

THIRD MEETING
OF THE JUDICIAL GROUP
ON STRENGTHENING JUDICIAL INTEGRITY

COLOMBO, SRI LANKA

10-12 JANUARY 2003

**THIRD MEETING
OF THE JUDICIAL GROUP ON STRENGTHENING JUDICIAL
INTEGRITY**

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Organized with the assistance of the
United Nations Centre for International Crime Prevention, Vienna and the
Department for International Development, United Kingdom,
and with the co-operation of the Government of Sri Lanka.

INTRODUCTION

1. The Third Meeting of the Judicial Integrity Group was convened in the Conference Room of the Hilton Hotel in Colombo, Sri Lanka on January 10, 11 and 12 2003.¹ The meeting was funded by the United Nations Centre for International Crime Prevention (UNCICP), and was organized with the assistance of the Department for International Development in the United Kingdom, the Government of Sri Lanka and the Marga Institute, Colombo. The purposes of this meeting were:

- (a) To review the mechanisms utilized in the pilot programmes in the three focus countries: Uganda, Sri Lanka and Nigeria, to diagnose systemic weaknesses in the judicial system;
- (b) To share experiences in addressing the systemic weaknesses identified in the surveys of court users and other stakeholders and through the other mechanisms employed in the focus countries;
- (c) To consider (i) what steps ought to be taken to secure the passage of the *Bangalore Principles of Judicial Conduct* to the UN General Assembly; and (ii) what measures should be adopted by national judiciaries to provide a mechanism to implement these principles;
- (d) To consider a draft *Code of Conduct for Judicial Employees*; and
- (e) To decide on future meetings and/or activities of the Judicial Group.

¹ Two previous meetings of the Judicial Group were held in Vienna and Bangalore in April 2000 and February 2001 respectively. A Round-Table Meeting of Chief Justices representing civil law and other legal systems was convened by the Chairman of the Judicial Group in November 2002 at the Peace Palace at The Hague. The purpose of that meeting was to review and revise the *Draft Bangalore Code of Judicial Conduct* which the Judicial Group had adopted in February 2002. The *Bangalore Principles of Judicial Conduct* emerged from that meeting.

MEMBERSHIP

2. The Judicial Integrity Group was chaired by H E Judge Christopher Weeramantry (former Vice-President of the International Court of Justice). The other participants were Chief Justice M L Uwais (Nigeria); Chief Justice B A Samatta (Tanzania); Chief Justice B J Odoki (Uganda); Deputy Chief Justice Pius Langa (South Africa); Chief Justice N K Jain (Karnataka State, India); Justice K M Hasan (Bangladesh); and Chief Justice K N Upadhyay (Nepal). On the invitation of the Judicial Group, Chief Justice Hilario G Davide Jr (Philippines) and Deputy Chief Justice Dr Adel Omar Sherif (Egypt) also participated as special guests. Chief Justice Sarath N Silva (Sri Lanka) was absent. The rapporteur was Justice Michael Kirby (High Court of Australia).
3. The Hon P N Bhagwati (Chairman of the UN Human Rights Committee) and Dato' Param Cumaraswamy (UN Special Rapporteur on the Independence of Judges and Lawyers) participated as observers. The resource persons were Mr Jeremy Pope (Executive Director of Transparency International), Mr Petter Langseth (Programme Manager, Global Programme Against Corruption, UNCICP), and Mr Keith Mackiggan (Justice and Human Rights Adviser, Department for International Development, United Kingdom).
4. Dr Nihal Jayawickrama served as the Coordinator of the Judicial Integrity Group.

INAUGURATION OF THE THIRD MEETING

5. The inaugural session of the Third Meeting took place at 10.00 am on Friday 10 January 2003 in the Ballroom of the Hotel Lanka Oberoi in the presence of a large gathering of Sri Lankan judges, cabinet ministers, officials and other citizens. Representatives of the Diplomatic Corps and of civil society organizations, including the media, also attended. The Prime Minister of Sri Lanka, The Hon. Ranil Wickremasinghe MP, was the chief guest.
5. The proceedings began with the lighting of the ceremonial lamp. In his introductory speech, Dr Nihal Jayawickrama welcomed the members of the Judicial Integrity Group and explained its conception, development and activities. He emphasised the importance of the timing of the meeting given the concurrent negotiations designed to bring an end to civil conflict in Sri Lanka. He referred to the long tradition of the judiciary of Sri Lanka and to the need in Sri Lanka and elsewhere for the judiciary to play a pivotal role in strengthening the integrity of judicial systems.
6. Judge Weeramantry, in his remarks from the chair, drew attention to the commonalities that existed between the differing legal, religious, philosophical and social traditions of all countries of the world. He emphasised the need to reinforce integrity to ensure the acceptability of the judgments of courts. He pointed, in the context of the work of the International Court of Justice (of which he had until recently been a member) to the absence of coercive enforcement save for respect and compliance with the law. It was this feature, also common in domestic jurisdictions, that laid emphasis upon the maintenance and strengthening of judicial integrity.

7. Inaugurating the meeting, the Prime Minister of Sri Lanka, The Hon Ranil Wickremasinghe MP, congratulated the Judicial Integrity Group on the progress it had so far achieved, and referred in particular to the *Bangalore Principles of Judicial Conduct*. He referred to the survey of court users and other stakeholders conducted in Sri Lanka by the Marga Institute, and assured that his government, which was committed to good governance, would recommend to parliament such remedial action as might be warranted. He insisted that the integrity of the judiciary should be seen in the wider context of good governance. Without integrity in government, at all levels and in all branches, efforts to secure peace and security and to promote economic development, would founder. He lauded the role of the Supreme Court of India in nation building, and observed that if the Supreme Court of his own country had similarly fulfilled its mission of protecting the rights of different groups, recent history might have taken a different turn, and Sri Lanka might have been spared the trauma of an armed struggle.

8. The Prime Minister emphasized the importance of sustaining judicial independence by means of regional human rights arrangements. He proposed the consideration of an Asian Convention on Human Rights, which would include principles supporting judicial independence. He envisaged the establishment of a regional court or tribunal with jurisdiction to resolve issues arising between the citizen and government after national remedies had been exhausted, thereby applying and enforcing a common standard. He acknowledged that such an idea might have opponents at the start and seem controversial. However, he said that if five or six like-minded countries of the region were willing to join in such an endeavour, Sri Lanka would be amongst them.

9. The keynote address was given by the Judicial Integrity Group's rapporteur, Justice Michael Kirby (Australia). He said that the work of the Judicial Integrity Group constituted an alternative vision for humanity to that of the power of capital and weapons. The rule of law, constitutionalism and defence of human rights depended on a judiciary of courage and integrity. He paid tribute to the work of the International Court of Justice and other international tribunals and to the UN agencies that supported work such as that of the Judicial Integrity Group. He speculated on the future activities of the Group and ways to make the *Bangalore Principles* more effective in countries of differing legal and social traditions.

10. Chief Justice Uwais (Nigeria) proposed the vote of thanks and recalled that his previous visit to Sri Lanka had been in the height of the armed conflict, as a member of an international commission invited to inquire into the circumstances leading to the death of two army generals.

REVIEW OF MECHANISMS

11. **Survey instruments:** The Group had before it reports of national surveys of court users and other stake-holders in the justice systems in Nigeria, Uganda and Sri Lanka.²

² Centre for Basic Research, *Final Draft Report on Integrity in Uganda* (November 2002); The Marga Institute (Sri Lanka Centre for Development Studies), *A System Under Siege – An Inquiry into the Judicial System of Sri Lanka* (September 2002); Nigerian Institute of Advanced Legal Studies, *Summaries of Findings of Surveys conducted in Lagos and Borno States* (September 2002).

These surveys were based on instruments approved at the Bangalore meeting. The reports were explained by Chief Justice Uwais and Chief Justice Odoki and, in respect of Sri Lanka, by Mr Basil Ilangakoon, Executive Vice-Chairman of the Marga Institute. Chief Justice Davide (Philippines) referred to the Action Programme for Judicial Reform in his country, and explained a *Blueprint* developed by the Philippines judiciary to combat actual and perceived problems of corruption and inefficiency in the judiciary.

12. At the close of a searching review of the surveys, their methodology and outcomes, the Judicial Integrity Group agreed as follows:

(a) Since the nature and extent of the problems will vary as between each country in which a survey is intended to be undertaken, the design and implementation of the survey should ordinarily be planned and carried out in close consultation with the Chief Justice or other body responsible for strengthening integrity in the judiciary in that country.

(b) It may be useful to integrate the survey with the statements contained in the *Bangalore Principles*.

(c) The survey should be concerned with the reality of integrity and not simply with perceptions. It should be concerned with facts and not mere gossip or assumptions. It is important, in questions and in investigations related to the survey, to ensure that presuppositions are avoided.

(d) Four principles should govern the conduct of a survey, namely:

- (i) Judges should ordinarily be involved in the design of the survey and be invited to comment on the survey instrument before distribution;
- (ii) The survey should be conducted to explore data on judicial performance and should not be confined to issues of corruption only;
- (iii) The results of the survey should be integrated into the education and training of judges and other court personnel; and
- (iv) The conduct of the survey should be transparent and the public should be informed of it and of its outcome and significance.

(e) With funds provided by DFID-UK and by UNCICP, desirably within a period of six months, and through a body that specializes in survey analysis, the survey instruments employed and the data gathered in Nigeria, Sri Lanka and Uganda should be assessed and evaluated in order to maximize their utility.

