not* part of (and did not regard themselves as part of) a judicial bureaucracy. The coordinator observed, however, that this tendency had been reduced in many developing common law countries in recent decades so that appointments to the superior courts now more commonly result from the promotion by the Executive of officers of the judicial service and government lawyers. Inculcating a spirit of true independence from the Executive Government would require new techniques, including judicial education devoted to the expression and maintenance of such values.

43. Chief Justice Langa described the work of the Judicial Service Commission in South Africa and the shift towards more transparent procedures for judicial appointment at every level in that country. There was a lively discussion concerning the South African innovations. Chief Justice Uwais described the functions of the National Judicial Council of Nigeria which included examining returns from judges.

44. The Chair stressed the importance of seeing the two systems of judicial recruitment in the civil law and common law in historical perspective. He traced the differing role of leading lawyers to the *jurisconsult* of Roman law who enjoyed a status quite distinct from that of the more humble *judex*. The particular role of the common law judiciary in developing and expanding the law was, in part, a reflection of the higher civic status typically enjoyed by the judge of that tradition. The Chair explained the ways in which the different systems were obliged to operate together within international tribunals such as the International Court of Justice. He suggested that, to some extent, a merger was in progress between the two traditions. This was reflected in approaches in international tribunals to the gathering of evidence, to the use of previous precedents of decision-making and to the exposition of reasons for decision.

2. Judicial Discipline

45. Turning to judicial discipline in Continental Europe, Professor Di Federico noted that such decisions were in the hands of national Superior Councils, the heads of courts or

ministries of justice. The most common sanctions are admonition, censure, loss of seniority, economic fines and removal. The norms regulating judicial discipline are usually worded in rather generic terms. For example, in Italy, judges are subject to sanctions when they “fail to accomplish their duties; or conduct themselves either in their office or outside in a way that makes them unworthy of the trust and consideration that a judge must enjoy; or when they jeopardize the prestige of the magistracy”. In France, disciplinary proceedings are generally based on the content of the judicial oath: “I swear to perform properly and trustworthily my functions, to protect religiously the secrets of the deliberations and to fully behave as a dignified and loyal magistrate”. Such generic formulae have been criticized because (a) they leave much room for discretion in the hands of those who decide on disciplinary violations; and (b) a well articulated code of conduct could serve a preventive function as well.

46. Deputy Chief Justice Sherif of Egypt drew a distinction between the actual work of judging and the relationship of the Judiciary with the Executive. He said that it was important for judges not to be too close to the Executive Government and not generally to mix in the circle of the Executive. Corruption, he pointed out, could occur not simply by financial means but also by propinquity and the inappropriate sharing of values and outlooks. Litigants were entitled to secure judges who were truly independent of the Executive even though they were also actors in the broad sense in the Government of the State.

3. Criteria for Evaluation

47. The Chair asked whether it was possible to expound criteria of an objective character by which to evaluate judicial performance. Such considerations as efficiency, timeliness, punctuality, courtesy to advocates and accuracy of decisions were mentioned. Justice Bhagwati explained that it was difficult to lay down universal criteria because of the myriad of decisions that judges have to make. The judicial function was not readily reducible to a production line mentality or fixed requirements. Nebulous considerations (such as commitment to human rights, creative development of the law to overcome injustice and courage in the face of challenges) were not easily rendered into a simple quantitative formula.

48. The rapporteur said that the systems adopted in the civil law countries could not simply be borrowed and applied in common law jurisdictions. Systems for handling complaints of departure from a national code of judicial conduct had to take into account the different procedures for recruitment, training and discipline that existed in different countries and the different status, role and expectations of judges in different countries.

49. It was agreed that the coordinator will analyse the Bangalore Principles of Judicial Conduct and other sources to consider whether any checklist to measure judicial performance can be recommended so as to reflect objective considerations whilst at the same time respecting the immeasurable values which the judiciary defends.

