



The Bangalore Principles of Judicial Conduct

JUDICIAL INTEGRITY IN AFRICA

Integrity Based Judicial Reform Efforts: Lessons Learned and Good Practices

23 and 24 January 2010, Lusaka, Zambia

Independence

Judicial independence is a prerequisite 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.

Impartiality

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.

Integrity

Integrity is essential to the proper discharge of the judicial office.

Propriety

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

Equality

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

Competence and Diligence

Competence and diligence are prerequisites to the due performance of judicial office.

The Record of the sixth Meeting of the Judicial Group on Strengthening Judicial Integrity

The Judicial Integrity Group

The Judicial Integrity Group



Federal Ministry
for Economic Cooperation
and Development



Chief Justice of Zambia

**THE RECORD OF THE SIXTH MEETING
OF THE
JUDICIAL GROUP ON
STRENGTHENING JUDICIAL INTEGRITY
(The Judicial Integrity Group)**

**LUSAKA, ZAMBIA
JANUARY 21 and 22, 1010**

INTRODUCTION

1. The Judicial Integrity Group (“the Group”) met for its Sixth Meeting in Lusaka on January 21 and 22, 2010. The meeting was hosted by the Chief Justice of the Republic of Zambia, the Honourable Ernest Sakala, and held at Hotel Taj Pamodzi, with the final session being convened in the Chambers of the Chief Justice at the Supreme Court Building. The meeting was facilitated by Deutsche Gesellschaft für Technische Zusammenarbeit (“GTZ”) on behalf of the German Federal Ministry for Economic Co-operation and Development (“BMZ”), in collaboration with the United Nations Office on Drugs and Crime, Vienna (“UNODC”). The principal purpose of the meeting was to consider and adopt Procedures for the Effective Implementation of the Bangalore Principles of Judicial Conduct. The meeting was followed by a two-day Regional Workshop on Judicial Integrity in Africa organized by GTZ in collaboration with UNODC and the United Nations Development Programme (“UNDP”), and with the active participation of the members of the Group.¹

PARTICIPATION

2. The Group was chaired by H. E. Judge Christopher Weeramantry, former Vice-President of the International Court of Justice (Sri Lanka). The Members present were: The Hon. Michael Kirby, the Rapporteur of the Group (Australia), The Hon. M L Uwais (Nigeria), The Hon. Pius Langa (South Africa), The Hon. B J Odoki (Uganda), The Hon. B A Samatta (Tanzania), The Hon. Dr. Adel Omar Sherif (Egypt), The Rt. Hon. Lord Mance (United Kingdom), The Hon. Christine Chanet (France), and The Hon. Rudolf Mellinshoff (Germany). The Hon. Ernest Sakala (Zambia) participated as a Special Guest.

3. Participating as Observers were three senior members of the Zambian judiciary: The Hon. I M C Mambilima, Deputy Chief Justice, The Hon. M Mwanamwambwa, Judge of the Supreme Court, and The Hon. Philip Musonda, High Court Judge-in-Charge.

4. Also participating as Observers were the following representatives of Governments and International Organizations: Dr Dedo Geinitz (GTZ), Ms Johanna Beate Wysluch (GTZ), Dr Lothar John (GTZ), Ms Gabriele Zoeller (BMZ), Mr Dimitri Vlassis (UNODC), Dr Oliver Stolpe (UNODC), and Ms Julia Keutgen (UNDP).

5. Dr Nihal Jayawickrama served as Co-ordinator of the Group.²

6. The Hon. P.N. Bhagwati (India) was unable to attend on medical advice. Dato Param Cumaraswamy, former UN Special Rapporteur on the Independence of Judges and Lawyers (Malaysia), who participates as an Observer, also refrained from travelling on medical advice.

¹ The provisional agenda, which was adopted, is attached marked “A”.

² The List of Participants is attached marked “B”.

INAUGURAL SESSION

7. Chief Justice Sakala welcomed the Members of the Group and expressed his appreciation for choosing Zambia as the first African country to host a meeting of the Group.³ Statements were then made by Dr Dedo Geinitz (GTZ), Ms Gabriele Zoeller (BMZ) and Mr Dimitri Vlassis (UNODC). They complimented the Group for what had been achieved so far, and assured the Group of the support of their respective organizations in its future work. Judge Weeramantry, speaking from the Chair, emphasized the importance of independence and integrity as the primary sources of the strength and authority of judicial decisions. Dr Nihal Jayawickrama, Co-ordinator of the Group, made an introductory statement in which he thanked the BMZ and GTZ for having made it possible for the Group to meet in Lusaka, Chief Justice Sakala for hosting the meeting, and the staff of the Supreme Court of Zambia for their logistical assistance.⁴

THE BANGALORE PRINCIPLES – AN UPDATE

8. In providing an update on the Bangalore Principles of Judicial Conduct (“the Bangalore Principles”), Dr Jayawickrama stated that there was no mechanism to ascertain the extent to which the Bangalore Principles were being adopted or used by national judiciaries. Anecdotal evidence, however, suggested that judiciaries on every continent had adopted codes of conduct based on the Bangalore Principles or were in the process of doing so. Material on the internet also suggested that the Bangalore Principles had been the subject of judicial workshops in countries such as Mauritius and French Polynesia. In advising the removal from office of the Chief Justice of Gibraltar for inability to discharge the functions of his office, the Judicial Committee of the Privy Council observed that the Bangalore Principles (and the Guide to Judicial Conduct published by the Judges’ Council of England and Wales in October 2004) “provided guidance as to the standard of conduct to be expected of a judge”. The provisions relating to “Impartiality” and “Propriety” were cited as being of particular relevance.⁵

9. At the international level, ECOSOC resolution 2006/23 had “emphasized that the Bangalore Principles represented a further development and were complementary to the Basic Principles on the Independence of the Judiciary”, and had invited Member States “to encourage their judiciaries to take the Bangalore Principles into consideration when reviewing or developing rules with respect to the professional and ethical conduct of members of the judiciary”. In resolution 2007/22, ECOSOC had requested UNODC to translate the Commentary on the Bangalore Principles (“the Commentary”) into all official languages of the United Nations and disseminate it to Member States, international and regional judicial forums and appropriate organizations. That resolution, while requesting UNODC to develop technical cooperation projects and activities aimed at supporting Member States in their implementation of the Bangalore Principles, also requested the Secretariat to submit

³ Chief Justice Sakala’s address is attached marked “C”.

⁴ Dr Jayawickrama’s statement is attached marked “D”.

⁵ Privy Council No.16 of 2009, Referral under Section 4 of the Judicial Committee Act 1833, Hearing on the Report of the Chief Justice of Gibraltar, 12 November 2009, [2009] UKPC 43.

the Bangalore Principles and the Commentary to the Conference of the States Parties to the United Nations Convention against Corruption (UNCAC).

10. According to available information, the Group noted that:

- (i) the UN expert group on “Democracy and the Rule of Law” had recommended that since judicial integrity was a key element of impartial justice, “States that do not already have a code of conduct for judges are encouraged to consider adopting the Bangalore Principles on Judicial Conduct”;⁶
- (ii) the UN Committee on the Elimination of Racial Discrimination, in requiring States parties to “strive firmly to ensure a lack of any racial or xenophobic prejudice on the part of judges, jury members and other judicial personnel, requested States parties to “take into account the Bangalore Principles of Judicial Conduct”, and cited several relevant provisions from it;⁷
- (iii) the UN Special Rapporteur on the Independence of Judges and Lawyers, in his 2008 report to the Human Rights Council, in discussing the recognition of the traditional systems of justice of indigenous peoples, referred to the principle of equality in the Bangalore Principles;⁸ and
- (iv) in his 2009 report to the Human Rights Council, in which he discusses guarantees of judicial independence, the UN Special Rapporteur on the Independence of Judges and Lawyers cited extensively from the Bangalore Principles.⁹

11. Although it had so far not been possible for the Group to undertake a comprehensive survey of academic papers, the Bangalore Principles appeared to have been referred to in several of them. In one, they were described as “the undisputed international benchmark” and “the international norm holding the field”.¹⁰ Another, by Sir Nigel Rodley, discussed problems of identifying questionable judicial conduct and the relevance of the Bangalore Principles. He argued that since “non-arbitrariness” did not have the characteristics contained in the definitions of any of the values, it would perhaps be desirable to have that value/principle spelt out as an independent component of the Bangalore Principles.¹¹ Presentations on the Bangalore Principles made since the last meeting included a paper by Dato Param Kumaraswamy at the Asia-Pacific Judicial Reform Conference in Singapore (January 2009), and by Dr Nihal Jayawickrama at a Council of Europe Conference on Judicial Ethics in Ankara, Turkey (February 2009). The Hon. Michael Kirby referred to the

⁶ E/CN.4/2005/58

⁷ General Recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, UNGA Official Records, Supplement No.18, A/60/18, pp.98-108 at 106-7.

⁸ A/HRC/8/4 of 13 May 2008.

⁹ A/HRC/11/14 of 24 March 2009.

¹⁰ *Law-in-Perspective*, 1 November 2009.