13. **Focus Group Consultations:** Chief Justice Odoki described the focus group consultations which were conducted in Uganda, with the Judicial Integrity Committee (JIC) headed by a Supreme Court Judge travelling throughout the country meeting groups of civic leaders, court users, judicial officers and other actors in the judicial system including lawyers,

the police and prison officers. The objective of that exercise was to ascertain and understand the causes of the negative public image of the judiciary, and to solicit suggestions on measures that could be employed to reverse that image. Based on these discussions, the JIC proposed a Plan of Action.³ These included several short, medium and long-term measures which the judiciary could undertake to address concerns regarding (a) judicial conduct, (b) corruption in the judiciary, (c) delay in the disposal of cases, (d) mysticism of the judicial process, (e) execution of court process, and (f) administration of the estates of deceased persons. The JIC also proposed a revised code of judicial conduct based on the Bangalore Principles. The Chief Justice explained that this exercise brought problems affecting the judiciary into the public domain, and proved more effective than questioning by an external investigator conducting a survey.

14. **National Workshop of Stakeholders:** Chief Justice Odoki described the national workshop of stakeholders held in Jinja, Uganda, in December 2002 to examine the survey report. He tabled the report of the workshop containing its recommendations.⁴ He said that the workshop of 80 participants amplified and added quality to the survey findings, and while also validating them, made the report “more realistic, more living”. The next step would be a Judges Conference which was scheduled for three days in late January 2003.

15. **Case Audit:** Dr Jayawickrama informed the Group that a case audit will commence shortly in Sri Lanka for the purpose of identifying the stages in a judicial proceeding at which inordinate delays take place. A checklist had been prepared for this purpose.

REMEDYING SYSTEMIC WEAKNESSES

16. **Systemic weaknesses:** The Judicial Integrity Group examined systemic weaknesses identified in the surveys of court users and other stake-holders conducted in the pilot studies. They noted that areas for attention included:

- (a) Lack of adequate training for judges;
- (b) Delay and lethargy in the judicial system;
- (c) Length of court proceedings;
- (d) Lack of skill in the English language (the language of the court) amongst some judges;
- (e) The disappearance of court records;
- (f) Prejudice;

³ Judicial Integrity Committee, *Plan of Action for Strengthening Judicial Integrity* (30 May 2002).

⁴ *Workshop on Judicial Integrity in Uganda* (Jinja, 15-17 December 2002).

- (g) Inappropriate socialising of judges and lawyers;
- (h) Variations in sentencing;
- (i) Delay in delivering judgments;
- (j) Expensive private legal services; and
- (k) Unofficial payments required to be made for various administrative activities inherent in the judicial process.

17. ***Remedying systemic weaknesses:*** In response to these reports the members of the Judicial Integrity Group agreed as follows:

(a) The Group noted that in many jurisdictions, the quality of legal education was not of an acceptable standard; that one could graduate without any knowledge of legal philosophy, international law, international human rights and humanitarian law, or environmental law; that judges who were products of such law schools would be inadequately equipped; that due to lack of training many judges were unaware of what went on in other jurisdictions; and that judges of superior courts often felt that they did not require continuing legal education. Accordingly,

(i) It was necessary to institute training programmes for judges on a regular basis, while senior judges should conduct seminars to which junior judges were invited. In this connection, reference was made to the Philippines Judicial Academy, where attendance was mandatory and performance in courses was taken into account in promotions.

(ii) Where the language of legal literature (ie law reports, appellate judgments, etc) is different from the language of legal education, it is imperative that instruction in the former should be provided to both lawyers and judges.

(iii) Those responsible for judicial and legal education should be informed of the need for legal instruction in such areas as International Law, including International Human Rights and Humanitarian Law; International Environmental Law; and Legal Philosophy.

(b) Judicial officers must take responsibility for reducing delay in the conduct and conclusion of court proceedings and discourage activities of the legal profession that cause undue delay. Judicial officers should institute transparent mechanisms to allow the judiciary, the legal profession and litigants to know the status of court proceedings. (One method suggested was the monthly circulation among judges of a list of pending judgments). Where no legal requirements already exist, standards should be adopted by the judges themselves and publicly announced in order to ensure due diligence in the administration of justice.

(c) Judicial officers must take necessary steps to prevent court records from disappearing or being withheld. Such steps should include the computerisation of court records. They should also institute systems for the investigation of the loss and disappearance of court files.

Where wrong-doing is suspected, they should ensure the investigation of the loss of files, which is always to be regarded as a serious default. In the case of lost files, they should institute action to reconstruct the record and institute procedures to avoid such loss.

(d) Where they do not already exist and within any applicable law, the judiciary should introduce means of reducing unjustifiable variations in criminal sentences in like cases including:

- (i) By the introduction of sentencing guidelines and like procedures;
- (ii) By securing the availability of relevant sentencing statistics and data; and
- (iii) By judicial education, including the introduction of a judicial handbook concerning sentencing standards and principles (Reference was made to the Bench Book in the Philippines).

Such initiatives should observe due respect for the proper role of judicial discretion in sentencing and should be transparent so as to be known to the judiciary, the legal profession and to litigants.

(e) Recognising the fundamental importance of access to justice to ensure true equality before the law, the high costs of private legal representation and the typical limits on the availability of public legal aid, Judges should consider, in accordance with any legal provisions that may apply and with the consent of any unrepresented party but acting in cooperation with the legal profession, various initiatives including:

- (i) The encouragement of pro bono representation by the legal profession of selected litigants;
- (ii) The appointment of *amici curiae* or other representatives to protect interests that would otherwise be unrepresented in proceedings; and
- (iii) The provision of permission to appropriate non-qualified persons to represent parties before a court.

Judges should take appropriate opportunities to emphasise the importance of access to justice, given that such access was essential to true respect for constitutionalism and the rule of law.

(f) Having regard to reports of unofficial payments for purposes such as the calling up of files, the issuing of summonses, the service of summonses, securing copy of evidence, the obtaining of bail, the provision of a certified copy of a judgment, expedition of cases, the delay of cases, the fixing of convenient dates and the rediscovery of lost files, Judges should consider:

- (i) The display of notices in court buildings and elsewhere where they might be seen by relevant persons, forbidding all such payments.

- (ii) The appointment of court vigilance officers and users committees together with appropriate systems of inspection to combat such informal payments;
- (iii) The introduction of computerisation of court records including of the court hearing schedule;
- (iv) The introduction of fixed time limits to prescribe legal steps that must be taken in the preparation of a case for hearing; and
- (v) The prompt and effective response by the court system to public complaints.

To ensure the effectiveness of such measures and the prohibition of informal payments by users of the court system, Judges should, as far as possible, address the issue of the adequacy of the remuneration of court officers.

18. It was generally agreed that the *Bangalore Principles* and the foregoing resolutions in response to the pilot surveys should be made known by the members of the Judicial Integrity Group to their judicial colleagues and to other judges in participating and non-participating countries through judicial meetings, conferences and suitable publications.

THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT

19. The chairman tabled the *Bangalore Principles of Judicial Conduct*, which had emerged from the Round-Table Meeting of Chief Justices held in the Peace Palace at The Hague in November 2002. Represented at that meeting were the Judiciaries of Mexico, Brazil, Norway, Netherlands, France, Czech Republic, Egypt, Mozambique and the Philippines. Also participating were the Judges of the International Court of Justice from Madagascar, Hungary, Germany, Sierra Leone, United Kingdom, Brazil, Egypt, and the United States of America. The Hague Meeting was preceded by extensive consultations, undertaken with the cooperation of the UN Special Rapporteur, with Judges from over sixty countries, including the Consultative Council of European Judges established by the Council of Europe, and the Judiciaries of Central and Eastern European countries, as well as of other Asian, African, Pacific and Caribbean countries. The chairman described the course of the deliberations at The Hague.

20. Dato' Param Cumaraswamy informed the Judicial Integrity Group that *The Bangalore Principles* (translated into the United Nations languages) were annexed to his report to the forthcoming session of the United Nations Commission on Human Rights. He intended to urge the Commission to give “careful consideration” to *The Bangalore Principles* and either “endorse” or “note” them. His report will shortly be posted on the United Nations Website and thus made accessible throughout the world. The Group welcomed this development. Meanwhile, suggestions were made that:

- (a) Discussions be held with receptive Foreign Ministries with a view to *The Bangalore Principles* being presented for “adoption” by the United Nations General Assembly.

- (b) *The Bangalore Principles* be forwarded to the Crime Commission of the United Nations with a view to securing a resolution requesting member states to implement it.

The Judicial Integrity Group agreed that whichever route was followed to secure universal acceptance of *The Bangalore Principles*, their “ownership” must remain with national judiciaries and, accordingly, no part of the text should be amended except by representatives of national judiciaries.

21. Deputy Chief Justice Sherif (Egypt) informed the meeting that the Chief Justice of Egypt would be presenting *The Bangalore Principles* to the meeting then in progress in Mauritius of the Arab Federation of Constitutional Courts and Councils. Dr Jayawickrama reminded the meeting that *The Bangalore Principles* had already been presented by the Chief Justice of Mexico to a similar gathering of Chief Justices from Spanish-speaking countries held in Cancun in November 2002. It was agreed that *The Bangalore Principles* be disseminated at forthcoming legal and judicial meetings, including the Commonwealth Law Conference (Melbourne, April 2003), World Jurists Association (Sydney, August 2003), and LAWASIA (Tokyo, September 2003). Chief Justice Davide undertook to present it to the forthcoming Conference of Asian-Pacific Chief Justices in Tokyo in September 2003.

22. The Judicial Integrity Group agreed that the Chairman, assisted by the Coordinator, should write to national Chief Justices in all countries, informing them of *The Bangalore Principles* and of the work of the Group, and inviting comments thereon. In this connection, it was agreed that an appropriate letterhead for the Judicial Integrity Group be prepared containing the names of its members, etc., the address and contact information being that of the Coordinator.