IX. DRAFT PRINCIPLES OF CONDUCT FOR COURT PERSONNEL

50. The coordinator tabled the draft Principles of Conduct for Court Personnel. He explained the origins of this document in discussions of the Group held in Colombo and the

inspiration and encouragement received from Chief Justice Davide of The Philippines. He referred to comments that had been received for the improvement of the draft. The participants turned to a consideration of the draft. They adopted recommended changes proposed by the Chief Executive and Principal Registrar of the High Court of Australia. They then considered recommendations made by the participants themselves.

51. After a number of amendments to the draft were proposed and agreed to the Members of the Group formally adopted the Principles of Conduct for Court Personnel (*Annex A*). The Principles were commended to the participating judges for introduction and trial in their jurisdictions, as appropriate in accordance with law. The Members of the Group are to report any difficulties and also merits of the Principles which will be reconsidered at the next meeting of the Group. Meantime, the Principles, as amended, are to be given widespread publicity and opportunities for consultation towards final improvement.

X. GENERAL ASSEMBLY RESOLUTION

52. At the invitation of the Chair, Mr Stolpe tabled a draft resolution on strengthening judicial integrity which, it was hoped, would be presented to the United Nations General Assembly via the Commission on Crime Prevention and Criminal Justice at its 16th Session in 2006. The resolution would, inter alia, mandate UNODC to continue supporting the work of the Judicial Integrity Group, including the preparation of a technical guide on strengthening judicial integrity and capacity and a commentary on the Bangalore Principles of Judicial Conduct. The resolution would also request Member States, in accordance with their respective constitutional provisions and laws, to take into consideration the Bangalore Principles of Judicial Conduct when reviewing or developing rules with respect to the professional and ethical conduct of members of the judiciary. Members of the Permanent Missions of several countries represented in the Group were present during this session.

53. It was agreed that the draft Resolution on Strengthening Judicial Integrity, as amended (*Annex B*), be commended to UNODC with a view to its being submitted to the Commission on Crime Prevention and Criminal Justice at its 16th Session in 2006.

54. There was consideration of the possibility of variation of the language of the Bangalore Principles of Judicial Conduct. The Chair emphasised the importance of preserving the statement made by judges for judges and the essential need for Member States to respect the integrity of the document as so developed. Assurances were given by the diplomatic officers present that, although the language of the resolution would be subject to revision, the Annex containing the draft Principles of Judicial Conduct, as a document developed by experts, was unlikely to be amended.

55. There followed some consideration of the title of the Annex to the draft resolution which contained the Bangalore Principles of Judicial Conduct. The description of the Bangalore Principles of Judicial Conduct by a generic title, if considered appropriate or necessary, was accepted by the Group on the understanding that a preambular statement or other means would be found to refer to the former title as the "Bangalore Principles of Judicial Conduct".

56. The Members of the Group considered the procedures that would be followed to ensure an understanding of the process of the work of the Group at any consideration of a Draft Resolution by the 16th Session of the Commission on Crime Prevention and Criminal Justice. Members of the Group generally favoured having the Chair and the Coordinator present at the time of any such consideration, to help UNODC with consultations. The possible future presentation of the resolution to the General Assembly of the United Nations for endorsement of the Principles of Judicial Conduct was favoured by the Group. Members saw this as a natural elaboration of the UNGA Resolution 40/32 of 29 November 1985 and 40/146 of 13 December 1985 on the Basic Principles on the Independence of the Judiciary, adopted by the General Assembly. Members of the Group asked to be kept informed of developments in the consideration of the foregoing resolution. The possibility of describing the Principles as "Basic Principles on Judicial Integrity", "Basic Principles of Judicial Accountability" or "Basic Principles on Judicial Conduct" was discussed but not finally resolved.

XI. FUTURE PROGRESS

1. Media Release

57. Mr Stolpe tabled a draft Media Release which had been prepared in the media office. Various changes were suggested and it was generally approved.

2. Programme of Work

58. The programme of work following this meeting is set out in Part VI (Conclusions and Recommendations) of this Report.

3. Relations with UNODC

59. Mr Gilman reported on the need to clarify the relation between the Group and UNODC with a view to establishing a more permanent working relationship, and thereby allowing UNODC to support more fully the work of the Group, including to raise funds to support the future activities of the Group.