¹¹ Sir Nigel Rodley, “The Singarasa Case: Quis Custodiet . . . ? A test for the Bangalore Principles of Judicial Conduct”, (2008) *Israel Law Review*, vol.41, pp.500-521, <http://ssrn.com/abstract+1333324>.

Bangalore Principles at a workshop in Chiang Mai, Thailand, in January 2010, convened to discuss the new ASEAN Human Rights Commission.

MEASURES FOR THE EFFECTIVE IMPLEMENTATION OF THE BANGALORE PRINCIPLES

12. In six sessions of the meeting, on January 21 and 22, the Group proceeded to examine in detail the Report and draft Procedures for the Effective Implementation of the Bangalore Principles prepared by the Co-ordinator. It was agreed that these should be described as “measures” rather than as “procedures”. While maintaining the structure (i.e. responsibilities of the judiciary and responsibilities of the state), the draft measures were reviewed and revised. The Group adopted the draft Measures for the Implementation of the Bangalore Principles (“Implementation Measures”). These will be further reviewed by the Group within the next few months.¹²

MEASURES FOR THE DISSEMINATION OF THE BANGALORE PRINCIPLES

13. The Rapporteur presented a draft statement of measures for the dissemination of the Bangalore Principles, including the Commentary and the Implementation Measures.

- (i) The *first* measure proposed was the establishment and maintenance of a website concerning the work, activities and products of the Group. The website should also contain resolutions of international, regional and national bodies adopting, noting or applying the Bangalore Principles, as well as decisions of courts applying the Principles and academic commentary on the Principles.
- (ii) The *second* measure proposed was the wide distribution of the Bangalore Principles and related material, including to judges of international, regional and national courts, heads of relevant UN organs and agencies and the human rights treaty monitoring bodies, the secretariat of the OECD, bar associations, law schools, and anti-corruption bodies.
- (iii) The *third* measure proposed was the promotion of the Bangalore Principles, the Commentary and the Implementation Measures, especially through the public media and at national, regional and international conferences.

After discussion, the Group adopted the Measures for the Dissemination of the Bangalore Principles (“Dissemination Measures”).¹³

¹² The Implementation Measures, as revised, are attached marked “E”.

¹³ The Dissemination Measures are attached marked “F”.

THE LUSAKA DECLARATION ON JUDICIAL INTEGRITY

14. The Rapporteur presented the draft text of the Lusaka Declaration on Judicial Integrity (“the Lusaka Declaration”) in which the Group re-affirmed the importance of effective measures to uphold human rights, the rule of law, a vibrant civil society and judicial integrity, and called upon Member States of the United Nations to guarantee to their respective judiciaries the core values and principles of judicial integrity enshrined in the Bangalore Principles and in the Implementation Measures. It also encapsulated the decisions reached at the sixth meeting of the Group, and recalled the requests made by ECOSOC to Member States to support the work of the Group and to UNODC to assist Member States in the implementation of the Bangalore Principles. The draft text was considered by the Group at its penultimate session, after which the Group adjourned to the Chambers of the Chief Justice of Zambia in the premises of the Supreme Court where, at its final session, the Group adopted and signed the Lusaka Declaration.¹⁴

THE FUTURE PROGRAMME OF WORK

15. The Group met in special session on Saturday 23 January at 6.30 pm to discuss with the representatives of government and international organizations, who were participating as Observers, its future programme of work.

(a) Structure and Membership

16. The Group recognized that, ten years after it was constituted, it still remained an unincorporated body without specific legal status. A memorandum of understanding prepared in 2007 sought to define its objectives, structure, administrative arrangements, etc. At first, a retiring Chief Justice was usually replaced by his successor. Later, it was felt that if a retiring judge was willing to serve, the Group ought not to be denied the benefit of the wealth of knowledge and experience he or she had gathered while in office. This notwithstanding, the Group acknowledged that the current membership was not sufficiently representative of the geographical regions and legal systems of the world, particularly since two potential members – one from Chile and the other from Hong Kong – were not available for the Lusaka meeting. The Group had also been reluctant to expand its membership without the assurance that sufficient funds would be available to enable all the members to attend and participate in a meeting whenever and wherever held.

17. The fact that the Group was not a legal entity (i.e. not a registered or incorporated body) and was therefore unable to raise funds on its own, meant that it could not determine when, and how often, it would meet. While the Group had, at each of its meetings, identified several focus subjects, it was necessary, in practice, to secure concurrence between the agenda developed by the Group and the interests of a donor agency. In the past this had not proved a difficulty because of the fact that the Group was exploring many previously unexplored and important questions. After the United Nations Centre for International Crime Prevention (now UNODC) had funded the first meeting under its Global Programme against Corruption, the United

¹⁴ The Lusaka Declaration is attached marked “G”.

Kingdom's Department for International Development (DFID) provided funding for the Group's activities under its justice programme from 2000-2003, including two meetings on 2001 and 2002. DFID's support ceased when its priorities changed. Thereafter, GTZ funded the Group's activities from 2005, including the Lusaka meeting, under its UNCAC (United Nations Convention Against Corruption) programme, while UNODC convened the meetings held in 2003, 2005 and 2007. Several issues which the Group would wish to address had consequently remained on the backburner. It was only after considerable effort on the part of all concerned (including those in the organizations referred to above) that funding was eventually secured for the work that had been undertaken and the meetings that had been held.

18. The Group considered several options in regard to its future structure:

- (i) The first option would be for the Group to continue to be what it had been so far – described by one observer as an “elitist group of judges for judges”, and by another as a “closed club”. Chief Justice Odoki saw it as “a group of experts or think-tank seeking to promote agreed values”. However described, the Group had made a very significant contribution towards raising awareness of, and strengthening, judicial integrity. The Group's products had been accepted by judiciaries across the globe principally because they were crafted by an independent and autonomous body of senior judges. But, as one observer asked, is the Group satisfied with the arrangement involving the need for “convergence of interest”?
- (ii) A second option would be for the Group to be incorporated and registered as a charitable organization or society in some country. The Group would then be a non-governmental organization (NGO), with the capacity to raise funds on its own from approved sources, but with no assurance that it would, in fact, be able to do so. Moreover, the propriety of serving judges being engaged in fund-raising was thought to raise a possible ethical issue. One observer felt that the Group's “stature and reputation” would be “lost” if the Group became an NGO.
- (iii) A third option would be affiliation of the Group with UNODC, UNDP or the Office of the United Nations High Commissioner for Human Rights (OHCHR), probably as a roster of experts or reference group. In such event, the UN organ or agency would necessarily seek a prominent role in determining the composition of the Group, as well as in the formulation of its agenda. It was conceded that there would be a loss of autonomy.
- (iv) A fourth option would be for the Group to be reconstituted as a specialized advisory group to the Conference of States Parties to UNCAC. The latter would exercise greater scrutiny of membership and of programmes. In return, the Group would have a “greater institutional presence”.

19. It was agreed that the Group needed improved and stable substantive and logistical support. Deputy Chief Justice Sherif thought that the Group had performed well, but in an uncomfortable environment. He agreed with Chief Justice Odoki that there was probably a need to transform; a need for an identity or legal status. Recognizing the difficulty of deciding this matter without further careful

consideration, Justice Samatta suggested that it be revisited at the proposed Workshop on Judicial Integrity in West Africa.

20. While it was essential that the major legal systems and geographical regions should be represented in the Group, Judge Mellinghoff preferred a smaller, more compact, rather than an expanded, membership. Other Members expressed the view that the high quality of the Group's work was the result of its small membership comprising judges or former judges of experience and ability with knowledge of the particular subject.

(b) Programme of work

21. It was agreed that it would be desirable to seek endorsement by ECOSOC of the Implementation Measures as being complementary to the Bangalore Principles and the Commentary, both of which ECOSOC had already endorsed.

22. The "judiciary in post-conflict societies", "integrity in the informal justice sector", and "principles of electoral integrity" were mentioned as subjects worthy of attention by the Group. The following communication from Dato Param Kumaraswamy suggesting that it would be timely for the Group to revisit the UN Basic Principles on the Independence of the Judiciary was tabled:

Further to my earlier email and the conversation with you over the telephone on Jan 15, I would appreciate if you could bring the following for the attention of the Judicial Group for its consideration.

Now that the Group has successfully deliberated over the last ten years in the drafting of the Bangalore Principles, its Commentary and currently on a set of Procedures for implementation of the Principles it would be timely for the same Group to undertake a review of the UN Basic Principles on the Independence of the Judiciary.

As you know the Basic Principles were adopted at the seventh UN Congress on the Prevention of Crime and Treatment of Offenders in Milan in 1985 and endorsed by the General assembly in the same year. Some 25 years ago.

The original draft (The Varenna draft) before the Congress was an ambitious piece and quite comprehensive. However, the Eastern European States (the communist bloc then) nearly blocked its adoption in that form and content. Instead a diluted compromised set of principles as guidelines were finally adopted. It was a case of adopting something rather than nothing.

The situation and circumstances have since changed. It is now an opportune time for the Group to revisit these Principles and draft a new set of comprehensive standards for consideration and adoption by the UN. I can think of no other body other than this Group with the wealth of knowledge gathered over the years in addressing judicial integrating to curb judicial corruption.