23. A discussion on what measures ought to be recommended for the implementation of *The Bangalore Principles* was deferred, pending the preparation of a report on mechanisms already in existence at the national level for the implementation of codes of judicial conduct.

PROPOSED CODE OF CONDUCT FOR JUDICIAL EMPLOYEES

24. The Coordinator tabled a Draft Code of Conduct for Judicial Employees. He explained that this was based on the Model Code of Conduct for Non-judicial Employees prepared by the American Judicature Society. He had also drawn upon three other state codes now in operation in the United States.

25. The Judicial Integrity Group considered the draft. It noted suggested textual amendments, including a number proposed by Chief Justice Davide (Philippines). The Group then resolved that:

- (a) The document should be reformulated as guidelines and not as a code.
- (b) Such guidelines should contain a preamble explaining how the integrity of the conduct of court employees is related to the promotion of judicial integrity which cannot be the concern of judges only but involves all those engaged in judicial proceedings.

- (c) Any such guidelines should be in addition to, not in derogation of, any legal, regulatory or contractual undertakings given by court employees concerning integrity in the performance of their duties.
- (d) Members of the Judicial Integrity Group should take steps to distribute the amended version of the guidelines to court registrars and other appropriate officers for comment by them.
- (e) The draft guidelines should be considered at a future meeting of the Judicial Integrity Group when the Group invited the Chief Justices, the UN Special Rapporteur and other interested parties (including those representative of court employees) to submit suggested amendments and additions.

FUTURE MEETINGS AND ACTIVITIES OF THE JUDICIAL INTEGRITY GROUP

26. The Judicial Integrity Group considered a document on "A Possible Way Forward" which was tabled at the meeting containing suggestions for intensifying the work of the Group and widening its participation. The Group agreed that:

- (a) enquiries be made to establish a Website on the Internet for the Judicial Integrity Group which would serve, inter alia, as a documentation centre;
- (b) action be taken to capture and exchange emerging best practice on judicial reform, including case management, sentencing guidelines, and computerization of case records;
- (c) continuing education material for judges be developed, focusing on the need to sensitize them, in particular, to international law, international human rights and humanitarian law, environmental law, and philosophical perspectives;
- (d) principles, standards and instruments relating to the judicial process (eg. Judicial independence) be further developed or updated;
- (e) a manual on the judicial reform process be developed, capturing the experience gained to date;
- (f) the feasibility of institutionalizing the Judicial Integrity Group and establishing a secretariat be examined. The advantages of locating the secretariat in a developing country were noted;
- (g) while expressing appreciation for the support that had been provided to its work by DFID-UK, the exploration of funding from the "Utstein" Group (Germany, Netherlands, Norway and the United Kingdom) for the future activities of the Judicial Group was authorized;

- (h) A Fourth Meeting of the Judicial Integrity Group be convened, the timing, venue and participation in such meeting to be determined by the chairman in consultation with the coordinator.

COMPOSITION OF THE JUDICIAL INTEGRITY GROUP

27. On the invitation of the Judicial Integrity Group, Chief Justice Davide (Philippines) and Deputy Chief Justice Dr Adel Omar Sherif (Egypt) agreed to serve as members of the Group. The Group noted the absence of Chief Justice S N Silva (Sri Lanka) who would be taken to have retired from the Judicial Integrity Group.

ACKNOWLEDGEMENTS

28. The Third Meeting of the Judicial Integrity Group closed with expressions of appreciation to the Government of Sri Lanka, and in particular to the Prime Minister who inaugurated the meeting; the Minister of Foreign Affairs, the Hon. Tyronne Fernando, MP PC, and the Minister of Constitutional Affairs, Professor G. L. Peries MP, for their hospitality; and to the Ministry of Foreign Affairs and the Ministerial Security Division of the Police Department for the assistance and courtesies afforded to the participants on their arrival and during their stay in the country. Appreciation was also expressed to the Marga Institute for their secretarial assistance; to the Colombo Hilton and the Lanka Oberoi Hotels for providing excellent meeting facilities; to the resource persons, the chairman, the coordinator and all participants.

Annexures

- A: List of Participants
- B: Provisional Programme and Agenda
- C: Programme of the Inaugural Session
- D: Annotated Agenda
- E: Introductory Statement of the Coordinator
- F: *Judicial Integrity: A Global Social Contract* – Keynote Address by The Hon. Justice Michael Kirby.

**3RD MEETING OF
THE JUDICIAL GROUP
ON STRENGTHENING JUDICIAL INTEGRITY**

**The Colombo Hilton
January 10, 11 and 12, 2003**

LIST OF PARTICIPANTS

CHAIRPERSON
H.E. Judge C. G. Weeramantry Former Vice-President of the International Court of Justice
MEMBERS
The Hon. Justice K. M. Hasan Judge of the Appellate Division of the Supreme Court of Bangladesh (representing the Chief Justice of Bangladesh)
The Hon. Nagendra Kumar Jain Chief Justice of Karnataka, India
The Rt. Hon. Kedar Nath Upadhyay Chief Justice of Nepal
The Hon. M. L. Uwais, GCON Chief Justice of Nigeria
The Hon. Pius Langa Deputy Chief Justice of South Africa and Deputy President of the Constitutional Court of South Africa
The Hon. Sarath N. Silva Chief Justice of Sri Lanka
The Hon. B. A. Samatta Chief Justice of the United Republic of Tanzania

The Hon. B. J. Odoki Chief Justice of Uganda
SPECIAL GUESTS
The Hon. Hilario G. Davide Jr. Chief Justice of the Philippines
The Hon. Dr Justice Adel Omar Sherif Chief Commissioner and Deputy Chief Justice-Designate of the Supreme Constitutional Court of Egypt
RAPPORTEUR
The Hon. Justice Michael D. Kirby, AC CMG Judge of the High Court of Australia
OBSERVERS
The Hon. Justice P. N. Bhagwati Chairman of the UN Human Rights Committee
Dato' Param Kumaraswamy UN Special Rapporteur on the Independence of Judges and Lawyers
CO-ORDINATOR, JUDICIAL INTEGRITY PROGRAMME
Dr Nihal Jayawickrama
RESOURCE PERSONS
Dr Petter Langseth Programme Manager, Global Programme Against Corruption, United Nations Centre for International Crime Prevention, Vienna
Mr Jeremy Pope Executive Director, Centre for Innovation and Research Transparency International, London

Mr Keith Mackiggan
Justice and Human Rights Adviser
Department for International Development, United Kingdom

IN ATTENDANCE

Shree Prasad Pandit
Registrar, Supreme Court of Nepal

Mr L. M. K. Uzia
Legal Secretary to the Chief Justice of Tanzania

ACCOMPANYING PERSONS

Mrs Shamim Hasan
Srimathi Aruna Jain
Mrs Indira Upadhyay
Mrs Virginia P. Davide
Mrs Daviinder Kumaraswamy
Dr (Mrs) Sarojini Jayawickrama
Mrs Sidsel Langseth
Mrs Diana Pope

**THE JUDICIAL GROUP
ON
STRENGTHENING JUDICIAL INTEGRITY**

**The Third Meeting of the Judicial Group
Colombo, Sri Lanka**

January 10-12, 2003

Organized with the assistance of the
United Nations Centre for International Crime Prevention, Vienna and the
Department for International Development, United Kingdom,
and with the co-operation of the Government of Sri Lanka.

**Provisional Programme
and Agenda**

THURSDAY 9 JANUARY

19.30: Informal Dinner at “Spoons” Restaurant, Colombo Hilton.

FRIDAY 10 JANUARY

10.00 – 11.55: *Inaugural Session* - Ballroom of the Hotel Lanka Oberoi.

12.00 Buffet Lunch at the Hotel Lanka Oberoi.

14.00 - 17.00: *Working Session 1*⁵

18.00 - 19.30: Informal Consultation on the Peace Process, Board of Investment Auditorium, World Trade Centre, Colombo.⁶

19.45: Reception hosted by The Hon. Tyronne Fernando, P.C., M.P., Minister of Foreign Affairs, at the Galadari Hotel.

⁵All Working Sessions will be in Boardroom 2 of the Colombo Hilton Hotel. Tea/coffee and other refreshments will be served.

⁶ The Leader of the Sri Lanka Government Delegation to the ongoing Peace Talks with the Liberation Tigers of Tamil Eelam, Hon. Professor G. L. Peiris, has requested an opportunity for an informal consultation with the Members of the Judicial Group.

SATURDAY 11 JANUARY

0930 - 12.30: *Working Session 2*

12.45 - 14.00: Lunch at “Spices”, Colombo Hilton.

14.30 - 17.30: *Working Session 3*

20.30: Dinner hosted by The Hon. Professor G. L. Peiris, M.P., Minister of Constitutional Affairs, Enterprise Development, Industrial Policy and Investment Promotion, at the Moonstone Room, Colombo Hilton.

SUNDAY 12 JANUARY

09.00 - 12.00: *Working Session 4*

13.00 : Lunch at the Mount Lavinia Hotel.

**THE JUDICIAL GROUP
ON
STRENGTHENING JUDICIAL INTEGRITY**

**The Third Meeting of the Judicial Group
Colombo, Sri Lanka**

January 10-12, 2003

Organized with the assistance of the
United Nations Centre for International Crime Prevention, Vienna and the
Department for International Development, United Kingdom,
and with the co-operation of the Government of Sri Lanka.