60. The Members of the Group agreed that UNODC should be accepted as the sole agency for raising funds from donors for the ongoing work of the Judicial Integrity Group and authorised, on its behalf, to seek funds for such future work to the exclusion of any other agency or institution.

61. Mr Gilman reported on the possibility of establishing an Internet Webpage on the activities of the Group including the Bangalore Principles of Judicial Conduct and the now adopted Principles of Conduct for Court Personnel together with information on the Members of the Judicial Integrity Group, its methods of work and contact with its Coordinator and with UNODC.

62. The Group approved the creation of an Internet Webpage on the activities of the Group and invited UNODC to look into the establishment of such an outreach in consultation with the Chair and the Coordinator, details to be provided to Members of the Group.

63. Mr Gilman stressed that these measures will not result in the Group becoming a “UN activity”, but that the Group would continue to be a UN-supported activity.

4. Future Meetings

64. The Members of the Group welcomed the support for its activities by UNODC. However, all Members expressed the view that the value of the Group lay in its exclusive judicial composition and functioning. Mr Gilman indicated that this was fully appreciated by UNODC. He said that UNODC would bring back to the Group proposals for future meetings and activities as well as questions and issues requiring consideration by the Group. If necessary this could be done by email contact between Members between meetings.

5. Expansion of the Group

65. Chief Justice Langa raised the question of expansion of Members of the Group to reflect differing geographical interests, different legal systems, gender and like considerations. Members of the Group supported an expansion of the Group to reflect such considerations, but noted the financial implications of such expansion.

66. The Coordinator asked for guidance as to what should occur when a Chief Justice who was a Member of the Group retired from office. Various views were expressed on this point obliging fresh consideration of the criteria for Membership of the Group. There was general agreement that such considerations should be discussed between the Chair and the Coordinator, on the one hand, and UNODC, on the other. The high desirability of the participation of currently serving Chief Justices and senior judges was recognised by all participants.

XII. CLOSING SESSION

67. In his closing remarks, Mr Gilman (UNODC) emphasised the need for UNODC to attend to the raising of funds to ensure the fulfilment of the present and future objectives of the Judicial Integrity Group. The expansion of the influence of the Bangalore Principles of Judicial Conduct was an important objective of the Group and a key component in the strategy of UNODC to render the proposed United Nations Convention Against Corruption a practical reality in respect of the judiciary everywhere. Mr Gilman said that it was desirable that the Group should not become too large. On the other hand, there were gaps in the reflection of the diversity of judicial systems, geography and gender, that needed to be attended to. These considerations would be taken into account by UNODC.

68. The Chair stressed the great utility to the judiciaries of the world of the work of the Group and even greater potential utility as the work expanded and developed. He welcomed

the possible steps designed ultimately to place the Bangalore Principles of Judicial Conduct before the United Nations General Assembly. If the General Assembly endorsed the Principles, this would be of great importance for the future significance of the Group and its work. It would be of benefit to judicial officers everywhere.

69. The Chair thanked the participating judges, the special guests, the officers of UNODC and the coordinator.

XIII. CONCLUSIONS AND RECOMMENDATIONS

70. **Resolution 1:** It was agreed that Members of the Group would inform the coordinator and UNODC of the use being made of the Bangalore Principles of Judicial Integrity as they became aware of such use.

71. **Resolution 2:** It was agreed that the Members of the Group would inform the coordinator and UNODC of the arrangements for judicial education that existed in their countries and the potential for utilising, in the course of such education, the Bangalore Principles of Judicial Conduct and other Principles devised by the Group.

72. **Resolution 3:** It was agreed that Members of the Group would inform the coordinator of illustrations of various provisions in the Bangalore Principles of Judicial Conduct taken from local case law and other examples. It was agreed that illustrations of this kind would be provided for the preparation of the Commentary and supplied within six months. The coordinator would then include such examples, as appropriate, in the draft Commentary.

