

**THE RECORD OF THE FIFTH MEETING
OF THE
JUDICIAL GROUP ON
STRENGTHENING JUDICIAL INTEGRITY**

**VIENNA
FEBRUARY 28 – MARCH 2, 2007**

THE FIFTH MEETING OF THE JUDICIAL INTEGRITY GROUP

held in conjunction with

THE OPEN-ENDED INTERGOVERNMENTAL EXPERT GROUP MEETING

Vienna International Centre
United Nations Organizations in Vienna
Conference Room III, Building C, 7th Floor
28 February 2007

I. INTRODUCTION

1. The Fifth Meeting of the Judicial Integrity Group (“the Group”) was hosted by the United Nations Office on Drugs and Crime (UNODC) and held at the Vienna International Centre on February 28, March 1 and March 2, 2007. On the second and third of these days, the meeting was held in conjunction with an Open-ended Intergovernmental Expert Group Meeting convened by UNODC in pursuance of Resolution 2006/23 of the Economic and Social Council of the United Nations (ECOSOC).

2. That resolution, *inter alia*,

- (a) Invited Member States, consistent with their domestic legal systems, to encourage their judiciaries to take into consideration the Bangalore Principles of Judicial Conduct (which was annexed to the resolution) when reviewing or developing rules with respect to the professional and ethical conduct of members of the judiciary;
- (b) Emphasized that the Bangalore Principles of Judicial Conduct represented a further development and were complementary to the Basic Principles on the Independence of the Judiciary, endorsed by the General Assembly in its resolution 40/32 and 40/146;
- (c) Acknowledged the important work carried out by the Judicial Integrity Group under the auspices of the UNODC, as well as other international and regional forums that contribute to the development and dissemination of standards and measures to strengthen judicial independence, impartiality and integrity;
- (d) Requested the UNODC to continue to support the work of the Judicial Integrity Group;
- (e) Invited Member States to make voluntary contributions, as appropriate, to the United Nations Crime Prevention and Criminal Justice Fund to support the Judicial Integrity Group;

- (f) Invited Member States to submit to the Secretary-General their views regarding the Bangalore Principles of Judicial Conduct and to suggest revisions, as appropriate; and
- (g) Requested the UNODC to convene an open-ended intergovernmental expert group, in co-operation with the Judicial Integrity Group and other international and regional judicial forums, to develop a commentary on the Bangalore Principles of Judicial Conduct, taking into account the views expressed and the revisions suggested by Member States.

II. PARTICIPATION

3. The Group was chaired by Judge Christopher Weeramantry, former Vice-President of the International Court of Justice (Sri Lanka). The members present were: Chief Justice Pius Langa (South Africa), Chief Justice B J Odoki (Uganda), Chief Justice B A Samatta (Tanzania), Deputy Chief Justice Dr Adel Omar Sherif (Egypt), and Justice M L Uwais (former Chief Justice of Nigeria). Justice M D Kirby (High Court of Australia) was unable to be present since his Court was in session. Justice P.N. Bhagwati (former Chief Justice of India) was also unable to attend.

4. Observers invited by UNODC who were present on all three days were Dra. Elena Highton de Nolasco, Vice-President of the Supreme Court of Argentina; Prof. Dr Paulus Effendie Lotulung, Deputy Chief Justice of Indonesia; Justice Mohammed Aly Seef and Justice Elham Naguib Nawar, Judges of the Supreme Constitutional Court of Egypt; Justice Ram Kumar Prasad, Judge of the Supreme Court of Nepal; Justice Ignacio Sancho Gargallo, President of the Commercial Division of the Court of Appeal of Barcelona, Spain; and Justice Timothy Adepoju Oyeyipo, Administrator of the National Judicial Institute of Nigeria.

5. Observers present on the second and third days included Lord Mance, House of Lords, United Kingdom and former Chairman of the Consultative Council of European Judges, Council of Europe, Strasbourg; Judge Christine Chanut, Conseillère, Cour de Cassation of France and Chairman of the UN Human Rights Committee; Justice Ursula Vezekenyi, Supreme Court of Hungary; Justice Collins Parker, High Court of Namibia; Justice Hansjorg Scherer, District Court, Germany; Judge Riitta Kiiski, District Court of Helsinki, Finland; and Judge Nora Hachani, Magistrate, Algeria.