I trust that the Group will give this humble proposal of mine due consideration and hope both UNDOC and UNDP will support the same proposal. I will be happy to assist in anyway.

23. It was suggested by the Observers that Members of the Group could contribute to judicial training and provide advice to States Parties to UNCAC. With UNDP likely to introduce judicial integrity into its international programmes, it was suggested that Members of the Group could play an active role in regional conferences and mentoring programmes.

RECOMMENDATIONS OF THE REGIONAL WORKSHOP ON JUDICIAL INTEGRITY IN AFRICA

24. The meeting of the Group was followed by a Regional Workshop on Judicial Integrity in Africa hosted by the Chief Justice of Zambia and facilitated by BMZ and GTZ in collaboration with UNODC and UNDP, and held on January 23 and 24, 2010. It brought together senior judges from Africa, Europe and Asia, together with international experts, to discuss common challenges faced by judiciaries, including frequent delays and adjournments, limited access, archaic and complicated procedures, lack of sufficient training, political interference and corruption involving both court staff and judicial officers. The Members of the Group actively participated in the workshop. Judge Weeramantry delivered the keynote address on “Judicial Integrity and the Rule of Law”. Dr Nihal Jayawickrama and Judge Mellinshoff made presentations, while Justice Samatta, Judge Chanet, Chief Justice Odoki, Justice Uwais and Justice Langa chaired the sessions. Deputy Chief Justice Sherif served as a discussant and the Hon. Michael Kirby provided the summation at the end of the first day.

25. During the workshop the following proposals relating to the future work of the Group were made:

- (i) The Co-ordinator should prepare and publish a record of the history of the Group.
- (ii) A review should be conducted of the global implementation of the Bangalore Principles. The Group should also collect instances where the Bangalore Principles had been applied in judicial decisions.
- (iii) The Bangalore Principles should be incorporated into law courses, specifically those related to legal and judicial ethics. The Principles cannot be properly understood without a cross-cultural awareness of the historical, social and religious traditions that underpin them. These are mentioned in the Commentary.
- (iv) Empirical studies should be undertaken to measure the implementation of the Bangalore Principles. The more that empirical markers for improvement in judicial and court practices can be derived and published, the more likely it is that governments and the judiciary will support the introduction of necessary reform.
- (v) National judiciaries should be encouraged to re-evaluate their own systems by reference to the Bangalore Principles and to report on any difficulties which observance of those Principles might be thought to create.
- (vi) The Group should formulate a peer review mechanism to measure compliance with the Bangalore Principles. A good model would be the African Peer Review Mechanism (APRM) which is a mutually agreed instrument voluntarily acceded to by member states of the African Union,

and intended to be used in regard to political, economic and corporate governance values, codes and standards.

- (vii) The Commentary should be translated into other languages, including French, Arabic and Swahili and disseminated widely in the community, including to lawyers.
- (viii) The Judicial Integrity Group website should be an instrument of knowledge management. The Group should also establish a clearing house for relevant material.
- (ix) In regard to the Implementation Measures, a practical tool in simple language should be prepared as a guide, especially for the benefit of legal practitioners and litigants.
- (x) A training manual on judicial ethics should be prepared. This manual should explain sensitive subjects to judges; for example, how a colleague's misconduct ought to be dealt with.
- (xi) Members of the Group should make themselves available for mentoring purposes.
- (xii) The Group should organize a forum for African Chief Justices, especially because in some countries their approval is necessary even to introduce ethics into the judicial training curriculum.
- (xiii) Provided satisfactory arrangements can be made for funding and logistics, the next meeting of the Group should be held in conjunction with a regional workshop on judicial integrity in West Africa.

ACKNOWLEDGMENTS

26. The Sixth Meeting of the Group closed with expressions of appreciation to the Chief Justice of Zambia who hosted the meeting and the regional workshop, and the Government of Germany that had, through its Ministry for Economic Cooperation and Development and GTZ, facilitated both events. Appreciation was also expressed to UNODC and UNDP for their collaboration; to the Protocol Division of the Supreme Court and the Ministry of Foreign Affairs of Zambia for their assistance; and to Dr Dedo Geinitz and His Excellency Salah A. El-Sadek, Ambassador of the Arab Republic of Egypt in Zambia, for their generous hospitality.

**THE JUDICIAL GROUP ON
STRENGTHENING JUDICIAL INTEGRITY
(The Judicial Integrity Group)**

SIXTH MEETING

Hotel Taj Pamodzi, Lusaka, Zambia
21-22 January 2010

*Hosted by the Chief Justice of the Republic of Zambia and
Facilitated by Deutsche Gesellschaft fuer Technische Zusammenarbeit (GTZ) on behalf of the
German Federal Ministry for Economic Co-operation and Development (BMZ), in
collaboration with the United Nations Office on Drugs and Crime, Vienna (UNODC).*

AGENDA

THURSDAY 21 JANUARY

09.00 – 10.00 : **INAUGURAL SESSION**

- Welcome Address by The Hon. Ernest Sakala, Chief Justice of the Republic of Zambia.
- Statement by Dr Dedo Geinitz (GTZ)
- Statement by Ms Gabreile Zoeller (BMZ)
- Statement by Mr Dimitri Vlassis (UNODC)
- Statement by H. E. Judge Christopher Weeramantry, Chair, Judicial Integrity Group
- Introductory Statement by Dr Nihal Jayawickrama, Coordinator, Judicial Integrity Group

10.00 – 10.30 : Tea/Coffee break

10.30 – 12.30 : **SESSION ONE**

- Adoption of the Agenda
- The Bangalore Principles of Judicial Conduct – an update
- General review of the Draft Procedures for the Effective Implementation of the Bangalore Principles of Judicial Conduct, including structure, format, title, etc.
- Review of the Draft Procedures: Responsibilities of the Judiciary

12.30 – 14.00 : Lunch

14.00 – 16.00 : **SESSION TWO**

- Review of the Draft Procedures: Responsibilities of the Judiciary

16.00 – 16.30 : Tea/Coffee break

16.30 – 18.00 : **SESSION THREE**

- Review of the Draft Procedures: Responsibilities of the Judiciary

EVENING: 19.00

Reception and buffet dinner hosted by the Chief Justice of Zambia
and Dr Dedo Geinitz at Hotel Taj Pamodzi.

Chief Guest: The Vice-President of the Republic of Zambia.

FRIDAY 21 JANUARY

09.00 – 10.45 : **SESSION FOUR**

- Review of the Draft Procedures: Responsibilities of the State

10.45 – 11.00 : Tea/Coffee break

11.00 – 12.30 : **SESSION FIVE**

- Review of the Draft Procedures: Responsibilities of the State

12.30 – 14.00 : Lunch

14.00 – 15.30 : **SESSION SIX**

- Review of the Draft Procedures: Responsibilities of the State

15.30 – 15.45 : Tea/coffee break

15.45 – 17.00 : **SESSION SEVEN**

- Adoption of the Draft Procedures
- Proposals for the validation of the Procedures
- Future programme of work

17.00 – 17.15 : Transfer to the Supreme Court

17.15 – 18.00 : **CONCLUDING SESSION**

EVENING : 19.30

Reception and buffet dinner hosted by H.E. Salah A El-Sadek,
Ambassador of the Arab Republic of Egypt,
at his residence.

THE JUDICIAL INTEGRITY GROUP

SIXTH MEETING
Lusaka, Zambia
21-22 January 2010

List of Participants

Chairperson

H. E. Judge Christopher Gregory Weeramantry
Former Vice-President of the International Court of Justice

Rapporteur

The Hon. Michael Donald Kirby
Justice of the High Court of Australia (1996-2009).

Members

The Hon. Muhammad Lawal Uwais
Chief Justice of Nigeria and Chairman, National Judicial Council (1995-2006).

The Hon. Pius Nkonzo Langa
Chief Justice of South Africa, President of the Constitutional Court, and Chairperson of the
Judicial Service Commission (2005-2009).

The Hon. Benjamin Joseph Odoki
Chief Justice of Uganda (2001-)

The Hon. Barnabas Albert Samatta
Chief Justice of Tanzania and Chairman of the Judicial Service Commission (2000-2007)

The Hon. Dr. Adel Omar Sherif
Deputy Chief Justice of the Supreme Constitutional Court of Egypt (2002-)

The Rt. Hon. The Lord Mance
Judge of the Supreme Court of the United Kingdom (2009-)

The Hon. Christine Chanet
Judge of the Court of Cassation of France (1996-)

The Hon. Prof. Dr. Rudolf Mellinghoff
Judge of the Federal Constitutional Court of Germany (2001-)

Special Guest

The Hon. Ernest L. Sakala
Chief Justice of the Republic of Zambia

Co-ordinator

Dr Nihal Jayawickrama

Observers

Representatives of the Zambian Judiciary

The Hon. Mrs. I M C Mambilima
Deputy Chief Justice of Zambia

The Hon. M. Mwanamwambwa
Judge of the Supreme Court of Zambia

The Hon. Philip Musonda
High Court Judge-in-Charge

Representatives of Governments and International Organizations

Dr Dedo Geinitz
GTZ

Ms Johanna Beate Wysluch
GTZ

Dr Lothar Jahn
GTZ

Ms Gabriele Zoeller
BMZ

Mr Dimitri Vlassis
UNODC

Dr Oliver Stolpe
UNODC

Ms Julia Keutgen
UNDP

In Attendance

Mr Samuel Emokor
Magistrate Grade 1
Personal Assistant to Chief Justice Odoki

Mr Bernard Mpopo
Resident Magistrate
Personal Assistant to Justice Samatta

Mr Ravindra Weeramantry
Personal Assistant to Judge Weeramantry

**WELCOMING REMARKS
BY THE HON. ERNEST L. SAKALA, CHIEF JUSTICE,
AT THE SIXTH JUDICIAL INTEGRITY MEETING, 21 JANUARY, 2010
AT TAJ PAMODZI HOTEL, LUSAKA**

My Lords and Ladies, on behalf of the Zambian Judiciary and on my own behalf, I warmly welcome each one of you, our distinguished guests, to Zambia in the Sun. I just returned from the United Kingdom last Thursday. I know it for myself that weather there is not as friendly as it is here. For those of you coming from that part of the world, I am very sure that you shall enjoy the sunshine of Zambia, though we are in the rainy season.