73. **Resolution 4:** It was agreed that the Commentary on the Principles of Judicial Conduct would be prepared by the coordinator with the assistance of UNODC. However, it would be necessary for the Commentary to be approved by Members of the Group. This would require circulation of the Draft Commentary to Members of the Group in time to permit consideration and approval.

74. **Resolution 5:** It was agreed that the coordinator will prepare a note on existing mechanisms both for disciplining judges and for the enforcement of national codes of judicial conduct, identifying the principles underlying these mechanisms, and circulate it among the Members of the Group.

75. **Resolution 6:** It was agreed that Members of the Group would send any additional comments on the draft Guide to Mr Stolpe so that he could take them into account in a revision. Such comments are to be sent within three months and to be accompanied by any examples considered helpful.

76. **Resolution 7:** It was agreed that the coordinator will analyse the Bangalore Principles of Judicial Conduct and other sources to consider whether any checklist to measure judicial performance can be recommended so as to reflect objective considerations whilst at the same time respecting the immeasurable values which the judiciary defends.

77. **Resolution 8:** The draft Principles of Conduct for Court Personnel, as amended at the Fourth Meeting, were approved by the Group. As so amended the Principles will be commended to the participating judges for introduction and trial in their jurisdictions, as appropriate in accordance with law. The Members of the Group are to report any difficulties and also merits of the Principles which will be reconsidered at the next meeting of the Group. Meantime, the Principles, as amended, are to be given widespread publicity and opportunities for consultation towards final improvement.

78. **Resolution 9:** It was agreed that the draft Resolution on Strengthening Judicial Integrity, as amended, be commended to UNODC with a view to its being submitted to the Commission on Crime Prevention and Criminal Justice at its 16th Session in 2006.

79. **Resolution 10:** The description of the Bangalore Principles of Judicial Conduct by a generic title, if considered appropriate or necessary, was accepted by the Group on the understanding that a preambular statement or other means would be found to refer to the former title as the "Bangalore Principles of Judicial Conduct".

80. **Resolution 11:** The Members of the Group agreed that UNODC should be accepted as the sole agency for raising funds from donors for the ongoing work of the Judicial Integrity Group and authorised, on its behalf, to seek funds for such future work to the exclusion of any other agency or institution.

81. **Resolution 12:** The Group approved the creation of an Internet Webpage on the activities of the Group and invited UNODC to look into the establishment of such an outreach in consultation with the Chair and the coordinator, details to be provided to Members of the Group.

Annextures

- A: Provisional Agenda
- B: Statement of the Coordinator at the Inaugural Session
- C: Principles of Conduct for Court Personnel
- D: Draft Resolution on Strengthening Judicial Integrity

**FOURTH MEETING
OF THE JUDICIAL INTEGRITY GROUP**

Vienna International Centre

Provisional Agenda

THURSDAY 27 OCTOBER

09.30 – 10.00 : INAUGURAL SESSION

Welcome Address by Antonio Maria Costa, Executive Director, United Nations Office on Drugs and Crime and Director, United Nations Office in Vienna.

Statement by Stuart C. Gilman, Head, Anti-Corruption Unit and The Global Programme Against Corruption, Rule of Law Section, United Nations Office on Drugs and Crime

Statement by Judge Christopher Gregory Weeramantry, Chair, Judicial Integrity Group

Introductory Statement by Nihal Jayawickrama, Coordinator, Judicial Integrity Group

10.00 – 10.45 : SESSION ONE

The Bangalore Principles of Judicial Conduct – an update

Draft Outline of the proposed Guide to the Application of the Bangalore Principles of Judicial Conduct

Draft Chapter of the proposed Guide to the Application of the Bangalore Principles of Judicial Conduct

Draft Resolution for submission of the Bangalore Principles of Judicial Conduct to the Commission on Crime Prevention and Criminal Justice / UN General Assembly

10.45 – 11.00 : TEA/COFFEE BREAK

11.00 – 12.30 : SESSION TWO (continuation)

12.30 – 14.00 : LUNCH

14.00 – 15.30 : **SESSION THREE**

The Bangalore Principles of Judicial Conduct - Implementation procedures and principles
Disciplining Judicial Officers – The Kenyan Experience