6. Other participants included Ms Kit Volz, Chief, Human Security Branch, UNODC; Dr Stuart Gilman, Head, Anti-Corruption Unit and The Global Programme Against Corruption, UNODC; Dr Oliver Stolpe, Drug Control and Crime Prevention Officer, UNODC; and Dr Dedo Geinitz, Deutsche Gesellschaft für Technische Zusammenarbeit – GTZ, Germany.

7. Dr Nihal Jayawickrama, Co-ordinator of the Judicial Integrity Group, served as Rapporteur.

III. INAUGURAL SESSION

8. In her opening address, Ms Kit Volz, Chief, Human Security Branch, UNODC, welcomed the members of the Group and acknowledged that the work being done by the Group was fundamental to the implementation of the United Nations Convention Against Corruption. The expansion of the influence of the Bangalore Principles of Judicial Conduct was a key component in the strategy of the UNODC in making the Convention a practical reality and thereby strengthening judicial integrity. She noted that the rule of law requires a criminal justice system that has integrity.

9. Dr Stuart Gilman, Head, Anti-Corruption Unit and the Global Programme Against Corruption of UNODC, referred to the ECOSOC resolution and the Intergovernmental Expert Group meeting due to commence on the following day, and noted that representatives of 40 Member States would be participating in reviewing the Commentary on the Bangalore Principles of Judicial Conduct. Observing that there appeared to be a consensus on the global standards on judicial conduct, he pointed out the significance nevertheless of engaging the international community in revising the Bangalore Principles. He stressed that the United Nations considered that exercise to be fundamental.

10. Speaking from the Chair, Judge Weeramantry recalled the tremendous progress made by the Group since its preparatory meeting in 2000. He noted that the Bangalore Principles had bridged the gap that existed between common law and civil law systems, but emphasized that the Principles must now penetrate into the area of implementation. He proposed, as one measure, the establishment of an International Judicial Institute as a centre of excellence where staff of national judicial institutes could be trained, not only in judicial ethics, but also in subjects such as international human rights and humanitarian law and legal philosophy which are fundamental to a judge's training in the contemporary world. He referred to a recent initiative to equip judges with knowledge of environmental law, including the publication of a case-book and the proposed establishment of an international judges training institute in Cairo.

11. In his introductory statement, the Co-ordinator, Dr Nihal Jayawickrama, noted that the Bangalore Principles had been adopted as a model by several judiciaries across the globe, from the Philippines and the Marshall Islands to Belize and Bolivia. Many of these judiciaries did so before the resolutions relating to the Bangalore Principles were adopted by the UN Commission on Human Rights, the UN Commission on Crime Prevention and Criminal Justice, and ECOSOC. This demonstrated that the Bangalore Principles derived its strength and credibility from the fact that it was drafted by judges. The same would be true of the Commentary. The Group too, if it is to continue to play an effective and influential role in the judicial world must be, and be seen to be, in control of its own affairs, and both autonomous and independent, which is what gives it its unique character. He thanked Dr Stuart Gilman and Dr Oliver Stolpe of UNODC and Dr Dedo Geinitz of GTZ Germany for their support towards the work of the Group during the past year.¹

¹ See Annex 1.

IV. AGENDA ITEM 1:

PROPOSED REVISION OF THE BANGALORE PRINCIPLES

12. Dr Stolpe tabled the Background Paper prepared by the Secretariat containing the Member States' views concerning the Bangalore Principles, including proposals for its revision. The Group also had before it a memo prepared by the Co-ordinator entitled "Amendments proposed by Member States and Comments thereon".

13. According to the UN report, fourteen States had submitted their views and suggestions for possible revisions of the Bangalore Principles. These States were Afghanistan, Belarus, Burkina Faso, Ecuador, Germany, Greece, Hungary, Latvia, Lithuania, Mexico, Namibia, Philippines, Slovenia and Venezuela. All the States had welcomed the Bangalore Principles as useful guidance for the development of domestic standards and rules of professional conduct of judges. Ten States had informed the Secretary-General that they had already adopted standards and rules which complied with the values, principles and guidelines enshrined in the Bangalore Principles. Four States (Afghanistan, Burkina Faso, Ecuador and Namibia) had reported that they were in the process of reviewing existing professional standards and rules of judicial conduct in the light of the Bangalore Principles. Six of the fourteen respondents (Ecuador, Greece, Hungary, Latvia, Lithuania and Mexico) had proposed amendments and additions to the Bangalore Principles.