But I know that some of you, like Chief Justice Odoki and Chief Justice Samatta, Lusaka is not a new place. Therefore, may I simply welcome you back.

At the outset, I would like to take this opportunity to thank the Judicial Integrity Group Coordinator Dr. Nihal Jayawickrama for choosing me and Lusaka as the host of the Sixth Meeting, and the Regional Workshop of the Judicial Integrity Group. I would also like to thank Dr. Dedo Geinitz of the Germany Technical Cooperation, GTZ, who has worked so hard with my colleagues in the Judiciary to ensure that the Meeting and the Regional Workshop take place in Lusaka.

I feel greatly honoured by your gesture to have invited me to be your host and Special Guest at your Meeting and Regional Workshop.

As the head of the Judiciary in Zambia, I look forward to the deliberations and decisions that will follow in the Implementation of the Bangalore Principles of Judicial Conduct. There is no doubt that we all stand to benefit from this Meeting as we aim to have our judiciaries to be of high integrity.

It is recognizable everywhere that individual efforts, in respective countries, might not be adequate to ensure acceptable high standards of Judicial integrity. It is, therefore, prudent to interact, consult with each other as colleagues and adopt best practices.

It is also important that we consult other stake- holders from a wide dimension of jurisdictions if we are going to truly achieve our desire of having high judicial standards of integrity in our jurisdictions. This is more imperative now because our World has become a global village.

As I have said earlier, the Zambian Judiciary is ready to learn from your experiences and from the work done so far by the Judicial Integrity Group in the area of Judicial Conduct. I say so because our Judiciary attaches great importance to Judicial Integrity.

Thus, one important element the Judicial Service Commission considers in Zambia in the selection of Judges is to look for persons of unquestionable integrity and persons with suitable temperament, patience, and impartial disposition.

This is so because the assumption of the office of a Judge casts upon the incumbent duties in respect of his or her personal conduct, which concerns his or her relations to the State and its inhabitants, the litigants before him or her, the practitioners of law in his court, and the witnesses and attendants who aid him in the administration of his or her functions. Therefore, a Judge's official conduct should be free from impropriety and the appearance of impropriety. He should be avoiding infractions of laws; and his personal behaviour, not only on the

Bench; and in the performance of his judicial duties; but also in his every day life, should be beyond reproach

I was, therefore, very excited when the Hon. Chief Justice Odoki first informed me of the Judicial Integrity Group, when we met at another Conference in Mauritius late last year. We, too, look forward to sharing our experiences in the area of Judicial Conduct. I am confident that our experiences over the past years will also benefit you.

My Lords and Ladies, your decision to choose Zambia as the host will forever be cherished by the Zambia Judiciary for many years to come, as this Meeting and the Regional Workshop will motivate us to do even more to rid the system of any elements that would compromise the integrity of our Judiciary and in the fight against corruption in our judiciary.

We shall also ensure that our commitment towards having a Judiciary of high integrity also benefits the Judicial Integrity Group by positively contributing materials and ideas whenever called upon to do so. We believe our resolution to fight corruption and clean up our system will achieve positive results in the near future.

It is my understanding and belief that there is a lot to learn from the Bangalore Principles of Judicial Conduct, even from countries that have already drafted their Codes like Zambia. I also believe that as the Nation undertakes reforms in the various sectors, including the Judiciary, we should have the Bangalore Principles of Judicial Conduct in mind as they are cross cutting in all areas of human endeavours.

I further believe that our own Code of Conduct for the judicial officers in Zambia can greatly benefit from the Bangalore Principles. Therefore, perhaps at another forum, I might be confirming that we have revised our Code based on the values of the Bangalore Principles.

My Lords and Ladies, most of our laws relating to the fight against corruption in the country are being revised to include the best practices prevailing in other countries; again the Bangalore Principles will become handy. It does not, therefore, come as a surprise that these principles have become so widely accepted world wide by all sectors of humanity.

I would like, therefore, to congratulate each one of you for having formulated the principles this far. I can only pledge to do all I can in ensuring that the principles, which we will be discussing during this Meeting, come to their practical use in all jurisdictions.

I thank you.

**MEETING OF THE JUDICIAL INTEGRITY GROUP
Lusaka, Zambia**

Inaugural Session – Thursday 21 January 2010

Dr Nihal Jayawickrama

Co-ordinator, Judicial Integrity Group.

It is ten years almost to the day, since eight Chief Justices and senior judges responded positively to a suggestion that a small group be established to address the issue of judicial corruption. It was a time when evidence of corruption in the judiciary was surfacing, steadily and increasingly, but mainly through public perception and service delivery surveys conducted on every continent. In October 1999, at a workshop on “Strengthening Judicial Integrity” held during the Ninth International Anti-Corruption Conference in Durban, attended by a very mixed gathering of lawyers, judges, legal academics, parliamentarians, justice ministry officials and human rights activists, and which I had the privilege to chair, the message that came through clearly and strongly, was the need to formulate and implement a concept of judicial accountability without eroding the principle of judicial independence. How else could that be done except by the judges themselves? The first meeting of the Judicial Integrity Group was held in Vienna, in April 2000, on the invitation of the then United Nations Centre for International Crime Prevention, and in conjunction with the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

It is a matter of considerable pleasure to have with us today, not only the Chairperson of that meeting, Judge Weeramantry and the Rapporteur Justice Kirby, but also three of the four judges from this continent who participated in that meeting – Justice Uwais, even then one of the longest serving Chief Justices of Nigeria; Justice Langa, then Vice-President of the internationally acclaimed Constitutional Court of South Africa; and Justice Odoki, then the Chairman of the Judicial Service Commission of Uganda, the body recognized as having been responsible for bringing integrity into that country’s judiciary after a particularly tumultuous period of its history. Justice Samatta, the then newly appointed Chief Justice of Tanzania, with a quarter century of experience in the superior courts of that country and of Zimbabwe, would have been the fourth had he not very generously consented to his predecessor, the then recently retired Chief Justice Nyalali, who had participated in the Durban workshop, attending on his behalf. We are sorry that Justice Bhagwati was prevented by sudden illness from being with us today. He first joined the Group at its meeting in Bangalore in 2002, not only as the former Chief Justice of India who had initiated the tradition of public interest litigation for which that Court is now renowned, but as the special representative of the then UN High Commissioner for Human Rights, Mary Robinson.

Over time, the Group looked beyond the common law world, and in 2002, Justice Sherif, Deputy Chief Justice of the Supreme Constitutional Court of Egypt, who was well known for his pioneering work in helping to globalize environmental law and for his research into Islamic and Middle Eastern law, attended the round table meeting of civil law judges at the Peace Palace at The Hague convened to adopt the Bangalore Principles of Judicial Conduct. As did Justice Christine Chanut, who later also actively contributed to the development of the Commentary on the Bangalore Principles at the intergovernmental expert group meeting held in Vienna in 2007. I think it is not entirely without significance to the work that the Judicial Integrity Group is engaged in that Justice Chanut as a long-serving member and twice Chairperson of the UN Human Rights Committee; Justice Kirby on the High Court of Australia; and Judge Weeramantry as a Judge and later Vice-President of the International

Court of Justice, are better known and more respected for their dissenting, but visionary, opinions that have extended the frontiers of law, perhaps even ahead of their time. Lord Mance, as Chairperson of the Consultative Council of European Judges, but trained in the common law system, contributed perhaps more than anyone else in transforming the Draft Bangalore Code drafted by common law judges into the Bangalore Principles of Judicial Conduct to become an instrument of use and relevance to other legal systems as well. The newest member of the Group, Justice Rudolph Mellinghoff, Judge of the Federal Constitutional Court of Germany, who will be with us shortly, brings with him that great Germanic tradition of jurisprudence.