15.30 – 15.45 : TEA/COFFEE BREAK

15.45 – 17.00 : **SESSION FOUR** (continuation)

FRIDAY 28 OCTOBER

09.30 – 10.45 : **SESSION ONE**

Draft Manual on the Judicial Reform Process

10.45 – 11.00 : TEA/COFFEE BREAK

11.00 – 12.30 : **SESSION TWO**

Evaluation of Judicial Performance

12.30 – 14.00 : LUNCH

14.00 – 15.30 : **SESSION THREE**

Draft Principles of Conduct for Judicial Personnel

15.30 – 15.45 : TEA/COFFEE BREAK

15.45 – 17.00 : **SESSION FOUR**

Relations with UNODC

Future programme of work

**FOURTH MEETING
OF THE JUDICIAL INTEGRITY GROUP
Vienna, Austria**

Inaugural Session – 27 October 2005

Dr Nihal Jayawickrama
Co-ordinator, Judicial Integrity Group

As we mark the 5th anniversary of the establishment of the Judicial Integrity Group, and as we return to Vienna through Bangalore, The Hague and Colombo, it is fitting that we record our appreciation to UNODC for having been brave enough, five years ago, to experiment with a wholly new concept – that judicial reform was not the prerogative of the executive and legislative branches of government, but that judges, acting together, pooling their combined experience, invoking and exercising their own powers, could make a difference – a significant difference – especially in strengthening the integrity of the judicial systems over which they presided. No one imagined then that the statement of principles of judicial conduct, which they identified as the essential first measure of reform, would have such a global impact in such a short space of time. We must recall that it was Dr Petter Langseth, then head of the Global Programme Against Corruption, who set the process in motion, and that it was Dr Oliver Stolpe and Dr Stuart Gilman who have made this meeting possible. To all three of them, we must record our appreciation.

Three members of the Group have retired since the last meeting in Colombo – the Chief Justices of Bangladesh, Nepal and Karnataka State in India. Chief Justice Davide of the Philippines would have been here today had his office not forgotten to obtain a visa for him, but we hope that he may still find it possible to come. Chief Justice Samatta has had to remain in Tanzania in view of the presidential election which is scheduled for this weekend, but he is represented by Justice Mroso. We also welcome three special guests – the President of the Supreme Court of Austria, the Hon. Dr. Johann Rzeszut; the Chief Justice of Kenya, the Hon. Johnson Evans Gicheru; and the Hon. Justice Robert Fremr, Chairman of the Senate of the Criminal Division of the Supreme Court of the Czech Republic.

I should mention that Mr Justice Sabharwal of the Supreme Court of India is unable to be here because he is being sworn-in as the new Chief Justice of India over the weekend. Justice Christine Chanut of the Court of Cassation of France is functioning as Chairperson of the UN Human Rights Committee in Geneva right now; and Chief Justice Andrew Li of Hong Kong is unable to be here because the Court of Final Appeal of the Hong Kong SAR is in session this week. Dr Lucius Wildhaber, President of the European Court of Human Rights, and Professor Cecilia Medina, Judge of the Inter-American Court of Human Rights, are also held up with the work of their respective Courts. Health considerations prevented Chief Justice Manan of Indonesia from travelling to Vienna. Chief Justice Lebedev of the Russian Federation accepted our invitation, but was unable at the last moment to leave Moscow. All of them have expressed their interest in the work of the Judicial Integrity Group and wish to be active participants in the future.

Mr Param Kumaraswamy, in his capacity as UN Special Rapporteur on the Independence of Judges and Lawyers, was a very supportive observer member of the Group from its very inception, and was responsible for steering the Bangalore Principles of Judicial Conduct through the UN Commission on

Human Rights in Geneva. His successor, Dr Leandro Despouy is in New York to present his report to the UN General Assembly, and is represented today by his assistant, Sonia Cronin.