14. The Group agreed that since translation is a subsidiary process, the corrections proposed to the Spanish version of the Bangalore Principles should more appropriately be examined by UNODC, and corrected if necessary, in consultation with Spanish-speaking Member States. It might be advisable to adopt a similar approach in respect of other translations too.

15. Since this was the first occasion when Governments have had an opportunity of examining the Bangalore Principles of Judicial Conduct and expressing their views on the document, the Members of the Group expressed their appreciation to Member States for their careful scrutiny and thoughtful comments, and to UNODC for having provided that opportunity and facilitated the exercise.

16. The Group then proceeded to examine the proposals for amendment or addition.

Principle 1.2²

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.

² The term "principle" is used throughout this document even when reference is made to the application of a principle.

Proposal

Emphasize the ultimate responsibility of a judge to the public, by adding “and subject to the people’s power”.

Decision

The Group noted that the Preamble states quite emphatically that “public confidence” in the judicial system and in the moral authority and integrity of the judiciary is of utmost importance. It declares to be essential that judges, individually and collectively, respect and honour judicial office as a “public trust”. These have now been elaborated in the Draft Commentary. While there was no doubt that judges owed a responsibility to the people they serve, the Group recalled that this preambular statement had originally read: “*the real source of judicial power is public acceptance of the moral authority and integrity of the judiciary*”, and was objected to, in particular by the Consultative Council of European Judges (CCJE), on the ground that in most civil law countries the “real source” of judicial power is the Constitution, and that too great an emphasis on the ultimate dependence of judicial power upon general acceptance could in some circumstances even be dangerous. One member added that if this amendment was accepted, it would be necessary to make sure that service to the people did not become debased as service to populist causes or the people’s will as interpreted solely by the executive government (or more often nowadays the media). Other members observed that what was proposed was a dangerous concept, since judges must not subject themselves to what people want; they were subject only to the constitution and the law. It was also noted that Principle 1.2 dealt with a somewhat different matter, namely, it requires a judge to be independent in relation to society in general and in relation to the parties to a dispute. Since the Draft Commentary, in paragraphs 31-35 discusses the extent to which contact with the community is beneficial, the Group agreed that the proposed words should not be added.

Principle 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.

Proposal

Further clarify this principle. Guaranteeing the independence of the judiciary is a task which falls under the responsibility of the legislature rather than the individual judge.

Decision

The Group agreed that it was the Constitution that guaranteed the institutional independence of the judiciary, and that it was also the duty of the legislature and the executive to respect and uphold that independence. But the focus of Principle 1.5 is on the duty and right of the judge not only to maintain but also to enhance, through his or her own conduct, both the institutional and the operational independence of the

judiciary. This is further clarified in the Draft Commentary, paragraphs 43-44. Accordingly, the Group agreed that no change to the text was necessary.

Additional Principle 1.7

Proposal

Include an additional principle to govern the interaction of judges with the media with a view to strengthening judicial independence: “A judge must act in his/her daily duties without being influenced by the media”.

Decision

One member noted that it would be to deny reality to say that a judge was not influenced by the media. Indeed, this was often the way in which a judge received judicial notice of developments in his or her society. He agreed, however, that a judge should not be “unduly” influenced by the media. Another member inquired why special reference should be made to the media when other sectors of society were equally capable of seeking to influence a judge.

The Group recalled that during the consultation stage on the Draft Bangalore Code, CCJE had suggested that the issue of relations with the media be specifically addressed. Three aspects of concern were identified: the use of the media to promote a judge’s public image or career, or conversely the possibility of concern on the part of a judge as to possible media reaction to a particular decision; the question of contact out of court with the media; and comment, even in an academic article, on the judge’s own or another judge’s decision. Because of the wide-ranging nature of these issues, it had been agreed to subsume them in the principles of Independence and Impartiality. The Draft Commentary now deals extensively with them in paragraphs 28-30 and 74-76. In the circumstances, the Group agreed that the proposed new principle was unnecessary.

Principle 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.