Justice Odoki, at our last meeting in Vienna, described the Judicial Integrity Group very accurately as an amorphous group. Such a body cannot survive for long on its own. We are very fortunate that in the first four years of its existence, until the Bangalore Principles were adopted and pilot projects were undertaken in Uganda and Sri Lanka and commenced in Nigeria, the Group was supported by the Department for International Development of the United Kingdom. Since 2005, GTZ made it possible for the Commentary on the Bangalore Principles to be prepared, validated and disseminated, and thereafter for work to be undertaken on the Implementation Procedures and for this meeting to be convened to discuss and adopt those procedures. We would not be here today but for the fact that Dr Dedo Geinitz and Johanna Wysluch had sufficient faith, belief and confidence in the potential of the Group and therefore exerted efforts far beyond their call of duty, not only to make this meeting possible, but also to ensure that what it brings forth will be of value. I would also like to thank the German Government, in particular the German Federal Ministry of Economic Cooperation and Development, for their commitment and for making it possible for GTZ to support the work of the Group.

The Judicial integrity Group is not only an amorphous body; it is also not an official governmental body. The Group was fortunate that from its inception the then UN Special Rapporteur on the Independence of Judges and Lawyers, Dato Param Cumaraswamy, had been associated with its work. It was he who first presented the Bangalore Principles to the Commission on Human Rights in April 2003. Thereafter, it was the ingenuity of Dr Oliver Stolpe and his colleagues in Vienna that made it possible for the products of the Group – the Bangalore Principles and the Commentary – to be adopted and endorsed by the UN Economic and Social Commission. I know of at least one postgraduate student at a university in Italy who is researching for her PhD thesis this international law phenomenon of the formal acceptance by the United Nations of an instrument that was neither initiated nor drafted by it. It was, as far as I am aware, the first instrument not drafted by representatives of governments to have been endorsed by the UN.

Finally, I would like to thank Chief Justice Sakala for so graciously agreeing to host this meeting in this pleasant and peaceful land, and the officials of the Zambian Supreme Court for their interventions to facilitate this meeting and to enable all of us to be here for it today.

**MEASURES FOR THE
EFFECTIVE IMPLEMENTATION OF
THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT**

(The Implementation Measures)

INTRODUCTION

The Bangalore Principles of Judicial Conduct identify six core values of the judiciary – Independence, Impartiality, Integrity, Propriety, Equality, Competence and Diligence. They are intended to establish standards of ethical conduct for judges. They are designed to provide guidance to judges in the performance of their judicial duties 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 the judicial role, and to offer the community a standard by which to measure and evaluate the performance of the judicial sector. The Commentary on the Bangalore Principles is intended to contribute to a better understanding of these Principles.

The section on “Implementation” in the Bangalore Principles of Judicial Conduct states that:

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.

In some jurisdictions mechanisms and procedures are already in existence, having been instituted by law or rules of court, to establish ethical standards of conduct for judges. In others they are not. Accordingly, this statement of measures is offered by the Judicial Integrity Group as guidelines or benchmarks for the effective implementation of the Bangalore Principles.

This statement is in two parts. Part One describes the measures that are required to be adopted by the judiciary. Part Two describes the institutional arrangements that are required to ensure judicial independence and which are exclusively within the competence of the State. While judicial independence is in part a state of mind of members of the judiciary, the State is required to establish a set of institutional arrangements that will enable the judge and other relevant office holders to enjoy that state of mind. The protection of the administration of justice from political influence or interference cannot be achieved by the judiciary alone. While it is the responsibility of the judge to be free of inappropriate connections with the executive and the legislature, it is the responsibility of the State to establish the institutional arrangements that would secure the independence of the judiciary from the other two branches of government.¹⁵

¹⁵ In its General Comment No.32 (2007), the Human Rights Committee states that the requirement of independence in article 14(1) of the International Covenant on Civil and Political Rights refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature. Accordingly, States are required to take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the

In preparing this statement of measures, reference was made to several national constitutions and to regional and international initiatives to ensure that they reflect a broad national and international consensus. The latter include:

- (a) The Draft Principles on the Independence of the Judiciary (“Siracusa Principles”) formulated by a representative committee of experts in 1981;
- (b) The Minimum Standards of Judicial Independence adopted by the International Bar Association in 1982;
- (c) The United Nations Basic Principles on the Independence of the Judiciary 1985;
- (d) The Draft Universal Declaration on the Independence of Justice 1988 (the “Singhvi Declaration”);
- (e) Recommendation No. R (94) 12 of the Committee of Ministers of the Council of Europe on the Independence, Efficiency and Role of Judges, 1994;
- (f) The Beijing Statement of Principles of the Independence of the Judiciary adopted by a conference of Chief Justices of the Asia-Pacific region in 1995;
- (g) The European Charter on the Statute for Judges adopted in 1998;
- (h) The Universal Charter of the Judge adopted by the International Association of Judges in 1999;
- (i) The Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence for the Commonwealth adopted in 2001;
- (j) Opinions of the Consultative Council of European Judges (CCJE):
 - Opinion No.1 (2001): Standards concerning the Independence of the Judiciary and the Irremovability of Judges;
 - Opinion No.2 (2002): Principles and Rules governing Judges’ Professional Conduct, in particular Ethics, Incompatible Behaviour and Impartiality;
 - Opinion No.3 (2003): Appropriate Initial and In-Service Training for Judges at National and European Levels;
 - Opinion No.10 (2007): A Council for the Judiciary.
- (k) The Blantyre Rule of Law/Separation of Powers Communique issued by representatives of all three branches of government in the Southern African Development Community (SADC) region in 2003;
- (l) The Cairo Declaration on Judicial Independence adopted by the participants of the Second Arab Justice Conference held in 2003;
- (m) The Suva Statement on the Principles of Judicial Independence and Access to Justice adopted at a judicial colloquium in 2004.

appointment, remuneration, tenure, promotion, suspension and dismissal of members of the judiciary and disciplinary sanctions taken against them.

- (n) “Justice Matters” – the report of the Irish Council for Civil Liberties on Independence, Accountability and the Irish Judiciary, 2007;
- (o) General Comment No.32 (2007) of the Human Rights Committee on Article 14 of the International Covenant on Civil and Political Rights.
- (p) The Venice Commission Report on Judicial Appointments, 2007;
- (q) The United Nations Office on Drugs and Crime (UNODC), Draft Guide on Strengthening Judicial Integrity and Capacity, October 2009.

Part One

RESPONSIBILITIES OF THE JUDICIARY

1. Formulation of a Statement of Principles of Judicial Conduct

- 1.1 The judiciary should adopt a statement of principles of judicial conduct, taking into consideration the Bangalore Principles of Judicial Conduct.
- 1.2 The judiciary should ensure that such statement of principles of judicial conduct is disseminated among judges and in the community.
- 1.3 The judiciary should ensure that judicial ethics, based on such statement of principles of judicial conduct, are an integral element in the initial and continuing training of judges.

2. Application and Enforcement of Principles of Judicial Conduct

- 2.1 The judiciary should consider establishing a judicial ethics advisory committee of sitting and/or retired judges to advise its members on the propriety of their contemplated or proposed future conduct.¹⁶
- 2.2 The judiciary should consider establishing a credible, independent judicial ethics review committee to receive, inquire into, resolve and determine complaints of unethical conduct of members of the judiciary, where no provision exists for the reference of such complaints to a court. The committee may consist of a majority of judges, but should preferably include sufficient lay representation to attract the confidence of the community. The committee should ensure, in accordance with law, that protection is accorded to complainants and witnesses, and that due process is secured to the judge against whom a complaint is made, with confidentiality in the preliminary stages of an inquiry if that is requested by the judge. To enable the committee to confer such privilege upon witnesses, etc., it may be necessary for the law to afford absolute or qualified privilege to the proceedings of the committee. The committee may refer sufficiently serious complaints to the body responsible for exercising disciplinary control over the judge.¹⁷

¹⁶ In many jurisdictions in which such committees have been established a judge may request an advisory opinion about the propriety of his or her own conduct. The committee may also issue opinions on its own initiative on matters of interest to the judiciary. Opinions address contemplated or proposed future conduct and not past or current conduct unless such conduct relates to future conduct or is continuing. Formal opinions set forth the facts upon which the opinion is based and provide advice only with regard to those facts. They cite the rules, cases and other authorities that bear upon the advice rendered and quote the applicable principles of judicial conduct. The original formal opinion is sent to the person requesting the opinion, while an edited version that omits the names of persons, courts, places and any other information that might tend to identify the person making the request is sent to the judiciary, bar associations and law school libraries. All opinions are advisory only, and are not binding, but compliance with an advisory opinion may be considered to be evidence of good faith.

¹⁷ In many jurisdictions in which such committees have been established, complaints into pending cases are not entertained, unless it is a complaint of undue delay. A complaint is required to be in writing and signed, and include the name of the judge, a detailed description of the alleged unethical conduct, the names of any witnesses, and the complainant's address and telephone number. The judge is not notified of a complaint unless the committee determines that an ethics violation may have

3. Assignment of Cases

- 3.1 The nomination of judges to sit on a bench is an inextricable part of the exercise of judicial power.
- 3.2 The division of work among the judges of a court, including the distribution of cases, should ordinarily be performed under a predetermined arrangement provided by law or agreed by all the judges of the relevant court. Such arrangements may be changed in clearly defined circumstances such as the need to have regard to a judge's special knowledge or experience. The allocation of cases may, by way of example, be made by a system of alphabetical or chronological order or other random selection process.
- 3.3 A case should not be withdrawn from a particular judge without valid reasons. Any such reasons and the procedures for such withdrawal should be provided for by law or rules of court.