We also welcome three other observers – Robert Husbands from the Office of the High Commissioner for Human Rights – and we recall the support and encouragement which Her Excellency Mary Robinson provided to the Group when the Bangalore Principles were being formulated; Professor Federico from the University of Bologna, who will be introducing the subject of the evaluation of judicial performance; and Dr Dedo Geinitz from GTZ, whose generous support made possible the preparatory work leading to this meeting.

PRINCIPLES OF CONDUCT FOR COURT PERSONNEL

Preamble

WHEREAS international and domestic law recognize as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal established by law in the determination of rights and obligations and of any criminal charge.

WHEREAS competent and impartial administrative personnel and support staff are essential if the courts are to fulfil their role in upholding this principle.

WHEREAS public confidence in the judicial system is dependent on the perceived integrity of all personnel who play any role in the administration of justice.

AND WHEREAS the principal responsibility for court administration, including supervision and disciplinary control of administrative personnel and support staff, rests with the judiciary.

THE FOLLOWING PRINCIPLES have been approved by the Judicial Group on Strengthening Judicial Integrity, comprising the Chief Justices or Senior Justices of ten countries, and are intended to establish standards of conduct for administrative personnel and support staff within the judicial system. They are designed to provide guidance to judges and to afford the judiciary a tool of management. They are intended to supplement and not to derogate from rules of law and conduct which bind such personnel.

1. SCOPE

- (1) These principles shall apply to all personnel other than judges who are directly or indirectly involved in the court's operation. Court personnel who are no longer employed in the judiciary but who acquired, while still employed, confidential information as defined in paragraph 3(1) are subject to paragraph 3(6).
- (2) The term "personnel" includes court registrars or those who have important supervisory responsibilities. Each jurisdiction shall identify the particular court personnel to whom these principles shall apply.

2. FIDELITY TO DUTY

- (1) Court personnel shall not use or attempt to use their official position to secure unwarranted privileges or exemptions for themselves or for others.
- (2) Court personnel shall not solicit, accept, or agree to accept any gift, favour or anything of value based upon any understanding that the official actions, explicit or implicit, of such personnel would be influenced thereby.
- (3) Court personnel shall not discriminate by dispensing special favours to anyone. They shall not allow kinship, rank, position or favours from any party or person to influence their official acts or duties.

- (4) Court personnel shall not request or accept any fee or compensation, beyond what they receive or are entitled to in their official capacity, for advice or assistance given in the course of their employment.
- (5) Court personnel shall use the resources, property and funds under their official custody or control in a judicious manner and solely in accordance with prescribed statutory and regulatory guidelines or procedures.

3. CONFIDENTIALITY

- (1) Court personnel shall not disclose to any unauthorized person any confidential information acquired by them while employed in the judiciary, whether such information came from authorized or unauthorized sources.
- (2) Confidential information available to specific individuals by reason of statute, court rule or administrative policy shall be provided only by court personnel authorized to do so.
- (3) Court personnel shall report confidential information to the appropriate authority when they reasonably believe this information is or may be evidence of a violation of law or of unethical conduct. Court personnel shall not be disciplined for disclosing such confidential information to an appropriate authority.
- (4) Court personnel are not precluded from responding to inquiries concerning court procedures, but they shall not give legal advice. Standard court procedures, such as the method for filing an appeal or starting a small claims action, may be communicated orally or summarized in writing and made available to litigants.
- (5) Court personnel shall not initiate or repeat ex parte communications from litigants, witnesses or attorneys to judges, jury members or any other person.
- (6) Former court personnel shall not disclose confidential information acquired by them during their employment in the judiciary when disclosure by current court personnel of the same information would constitute a breach of confidentiality. Any disclosure in violation of this provision may constitute contempt of court.
- (7) Confidential information means information that has not been made a matter of public record relating to pending cases, as well as information not yet made public concerning the work of any judge relating to pending cases, including notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations and similar papers. The notes, drafts, research papers, internal discussions, internal memoranda and similar papers that a judge uses in preparing a decision or order shall remain confidential even after the decision or order is made public.