Proposal

This principle would benefit from further clarification as concerns the benchmark to be used when assessing the compliance of judges.

Decision

The Group noted that this principle is discussed in paragraphs 124-130 of the Draft Commentary. Beyond that, Group agreed that its implementation should be dealt with by each country in its own way.

Principle 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.

Proposal 1

Some of the guidelines for the application of Principle 4.11 may unduly limit the range of activities which a judge is entitled to carry out beyond his or her judicial duties. For example, what is the rationale for guideline 4.11.1 which restricts the right of the judge to write, lecture and teach to issues pertaining to the law, the legal system and the administration of justice?

Decision

The Group noted that the original Bangalore Draft Code had contained only a list of permitted activities. However, on the suggestion of CCJE, another sub-paragraph was added which allowed judges to “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”. This sub-paragraph 4.11.4 refers to other activities which a judge may engage in, including speaking, writing, lecturing and teaching on non-legal subjects. This is clarified in the Draft Commentary, paragraph 156. The right to speak on other issues in the exercise of a judge’s freedom of expression is examined in the Draft Commentary, paragraphs 128-130. Accordingly, the Group agreed that no amendment was required.

Proposal 2

Principle 4.11 should be expanded to prohibit judges from taking on administrative duties outside the court.

Decision

The Group observed that the propriety of engaging in such duties is examined in the Draft Commentary, paragraphs 157-161. Accordingly, no amendment was required.

Principle 4.12

A judge shall not practise law whilst the holder of judicial office.

Proposal

This principle should be broadened to prohibit judges from engaging privately in arbitration, conciliation, mediation and other forms of alternative dispute resolution.

Decision

The Group noted that the Draft Commentary, in paragraph 163, examines this issue. In common law jurisdictions, a judge would not act as arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law. However, the position was different in the civil law tradition. For example, judges of the Final Court in Denmark did engage in private arbitrations. The Group agreed, therefore, that the Principle should remain in its present form.

Principle 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.

Proposal

Should be deleted as it concerns behaviour prohibited by law, or more appropriately, should be included under the guidelines for application relating to Value 3: Integrity.

Decision

The Group noted that this principle formed a part of many of the national codes of judicial conduct. Not every aspect of the conduct referred to in it would necessarily be prohibited by criminal law; for example, social hospitality. One member observed that the criminal law might not make reference to family members. The issues that are likely to arise in its application are discussed in paragraphs 167-170 of the Draft Commentary.

Principle 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.

Proposal

Should be deleted as it concerns behaviour prohibited by law, or more appropriately, should be included under the guidelines for application relating to Value 3: Integrity.

Decision

The Group agreed that this Principle should be retained for the same reasons for which Principle 4.14 was being retained.

Additional Principle 4.17

Proposal

There is a need for a separate and more detailed guideline concerning the political neutrality of the judge addressing such issues as membership in political parties and donations for the support of political parties as well as the advisable conduct of judges who wish to be candidates for elected public office.

Decision

The Group recalled that the original Bangalore Draft Code had contained such a provision. However, during the consultation process, CCJE had pointed out that there was no general international consensus that judges should either be free to engage in or should refrain from political participation. It appeared to be for each country to strike its own balance between judges' freedom of opinion and expression on matters of social significance and the requirement of neutrality. CCJE nevertheless had agreed that even though membership of a political party or participation in public debate on the major problems of society might not be prohibited, judges must at least refrain from any political activity liable to compromise their independence or jeopardise the appearance of impartiality.

In this connection, the Group noted that the position in some civil law countries was fundamentally different from that in most common law countries. For example, in Switzerland, judges were elected on the basis of their party membership. In Austria, it was not forbidden to be a member of parliament while performing the functions of a judge (other than a judge of the Supreme Court). In Germany, a judge might belong to a political party and might stay as a candidate for parliament. If he or she were elected and accepted such election, the right and the duty to hold judicial office were suspended.

Accordingly, the Group reiterated its agreement with the view expressed by judges of both civil law and common law jurisdictions that the more appropriate formulation would be that in Principle 4.6. The Draft Commentary, in paragraphs 88, and 125-126 clarifies the position further.

Principle 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”).