4. Court Administration

- 4.1 The responsibility for court administration, including the appointment, supervision and disciplinary control of court personnel should vest in the judiciary or in a body subject to its direction and control.
- 4.2 The judiciary should adopt and enforce principles of conduct for court personnel, taking into consideration the Principles of Conduct for Court Personnel formulated by the Judicial Integrity Group in 2005.
- 4.3 The judiciary should endeavour to utilize information and communication technologies with a view to strengthening the transparency, integrity and efficiency of justice.
- 4.4 In exercising its responsibility to promote the quality of justice, the judiciary should, through case audits, surveys of court users and other stakeholders, discussion with court-user committees and other means, endeavour to review public satisfaction with the delivery of justice and identify systemic weaknesses in the judicial process with a view to remedying them.
- 4.5 The judiciary should regularly address court users' complaints, and publish an annual report of its activities, including any difficulties encountered and measures taken to improve the functioning of the justice system.

5. Access to Justice

occurred. The identity of the person making the complaint is not disclosed to the judge unless the complainant consents. It may be necessary, however, for a complainant to testify as a witness in the event of a hearing. All matters before the committee are confidential. If it is determined that there may have been an ethics violation, the committee usually handles the matter informally by some form of counselling with the judge. If the committee issues a formal charge against the judge, it may conduct a hearing and, if it finds the charge to be well-founded, may reprimand the judge privately, or place the judge on a period of supervision subject to terms and conditions. Charges that the committee deems sufficiently serious to require the retirement, public censure or removal of the judge are referred to the body responsible for exercising disciplinary control over the judge.

- 5.1 Access to justice is of fundamental importance to the rule of law. The judiciary should, within the limits of its powers, adopt procedures to facilitate and promote such access.
- 5.2 When there is no sufficient legal aid publicly available, the high costs of private legal representation make it necessary for the judiciary to consider, where appropriate and desirable, such initiatives as the encouragement of *pro bono* representation of selected litigants by the legal profession of selected litigants, the appointment of *amici curiae* (friend of the court), alternative dispute resolution, and community justice procedures, to protect interests that would otherwise be unrepresented in court proceedings; and the provision of permission to appropriate non-qualified persons (including paralegals) to represent parties before a court.
- 5.3 The judiciary should institute modern case management techniques to ensure the just, orderly and expeditious conduct and conclusion of court proceedings.¹⁸

6. Transparency in the Exercise of Judicial Office

- 6.1 Judicial proceedings should, in principle, be conducted in public. The publicity of hearings ensures the transparency of proceedings. The judiciary should make information regarding the time and venue of hearings available to the public and provide for adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, inter alia, the potential interest in the case and the duration of the hearing.¹⁹
- 6.2 The judiciary should actively promote transparency in the delivery of justice, and ensure that, subject to judicial supervision, the public, the media and court users have

¹⁸ Traditionally, the parties to a dispute control the movement of a case, with judges and court personnel merely acting as facilitators. It is now recognized in many jurisdictions that the judiciary should actively monitor and control the progress of a case, especially in the original courts, from institution to judgment, including the completion of all the post-judgment steps. The active management by the court of the progress of a case is designed to encourage the just, orderly and expeditious resolution of disputes. This may involve the case being handled by the same judge from beginning to end; the early fixing of a near-immutable trial date; the judge himself fixing the timetable and giving relevant directions in the pre-trial period; and the same judge trying the case if it goes to trial. The active involvement of the judge enables him or her to deal effectively with the critical areas of litigation, such as defective pleadings, excessive discovery of documents and other techniques frequently employed to delay the proceedings. It may also facilitate the continuous hearing of a case instead of short and incomplete hearings spread over several weeks or months.

¹⁹ The requirement of a public hearing does not necessarily apply to all appellate proceedings which may take place on the basis of written presentations, or to pre-trial decisions. Article 14(1) of the International Covenant on Civil and Political Rights acknowledges that a court has the power to exclude all or part of the public for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice. Apart from such exceptional circumstances, a hearing must be open to the general public, including members of the media, and must not, for instance, be limited to a particular category of persons. Even in cases in which the public is excluded from the trial, the judgment, including the essential findings, evidence and legal reasoning must be made public, except where the interest of juvenile persons otherwise requires, or the proceedings concern matrimonial disputes or the guardianship of children.

reliable access to all information pertaining to judicial proceedings, both pending and concluded, whether on a court website or through appropriate and accessible records. Such information should include reasoned judgments, pleadings, motions and evidence, but affidavits or like evidentiary documents that have not yet been accepted by the court as evidence may be excluded.

- 6.3 To facilitate access to the judicial system, the judiciary should ensure that standard, user-friendly forms and instructions, and clear and accurate information on matters such as filing fees, court procedures and hearing schedules are made available to potential court users.
- 6.4 The judiciary should ensure that witnesses, other court users and interested members of the public have access to easily readable signs and publicly displayed courthouse orientation guides. Sufficient court personnel should be provided to respond to questions through public information services. They should be available close to court entrances. Customer service and resource centres should be provided in an accessible place. Court users should have access to safe, clean, convenient and user-friendly court premises, with comfortable waiting areas, adequate public space, and amenities for special-need users, such as children, victims, and the disabled.
- 6.5 The judiciary should consider initiating outreach programmes designed to educate the public on the role of the justice system in society and to address common uncertainties or misconceptions about the justice system.²⁰
- 6.6 The judiciary should afford access and appropriate assistance to the media in the performance of its legitimate function of informing the public about judicial proceedings, including decisions in particular cases.

7. Judicial Training

- 7.1 To the full extent of its powers, the judiciary itself should organize, conduct or supervise the training of judges.
- 7.2 In jurisdictions that do not have adequate training facilities, the judiciary should, through the appropriate channels, seek the assistance of appropriate national and international bodies and educational institutions in providing access to such facilities or in developing the local knowledge capacity.
- 7.3 All appointees to judicial office should have or acquire, before they take up their duties, appropriate knowledge of relevant aspects of substantive national and international law and procedure. Duly appointed judges should also receive an introduction to other fields relevant to judicial activity such as management of cases and administration of courts, information technology, social sciences, legal history and philosophy, and alternative dispute resolution.

²⁰ In a departure from the traditional belief that judges should remain isolated from the community to ensure their independence and impartiality, judicial outreach now involves proactive measures by judges and direct interaction with the communities they serve. Experience suggests that increased public knowledge about the law and court processes promote not only judicial transparency but also public confidence. Recent outreach approaches have included town hall meetings, the production of radio and television programmes, and the dissemination of awareness-raising materials such as court user guides in the form of short pamphlets providing basic information on arrest, detention and bail, criminal and civil procedures, and useful contacts for crime victims, witnesses and other users.

- 7.4 The training of judicial officers should be pluralist in outlook in order to guarantee and strengthen the open-mindedness of the judge and the impartiality of the judiciary.
- 7.5 While it is necessary to institute training programmes for judges on a regular basis, in-service training should normally be based on the voluntary participation of members of the judiciary.
- 7.6 Where the language of legal literature (i.e. law reports, appellate judgments, etc) is different from the language of legal education, instruction in the former should be provided to both lawyers and judges.
- 7.7 The training programmes should take place in, and encourage, an environment in which members of different branches and levels of the judiciary may meet and exchange their experiences and secure common insights from dialogue with each other.

8. Advisory Opinions

- 8.1 A judge or a court should not render advisory opinions to the executive or the legislature except under an express constitutional or statutory provision permitting that course.

9. Immunity of Judges

- 9.1 A judge should be criminally liable under the general law for an offence of general application committed by him or her and cannot therefore claim immunity from ordinary criminal process.
- 9.2 A judge should enjoy personal immunity from civil suits for conduct in the exercise of a judicial function.
- 9.3 The remedy for judicial errors (whether in respect of jurisdiction, substance or procedure) should lie in an appropriate system of appeals or judicial review.
- 9.4 The remedy for injury incurred by reason of negligence or misuse of authority by a judge should lie only against the State without recourse by the State against the judge.
- 9.5 Since judicial independence does not render a judge free from public accountability, and legitimate public criticism of judicial performance is a means of ensuring accountability subject to law, a judge should generally avoid the use of the criminal law and contempt proceedings to restrict such criticism of the courts.