4. CONFLICT OF INTEREST

- (1) Court personnel shall avoid conflicts of interest in the performance of official duties. They are required to exercise utmost diligence in becoming aware of conflicts of interest, disclosing conflicts to an appropriate authority, and terminating them when they arise.
 - (a) A conflict of interest exists when:

- i. the court personnel's objective ability or independence of judgment in performing official duties is impaired or may reasonably appear to be impaired, or
 - ii. when the court personnel, or their immediate family, or their business or other financial interest, would derive financial gain because of the personnel's official act.
 - (b) No conflict of interest exists if any benefit accrues to court personnel as a member of a profession, business or organization to the same extent as any other member of such profession, business or organization who does not hold a position within the judiciary.
 - (c) The term, "immediate family" includes the following, whether related by blood, marriage or adoption: spouse, son, daughter, brother, sister, parent, grandparent, grandchildren, father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, and any other close relative or person who lives in the employee's household. The term "spouse" includes a de facto spouse or like domestic relationship.
- (2) Court personnel shall not:
- (a) enter into any contract with the judiciary for services, supplies, equipment, or lease or sale of property, apart from the employment contract relating to the personnel's position; nor use that position to assist any member of the personnel's immediate family in securing a contract with the judiciary in a manner not available to any other interested party.
 - (b) receive tips or other compensation, or reward or inducement, for assisting or attending to parties engaged in transactions with, or involved in proceedings in, the judiciary.
 - (c) participate in any official action involving a party with whom either the court personnel or any member of the personnel's immediate family is negotiating for future employment.
 - (d) knowingly employ or recommend for employment any member of the court personnel's immediate family.
 - (e) solicit or accept any gift, loan, gratuity, discount, favour, hospitality or service under circumstances from which it is, or could be, reasonably inferred that a major purpose of the donor is to influence the court personnel in performing official duties.
- (3) To secure conformity with the above principles, court personnel who have authority to enter into or approve contracts for the judiciary shall file a financial disclosure statement with the designated authority at the beginning and upon termination of employment in such position, and annually while so employed. The disclosure shall follow the guidelines established by the designated authority, and includes all sources of personal and business income, including investments and immoveable property, as well as all known income received by their spouses or dependent children.
- (4) The position in the judiciary of every court personnel shall be the personnel's primary employment. "Primary employment" means the position that ordinarily consumes the

normal working hours of the court personnel and requires the personnel's exclusive attention in performing official duties. Outside employment may be allowed only if it complies with all the following criteria:

- (a) The outside employment is not with a person or entity that practises law before the courts or conducts business with the judiciary;
- (b) The outside employment is not incompatible with the performance of the court personnel's duties and responsibilities;
- (c) The outside employment does not require the practice of law;
- (d) The outside employment does not require or induce the court personnel to disclose confidential information acquired while performing official duties;
- (e) The outside employment shall not be with the executive or legislative branch of government unless specifically authorized by both employers;
- (f) Where a conflict of interest exists or may reasonably appear to exist or where the outside employment reflects adversely on the integrity of the court, the court personnel shall not accept the outside employment.

5. PERFORMANCE OF DUTIES

- (1) Court personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours.
- (2) Court personnel shall carry out their responsibilities as public servants in as courteous a manner as possible.
- (3) Court personnel shall not alter, falsify, destroy or mutilate, or fail to make required entries on, any record within their control. This provision does not prohibit alteration or expungement of records or documents pursuant to a court order.
- (4) In performing official duties, court personnel shall not discriminate, nor manifest by word or conduct, bias or prejudice based on race, religion, national or ethnic origin, disability, age, gender, marital status, sexual orientation, social or economic status, or political affiliation or opinion.
- (5) Court personnel shall not recommend private attorneys to litigants, prospective litigants, or anyone dealing with the judiciary.
- (6) Court personnel shall expeditiously enforce rules and implement orders of the court within the limits of their authority.
- (7) Court personnel shall not be compelled to perform any work or duty outside the proper scope of their employment.

