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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS  
OF INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION  
OF JUSTICE, IMPUNITY**

**Report of the Special Rapporteur on the independence of judges and  
lawyers, Dato' Param Cumaraswamy, submitted in accordance with  
Commission on Human Rights resolution 2002/43\***

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\* The annex is circulated as received, in all the official languages.

### **Executive summary**

This is the ninth report of the Special Rapporteur submitted pursuant to the mandate created by Commission resolution 1994/41. By Commission resolution 2002/37 the scope of the mandate was expanded.

The report contains, inter alia, chapters dealing with his methods of work, the international and regional standards he applied, some recent judicial decisions reflecting on the independence of the judiciary, the activities undertaken during the year, including promotional activities, situations in countries and territories, and his conclusions and recommendations. During the year the Special Rapporteur made several interventions, including urgent appeals, and in association with other special rapporteurs.

In the course of the year the Special Rapporteur undertook missions to Indonesia and Saudi Arabia and a follow-up mission to Italy. Separate reports on these missions will be before the Commission. The Special Rapporteur also visited Timor-Leste at the invitation of the Minister for Foreign Affairs to resolve a difference between the Government and the judges. Owing to time constraints the Special Rapporteur could not accept the invitation from the Government of Greece to undertake a mission to that country. The Special Rapporteur attended a meeting in Rome in December 2002 to assist, with others, the Judicial Reform Commission of Afghanistan set up under the Bonn Agreement.

With regard to standards, the Special Rapporteur observes that while the two main United Nations instruments on judicial independence and the role of lawyers are well known, implementation needs to be intensified.

On judicial accountability, the Special Rapporteur has annexed to this report the Bangalore Principles of Judicial Conduct and urges the Commission to endorse them, or at least to take note of them in its resolution on this mandate. This document is the product of three years of work with eminent Chief Justices across the regions.

On the war on terrorism, the Special Rapporteur expresses his concern at its impact on the principles of due process and urges the Commission to remind member States of their obligations under international law, in particular international human rights, refugee and humanitarian law.

The Special Rapporteur also expresses his concern at the opposition of the Government of the United States of America to the establishment of the International Criminal Court and its continued action to obtain bilateral agreements with member States pursuant to article 98 of the Rome Statute.

With regard to Zimbabwe, there has been further deterioration of the rule of law and the Special Rapporteur urges the Commission to address this situation appropriately. The same would apply to Swaziland if the situation does not improve by the time of the next session of the Commission.

With regard to the United Kingdom of Great Britain and Northern Ireland, the Special Rapporteur reiterates his call for a public judicial inquiry into the murders of Patrick Finucane and Rosemary Nelson.

The Special Rapporteur once again reminds the Commission of the needs of countries in transition, particularly in Eastern and Central Europe and Asia, for technical assistance for structuring or restructuring their institutions for effective administration of justice. The Special Rapporteur has identified both Timor-Leste and Afghanistan as countries needing urgent and particular attention.

The Special Rapporteur once again stresses how research intensive this mandate is, particularly now with the scope having been expanded by Commission resolution 2002/37, and calls for more resources, particularly competent human resources.

The Special Rapporteur finally thanks all those who readily and fully cooperated with him in the implementation of the mandate.

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## **Introduction**

1. The present report is submitted pursuant to Commission on Human Rights resolution 2002/43. It is the ninth annual report (E/CN.4/1995/39, E/CN.4/1996/37, E/CN.4/1997/32, E/CN.4/1998/39, E/CN.4/1999/60, E/CN.4/2000/61, E/CN.4/2001/65 and E/CN.4/2002/72, and their relevant corrigenda and addenda) submitted to the Commission by the Special Rapporteur since the mandate was established by the Commission in its resolution 1994/41. In resolutions 1995/36, 1996/34, 1997/23, 1998/35, 1999/31, 2000/42, 2001/39 and 2002/43 the Commission on Human Rights took note of the respective annual reports of the Special Rapporteur.
2. The mandate was most recently renewed in resolution 2000/42 and endorsed by the Economic and Social Council in its decision 2000/264.
3. The Introduction of the present report refers to the terms of reference for the discharge of the mandate, to the methods of work applied by the Special Rapporteur in the discharge of his mandate and the standards and guidelines for judges and lawyers that have been adopted or are in the process of being adopted by various associations around the world. Section I contains a brief summary of judicial decisions asserting the importance of and the principle of judicial independence. In section II, the Special Rapporteur presents an account of the activities undertaken within the framework of his mandate in the past year. Section III refers to the communications with governmental authorities. Section IV contains the conclusions and recommendations of the Special Rapporteur. The annex contains the Bangalore Principles of Judicial Conduct.