Part Two

RESPONSIBILITIES OF THE STATE

10. Constitutional Guarantee of Judicial Independence

10.1 The principle of judicial independence requires the State to provide guarantees through constitutional or other means:

- (a) that the judiciary shall be independent of the executive and the legislature, and that no power shall be exercised as to interfere with the judicial process;
- (b) that everyone has the right to be tried with due expedition and without undue delay by the ordinary courts or tribunals established by law subject to appeal to, or review by, the courts;
- (c) that no special ad hoc tribunals shall be established to displace the normal jurisdiction otherwise vested in the courts;
- (d) that, in the decision-making process, judges are able to act without any restriction, improper influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason, and exercise unfettered freedom to decide cases impartially, in accordance with their conscience and the application of the law to the facts as they find them;
- (e) that the judiciary shall have jurisdiction, directly or by way of review, over all issues of a judicial nature, and that no organ other than the court may decide conclusively its own jurisdiction and competence, as defined by law;
- (f) that the executive shall refrain from any act or omission that preempts the judicial resolution of a dispute or frustrates the proper execution of a court decision;
- (g) that a person exercising executive or legislative power shall not exercise, or attempt to exercise, any form of pressure on judges, whether overt or covert;
- (h) that legislative or executive powers that may affect judges in their office, their remuneration, conditions of service or their resources, shall not be used with the object or consequence of threatening or bringing pressure upon a particular judge or judges;
- (i) that the State shall ensure the security and physical protection of members of the judiciary and their families, especially in the event of threats being made against them; and
- (j) that allegations of misconduct against a judge shall not be discussed in the legislature except on a substantive motion for the removal or censure of a judge of which prior notice has been given.

11. Qualifications for Judicial Office

- 11.1 Persons selected for judicial office should be individuals of ability, integrity and efficiency with appropriate training or qualifications in law.
- 11.2 The assessment of a candidate for judicial office should involve consideration not only of his or her legal expertise and general professional abilities, but also of his or her social awareness and sensitivity, and other personal qualities (including a sense of ethics, patience, courtesy, honesty, commonsense, tact, humility and punctuality) and communication skills. The political, religious or other beliefs or allegiances of a candidate, except where they are proved to intrude upon the judge's performance of judicial duties, should not be relevant.
- 11.3 In the selection of judges, there should be no discrimination on irrelevant grounds. A requirement that a candidate for judicial office must be a national of the country concerned shall not be considered discriminatory on irrelevant grounds. Due consideration should be given to ensuring a fair reflection by the judiciary of society in all its aspects.

12. The Appointment of Judges

- 12.1 Provision for the appointment of judges should be made by law.
- 12.2 Members of the judiciary and members of the community should each play appropriately defined roles in the selection of candidates suitable for judicial office.
- 12.3 In order to ensure transparency and accountability in the process, the appointment and selection criteria should be made accessible to the general public, including the qualities required from candidates for high judicial office. All judicial vacancies should be advertised in such a way as to invite applications by, or nominations of, suitable candidates for appointment.
- 12.4 One mechanism which has received particular support in respect of States developing new constitutional arrangements consists in the creation of a Higher Council for the Judiciary, with mixed judicial and lay representation, membership of which should not be dominated by political considerations.
- 12.5 Where an independent council or commission is constituted for the appointment of judges, its members should be selected on the basis of their competence, experience, understanding of judicial life, capacity for appropriate discussion and appreciation of the importance of a culture of independence. Its non-judge members may be selected from among outstanding jurists or citizens of acknowledged reputation and experience chosen by an appropriate appointment mechanism.
- 12.6 The promotion of judges, when not based on seniority, should be made by the independent body responsible for the appointment of judges, and should be based on an objective appraisal of his or her performance, having regard to the expertise, abilities, personal qualities and skills required for initial appointment.
- 12.7 The procedure in certain states of the Chief Justice or President of the Supreme Court being elected, in rotation, from among the judges of that court by the judges themselves, is not inconsistent with the principle of judicial independence and may be considered for adoption by other states.

13. Tenure of Judges

- 13.1 It is the duty of the State to provide a full complement of judges to discharge the work of the judiciary.
- 13.2 A judge should have a constitutionally guaranteed tenure until a mandatory retirement age or the expiry of a fixed term of office.²¹ A fixed term of office should not ordinarily be renewable unless procedures exist to ensure that the decision regarding re-appointment is made according to objective criteria and on merit.
- 13.3 The engagement of temporary or part-time judges should not be a substitute for a full complement of permanent judges. Where permitted by local law, such temporary or part-time judges should be appointed on conditions, and accompanied by guarantees, of tenure or objectivity regarding the continuation of their engagement which eliminate, so far as possible, any risks in relation to their independence.
- 13.4 Because the appointment of judges on probation could, if abused, undermine the independence of the judiciary, the decision whether or not to confirm such appointment should only be taken by the independent body responsible for the appointment of judges.
- 13.5 Except pursuant to a system of regular rotation provided by law or formulated after due consideration by the judiciary, and applied only by the judiciary or by an independent body, a judge should not be transferred from one jurisdiction, function or location to another without his or her consent.²²

14. Remuneration of Judges

- 14.1 The salaries, conditions of service and pensions of judges should be adequate, commensurate with the status, dignity and responsibilities of their office, and should be periodically reviewed for those purposes.
- 14.2 The salaries, conditions of service and pensions of judges should be guaranteed by law, and should not be altered to their disadvantage after appointment.

²¹ National practice appears to favour a specified retirement age for judges of superior courts. The constitutionally prescribed retirement age for judges of the highest court ranges from 62 in Belize, Botswana and Guyana to 65 in Greece, India, Malaysia, Namibia (with the possibility of extension to 70), Singapore, Sri Lanka and Turkey, 68 in Cyprus, 70 in Australia, Brazil, Ghana, Peru and South Africa, to 75 in Canada and Chile. In some jurisdictions (for example, Belize and Botswana), provision exists to permit a judge who has reached retirement age to continue in office “as long as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age”.

²² The transfer of judges has been addressed in several international instruments since transfer can be used to punish an independent and courageous judge, and to deter others from following his or her example.

15. Discipline of Judges

- 15.1 Disciplinary proceedings against a judge may be commenced only for serious misconduct.²³ The law applicable to judges may define, as far as possible in specific terms, conduct that may give rise to disciplinary sanctions as well as the procedures to be followed.
- 15.2 A person who alleges that he or she has suffered a wrong by reason of a judge's serious misconduct should have the right to complain to the person or body responsible for initiating disciplinary action.
- 15.3 A specific body or person should be established by law with responsibility for receiving complaints, for obtaining the response of the judge and for considering in the light of such response whether or not there is a sufficient case against the judge to call for the initiation of disciplinary action. In the event of such a conclusion, the body or person should refer the matter to the disciplinary authority.²⁴
- 15.4 The power to discipline a judge should be vested in an authority or tribunal which is independent of the legislature and executive, and which is composed of serving or retired judges but which may include in its membership persons other than judges, provided that such other persons are not members of the legislature or the executive.
- 15.5 All disciplinary proceedings should be determined by reference to established standards of judicial conduct, and in accordance with a procedure guaranteeing full rights of defence.
- 15.6 There should be an appeal from the disciplinary authority to a court.
- 15.7 The final decision in any proceedings instituted against a judge involving a sanction against such judge, whether held in camera or in public, should be published.
- 15.8 Each jurisdiction should identify the sanctions permissible under its own disciplinary system, and ensure that such sanctions are, both in accordance with principle and in application, proportionate.

16. Removal of Judges from Office

- 16.1 A judge may be removed from office only for proved incapacity, conviction of a serious crime, gross incompetence, or conduct that is manifestly contrary to the independence, impartiality and integrity of the judiciary.
- 16.2 Where the legislature is vested with the power of removal of a judge, such power should be exercised only after a recommendation to that effect of the independent authority vested with power to discipline judges.

²³ Conduct that gives rise to disciplinary sanctions must be distinguished from a failure to observe professional standards. Professional standards represent best practice, which judges should aim to develop and towards which all judges should aspire. They should not be equated with conduct justifying disciplinary proceedings. However, the breach of professional standards may be of considerable relevance, where such breach is alleged to constitute conduct sufficient to justify and require disciplinary sanction.

²⁴ Unless there is such a filter, judges could find themselves facing disciplinary proceedings brought at the instance of disappointed litigants.

16.3 The abolition of a court of which a judge is a member should not be accepted as a reason or an occasion for the removal of the judge. Where a court is abolished or restructured, all existing members of that court should be re-appointed to its replacement or appointed to another judicial office of equivalent status and tenure. Where there is no such judicial office of equivalent status or tenure, the judge concerned should be provided with full compensation for loss of office.

17. Budget of the Judiciary

17.1 The budget of the judiciary should be established in collaboration with the judiciary, care being taken that neither the executive nor legislature authorities is able to exert any pressure or influence on the judiciary when setting its budget.

17.2 The State should provide the judiciary with sufficient funds and resources to enable each court to perform its functions efficiently and without an excessive workload.

17.3 The State should provide the judiciary with the financial and other resources necessary for the organization and conduct of the training of judges.

17.4 The budget of the judiciary should be administered by the judiciary itself or by a body independent of the executive and the legislature and which acts in consultation with the judiciary. Funds voted for the judiciary should be protected from alienation and misuse.

DEFINITIONS

In this statement of implementation measures, the following meanings shall be attributed to the words used:

“irrelevant grounds” means race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes.

“judge” means any person exercising judicial power, however designated, and includes a magistrate and a member of an independent tribunal.