**INAUGURAL SESSION OF THE THIRD MEETING
OF THE JUDICIAL GROUP**

**Ballroom of the Hotel Lanka Oberoi
Friday 10 January, 10 a.m.**

Programme

9.45 – 10.00 : Arrival of invitees
Tea/coffee served in the foyer
Invitees seated in the hall

10.15 The Prime Minister, the Hon. Ranil Wickremasinghe, MP., is received by the Chairman of the Judicial Group, H.E. Judge Weeramantry, and the Co-ordinator of the Judicial Integrity Programme, Dr Nihal Jayawickrama.

The Prime Minister is introduced to the Members of the Judicial Group, the Chairman of the UN Human Rights Committee, the UN Special Rapporteur on the Independence of Judges and Lawyers, and the representatives of the United Nations Centre for International Crime Prevention, the Department for International Development, United Kingdom, and Transparency International.

Preceded by Kandyan dancers and drummers, the Members of the Judicial Group, followed by the Prime Minister, walk up the aisle and take their seats on the platform.

The National Anthem.

The Prime Minister lights the lamp to the accompaniment of ceremonial drumming (magul bera), followed by the Chairman of the Judicial Group, the Chairman of the Human Rights Committee, the UN Special Rapporteur on the Independence of Judges and Lawyers, and the representative of the United Nations Centre for International Crime Prevention.

10.30

Introductory remarks by the Co-ordinator of the Judicial Integrity Programme, Dr Nihal Jayawickrama.

Address by the Chairman of the Judicial Group, H. E. Judge C. G. Weeramantry.

Address by the Prime Minister, The Hon. Ranil Wickremasinght, MP

Keynote Address by The Hon. Justice Michael Kirby, AC, CBE, Judge of the High Court of Australia.

Vote of Thanks by The Hon. M. L. Uwais, GCON, Chief Justice of Nigeria.

12.00

Buffet Lunch in the Foyer.

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Annotated Agenda

1. REVIEW OF MECHANISMS UTILIZED TO DIAGNOSE SYSTEMIC WEAKNESSES IN THE JUDICIAL SYSTEM

(1) *Survey Instruments*

National surveys of court users and other stakeholders were conducted in Nigeria, Uganda and Sri Lanka (survey reports will be tabled). The Judicial Group is invited to evaluate the effectiveness of this mechanism. What improvements, if any, may be made in the questionnaires? Which methodologies were found to be most productive (face-to-face interviews; direct mail questionnaires; exit surveys, etc)?

(2) *Focus Group Consultation*

A country-wide focus group consultation was undertaken in Uganda, with the Judicial Integrity Committee headed by a Judge of the Supreme Court travelling throughout the country, meeting groups of civic leaders, court users, judicial officers and other actors in the judicial system including lawyers, and police and prison officers. The objective of the exercise was to ascertain and understand the causes of the negative public image of the judiciary, and to solicit suggestions on measures that could be employed to reverse that image. The committee submitted a report and an action plan containing several short, medium and long term measures which the judiciary could undertake to address concerns regarding (i) judicial conduct, (ii) corruption within the judiciary, (iii) delay in the disposal of cases, (iv) mysticism of the judicial process, (v) execution of court process, and (vi) administration of estates of deceased persons. The Chief Justice of Uganda may wish to comment on this mechanism.

(3) *Case Audit*

A case audit will commence shortly in selected courts in Sri Lanka for the purpose of identifying the stages in a judicial proceeding at which inordinate delays take place. The Judicial Group is invited to review and revise the draft checklists prepared for this purpose.

(4) ***National Workshop of Court Users and Other Stakeholders***

A national workshop of court users and other stakeholders was held in Uganda following the survey and focus group consultation. How useful was this exercise? What format is likely to be most effective?

(5) ***Judges Conference***

Two Judges Conferences were held in Nigeria, at the commencement and then on completion, of the surveys. How effective was this mechanism?

2. RESPONSE TO SURVEYS

The following are some of the systemic weaknesses identified in the surveys of court users and other stakeholders conducted in Sri Lanka and Uganda:

- (1) Lack of adequate training for judges;
- (2) Delay and lethargy in the judicial system;
- (3) Length of court proceedings;
- (3) Lack of skill in English language among judges;
- (4) Disappearance of court records;
- (5) Prejudice;
- (6) Frequent socializing of judges and lawyers;
- (7) Variations in sentencing;
- (8) Delay in delivering judgment;
- (9) Expensive private legal services;
- (10) unofficial payments required to be made, either “on demand” or because “it is necessary” for purposes such as:
 - (a) to “call-up file”,
 - (b) to issue summons,
 - (c) to ensure that a court order is served on the other party,
 - (d) to obtain a copy of evidence,
 - (e) to obtain bail,
 - (f) to implement the bail order,
 - (g) to obtain a certified copy of the judgment,
 - (h) to expedite the enforcement of judgment,
 - (i) to expedite the transfer of the case record to the appeal court,

- (j) to backdate documents,
- (k) to delay cases,
- (l) to secure the disappearance of evidence/files/court records,
- (m) to fix convenient dates, and
- (n) to secure a decision in favour of the party expected to lose.

The Judicial Group may wish to share experiences in addressing these problems in their different jurisdictions.

The Judicial Group may also wish to indicate areas (eg. case management, sentencing guidelines, etc.) in which they consider “best practice” material should be gathered and disseminated to assist the reform process.

3. THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT.

Following the Bangalore Meeting in February 2001, the Bangalore Draft Code of Judicial Conduct was presented to, and/or discussed in, other broader judicial fora, such as the Conference of Chief Justices of Asia and the Pacific (New Zealand), the Commonwealth Colloquium on Combating Corruption within the Judiciary (Cyprus), and the Global Judges Symposium on Sustainable Development and the Rule of Law (South Africa). It has been published in several legal journals, referred to in a parliamentary select committee report, and cited by speakers on several occasions. As part of a “validation” process, it has been examined and commented on by the Working Party of the Consultative Council of European Judges, and by supreme courts and judges associations of several countries of Central and Eastern Europe. In November 2002, at a Round-Table Meeting of Chief Justices of civil law countries, attended also by several Judges of the International Court of Justice, held at the Peace Palace in The Hague, the Bangalore Draft was reviewed and revised. The draft that emerged from that meeting – *The Bangalore Principles of Judicial Conduct* – will be submitted to the UN Commission on Human Rights by the UN Special Rapporteur in his next report. It is hoped that the document would thereafter be submitted to, and endorsed by, the UN General Assembly to complement the *UN Basic Principles on the Independence of the Judiciary*.

The Judicial Group is invited to consider:

- (1) What steps ought to be taken to secure the passage of the *Bangalore Principles* to the UNGA.
- (2) What measures should be adopted by national judiciaries to provide mechanisms to implement these principles (where such mechanisms are not already in existence).

4. A DRAFT CODE OF CONDUCT FOR JUDICIAL EMPLOYEES

A draft Code of Conduct for Judicial Employees, based on the Model Code of Conduct for Nonjudicial Employees, prepared by the American Judicature Society, is submitted for consideration by the Judicial Group.

5. FUTURE MEETINGS AND/OR ACTIVITIES OF THE JUDICIAL GROUP

With the end of Phase 1 of the pilot programmes in Uganda and Sri Lanka (April/May 2003), DFID's involvement with this project will end. It will be for national judiciaries in the two countries to implement whatever reform programmes are formulated with funds made available under other projects or programmes (Danida/World Bank, etc). It is not expected that DFID will assist in monitoring implementation of Phase 2 of the pilot programme.

The Judicial Group has proved itself to be a catalyst for change. The *Bangalore Principles of Judicial Conduct* is a significant example. Another area requiring attention appears to be the appointment and removal of judges, leading perhaps to a revision of the *UN Basic Principles on the Independence of the Judiciary*. A code of conduct for judicial employees appears to be required. Within the Commonwealth, the Judicial Group appears to have the capacity to play a role similar to that of the Working Party of the Consultative Council of European Judges for the judiciaries of the member states of the Council of Europe. A matter which the Judicial Group may wish to consider is the desirability of keeping the Judicial Group "alive", and the means for doing so.

There have been numerous inquiries, from time to time, about the work of the Judicial Group, and for copies of relevant documentation. The Judicial Group may wish to consider the viability (assuming the Judicial Group does not cease to exist at this meeting) of establishing a dedicated website containing information such as "best practice" material, national codes of conduct, mechanisms employed to identify systemic weaknesses in the judicial system, and their outcomes, etc.

6. ANY OTHER BUSINESS.

DR NIHAL JAYAWICKRAMA

Co-ordinator, Judicial Integrity Programme

Honourable Prime Minister,

May I express to you our gratitude for having come here this morning to inaugurate the 3rd Meeting of the Judicial Group on Strengthening Judicial Integrity. We regard it both as an expression of support and as a sign of encouragement for the work which the Judicial Group is engaged in. A little over an year ago, by the free expression of the will of the people, you were chosen to lead this country. Within that brief period, treading a constitutional minefield, you have begun to restore sanity into governance, infuse hope into the lives of ordinary people, and offer a sense of quiet dignity to every citizen, irrespective of his or her ethnic origin. The scientific, rational, humane, and just approach which you have adopted in addressing the issues relating to the ethnic conflict, almost from the moment of your election, holds out the promise of the kind and quality of leadership which this country must have if it is to survive in this, the new, millennium.

Honourable Chief Justices,

May I join Judge Weeramantry in welcoming to our island home the Heads of the Judiciaries of ten countries, the Chairman of the UN Human Rights Committee, and the UN Special Rapporteur on the Independence of Judges and Lawyers. Throughout history, this country has attracted the peoples of many lands. They came for a variety of reasons. From the west and the north, from the south and the east, they came as colonizers, traders, missionaries, or as intrepid explorers, or simple travellers. Many of them left behind legacies which, over time, have added diversity to our food, our music, and our dress, our languages and our architecture, our beliefs and our values, our forms of government and our systems of law.