## **Terms of reference**

4. Without substantially changing the mandate contained in resolution 1994/41, the Commission endorsed in its resolution 1995/36 the decision of the Special Rapporteur to use, beginning in 1995, the short title "Special Rapporteur on the independence of judges and lawyers".
5. In its resolution 2002/37 on the integrity of the judicial system, the Commission requested the Special Rapporteur, in the discharge of his mandate and in his reports, to take full account of the resolution which, inter alia, urged States to guarantee fair trial procedures before independent and impartial courts trying criminal offences.
6. Several of the resolutions adopted by the Commission at its fifty-eighth session are also pertinent to the mandate of the Special Rapporteur and have been taken into consideration in examining and analysing the information brought to his attention with regard to various countries. These resolutions are:
  - (a) Resolution 2002/35 on human rights and terrorism, in which the Commission urged all relevant human rights mechanisms and procedures, as appropriate, to address the consequences of the acts, methods and practices of terrorist groups in their forthcoming reports to the Commission;

(b) Resolution 2002/39 on the incompatibility between democracy and racism, in which the Commission invited the mechanisms of the Commission and the treaty bodies to continue to pay particular attention to violations of human rights stemming from the rise of racism and xenophobia in political circles and society at large, especially as regards their incompatibility with democracy;

(c) Resolution 2002/47 in which the Commission called upon special rapporteurs, special representatives and working groups and other mechanisms to continue to give special attention to questions relating to the effective protection of human rights in the administration of justice, including juvenile justice, and to provide, wherever appropriate, specific recommendations in this regard, including proposals for advisory services and technical assistance measures;

(d) Resolution 2002/48 on the right to freedom of opinion and expression, in which the Commission invited the working groups, representatives and special rapporteurs of the Commission to pay attention, within the framework of their mandates, to the situation of persons detained, subjected to violence, ill-treated, intimidated or discriminated against for having exercised the right to freedom of opinion and expression as affirmed in the relevant human rights instruments;

(e) Resolution 2002/50 on integrating the human rights of women throughout the United Nations system, in which the Commission requested all special procedures and other human rights mechanisms regularly and systematically to take a gender perspective into account in the implementation of their mandates and to include in their reports information on and qualitative analysis of human rights of women and girls, and encouraged the strengthening of cooperation between those procedures and mechanisms;

(f) Resolution 2002/51 on traffic in women and girls, in which the Commission invited human rights treaty bodies, the special rapporteurs and subsidiary bodies of the Commission to continue to address within their mandates the problem of trafficking in women and girls and to share their knowledge and best practices as widely as possible;

(g) Resolution 2002/52 on elimination of violence against women, in which the Commission requested special rapporteurs to give consideration to violence against women within their respective mandates;

(h) Resolution 2002/57 on the rights of persons belonging to national or ethnic, religious and linguistic minorities, in which the Commission called upon special representatives, special rapporteurs and working groups of the Commission to continue to give attention, within their respective mandates, to situations and rights involving minorities;

(i) Resolution 2002/61 on the human rights of persons with disabilities, in which the Commission invited all special rapporteurs, in carrying out their mandates, to take into account the situation and human rights of persons with disabilities;

(j) Resolution 2002/74 on the United Nations Decade for Human Rights Education (1995-2004) in which the Commission encouraged all relevant mechanisms of the Commission to include systematically in their reports a specific section on human rights education, as relevant to their mandate;

(k) Resolution 2002/84 on human rights and thematic procedures, in which the Commission requested the thematic special rapporteurs to make recommendations for the prevention and protection of human rights violations within their respective mandates;

(l) Resolution 2002/92 on the rights of the child, in which the Commission requested special rapporteurs, special representatives and working groups regularly and systematically to include a child rights perspective in the fulfilment of their mandates.