Proposal

While capturing the problem of differential treatment based on “irrelevant grounds”, Principle 5.1 does not address adequately situations in which grounds of differentiation are relevant for adopting certain decisions, yet the way in which they are taken into consideration does not comply with the requirements of substantive equality.

Decision

The Group considered that if further clarification were required, it would be for national judiciaries to do so.

Principle 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.

Proposal

This guideline raises doubts concerning the scope of the term “judicial duties”, as it makes reference also to “other tasks relevant to the judicial office or the court’s operations”.

Decision

The Group noted that some of the “other tasks relevant to the judicial office or the court’s operations” are clarified in paragraphs 186-188 of the Draft Commentary.

Principle 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.

Proposal

This guideline should emphasize the maintenance and enhancing of knowledge, skills and personal qualities not only as an obligation of the judge, but also as a right; and impose on the legislative and executive power to provide the necessary budgetary means to organize and participate in relevant training activities.

Decision

While agreeing that the obligation of the legislature and the executive to provide necessary funding for the proper organization of the judiciary, including the training of judges, was unquestioned, the Group recognized that the Bangalore Principles of Judicial Conduct were addressed to judges. Accordingly, the proposed direction should more properly form part of a future statement on effective measures for the implementation of the Bangalore Principles addressed to the legislative and executive branches of government.

Principle 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 other subject to the judge's influence, direction or control.

Proposal

This principle would be further enriched by adding “serviable, objective” to this list of behavioural rules.

Decision

The Group observed that the word “serviable” was not an English expression. The obligation to be “objective” was implicit in many of the ethical principles, and is extensively examined in the Draft Commentary, particularly under the values of Independence, Impartiality and Equality.

Additional Principle 6.8

Proposal

It is proposed that there be an additional guideline to further strengthen the competence and diligence of judges. More specifically, it is proposed that this additional guideline read: “A judge must do his/her work with a high level of professionalism and within reasonable time”.

Decision

The Group noted that these aspects are addressed in the Draft Commentary, paragraphs 189-195 (Principle 6.3) and paragraphs 197-199 (Principle 6.5).

Additional Principle 6.9

Proposal

It is proposed that there be included a provision concerning the advisable conduct of a judge who has reliable information that another judge has violated certain principles of judicial conduct.

Decision

The Group noted that this matter is referred to in paragraph 208 of the Draft Commentary. It could be further addressed in a statement of effective measures for the implementation of the Bangalore Principles.

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.

Proposal

The Bangalore Principles should include specific guidelines for candidates for judicial office.

Decision

The Group agreed that the Bangalore Principles were preventive as well as curative, and would, therefore, be applicable to candidates for judicial office. This could be further clarified in a statement of effective measures for the implementation of the Bangalore Principles.

V. AGENDA ITEM 2:

CONSIDERATION AND ADOPTION OF THE DRAFT COMMENTARY ON THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT.

17. The Group, on the first day, discussed its approach to the draft chapter on “Cultural and Religious Traditions” which had not been circulated to the Intergovernmental Expert Group. One view expressed was that it was potentially divisive and would be inappropriate to include this chapter in a commentary on judicial ethics. Another view expressed was that these cultural and religious traditions were the source of all ethical values and an understanding of them would enhance respect for the values enunciated in the Bangalore Principles. Deputy Chief Justice Sherif argued that the commonalities between the cultural and religious traditions were greater than the differences, and that in order to move into the future it was necessary to know and understand the past. After an extensive discussion the Group agreed that the Chair, Judge Weeramantry, would, in his preface to the Commentary, refer to the significance of cultural and religious traditions, and that the draft chapter which examined these traditions in greater detail would be included as an Appendix to the Commentary.

18. On the second and third days, the Group met together with the Intergovernmental Expert Group in considering in detail the final revised version (24 January 2007) of the Draft Commentary on the Bangalore Principles prepared by the Co-ordinator. The experts included, in addition to judges, several senior officials of ministries or departments of justice, anti-corruption agencies, bar associations and research organizations. The meeting was chaired on the two days by Judge Weeramantry and Chief Justice Langa. Each of the 219 paragraphs of the Draft Commentary was examined separately, and several amendments, including certain deletions, were agreed upon. The Co-ordinator was requested to prepare the final version of the Commentary which, upon being approved by the Members of the Group, would be published and disseminated as a product of the Group.