It will, no doubt, interest you to know that Roman Dutch Law continues to be our common law, but our courts also apply English legal principles, Muslim Law, the *Thesawalamai* or the customary laws of the Malabar inhabitants of the North, the Kandyan law or customary law of the Sinhalese inhabitants of the central highlands, and, of course, statute law encompassing over 200 years. Our heterogenous population is as rich a mixture of ethnic, religious and linguistic groups as one could possibly find anywhere, and they, in turn, have now begun to experience, after the relatively recent phenomenon of conflict, the exhilarating dividends of peace. Your stay is brief, and the demands on your time will be many, but you are here at one of those great moments in history when a people are rediscovering themselves and reinventing their identities.

Your Excellencies, Honourable Ministers and Judges, Ladies and Gentlemen,

The Judicial Group came into existence nearly three years ago, when the Chief Justices of eight countries sharing a common legal tradition met in Vienna under the auspices of the United Nations, in response to an invitation from Transparency International, to attempt to formulate the concept of judicial accountability, and to devise the methodology for introducing that concept without compromising the principle of judicial independence. It was a challenge which had not been undertaken before. Conventional wisdom requires that only the independence of the judiciary be secured. But judicial independence is not a privilege enjoyed by judges; it is a privilege of the people, for the protection of the people, as they are confronted by the enormous power of public officials and the wealth and resources of the corporate sector. In recent years, however, the question has been raised in many jurisdictions whether this privilege is real, and whether this protection is adequate.

The UN Special Rapporteur has added his voice to calls for judicial independence to be complemented with judicial accountability.

In the early 1960s, when I was admitted to the Bar in Sri Lanka, and began practising before the court to which Judge Weeramantry was appointed a few years later as the youngest ever member of the Supreme Court, any suggestion that a judge or magistrate might be corrupt would have been so preposterous that, in fact, it was never heard. A strong tradition of integrity underpinned the judiciary at every level. At a time of immense change, both political and social, the judiciary remained constant in its commitment to equal justice under the law. Of course, the judiciary had its share of problems and its critics. But it was unthinkable that a judge could be corrupt in the financial sense.

Some ten years later, in the 1970s, when I was serving as Permanent Secretary to the Ministry of Justice and also, ex officio, as a member of the body required by the Constitution to recommend the appointment and transfer of judicial officers, I encountered, for the first time, a complaint that a magistrate had accepted a bribe. The complaint appeared to be true. When confronted, the magistrate resigned his office. It was also during this period that I saw and experienced, with considerable unease and sadness, how some serving judges could demean themselves, and the sanctity of their office, in the pursuit of preferential treatment from the executive branch of Government. When some of these efforts proved to be rewarding, it was difficult not to become sceptical. It was time for the illusions of youth to disappear.

The picture has changed dramatically since then, not merely in this country, but throughout the world. For example, a few years ago, a national household survey in a South-Asian country revealed that 88.5% of those surveyed thought it was impossible to obtain a quick and fair judgment from the judicial system without money or influence. Indeed, 63% of those involved in litigation in the lower courts had paid bribes to either court officials or the opponents' lawyers. In a similar survey in an African country, 32% of those surveyed reported payments to persons engaged in the administration of justice. Beyond the Commonwealth, in Argentina, 57% of those polled said they felt corruption was the main problem with the judiciary. In Honduras, three out of four believed the judiciary was corrupt. In Costa Rica, 54% believed that judicial decisions were subject to external 'pressures'. According to the Geneva-based Centre for the Independence of Judges and Lawyers, out of 48 countries covered in a recent report, judicial corruption was pervasive in 30 of them.

These, of course, are public perceptions, and public perceptions could be unreliable. They may reflect an exaggerated picture, blown up out of proportion to the real thing. But the judiciary cannot afford to ignore such perceptions. If the public wrongly believes that the judicial sector is corrupt, the reasons for that mistaken belief, and what contributes to such negative perceptions, need to be identified and remedied, since the real source of judicial power is the public acceptance of the moral authority and integrity of the judiciary. The principal responsibility falls on the judiciary to address this problem and endeavour to achieve higher levels of public confidence.

But these public perceptions are often supported by evidence. A commission of inquiry in a Commonwealth country described the standard procedure for dealing with traffic cases. The public prosecutor confers with the accused before the court proceedings begin and advises them on the fastest way to dispose of the cases. Each accused is advised to give a certain amount which will be divided between the prosecutor and the magistrate. If the "advice" is declined one is likely to be convicted, heavily fined and his driving licence suspended or revoked. The result is that the "advice" is normally followed and cases are disposed of quickly and the prosecutor and magistrate are complimented for doing a good job.

However wrong public perceptions might be, there is little doubt that in many countries, the people are losing confidence in their judicial systems. They are dissatisfied with the cost of justice. They are dissatisfied with the delays. They are dissatisfied with the cumbersome and daunting procedures involved in going to court. And they, naturally, are frustrated by the failure of the

authorities to address these issues. Many see these as indicators of judicial systems in a perpetual state of crisis. Others see them as indicators of the prevalence of corruption. In some jurisdictions, they may take the law into their own hands. In Venezuela, for instance, angry citizens took to lynching alleged murderers, then rapists and finally even car-thieves on nearly a weekly basis somewhere in the country. The police recorded an average of 21 murders a day, comparable to casualties in a nation at war.

Corruption in the judiciary is, of course, not limited to conventional bribery. An insidious and equally damaging form of corruption arises from the interaction between the judiciary and the executive, as well as from the relationship between the judiciary and the legal profession. For example, the political patronage through which a judge acquires his office, a promotion, an extension of service, preferential treatment, or the promise of employment after retirement, can give rise to corruption if and when the executive makes demands on such judge. Similarly, when a family member regularly appears before a judge, or when a judge selectively ignores sentencing guidelines in cases where particular counsel appear, the conduct of the judge would give rise to the suspicion of corruption, as would a high rate of decisions in favour of the executive. Indeed, frequent socializing with particular members of the legal profession, the executive or the legislature, or with litigants or potential litigants, is almost certain to raise, in the minds of others, the suspicion that the judge is susceptible to undue influence in the discharge of his duties.

These were the factors that led to the convening of a workshop on *Strengthening Judicial Integrity*, in October 1999, during the 9th International Anti-Corruption Conference in Durban. One message that came through clearly from the judges, lawyers, legal academics, justice ministry officials, members of parliament, human rights activists, and civil society representatives at that workshop was the need to formulate and implement a concept of judicial accountability. In the same month at their meeting also held in Durban, the Commonwealth Heads of Government approved a *Framework for Commonwealth Principles on Promoting Good Governance and Combating Corruption*, based on the report of an expert group which, in respect of the judiciary, had recognized the need for principles of accountability and had recommended the formulation of a national strategy to restore its integrity and efficiency. In February 2000, on the initiative of the Centre for the Independence of Judges and Lawyers, a 16-member expert group drawn from 14 countries addressed the issue of judicial corruption, and agreed on a policy framework, one of the principal elements of which was an enforceable statement of judicial ethics.

It was against this background that, in early 2000, with the active support and assistance of the Department for International Development of the United Kingdom, the Judicial Integrity Programme was launched, and the Judicial Group was convened. During the past three years, through pilot programmes in Uganda, Sri Lanka and Nigeria, certain tools and mechanisms have been developed, such as surveys of court users, case audits, focus group consultations, and workshops of stakeholders, which are capable of being utilized by judiciaries everywhere to identify systemic weakness in their judicial systems. “Best practice” material is also being gathered, drawing on the experience of some of the more successful jurisdictions. But perhaps the most significant achievement so far has been the formulation of a code of judicial conduct; an exercise in which Chief Justices or senior judges from over 70 countries have participated, and which culminated in the adoption, at a meeting held last November under the chairmanship of Judge Weeramantry at the Peace Palace at The Hague, that centre of international justice, of a statement of principles of judicial conduct of universal applicability.

The Judicial Integrity Programme was conceived and developed on the basis that, if public confidence in the judiciary has been undermined, the responsibility to restore it rests primarily with the judiciary. It has to regulate itself, and set its own house in order. If the judiciary fails in that task, the legislature and the executive will surely and necessarily intervene, and by so doing, may irreparably erode the principle of judicial independence upon which the judiciary is founded and by which it is sustained.

JUDICIAL INTEGRITY - A GLOBAL SOCIAL CONTRACT

The Hon Justice Michael Kirby AC CMG*

THIRTY YEARS - A RETURN TO SRI LANKA

As my 'plane approached the airport at Colombo I felt a mixture of anticipation and apprehension. These feelings were not produced by the latest cricket score, which chronicled how a Sri Lankan team trounced the Australian veterans. I knew that I could rely upon my New Zealand colleague, Mr Jeremy Pope, to hasten my receipt of bad news from the cricket ground.

The reason for my emotions was different. For it is almost exactly thirty years since I last visited Sri Lanka. In 1974, like many young Australians of that time, I travelled through Asia. I did so in a Kombi van. On the second such journey, I visited this beautiful island. I entered it by ferry from Rameswaram in India. A journey meant to be of days stretched into weeks. We travelled to Jaffna, to Colombo, Kandy, Galle, Polonnaruwa and Anuradhapura. For more than a week we stood on the beach at Bentota, south of Colombo, and witnessed unforgettable sunsets in the company of peaceful people. How often, in the intervening years, I have thought of those days. In lives of professional pressure our minds escape to easy times when there was occasion for the "pursuit of happiness": that goal of human government that Jefferson promised as a fundamental human right⁷. In later years, as the news of the violence that engulfed Sri Lanka spread, I often thought of those sun-drenched days and the friends we met from every community of this nation.