### **Methods of work**

7. The Special Rapporteur, in the ninth year of his mandate, continued to follow the methods of work described in his first report (E/CN.4/1995/39, paras. 63-93).

### **Standards**

8. The Special Rapporteur continues to refer in his interventions and reports to regional standards, particularly those of the Council of Europe and LAWASIA (see E/CN.4/1996/37, paras. 86-91; E/CN.4/1997/32, para. 49; E/CN.4/1999/60, paras. 43-49; E/CN.4/2000/61, paras. 33-35; E/CN.4/2002/72, para. 29).

## **I. JUDICIAL DECISIONS REFLECTING THE INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY**

9. In paragraph 30 of his last report (E/CN.4/2002/72) the Special Rapporteur indicated that the judgement delivered by the High Court of South Africa in the case of *H.F. Van Rooyen and Others v. The State and Others* declaring a large number of the provisions of the Magistrates Act 1993 as being inconsistent with the Constitution was before the Constitutional Court for review and judgement was awaited. The Constitutional Court delivered its judgement on 11 June 2002. In a very lengthy reasoned judgement the Court unanimously found, inter alia:

“The constitutional protection of the core values of judicial independence accorded to all courts by the South African Constitution means that all courts are entitled to and have the basic protection that is required. Section 165 (2) of the Constitution pointedly states that ‘[t]he courts are independent’. Implicit in this is recognition of the fact that the courts and their structure, with the hierarchical differences between higher courts and lower courts which then existed, are considered by the Constitution to be independent. This does not mean that particular provisions of legislation governing the structure and functioning of the courts are immune from constitutional scrutiny. Nor does it mean that lower courts have, or are entitled to have their independence protected in the same way as the higher courts. The Constitution and the existing legislation kept

in force by the Constitution treat higher courts differently to lower courts. While particular provisions of existing legislation dealing with magistrates' courts can be examined for consistency with the Constitution, the mere fact that they are different to the provisions of the Constitution that protect the independence of judges is not in itself a reason for holding them to be unconstitutional."

The Court then went on to find certain provisions of the Magistrates Act unconstitutional and others constitutional.

10. On this very issue of the independence of the subordinate judiciary, the Special Rapporteur welcomes the proposal by the Government of Namibia to secure the independence of magistrates by legislating to remove them from the public service and providing for a Magistrates' Commission. The Government, it is learnt, is in fact complying with a decision of the High Court delivered last year to the effect that in light of the Namibian constitutional guarantee of independence of the judiciary magistrates could not be seen as staff members of the public service.

## **II. ACTIVITIES OF THE SPECIAL RAPPORTEUR**

### **A. Consultations**

11. The Special Rapporteur visited Geneva for his first round of consultations from 3 to 6 April 2002 in order to present his report to the Commission at its fifty-eighth session. During this period the Special Rapporteur met with representatives of the regional groups to brief them on his work and to answer any questions they might have. He also held consultations with representatives of the Governments of Saudi Arabia, Tunisia, the Sudan and Sri Lanka. In addition, he held a briefing for interested non-governmental organizations and also met individually with several NGOs.

12. The Special Rapporteur visited Geneva from 24 to 28 June to attend the ninth annual meeting of the special rapporteurs/representatives, independent experts and chairpersons of working groups of the special procedures of the Commission on Human Rights and of the advisory services programme.

13. The Special Rapporteur further visited Geneva from 30 September to 4 October for further consultations. During the visit the Special Rapporteur met with the Permanent Representatives of Afghanistan, Italy, Saudi Arabia and Sri Lanka.

### **B. Missions/visits**

14. During 2002, the Special Rapporteur undertook three in situ missions: a mission to Indonesia from 15 to 24 July, a mission to Saudi Arabia from 20 to 27 October and a follow-up mission to Italy from 6 to 8 November. The reports of these missions, containing his findings, conclusions and recommendations, can be found in the addenda to the present report.



15. The Special Rapporteur received an invitation from the Government of Greece to undertake a mission to that country in 2002, but the Special Rapporteur could not accept the invitation owing to time constraints.

16. No positive responses to requests for missions have been received from the Governments of Cuba, Egypt, Pakistan, Sri Lanka, Turkey, Tunisia, Kenya and Equatorial Guinea.