VI. AGENDA ITEM 3:

CONSIDERATION OF DRAFT PROCEDURES FOR THE EFFECTIVE IMPLEMENTATION OF THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT.

19. Chief Justice Odoki stressed that the Group had an obligation to provide guidelines for the effective implementation of the Bangalore Principles. The Group noted that the need for such procedures or guidelines had also been emphasized at several legal and judicial conferences. Without such procedures, the Principles would remain mere aspirations and public expectations would remain unfulfilled. The Group recognized that the formulation of such procedures would, in fact, complete the

“triad” which commenced with the adoption of the Principles and was followed by the development of a Commentary on those Principles. As with the Principles themselves, any such procedures as were agreed upon would not be binding on any national judiciary or on any other branch of government. They would constitute benchmarks.

20. The Group also noted that while the obligation and responsibility for applying principles of judicial conduct rested with the national judiciary, certain corresponding obligations lay on both the executive and legislative branches of government. For example, judicial independence required both individual and institutional independence. The former was the responsibility of the judiciary, while the latter needed to be established by the legislature. Similarly, while a judge had the duty to be diligent, the ability to exhibit diligence might depend on the adequacy of resources, including the provision of support staff and technical assistance, provided by the executive. So too with the judge’s duty to undertake training, which was only possible if the State provided the necessary resources for that purpose. Therefore, the procedures might need to be addressed to the judiciary as well as to the other two branches of government.

21. The Group next proceeded to examine the framework for a statement of procedures suggested in a memo tabled by the co-ordinator.

22. On judicial appointments, Chief Justice Langa described the composition of the Judicial Service Commission of South Africa which consisted of 24 members. Chaired by the Chief Justice, its other members included judges, lawyers, law teachers, members of parliament and the minister of justice. It interviewed candidates for judicial office in public sittings. While the body had been criticised in some quarters, Chief Justice Langa believed that its broad membership and transparent procedures had contributed to its success and credibility. Chief Justice Odoki stated that he was not a member of the Judicial Service Commission of Uganda, although he had been its chairman prior to his appointment as Chief Justice. The nine-member Commission was now chaired by a retired judge with a private lawyer as the deputy. The Commission considered recommendations made by the Chief Justice. There was consensus within the Group that the transfer of judges was a matter that should remain within the province of the judiciary.

23. On court administration, Chief Justice Samatta stressed that the judiciary must administer itself. Justice Uwais stated that in Nigeria the judiciary submitted its budget to the National Assembly, while Deputy Chief Justice Lotulung observed that in Indonesia the Supreme Court was now responsible for court administration. Justice Elena Highton de Nolasco and Justice Ignacio Sancho Gargallo described the systems that prevailed in Argentina and Spain respectively. Noting that in some countries magistrates still came under the control of the minister of justice, the Group agreed that the minor judiciary should be regarded as an integral part of an independent judiciary.

24. The Group next discussed mechanisms through which the judiciary could interact with the community in order to ascertain the degree and extent of public satisfaction with the delivery of justice. Judge Weeramantry referred to the annual “Law Day” which is a regular feature in some jurisdictions, particularly in Australia.

Chief Justice Samatta described the public question and answer sessions in which judges participated in his neighbouring country, Kenya. Chief Justice Odoki referred to National Fora and the Integrity Committee headed by a senior judge which held public sittings throughout the country, while Justice Uwais mentioned Court User's Committees in Nigeria. Chief Justice Langa spoke of the possibilities of interaction with schoolchildren.

25. The Group agreed to undertake the preparation of a statement of procedures for the effective implementation of principles of judicial conduct, and requested the Co-ordinator to prepare a comprehensive draft statement for discussion with a view to the statement being considered and adopted at the next meeting. The Group also agreed that the framework for such a statement would probably include the following:

- i. The concept of judicial independence should be included in the constitution or other fundamental law. This may require reference to:
 - (a) qualifications, selection and appointment of judges;
 - (b) objective criteria for the promotion and transfer of judges;
 - (c) tenure;
 - (d) immunities and privileges of judges;
 - (e) remuneration;
 - (f) discipline and removal of judges;
 - (g) performance of executive or State functions incompatible with judicial independence;
 - (h) freedom from undue influence;
 - (i) court administration, including financial provision.
- ii. The provision by the State of adequate financial and other resources and facilities to enable the judiciary to function efficiently and for judges to undertake training and professional development.
- iii. The dissemination of the principles of judicial conduct among legislators, public officers and the public.
- iv. Principles governing the assignment of cases.
- v. Principles relating to recusal.
- vi. Internal mechanism within the judiciary to monitor judicial conduct.
- vii. A credible, transparent complaint mechanism to which the public have access.
- viii. The establishment of training facilities for judges.
- ix. The conduct, by or at the instance of the judiciary, of regular surveys of court users and stakeholders, and random case audits, to identify systemic weaknesses in the judicial system.