The Judicial Group is meeting in Sri Lanka at a critical time in the negotiations which all people of goodwill hope will bring peace, reconciliation and justice for all communities in this country. In the past, Ceylon was known as the pearl of the Indian Ocean. In recent years, Sri Lanka has seemed a tear - a place of human cruelty. All of us, who are friends from overseas, bring messages of hope for the success of the negotiations. The members of the Judicial Group who are judges, dedicated to constitutionalism and the rule of law, trust that these principles, together with respect for human rights, will strengthen Sri Lanka in the future.

THE INTERVENING YEARS

In the years since my last visit, great have been the changes that have occurred in the world. Many of the changes have been positive. Many have reinforced freedom. The Cold War has ended. The Berlin Wall has been dismantled. The move to democratic government has happened in many lands formerly controlled by totalitarian autocracies. The work of the international agencies for the

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⁷ The reference is to the *American Declaration of Independence*, written by Jefferson: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that amongst these are life, liberty and the pursuit of happiness".

protection of human rights has expanded. Two observers of the Judicial Group's work play key functions in that expanded role. Justice P N Bhagwati, one-time Chief Justice of India, chairs the United Nations Human Rights Committee in Geneva. Dato' Param Cumaraswamy of Malaysia is this year completing the ninth year of his term as United Nations Special Rapporteur on the Independence of Judges and of Lawyers. Although imperfect, the growth of international and regional machinery for the advancement of human rights is a positive change of the last three decades.

Technology has brought many advances. These include the growth of the Internet and the expansion of cyberspace; the completion of the Human Genome Project; and the enlargement of the facilities for international travel and communication. The world economy has grown, although, in many developing countries, economic growth has been patchy and uneven. Accompanying these positive changes are the negatives. A great epidemic of HIV/AIDS has afflicted humanity in a way that was totally unpredictable thirty years ago. It has shown, once again, how vulnerable our species is to new diseases. Malaria, an old enemy of humanity, is on the increase; as is tuberculosis. Homelessness amidst the growing populations of the world is a huge problem. Access to water is one of the flash-points of danger for the new century. The proliferation of nuclear and chemical weapons spells peril for the very survival of the human species. Religious and other fundamentalism seems to afflict many of the great religions of the world whose shared basic lesson teaches us to love one another.

We are meeting in Sri Lanka at a dangerous moment for world peace. No one at this meeting would be other than conscious and concerned about the risks of war and violence and of the special dangers that power will replace law in international dealings.

AN ALTERNATIVE VISION FOR HUMANITY

In a sense, the Judicial Group represents an alternative vision for humanity. It is one different from that based on the power of capital and of weapons. The independent judiciary, that hears both sides and decides disputes honestly, justly and lawfully in a peaceful way, is the model with which we are familiar.

The *Charter* of the United Nations sought to establish a new world order based upon three essential principles. They were the protection of international peace and security; the advancement of economic equity for all peoples; and respect for the fundamental human rights of individuals and peoples everywhere. These three objectives are inter-dependant. It is unlikely that peace and security will be stable without economic equity. Without economic equity respect for fundamental human rights will often be a hollow dream.

A key provision in the International Bill of Rights is the promise of access to judges of integrity. The promise appears in Article 14.1 of the *International Covenant on Civil and Political Rights*. It reads⁸:

"All persons shall be equal before the courts and tribunals. In the determination of any criminal charges against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law".

⁸ United Nations, Human Rights, *A Compilation of International Instruments* (Vol 1, 1994), 20 at 25.

The triple crown of integrity of the judiciary is stated in those words: competence, independence and impartiality. They are the promises which the work of the Judicial Group seeks to reinforce in every land.

We can see the way in which the alternative vision for humanity is being fostered by international, regional and domestic institutions. The media bring us daily coverage of the political organs of the United Nations - the work of the General Assembly and of the Security Council. Less well known is the work of the agencies with which we are familiar.

JUDICIAL AND HELPING ORGANS OF THE UNITED NATIONS

The *Charter* of the United Nations establishes the International Court of Justice. The Judicial Group is proud to be led by a distinguished former judge of that Court, who was until lately its Vice-President, His Excellency Judge Christopher Weeramantry. He is a son of Sri Lanka and was for a time a judge of the Supreme Court of this country. His work in the International Court is a demonstration of judicial integrity. His commitment to a humanitarian approach and his unique knowledge of the spiritual and philosophical beliefs of the world's great cultures and religions makes him a specially suitable person to lead our enterprise.

The work of the International Court is well established. But in recent times other judicial organs of the United Nations have been created. They include the specialised criminal tribunals for the former Yugoslavia and Rwanda. The creation of the International Criminal Court is, we hope, another signal that humanity is turning away from brute power and substituting just and rational solutions peacefully to render accountable the tyrants and oppressors of humanity.

It is the helping agencies of the United Nations with which I have most acquaintance. I have just returned from a meeting in Canada of the International Bioethics Committee of UNESCO. That body is addressing some of the most puzzling challenges facing humanity as we contemplate the prospect of human control over the elemental building blocks of our species. At the end of this month I will travel to Geneva for a meeting of a new global body of UNAIDS, established to monitor those aspects of the HIV/AIDS epidemic that are specifically relevant to human rights.

At about the same time Dato' Param Kumaraswamy will be setting out for the meeting of the Human Rights Commission of the United Nations. Reporting to that Commission will be the Special Rapporteurs and Special Representatives established by the United Nations. For a time, in the 1990s, I was privileged to be the Special Representative for the Secretary-General for Human Rights in Cambodia. I there reported on a land in which the rule of law had been smashed, courts destroyed and judges killed or expelled. Great wrongs occurred in the Kampuchea of the Khmer Rouge. Whatever horrors Sri Lanka has faced in recent times, they were not as bad as the ghastly genocide that afflicted the Cambodian people.

Rebuilding a judiciary of integrity in a land so afflicted was a first priority of the Cambodian government and of my own work as United Nations Special Representative. I can remember participating in the training of the new judges in the No 1 courtroom of the court building in Phnom Penh. Most of the trainees had no familiarity with the law. Most were former teachers, selected because they could read and write. The questions they asked were fundamental. Indeed, they raised some of the issues that have been studied by the Judicial Group:

- Could they remain members of a political party? Many owed their preferment to their party connections and were disinclined to sever them. I told them that, whilst this question was answered in different ways in different countries, in my own nation complete impartiality was taken to require severance with all links with party politics. In countries of so much passion, like Cambodia, it was a prudent rule that I urged them to consider.

- What should they do where there is no law? The trainees pointed to the destruction of the old law books and the absence of efficient law-making machinery. In the days of the French protectorate, a magistrate in doubt could telephone the Ministry of Justice to be instructed on the law and advised on the case. I told the anxious trainees that they must find their solutions amongst themselves. The separation of powers required independence from the Ministry. If there was no written law on the subject, they could do as the common law judges have done for centuries. Make it up. Develop the law from commonsense and notions of justice. But record the decisions and share them with each other so as to ensure consistency of approach and of principle.
- Could they accept gifts from litigants happy with their decisions? They pointed out that in the Khmer culture it was common to offer and receive gifts. In any case, they were in receipt of a paltry salary and the gifts would come in handy. I told them that the receipt of gifts was unacceptable for it would destroy the appearance of impartiality. No ordinary litigant could compete with a large corporation in gifts of gratitude. Integrity was the watchword for judges. Gifts were therefore forbidden. I saw the anxious eyes of the trainees, as if asking how they were to survive on their salaries of US\$20 a month. In Sri Lanka too, and in many lands, judicial salaries are inadequate. One of the main safeguards for integrity in the office where it is most important - the office of the judge - is the payment of adequate remuneration. Without such payments, detection and punishment will be only partly successful in removing the insidious effects of corruption.

In the United Nations Centre for International Crime Prevention, based in Vienna, there is a Global Programme Against Corruption. It is under the umbrella of that programme that the Judicial Group was initiated. I pay tribute to the dedication of Mr Petter Langseth of that Centre who has worked with the Judicial Group since its inception. Whilst the United Nations is often guilty of maddening inefficiencies, there is no other feasible way by which humanity can come together to solve global problems. One such global problem is corruption, inefficiency and lack of integrity in the judicial branch of government. But at least now there is an international body, comprising judges themselves, working towards the establishment of principles and the institution of a mechanism to uphold those principles so as to advance judicial integrity in every nation of the world.

I pay tribute to those who have made the meeting in Colombo possible. The Government of Sri Lanka, our hosts, who have welcomed our visit at this busy time. The United Kingdom Department for International Development which has generously provided the seeding funds to permit the initial meetings of the Judicial Group and to support the surveys on the extent of the problem of lack of integrity in the administration of justice in pilot projects. Those projects have taken place in Nigeria, Sri Lanka and Uganda, three countries of the Commonwealth of Nations. I pay tribute also to Transparency International, an international non-governmental organisation that has supported the work of the Judicial Group. I applaud the work of the other United Nations agencies and civil society organisations that have helped sustain this unique initiative within the highest levels of the judiciary of many countries.

WORK OF THE JUDICIAL GROUP

The first meeting of the Judicial Group took place in April 2000 in Vienna. From the start, Dr Nihal Jayawickrama, another distinguished legal son of Sri Lanka, has taken part as co-ordinator of the Group. I pay tribute to his efficient and principled work in recording, and following up, the recommendations of the Group. At the first meeting, the Group settled on a plan to formulate a number of core values that would be stated in a Code of Judicial Conduct. It was hoped that, drawing on relevant instruments in many countries, this Code would provide the international community with a model that could be adopted to spread the notions of integrity in a systematic way.