### **C. Communications with governmental authorities**

17. During the period covered by this report (30 November 2001 to 30 November 2002; communications sent or received between 1 to 31 December 2002 will be reflected in addendum 1), the Special Rapporteur transmitted 13 urgent appeals to the Governments of the following States: Bangladesh, Central African Republic (2), Egypt, Italy (2), Nepal, Pakistan (2), South Africa, the Syrian Arab Republic, United Kingdom of Great Britain and Northern Ireland (2).

18. Seeking to avoid unnecessary duplication of the activities of other thematic and country rapporteurs, during the year under review the Special Rapporteur joined with other special rapporteurs (i.e. Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on torture and Special Rapporteur on freedom of opinion and expression; Special Representative of the Secretary-General on human rights defenders) and working groups (i.e. Chairman-Rapporteur of the Working Group on Arbitrary Detention) to transmit 46 joint urgent appeals on behalf of individuals to the Governments of the following States: Algeria, Argentina (2), Brazil (2), Colombia (2), Democratic Republic of the Congo (4), Guatemala, Honduras, Iran (Islamic Republic of) (5), Israel (4), Liberia, Mexico (3), Nepal (3), Nicaragua, Nigeria (2), Sri Lanka, Sudan (2), Syrian Arab Republic (2), Tunisia (2), Turkey, Uruguay, the United States of America (4) and Uzbekistan.

19. The Special Rapporteur transmitted 24 interventions to the authorities of the following States: Argentina, Belarus, Ecuador, Egypt, Equatorial Guinea, Guatemala, Iran (Islamic Republic of), Italy, Libyan Arab Jamahiriya, Mauritania, Nicaragua, Nigeria (3), Pakistan, Peru, Saudi Arabia, Spain (2), Sudan, Tunisia (2), Turkey and Zimbabwe. The Special Rapporteur also sent three joint interventions with other special rapporteurs to the following States: Chad, United Kingdom of Great Britain and Northern Ireland and United States of America.

20. The Special Rapporteur received replies to urgent appeals from the Governments of: Argentina, Bangladesh, Colombia, Mauritania, Mexico (3), Nicaragua, Pakistan (2), Sri Lanka, Sudan, Syrian Arab Republic (3), Tunisia, Turkey and United Kingdom of Great Britain and Northern Ireland (2).

21. Replies to interventions were received from the Governments of: Argentina, Azerbaijan, Ecuador, Egypt, Guatemala, Libyan Arab Jamahiriya, Mexico, Saudi Arabia, Spain (2), Tunisia, Turkey and United Kingdom of Great Britain and Northern Ireland. Other communications were received from the Government of Zimbabwe.

#### **D. Cooperation with intergovernmental and non-governmental organizations**

22. The Special Rapporteur has continued the dialogue with intergovernmental and non-governmental organizations in the implementation of his mandate and thanks these organizations for their cooperation and assistance during the year.

#### **E. Special rapporteurs and working groups of the Commission on Human Rights**

23. The Special Rapporteur has continued to work closely with other special rapporteurs and working groups. As previously indicated, in order to avoid duplication he has, where appropriate, made joint interventions with other special rapporteurs and/or working groups. On issues relevant to his mandate, the Special Rapporteur makes reference in the present report to reports of other special rapporteurs and working groups.

#### **F. Activities and Programmes Branch of the Office of the High Commissioner for Human Rights**

24. Further to what the Special Rapporteur said in his third, fourth, fifth, sixth, seventh and eighth reports (E/CN.4/1997/32, para. 31; E/CN.4/1998/39, para. 26; E/CN.4/1999/60, para. 35; E/CN.4/2000/61, para. 25; E/CN.4/2001/65, para. 26; E/CN.4/2002/72, para. 22), the Special Rapporteur is pleased to note the completion and publication of the training manual for judges and lawyers in the context of the United Nations Decade for Human Rights Education (1995-2004). The publication *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers* (No. 9 in the Professional Training Series) is expected to be available shortly on the OHCHR web site ([www.unhchr.ch](http://www.unhchr.ch)) and in hard copy version (with CD-Rom).