- x. Mechanisms for the judiciary to interact with the community in order to ascertain the degree and extent of public satisfaction with the delivery of justice.

VII. AGENDA ITEM 4:

MATTERS RELATING TO THE JUDICIAL INTEGRITY GROUP, INCLUDING DATE AND VENUE OF THE NEXT MEETING, COMPOSITION, FUTURE PROGRAMME, ETC.

26. The Co-ordinator observed that his Report in respect of this item on the agenda, which he had sent to UNODC along with memos on the other agenda items, had not been printed and circulated to the Members of the Group. Dr Gilman stated that he had decided not to circulate the document because it contained certain references to UNODC. He had intended to discuss the matters with the Co-ordinator prior to the meeting, but had not had the opportunity to do so. The Co-ordinator stated that his document was a factual record of the work of the Group from 2000-2006, and the references to UNODC were in respect of several issues which the Group needed to address at this meeting. Dr Gilman asserted that since the Group had agreed that UNODC would be its secretariat, it was for the secretariat to decide what matters to place before the Group. The Co-ordinator referred to the Report of the 4th Meeting of the Group which recorded that the Group had agreed to establish “a more permanent working relationship” with UNODC, thereby allowing UNODC to support more fully the work of the Group, including to raise funds to support the future activities of the Group to the exclusion of any other agency or institution, but that it had also been agreed that the Group should not become a “UN activity”, and that it should continue to be a “UN-supported activity”. There was no reference to a secretariat. The Group then proceeded to discuss the issues raised by the Co-ordinator.

27. Judge Weeramantry speaking on behalf of the Group stated that they were a group of judges who were independent and autonomous. The Group alone should decide what it should do, its procedures, etc. He said that it was unfortunate that the dates of this meeting had been fixed by UNODC without reference to the Members of the Group. Consequently, Justice Kirby who was the Rapporteur of the Group had been unable to attend. He also stated that the travel arrangements were unsatisfactory, and the lack of any provision for tea or coffee to be served during the sessions or the breaks was also not satisfactory. He said that the general arrangements were not what the Group had been accustomed to in the past. It would therefore be necessary to seek supplementary funding if the UNODC was not able to provide adequately for the work of the Group and the organization of its meetings.

28. Deputy Chief Justice Sherif stated that the Group would, in principle, support the UNODC whenever it was called upon to do so, but that the Group and UNODC were two separate entities and the latter should respect the independence of the

Group. In particular, he referred to correspondence from UNODC which sometimes copied internal memos couched in language somewhat derogatory of judicial office.

29. Chief Justice Langa stated that it was unacceptable that a meeting should be fixed without agreement on the dates being reached, and that he himself had found it most inconvenient due to court schedules to be present at this meeting. He said that senior judges should not be required to adopt a mode of travel which was considered inappropriate in their own jurisdictions.

30. Chief Justice Odoki referred to the Group as an amorphous body and wondered whether its strength lay in that fact. On the other hand, it might be necessary to institutionalise it in order to sustain it. It would be useful to agree on an informal “constitution” which defined the structure, objectives, membership, the functions of the co-ordinator, relationships with partners, etc.

31. At the conclusion of the discussion, Chief Justice Langa observed that it would not be possible for the Group to survive on the basis of limitations imposed from outside. Accordingly, he proposed, and the Group agreed, that it be recorded that:

- (a) the Group is an independent and autonomous body.
- (b) The Group determines its own programme of work.
- (c) The Group determines its own membership.
- (d) The Group determines the dates of its meetings.
- (e) The Group may raise funds from any sources approved by it.
- (f) The Group may negotiate and enter into partnerships with other institutions and organizations, including the UNODC.
- (g) The Group requires a constitution.