The second meeting of the Group took place in February 2001 in Bangalore, India. Thanks to the work of Dr Jayawickrama, a draft "Code" was prepared. It was expressed in terms of basic values to be attained; the relevance of those values to judicial integrity; and the steps necessary to implement the values in practical cases. It drew on judicial codes already in force in many countries.

At Bangalore, the judges insisted that any such international "Code" would be subject to municipal law. In the event of any inconsistency with the Code, a judge owes his or her first duty to that law. The *Bangalore Principles of Judicial Conduct* were adopted. The *Principles* accepted in Bangalore have been widely published and distributed⁹. The then Chief Justice of India (Barucha CJ) who opened the Bangalore meeting, emphasised the importance of education of the judiciary. All participants expressed the hope that the formulation of the Bangalore values would help conceptualize the issue of integrity and facilitate education of judicial officers in the basic principles that they were committed to uphold.

A special meeting of the Judicial Group took place in November 2002 in the Hague, the Netherlands. The purpose of this meeting was to afford an opportunity to judges from countries of the civil law tradition to consider the work that had emanated from the Judicial Group. So far, the Judicial Group had comprised exclusively judges from English speaking countries, principally of the common law tradition. Chief Justices or senior judges who had taken part had come from Australia, Bangladesh, India, Nepal, Nigeria, South Africa, Sri Lanka, Tanzania and Uganda. The need was felt to expand the dialogue. The meeting in the Hague was extremely successful. It was agreed that the Bangalore Draft should be presented as "Principles" rather than a "Code". The latter word connoted something more final and exhaustive than was intended. It was also decided to omit the detailed provisions on implementation, leaving the manner of implantation of the principles to the lawmaking traditions of each participating country.

Several differences of view emerged in the meeting in the Hague. Civil law countries often afford a special status to prosecutors, different from that adopted in common law countries. Participation in politics is more common in the judiciaries of the civil law tradition. The right of free speech for judges tends to be less restricted. Methods of appointment, training and promotion are different. The right to withdraw a judge's labour in certain extreme circumstances is asserted by the judiciary of some countries. In others, there are specific problems connected with the risks of corruption, such as the involvement of judges in gambling. Finding common ground between these different views imposes upon international meetings the obligation to delete the inessential and to stick to the fundamental prerequisites. A consensus emerged from the Hague meeting. The resulting *Bangalore Principles of Judicial Conduct* has been a remarkable product of the deliberations of highly experienced judges from both major legal traditions of the world, from every continent and from many linguistic and cultural traditions. There has never been a similar exercise conducted globally with members of the judiciary.

Now the third meeting of the Judicial Group takes place in Colombo. With the assistance of the consultants, the judicial participants will be examining the report of the meeting in the Hague.

⁹ The original draft of the *Bangalore Principles* is set out in the record of the second meeting of the Judicial Group, Bangalore (February 2001) published in (2001) 27 *Commonwealth Law Bulletin* 404 at 408. See also M D Kirby, "A Global Approach to Judicial Independence and Integrity" (2001) 21 *University of Queensland Law Journal* 147 at 150. Moves towards formal and informal statements on judicial integrity are now common. See eg Australia, Council of Chief Justices and Australian Institute of Judicial Administration, *Guide to Judicial Conduct* (2002).

They will be examining the reports of the case studies from Nigeria¹⁰, Sri Lanka¹¹ and Uganda¹². They will be considering the question whether surveys are useful as recording the *acuality* of loss of integrity in the judiciary or whether they simply chronicle *perceptions* and *beliefs*. They will be studying the ways to take the work of the Judicial Group further, as for example by consulting judges from countries of the Commonwealth of Independent States (the former Soviet Union) and from the nations of Latin America, Francophone Africa and elsewhere. In this way, it is hoped that the process of consultation and engagement will be continued and expanded. In the end, the product of these labours may be an international instrument of some kind - whether a declaration or a binding treaty remains to be seen.

CONTINUING PROBLEMS

I do not pretend by this review that the work of the Judicial Group suggests that it has solved all of the problems of judicial integrity in the world. We do not labour under the misapprehension that the preparation of the *Bangalore Principles* or the conduct of surveys solves the truly hard problems of judicial integrity. Ours is merely the beginning of the process of solution. A reflection upon where we are, and where we are going discloses many continuing issues that the Judicial Group must consider if this project is to be brought to ultimate success.

At present all members of the Judicial Group are men. Yet more than half of humanity are women. In many countries, the numbers of women judges has increased in recent years. Two Chief Justices of Commonwealth nations (Canada and New Zealand) are women. Women's experience of life tends to be different from that of men. Their perceptions of the law and of the judiciary itself, may be different. It may be less patriarchal and complacent. I hope that, in the future, the Judicial Group will include an increasing number of women and, indeed, of judges who share the experience of minority communities who are sometimes on the receiving end of partiality and prejudice against which stands the equality principle adopted by the Judicial Group.

The implementation of the *Bangalore Principles* will necessarily vary from one legal system to another. Perception of what is a lack of integrity will differ, even within a single legal tradition. An illustration of this can be seen in the recent decision of my own Court, the High Court of Australia. In *Ebner v Official Trustee*¹³, a question relevant to this subject arose upon which the court divided. After the hearing of a case involving a dispute between a bank and a mortgagor, whilst the matter was reserved for decision, the judge's mother died. She left the judge a substantial parcel of shares in the bank. Through oversight, this inheritance was not drawn to the notice of the parties. The judge decided the case in favour of the bank. The unsuccessful mortgagor caused a check to be made on the Internet concerning the share register of the bank. He discovered the judge's interest. He applied to have the judgment against him set aside. The judge declined to do this. The Court of Appeal of Victoria dismissed the appeal and upheld the judgment. It pointed to the fact that the shareholding, although not trivial, could not have been affected in any way by the judge's decision in

¹⁰ P Langseth and A Mohammed (eds) *Strengthening Judicial Integrity and Capacity in Nigeria* (UNCICP, 2002).

¹¹ Marga Institute, *A System Under Siege. An Inquiry Into the Judicial System of Sri Lanka* (2002).

¹² Uganda, *Report of a Survey on Integrity in Uganda's Judicial System* by J-J B Barya and S P Rutabajuka (2002).

¹³ (2000) 205 CLR 337. See also *Johnson v Johnson* (2000) 201 CLR 488.

the case. In the multi-billion dollar capital of the bank, the judge's decision was irrelevant to the share values. But, as against this, the mortgagor insisted on the right to have his case decided by a judge who had no interest in one of the parties, in his case the bank.

The majority of the High Court of Australia decided against the mortgagor's challenge against the judge's imputed bias. They applied the test of what a reasonable person, knowing the relevant facts, might consider. They concluded that such a person would not have an apprehension that the judge might have been biased, obliging a rehearing of the case which had lasted very many days. I dissented on the basis of decisional authority¹⁴ and on the footing of my understanding of Australian law, as informed by fundamental human rights principles¹⁵. The case simply goes to illustrate the fact that instances of judicial integrity can give rise to sincere and genuine differences of opinion. Many are not wholly straight-forward. Necessarily, the *Bangalore Principles* are stated at a high level of generality. In the application of those principles there will be room for differences of view and differences of application in different cultures and differing legal traditions.

A third remaining problem is that of reconciling deeply felt differences between the perceptions of judicial integrity in countries of the common law and civil law traditions. Thus in Cambodia, I discovered that court furniture signalled the different status that a prosecutor traditionally enjoys in many civil law countries. The prosecutor is assigned to a bench only marginally lower in size and status than that of the judge. It is closer to the judicial bench than to the bar table. In the common law world, the prosecutor typically sits with the representative of the accused at the bar table to demonstrate symbolically the equality of the parties before the law. But in civil law countries the prosecutor commonly enjoys a quasi-judicial status and is often assimilated to the rules governing the judiciary. In the common law tradition prosecutors are completely separate from the judiciary which ordinarily has no part to play in the prosecution process.

The rule, stated in the *Bangalore Principles*, that judges do not practise law is also one that may need adaptation for civil law countries. Thus, in Denmark and doubtless other countries of the civil tradition, judges may, whilst holding judicial office, undertake private legal arbitrations. In the common law, whilst judges or former judges may sometimes be appointed as court assisted mediators or arbitrators, there are strict limits upon the extraneous legal and other activities in which they can be engaged whilst in judicial office. These differences need to be resolved if a truly international statement of principles on judicial integrity is to be achieved.

A fourth difficulty arises from the proliferation of international statements on judicial integrity. For example, within the Commonwealth of Nations, initiatives are being taken in the Pacific Forum to promote national leadership codes designed to uphold governmental integrity, and to confront corruption in senior office-holders in politics, the administration and the judiciary. How such initiatives cut across attempts to secure a special statement of principle for the judiciary remains to be worked out. In functional terms, many governments would view the judiciary as simply a part of the governmental administration. But in terms of principle, the judiciary, which holds the balance between the citizen and the government, has an inescapably special and separate status.

It will be important for the Judicial Group to secure the support of the Commonwealth Secretariat if it is to influence the development of principles on judicial integrity throughout the

¹⁴ *Dimes v Proprietors of the Grand Junction Canal* (1852) 3 HLC 759 [10 ER 301]; *Webb v The Queen* (1994) 181 CLR 41 at 75; *R v Bow Street Metropolitan Stipendiary Magistrate; Ex parte Pinochet Ugarte [No 2]* [2000] 1 AC 119 at 132-133.

¹⁵ *Ebner v Official Trustee* (2000) 205 CLR 337 at 382-384 [143]-[149].

Commonwealth of Nations. In the Commonwealth, and in other international and regional groupings, it should not be thought that the needs and opinions of the judiciary will always necessarily coincide with those of the executive government and administration. The latter are sometimes jealous of the special status and responsibilities of the judiciary. Yet one of the reasons for the success of the work of the Judicial Group to date has been that it has been undertaken by judges themselves, and senior judges at that.