#### **G. Centre for International Crime Prevention**

25. In his third, fourth, fifth and sixth reports (E/CN.4/1997/32, paras. 26-37; E/CN.4/1998/39, paras. 23-24; E/CN.4/1999/60, paras. 28-34; E/CN.4/2000/61, paras. 23-24), the Special Rapporteur referred to the importance of the work done by the former Crime Prevention and Criminal Justice Division in overseeing the implementation of the Basic Principles on the Independence of the Judiciary. The Special Rapporteur regrets that he was unable to attend the eleventh session of the Commission on Crime Prevention and Criminal Justice in May 2002. However, he continued to receive assistance from the secretariat as and when needed with regard to standards.

#### **H. Promotional activities**

26. As stated in his third and subsequent reports, the Special Rapporteur considers the promotion of the importance of the independence of the judiciary and the legal profession and the respect of the rule of law in a democratic society, in the spirit of the Vienna Declaration and Programme of Action, to be an integral part of his mandate. In this regard, the Special

Rapporteur continued to receive invitations to address legal forums, seminars and conferences. Owing to other commitments, the Special Rapporteur could not accept all the invitations. Nevertheless, he did accept the following invitations during 2002:

(a) On 8 April the Special Rapporteur addressed the Parliamentary Meeting held on the occasion of the fifty-eighth session of the Commission on Human Rights at the Palais des Nations on the subject "Parliamentary action to ensure the independence and good administration of justice";

(b) On 24 April, at the invitation of the Office of Human Rights and Social Development at Mahidol University, Thailand, the Special Rapporteur delivered a lecture on "The International Criminal Court - a new hope for the international justice system" during the South East Asian Advance Programme on Human Rights;

(c) On 20 May and 2 June the Special Rapporteur addressed and participated in the International Legal Network organized by Amnesty International in London;

(d) On 21 September the Special Rapporteur addressed the Malaysian Bar Council Colloquium in Kuala Lumpur on "Current judicial trends and the rule of law";

(e) On 28 September, at the invitation of the Bar Council of England and Wales, the Special Rapporteur addressed its annual conference in London as a panel speaker on the subject "Auld and after - preserving justice in the midst of change";

(f) On 10 October the Special Rapporteur delivered a keynote address on "Human rights and terrorism" at the Conference on Regional Systems for Protection of Human Rights in Strasbourg, France;

(g) On 1 November, at the invitation of the Human Rights Centre of the University of Essex and the United Kingdom Foreign and Commonwealth Office, the Special Rapporteur participated in the consultation seminar for the production of a manual for judges and prosecutors on preventing and investigating crimes of torture;

(h) On 16 and 17 December, at the invitation of the International Development Law Organization in conjunction with the Government of Italy, the Special Rapporteur addressed a round-table conference in Rome on "The role of law in modern Afghanistan". Following this round table on 19 and 20 December the Special Rapporteur planned to attend a donor conference on international assistance to the justice section in Afghanistan convened by the Government of Italy.

## **I. Discriminatory practices**

27. The Special Rapporteur continued to pay increased attention to discriminatory practices, especially those concerning: denial of access to legal representation; discriminatory practices against women and minorities within the judiciary, or the legal and prosecutorial professions

(i.e. restrictions on entry, discrimination in promotion and dismissal, unequal conditions of service, etc.); denial of fair trial; interference in the judicial process; and harassment or intimidation of judges, lawyers or prosecutors in cases involving these groups. The Special Rapporteur has addressed these issues in his mission reports.

## **J. International Criminal Court**

28. In paragraph 23 (d) of the Special Rapporteur's eighth report (E/CN.4/2002/72) the Special Rapporteur referred to his participation at the Wilton Park Conference in England on the theme "Towards global justice: accountability and the International Criminal Court" in February 2002. The Special Rapporteur has continued to follow the developments in the establishment of the Court. The Special Rapporteur was kept informed of these developments by the Coalition for the International Criminal Court.

29. On 28 June 2002, on the eve of the entry into force of the Rome Statute, the Special Rapporteur issued a press statement containing his reflections on the nomination and selection procedures for the judges of the court.

30. On 8 May 2002 the Special Rapporteur issued another press statement expressing his deep concern at the action by the Government of the United States in "unsigned" the Rome Statute. The Special Rapporteur also expressed his concern over the continued action on the part of the Government of the United States in obtaining bilateral agreements with member States pursuant to article 98 of the Rome Statute to prevent the International Criminal Court from proceeding against personnel of the United States of America present in such States.