32. The Co-ordinator reminded the Group of the following work which it had identified at previous meetings:

- (a) A checklist to measure judicial performance.
- (b) Identify the principles underlying existing mechanisms for disciplining judges and for the enforcement of national codes of judicial conduct.
- (c) Examine the potential for utilising the Bangalore Principles (and other Principles devised by the Group) in the course of judicial education.
- (d) Develop continuing education material for judges, focusing on the need to sensitize them, in particular, to international law, international human rights and humanitarian law, and philosophical perspectives.

- (e) Further develop and/or update principles, standards and instruments relating to the judicial process (eg. judicial independence).
- (f) Develop a manual on the judicial reform process, capturing the experience gained to date.
- (g) Establish a website for the Group which would serve, inter alia, as a documentation centre.

33. The Co-ordinator also informed the Group of the following proposals for future work:

- (a) Principles for the investigation and trial of corruption offences consistent with the provisions of international human rights law – suggested at a recent UN-OHCHR conference on “Corruption and Human Rights”.
- (b) Review and update the UN Basic Principles on the Independence of the Judiciary with a view to enhancing their relevance to the challenges posed to judicial independence in contemporary society – suggested at a recent Council of Europe conference which focused on undue influence on the judiciary.
- (c) An international judicial standard supportive of the independence of Electoral Commissions – requested by a Cambridge-based informal group of electoral commissioners meeting annually under the auspices of the Malaysian Commonwealth Studies Centre at Trinity College, University of Cambridge.

34. Chief Justice Samatta noted that that the Group would shortly be marking the tenth year of its existence. To commemorate the event, he suggested, and the Group agreed, that all the documentation relating to the Group be collected and published in a single volume. Dr Dedo Geinitz observed that it might be appropriate to review the impact of the Bangalore Principles of Judicial Conduct. It would be useful to know in which jurisdictions it had been adopted or used as a model and in what form. The Group agreed to this proposal too.

35. The Chair thanked the participating judges, the UNODC, and the Co-ordinator, and declared the meeting closed.

VIII. CONCLUSIONS AND RECOMMENDATIONS

Resolution 1: Since this was the first occasion when Governments have had an opportunity of examining the Bangalore Principles of Judicial Conduct and expressing their views on the document, the Members of the Group expressed their appreciation to Member States for their careful scrutiny and thoughtful comments, and to UNODC for having provided that opportunity and facilitated the exercise.

Resolution 2: The Group requested the Co-ordinator to prepare the final version of the Commentary which, upon being approved by the Members of the Group, would be published and disseminated as a product of the Group.

Resolution 3: The Group agreed that the Chair, Judge Weeramantry, would, in his preface to the Commentary, refer to the significance of cultural and religious traditions, and that the draft chapter which examined these traditions in greater detail would be included as an Appendix to the Commentary.

Resolution 4: The Group agreed to undertake the preparation of a statement of procedures for the effective implementation of principles of judicial conduct, and requested the Co-ordinator to prepare a comprehensive draft statement for discussion with a view to the statement being considered and adopted at the next meeting.

Resolution 5: The Group agreed that the co-ordinator would prepare and circulate a draft constitution for the Group which defined the structure, objectives, membership, the functions of the co-ordinator, relationships with partners, etc.

Resolution 6: The Group agreed that all the documentation relating to the Group be collected for publication in a single volume ahead of the 10th anniversary of the Group. In this connection, the Group also agreed that it would be useful to ascertain the extent to which the Bangalore Principles of Judicial Conduct had been adopted or used as a model and in what form.

Resolution 7: The Group endorsed the proposal of Judge Weeramantry that an International Judicial Institute be established as a centre of excellence where staff of national judicial institutes could be trained, not only in judicial ethics, but also in subjects such as international human rights and humanitarian law and legal philosophy which are fundamental to a judge's training in the contemporary world.

Resolution 8: The Judicial Integrity Group reaffirmed that:

- (a) the Group is an independent and autonomous body.
- (b) the Group determines its own work programme.
- (c) the Group determines its own membership.
- (d) the Group determines the dates of its meetings.
- (e) the Group may raise funds from any sources approved by it.
- (f) the Group may negotiate and enter into partnerships with other institutions and organizations, including the UNODC.

**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.