A fifth problem arises from the dangers of false complaints against judges. It is in the nature of judicial office that virtually every day a judge or magistrate will disappoint people. Decisions in hotly contested cases that might be decided one way or the other will leave many litigants discontented and others suspicious. In such circumstances the judge may be subjected to personal attack. In some circumstances, quite falsely (but in others with justification) it will be considered, and even stated, that the judge has decided in a particular way because of corruption. The problem is one of upholding a transparent process of scrutiny of complaints whilst at the same time defending the vulnerable judiciary from harassment, mistaken, false and fraudulent complaints designed to undermine the courageous performance of judicial duty by all such office-holders.

In Australia I am now one of the two longest serving judges. Inevitably, during my service, I have made decisions that have upset powerful and opinionated people, not all of them litigants. That possibility goes with the job. Like most other judges I have been attacked and criticised, both publicly and privately. Sometimes the attacks on judges are based on litigants' feelings. On other occasions, they are based upon opposition to the judge's view of the law and the Constitution or other more personal considerations¹⁶. Most experienced judges are no strangers to complaints of such kinds. Most realise that they have to endure false complaints and accusations as an inescapable feature of their public service.

Nevertheless, there is a clear need to protect the judiciary from the abuse of any complaints mechanism and to separate complaints that need further investigation and a formal process from those that are vexatious, frivolous, misconceived or put forward as a substitute to appellate procedures. One of the participants in the Judicial Group, Chief Justice Odoki of Uganda, has called attention to this problem of differentiating between malicious and warranted complaints against judges. Indeed, this is a universal problem. The *Bangalore Principles* do not purport to solve that problem. After the meeting with the civil law judges in the Hague, detailed provisions in an earlier draft concerning implementation have been deleted. Instead, implantation has been left to the process of each country. It has been emphasised that, at least in the first instance, the procedures for investigating complaints against judges should be dealt with within the judicial branch of government. Of course, in the case of allegations of criminal conduct, a judge, like anyone else, is subject to the law of the land.

The judiciary has to perform strong and difficult functions, often against powerful and opinionated interests and to do so on behalf of everyone in society. On the one hand, this is what makes it essential that judges have integrity and that complaints about them (or related personnel) should be handled with vigilance, care and prudence applying clear rules. On the other hand, the judicial function renders judges susceptible to false and malicious complaints. Reconciling these two elements to the problem is a task requiring wisdom and adherence to basic constitutional principles. In many constitutions, at least in Commonwealth countries, the provisions for sanctions for judicial misconduct or incapacity are very limited and effectively confined to removal from office. Obviously, this remedy is only available in a clear, serious and properly proved case. This procedure sets a deliberately high barrier against such discipline of judges, designed to defend their tenure and

¹⁶ E Campbell and M Groves "Attacks on Judges under Parliamentary Privilege: A Sorry Australian Episode" [2002] *Public Law* 626.

independence essential to their having the necessary opportunity and courage to perform the duties of their office.

FOR THEIR WORK CONTINUETH

The quandary presented by the need at the one time to sustain integrity, strength and courage in the judiciary can be illustrated by two final observations.

As to integrity, it is worth recalling the writings of the great contemporary philosopher, John Rawls, who died in November 2002. His most important work was *A Theory of Justice*. In that work, Rawls placed himself squarely in the social contract tradition of other philosophers who had gone before - such as Locke in his *Second Treatise on Government*, Rousseau in *The Social Contract* and Kant in *The Foundation of the Metaphysics of Morals*. Rawls propounded a theory of "justice as fairness". He maintained that human society was basically a cooperative venture undertaken for mutual advantage. This idea led him to the notion that the maintenance of the basic structure of society was the primary subject of justice because of the profound effects that the administration of justice can have on the lives of people and their individual chances from birth to death.

On this footing Rawls' theory of justice conceived of a well ordered society as one in which people were associated, recognizing certain rules of conduct as binding in relation to one another and acting in accordance with those rules. Thus, for Rawls the fundamental institutions of society - which certainly include a competent, independent and impartial judiciary - represented one aspect of the basic understanding between the state and the individual. The individual gives loyalty to the state. In return, the individual expects that the basic organs of the state will act with integrity in all dealings with the individual. In no organ is this more central than in the judiciary. Whatever expectations and tolerances may exist in other branches of government and in other walks of life, the very essence of the nature of a judiciary is incompatible with the existence of corruption, partiality, lack of competence, and dependance on mere power¹⁷.

John Rawls set himself the task:

"... to generalise and carry to a higher order of abstraction the traditional doctrine of the social contract. I hope to work out more clearly the chief structural features of this conception ... and to develop it as an alternative systematic account of justice that is superior to utilitarianism. I thought this alternative conception was, of the traditional moral conceptions, the best approximation to our considered conviction of justice"¹⁸.

If there is some truth in Rawls' analysis, as I believe there is, it becomes essential that the organs of governance of the state - including relevantly the judiciary - should undertake their own vigilant endeavours to ensure to every person integrity, efficiency, competence and justice in the performance of judicial functions. If they do not, the loyalty of the citizen to the state will be undermined. Powerful individuals will seek out ways to advance their interests outside the principles of constitutionalism and the rule of law.

¹⁷ See eg J Rawls, *A Theory of Justice* discussed in J Rawls (ed E Kelly) *Justice as Fairness - A Restatement* (2001); R P Wolff, *Understanding Rawls* (1998), 176-179. See Kukathas and P Pettit, *Rawls - A Theory of Justice and Its Critics* (1997) 47-51 ("Just institutions"); S Sedley, *Freedom, Law and Justice* (Hamlyn Lectures, 1999) 47-49.

¹⁸ J Rawls, *Political Liberalism - With a New Introduction and the "Reply to Habermas"* (1996), xvii.

It is thoughts like these that make the insistence by the Prime Minister of Sri Lanka (the Hon Ranil Wickremesinghe), in his opening address, specially pertinent to the work of the Judicial Group. The issue of judicial integrity cannot be seen in isolation from the other great themes of our time. Judicial integrity is bound up in the larger issues of human governance. It is connected with the success of efforts to uphold human rights, economic equity and peace and security. It is central to the advancement of the economic objectives of world trade. It therefore lies at the core of the concerns of governments of all nations, rich and poor. More fundamentally, it lies at the centre of the concerns of individual human beings everywhere.

Over the recent court vacation I read Sebastian Haffner's book *Defying Hitler*¹⁹. Haffner fled Nazi Germany in the 1930s. He was not himself Jewish. However, he hated the discrimination he saw against Jews and other minorities perpetrated by Hitler and the Nazi state apparatus. He changed his name and went to Britain where he became a leading journalist. In Berlin, before his flight, he was training to be a judge as a *Referendar*. He worked in the famous court in Berlin, the *Kamersgericht* of Prussia, that had enjoyed a long tradition of integrity.

When Frederick the Great built his palace of Sans Souci, he demanded that a nearby mill-owner demolish his mill that obstructed the King's view from the palace. The mill-owner would not do so. The King threatened the mill owner with his power and wealth. The mill owner replied "May it please Your Majesty. But there is still the *Kamersgericht* in Berlin". That court upheld the law in favour of the mill-owner against the King. The mill remained in position. It was a case of judicial integrity in action. When Hitler took power in Germany the day arrived when the Brown Shirts of the SA stormed the same Berlin court. They rushed into the judges' chambers. Meekly and subserviently, out of fear, the judges filed down the staircase watched by their trainees, including the young Haffner²⁰. He knew that it was time to go. He recorded these themes with passion as they were happening. His book, in manuscript form, was found unpublished in his desk after his death. It was later published and held the top place for non-fiction for almost a year, especially in Germany where it helped to explain how institutions, even old and respected ones, could be destroyed overnight by carelessness and by those who failed to cherish them.

Similar events have happened in our own time. In November 2000, in Harare, Zimbabwe, hundreds of "veterans" stormed the Supreme Court of Zimbabwe after that court delivered a decision against the government on a land claim. Doubtless, as in many countries (including my own), there is a need for a readjustment of land rights in Zimbabwe as in other post imperial, settler societies. But the process of lawful change²¹ stands in marked contrast to the reports of violence, the effective removal of judges and midnight arrests of former judges that have come from that unhappy country in recent times. All of us share the pain caused by such assaults on constitutionalism, the rule of law and human rights. Only a courageous judiciary will stand up against such wrongs. And to be respected when they do, the judiciary must observe the competence, independence and impartiality promised by international human rights law.

¹⁹ 2002 Wiedenfeld & Nicholson, London. Previously published in 2000 in Munich as *Geschichte eines Deutschen*.

²⁰ *Ibid*, 122.

²¹ As in *Mabo v Queensland [No 2]* (1992) 175 CLR 1 and *Wik Peoples v Queensland* (1996) 187 CLR 1, two decisions of the High Court of Australia on land rights of Australia's indigenous peoples.

In his address to open this meeting, the Prime Minister of Sri Lanka mentioned the imperial poet Kipling. As he said, Kipling is now somewhat out of vogue. Yet elements of his poetry capture enduring ideas. In one poem, drawing upon a biblical text, Kipling wrote in praise of his teachers. His words have just as much application to fine politicians who work in the cause of peace. They also apply to judges who, with integrity and courage, pursue the causes of justice and the rule of law:

*"Bless and praise we famous men
From whose bays we borrow
They who set aside today all the joys of their today
And by toil of their today, bought for us tomorrow
Bless and praise we famous men. Men of little showing
For their work continueth
And their work continueth
Broad and deep continueth,
Great beyond their knowing".*