MEASURES FOR THE DISSEMINATION OF THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT

1. Establishment and Maintenance of a Website

- 1.1 The Judicial Integrity Group (the Group) should establish and maintain a website concerning the work and activities of the Group.
- 1.2 Such website should include information about the Group and its role and activities, including but not limited to:
 - a. The Bangalore Principles of Judicial Conduct (“Bangalore Principles”);
 - b. The Commentary on the Bangalore Principles (“Commentary”);
 - c. Measures for the Implementation of the Bangalore Principles (“Implementation Measures”);
 - d. Resolutions of the United Nations and other international, regional and national bodies adopting, noting or applying the Bangalore Principles, the Commentary and the Implementation Measures;
 - e. Decisions of courts applying the Bangalore Principles, the Commentary and the Implementation Measures;
 - f. Academic commentary on the Bangalore Principles, the Commentary and the Implementation Measures; and
 - g. These Dissemination Measures.
- 1.3 The Group should take steps to translate the Bangalore Principles, the Commentary and Implementation Measures into the official languages of the United Nations and may translate the same into other languages and publish such translations on the Group’s website.

2. Distribution of the Bangalore Principles

- 2.1 The Group should ensure the distribution of the Bangalore Principles, the Commentary and the Implementation Measures as well as the foregoing Resolutions, Decisions and Academic Commentary, widely and in particular to:
 - a. The Judges of the International Court of Justice and other international and regional courts and tribunals;
 - b. The Executive Director of the United Nations Office on Drugs and Crime;
 - c. The Administrator of the United Nations Development Programme;

- d. The United Nations High Commissioner for Human Rights;
- e. The President of the Human Rights Council of the United Nations;
- f. The Members of the Human Rights Committee of the United Nations established under the *International Covenant on Civil and Political Rights*;
- g. The secretariat of the Organisation for Economic Cooperation and Development;
- h. The heads of national judiciaries; judicial associations; bar associations and national and international associations of lawyers;
- i. Educational institutions, including relevant colleges of judicial education; law schools; and institutes of juridical science;
- j. Anti corruption bodies established by law; and
- k. Other relevant and appropriate bodies.

3. Promotion of the Bangalore Principles

- 3.1 The Group should promote awareness and application of the Bangalore Principles, the Commentary and the Implementation Measures by all means within its power.
- 3.2 Without exhausting the initiatives that should be taken by the Group, these should include:
 - a. The promotion of national, regional and international conferences to permit the examination and discussion of the Bangalore Principles, the Commentary and the Implementation Measures;
 - b. The institution of professional prizes and awards for promotion of the Bangalore Principles, the Commentary and the Implementation Measures;
 - c. The examination and explanation in the public media of the Bangalore Principles, the Commentary and the Implementation Measures, their purposes and values; and
 - d. The approach to international and regional organizations, national governments and private foundations to secure funding and logistical and other support to ensure the achievement of the foregoing.

**THE LUSAKA DECLARATION
ON JUDICIAL INTEGRITY**

1. The Judicial Integrity Group ('the Group') convened for its sixth meeting in Lusaka, Zambia, between 20-22 January 2010 followed by a regional workshop. The meeting of the Group took place in the presence of the Chief Justice of Zambia (the Hon. Ernest Sakala) and other Judges of the Supreme Court and High Court of Zambia (who attended as observers). The Chief Justice of Zambia addressed the inaugural session of the meeting. At its concluding session held in the chambers of the Chief Justice at the Supreme Court of Zambia on 22 January 2010, this Declaration was adopted by the Group.
2. The Group was honoured by the attendance at its dinner in Lusaka of The Hon. George Kunda, SC, MP (Vice President of Zambia). He addressed the occasion and affirmed the importance which the Government of Zambia attached to judicial integrity and to measures against corruption in public and private office.
3. The Group acknowledged the participation in its deliberations, as observers, of representatives of the German Federal Ministry for Economic Cooperation and Development (BMZ), the Gesellschaft für Technische Zusammenarbeit (GTZ), the United Nations Office for Drugs and Crime (UNODC) and the United Nations Development Programme (UNDP). It welcomed participants of the BMZ and GTZ without whose support the meeting of the Group could not have taken place in Lusaka.
4. The Group re-affirmed the Bangalore Principles of Judicial Conduct which it drafted at its second meeting, held in Bangalore, India, in 2001 and finally adopted at a special meeting held at The Peace Palace at The Hague, The Netherlands in 2002 ('the Bangalore Principles'). It noted the endorsements of the Bangalore Principles within the organs and agencies of the United Nations, including the United Nations Commission on Human Rights, the United Nations Commission on Crime Prevention and Criminal Justice, the Economic and Social Council (ECOSOC) and UNODC. It noted with satisfaction numerous governmental, judicial and academic references to, and applications of, the Bangalore Principles since its last meeting. The Group resolved to take further the elaboration of the Bangalore Principles, in the form of Measures on the Implementation of the Bangalore Principles ('the Implementation Measures') and Measures on the Dissemination of the Bangalore Principles ('the Dissemination Measures').
5. At Lusaka, the Group resolved, in principle, to adopt the Implementation Measures aimed at furthering the implementation of the Bangalore Principles in domestic jurisdictions and to afford more detailed strategies and guidance on how those Principles might be applied throughout the world. The Implementation Measures contain elaborations for the more effective implementation of the Bangalore Principles, expressed by reference to particular responsibilities to assure judicial integrity devolving upon the Judiciary itself and particular responsibilities devolving upon the State. Amongst the subjects elaborated in the responsibilities of the Judiciary, endorsed by the Group in Lusaka, were:
 - Formulation of a Statement of Principles of Judicial Conduct
 - Applications and Enforcement of Principles of Judicial Conduct
 - Assignment of Cases
 - Court Administration
 - Access to Justice
 - Transparency in the Exercise of the Judicial Office

- Judicial Training
 - Advisory Opinions
 - Immunity of Judges
6. Amongst the subjects elaborated in relation to the responsibilities of the State, endorsed by the Group in Lusaka, were:
- Constitutional Guarantee of Judicial Independence
 - Qualifications for Judicial Office
 - Appointment of Judges
 - Tenure of Judges
 - Remuneration of Judges
 - Discipline of Judges
 - Removal of Judges from Office
 - Budget of the Judiciary
7. The Group reached consensus upon the substance of the Implementation Measures expressing the foregoing subjects. It established procedures for the finalization of the drafting of such Measures. When adopted, in accordance with these procedures, such Implementation Measures will form an annex to this Lusaka Declaration.
8. The Group also adopted Measures on the Dissemination of the Bangalore Principles. The Dissemination Measures, endorsed by the Group in Lusaka, concerned:
- Establishment and Maintenance of a Global Website on Judicial Integrity
 - Distribution of the Bangalore Principles and Implementation Measures
 - Promotion of the Bangalore Principles and Implementation Measures
9. The Dissemination Measures are annexed to this Lusaka Declaration.
10. The Group recognized the importance of changeover and renewal in its membership. It welcomed the participation in the Lusaka meeting of some long-standing and new members from the senior judiciary in Africa. It noted with satisfaction the participation in the Lusaka meeting of Judge Christine Chanet (Court of Cassation of France) and, for the first time, of Judge Rudolf Mellinghoff (Federal Constitutional Court of Germany) and re-affirmed its determination to reflect fully in its work the viewpoint of the civil law tradition of courts throughout the world. It also resolved to establish a procedure to secure the representation in the Group of legal systems and traditions not currently represented to carry forward the work of the Group.
11. The Group recalled ECOSOC Resolution 2006/23 which requested UNODC to continue to support the work of the Group and encouraged Member States to make voluntary contributions to support the Group, and to continue to provide technical assistance to developing countries and countries with economies in transition, upon request, to strengthen the integrity and capacity of their judiciaries. The Group also recalled ECOSOC Resolution 2007/22 which requested UNODC to develop and implement technical cooperation projects and activities aimed at supporting Member States, upon request, in developing rules with regard to the professional and ethical conduct of the members of the judiciary, as well as in their implementation of the Bangalore Principles. The Group called upon Member States of the United Nations to guarantee to their respective judiciaries the core values and principles of judicial integrity enshrined in the Bangalore Principles and in the Implementation Measures.
12. The Group, for its part, pledged to provide whatever assistance is required to implement such projects and activities as may be initiated or undertaken in the Member States.

13. The Group recorded its special thanks for the work of its chairperson, HE Judge Christopher Weeramantry (formerly Judge and Vice President of the International Court of Justice), its rapporteur, The Hon. Michael Kirby (formerly Judge of the High Court of Australia) and its coordinator, Dr. Nihal Jayawickrama.
14. The Group affirmed that its work is founded in the universal principles of Human Rights, recognized in international, regional and national human rights law. Such law assures to every person seeking access to the judiciary, uncorrupted judges of integrity who exhibit the tripartite qualities of competence, independence and impartiality. The Group recognized that, without a judiciary reflecting these features, countries everywhere, but especially in developing countries such as Zambia, will not attain their full economic and social potential. The Group re-affirmed the importance, in this regard, of effective measures to uphold human rights, the rule of law, a vibrant civil society and judicial integrity. It is to these ends that the Group has met in Lusaka and adopted the Implementation Measures and the Dissemination Measures referred to in this Statement.
15. May the work of the Judicial Integrity Group continue to contribute to peace and justice under law for all, without discrimination and without corruption.

Signed:

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