## **K. Judicial accountability**

31. In his sixth, seventh and eighth reports to the Commission on Human Rights (E/CN.4/2000/61, paras. 29-30; E/CN.4/2001/65, paras. 28-29; E/CN.4/2002/72, paras. 24-26) the Special Rapporteur drew attention to the concerns expressed by some States about the existence of judicial corruption.

32. In this regard, the Special Rapporteur drew attention to the fact that he had associated himself with the Judicial Group on Strengthening Judicial Integrity which consists of eight Chief Justices from Africa and Asia. Its Chairman is H.E. Judge Weeramantry, the former Vice-President of the International Court of Justice; the Rapporteur, Justice Michael Kirby of the Australian High Court; and the Coordinator, Dr. Nihal Jayawickrama. Following its meeting in Vienna in April 2000 this group met in Bangalore, India, in February 2001 where it endorsed a draft code of judicial conduct widely referred to as the Draft Bangalore Code.

33. During the fifty-eighth session of the Commission the Special Rapporteur drew attention to the Draft Bangalore Code at his meetings with the various regional groups and distributed a copy of the code to interested member States. In his eighth report to the Commission the Special Rapporteur also drew attention to the fact that he intended to develop this code further to ensure universal acceptance of the principles contained therein.

34. Realizing that the Draft Bangalore Code was based substantially on the common law tradition and needed input from other legal traditions, particularly the continental civil law system, in order to achieve universal acceptance, the Special Rapporteur sought the assistance of the Council of Europe. The Council readily cooperated. On 18 and 19 June 2002 the Special Rapporteur, together with the Coordinator of the Judicial Group, held a meeting in Strasbourg with the Working Party of the Consultative Council of European Judges. This 40-member council advises the Committee of Ministers of the Council of Europe on judicial matters. At the meeting the Draft Bangalore Code was discussed and it was followed by the working party's submitting its views on the code in writing. This submission was most useful. Earlier, in February 2002, the Special Rapporteur, through the American Bar Association and Central and Eastern European Law Initiative (ABA/CEELI) had sought the views of the judges of the Central and Eastern European countries. ABA/CEELI subsequently submitted the views of some of the judges in the region and in particular judges from Bosnia and Herzegovina, Bulgaria, Croatia, Kosovo, Romania, Serbia and Slovakia.

35. From 25 to 27 November 2002 a meeting of several Chief Justices from the civil law system was convened at the Peace Palace at The Hague by the Judicial Group to consider the Draft Bangalore Code in the light of the submissions by the Working Party of the Consultative Council and ABA/CEELI. Among the Chief Justices present at this meeting were the Chief Justices of Brazil, the Czech Republic, Egypt, Mexico, Mozambique, the Netherlands and the Philippines. Some judges of the International Court of Justice attended part of the meeting and expressed their views on the Draft Bangalore Code. Senior judges from France and Norway also attended and participated in the meeting. This meeting revised the Draft Bangalore Code and renamed it the Bangalore Principles of Judicial Conduct. This document is annexed to the present report.

36. As the principles set out in this document have the general support of eminent Chief Justices of some of the States of the two major legal traditions, namely the common law and the civil law traditions, the Special Rapporteur urges the Commission at its fifty-ninth session to endorse, or at least take note of this document in its resolution on this mandate. The principles set out in this document would go some way, when adopted and applied in member States, to supporting the integrity of judicial systems and could be used to complement the United Nations Basic Principles on the Independence of the Judiciary to secure greater judicial accountability.

#### **L. Measures to counter terrorism and their impact on due process and the rule of law**

37. In paragraph 28 of his eighth report (E/CN.4/2002/72) the Special Rapporteur stated that he would give careful attention to the effects any measures taken by Governments might have on the rule of law and the proper administration of justice in the light of Commission resolution 2001/37 and the consequences of the terrorist attack on the United States of America on 11 September 2001. In this regard, the Special Rapporteur has been following developments. In a press statement issued on 16 September 2001, the Special Rapporteur expressed his deep concern over the Military Order (Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism) signed by the President of the United States of America on 13 November 2001. The Special Rapporteur is especially concerned about the impact of such

measures on the rule of law and due process and the wrong signals such action by the United States Government could have on other member States, particularly the developing States. The Special Rapporteur to date has not received a response from the Government to an urgent appeal he communicated on that Order.