**DRAFT RESOLUTION
ON STRENGTHENING JUDICIAL INTEGRITY**

Recalling the Charter of the United Nations which affirms, inter *alia*, the determination of States Parties to establish conditions under which justice can be maintained to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,

Recalling the Universal Declaration of Human Rights which enshrines in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Recalling the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, which both guarantee the exercise of those rights, and the Covenant on Civil and Political Rights which further guarantees the right to be tried without undue delay,

Recalling also the United Nations Convention against Corruption which in its Article 11 obliges State Parties, in accordance with the fundamental principles of their legal systems and without prejudice to judicial independence, to take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary, including rules with respect to the conduct of members of the judiciary.

Concerned about increased evidence of corruption in the justice system in many countries with devastating effects for the rule of law,

Convinced that the integrity, independence and impartiality of the judiciary are essential prerequisites for the effective protection of human rights, economic growth and the eradication of poverty,

Recalling the recommendations adopted by the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders concerning the independence and impartiality of the judiciary and the proper functioning of prosecutorial and legal services in the field of criminal justice,

Recalling General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, in which the Assembly endorsed the Basic Principles on the Independence of the Judiciary as first adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling that in 2000 the United Nations Centre for International Crime Prevention invited a representative group of Chief Justices of the common law tradition to develop a concept of judicial accountability which would have the potential to impact positively on the standard of judicial conduct and raise the level of public confidence in the Rule of Law, and to design tools and mechanisms which are capable of being utilized by the national judiciary to strengthen the integrity of the judicial system, and to do so within the constitutional guarantees of judicial independence,

Recalling that this group of Chief Justices (the Judicial Integrity Group), meeting in 2000 and 2001 in Vienna and Bangalore respectively, being of the view that it is the national judiciary which has the primary duty to assert and protect the integrity of the processes over which the judiciary presides, and recognizing the need for a universally acceptable statement of judicial standards which, consistent

with the principle of judicial independence, is capable of being enforced at the national level by the judiciary, adopted the Bangalore Draft Code of Judicial Conduct,

Recalling that the Judicial Integrity Group thereafter conducted extensive consultations with Chief Justices and senior judges of other legal traditions when the draft code was subjected to intensive scrutiny, and that thereafter, in 2002, at a Round Table Meeting of Chief Justices or senior judges of the civil law tradition, held at the Peace Palace at The Hague, at which several judges of the International Court of Justice also participated, agreement was reached on the text of the Bangalore Principles of Judicial Conduct.

Recalling the resolution 2003/43 of the Commission on Human Rights, in which the Commission took note of the Bangalore Principles of Judicial Conduct and brought these principles to the attention of Member States, relevant United Nations organs and intergovernmental and non-governmental organizations for their consideration,

Urges Member States, in accordance with their Constitutions and laws as applicable, to take into consideration the Bangalore Principles of Judicial Conduct (annexed to the present resolution and described as “Principles of Judicial Conduct”) when reviewing or developing rules with respect to the professional and ethical conduct of members of the judiciary,

Acknowledges the important work carried out by the Judicial Integrity Group under the auspices of the United Nations Office on Drugs and Crime, as well as by other international and regional judicial fora that contribute to the development and dissemination of standards and measures to strengthen judicial independence, impartiality and integrity,

Requests the United Nations Office on Drugs and Crime, subject to the availability of extra budgetary resources, to continue supporting the work of the Judicial Integrity Group,

Encourages the United Nations Office on Drugs and Crime, subject to the availability of extra budgetary resources, to continue providing advisory services and technical assistance to developing countries and countries with economies in transition in strengthening the integrity and capacity of their respective courts, and calls upon Member States to support these efforts, including through the provision of technical and financial resources,

Requests the United Nations Office on Drugs and Crime to develop in close consultation with the Judicial Integrity Group and other international and regional judicial fora a technical guide on strengthening judicial integrity and capacity and a commentary on the application of the Bangalore Principles of Judicial Conduct,

Requests the Secretary General to report to the Commission on Crime Prevention and Criminal Justice at its 16th session on the implementation of the present resolution.

Annex

PRINCIPLES OF JUDICIAL CONDUCT

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 there from.

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.