38. The Special Rapporteur has since received reliable and credible information that the administrative detention practices of the United States with respect to security detainees, material witnesses and Immigration and Naturalisation Service (INS) detainees is characterized by a lack of independent judicial supervision, resulting in deprivation and abuse of their fundamental legal rights under United States and international law. Due to space constraints the Special Rapporteur is unable to elaborate on these concerns.

39. Recent media reports that the Government of the United States of America is considering setting up parallel courts to deal with terrorist-related offences are matters of grave concern. The Special Rapporteur will continue to monitor these developments.

40. The Special Rapporteur is also concerned about developments in the United Kingdom and Northern Ireland, in particular the State's derogation from article 5 of the European Convention on Human Rights to enable it to enact the Anti-Terrorism, Crime and Security Act providing for detention without trial in certain cases.

41. The Special Rapporteur welcomes the very recently adopted General Assembly resolution 57/219 on protecting human rights and fundamental freedoms while countering terrorism. In the resolution the Assembly affirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law.

### **III. SITUATIONS IN SPECIFIC COUNTRIES OR TERRITORIES**

42. For technical reasons, the section on situations in specific countries or territories is contained in addendum 1 to this report. The addendum contains brief summaries of the urgent appeals and interventions transmitted to governmental authorities between 1 December 2001 and 30 December 2002, as well as replies to the communications received between 1 January 2002 and 31 January 2003.

## **VII. CONCLUSIONS AND RECOMMENDATIONS**

### **A. Conclusions**

43. **In a very recent judgement delivered on 17 October 2002 a judge of the High Court in South Africa said that in a democratic society the judiciary as a whole must not only claim, or purport to be, but must manifestly be seen to be truly independent. He went on to say that judicial independence and impartiality lay at the very heart of the due process of the law. They represented the true essence of a proper judicial process. These observations of the learned judge echoes the sentiment which led to the creation of the mandate of the Special Rapporteur by Commission resolution 1994/41 and its expansion by Commission resolution 2002/37.**

44. In presenting his first report to the Commission on Human Rights on 10 February 1995 the Special Rapporteur said:

**“The right to an independent and impartial judiciary and an independent legal profession is not the right nor the prerogative of judges and lawyers. It is the right of the consumers of justice. In applying this right there should be no distinction made between the north and the south, the rich and poor, the developed and underdeveloped. To dispense justice without fear or favour and without regard to these distinctions, what the judges and lawyers seek is protection of this consumer right.”**

45. Throughout the last nine years the Special Rapporteur, without applying selectivism in any form, pursued the implementation of this mandate entrusted to him to the best of his ability and without any fear or favour.

46. Judicial independence and the independence of the legal profession continue to be threatened in many parts of the world. The United Nations Basic Principles on the Independence of the Judiciary (1985) and the United Nations Basic Principles on the Role of Lawyers (1990), the Guidelines on the Role of Prosecutors (1990) and, at the regional level, the Council of Europe standards on independence, impartiality and competence of judges, notably Recommendation No. R (94) 12 on the independence, efficiency and role of judges of the Committee of Ministers, and the Beijing Statement of Principles of the Judiciary in the LAWASIA Region (1995) have been applied as minimum benchmarks to measure the state of independence of judges and lawyers among member States. There is today greater awareness of the existence of these instruments than when the mandate was created. However, implementation among member States needs to be intensified.

47. Of late judicial accountability has been a source of concern with increasing allegations of judicial corruption which the Special Rapporteur has addressed in previous reports. It is in the light of this concern and calls for greater judicial accountability without impinging on judicial independence that the Special Rapporteur has pursued in the last three years with the Judicial Group on Strengthening Judicial Integrity the development of a universally acceptable set of principles for judicial conduct. The Bangalore Principles of Judicial Conduct annexed to the present report is the product of that pursuit.

48. Since 11 September 2001 principles of due process, including the right to a fair and public hearing by independent and impartial tribunals, are in jeopardy in some countries and, sad to say, in some well-developed States which in the past were staunch supporters of these core values.

49. The Special Rapporteur continued to be concerned about developments in the African continent, in particular Zimbabwe and more recently in Swaziland.

50. The continued opposition by the Government of the United States to the establishment of the International Criminal Court is a source of concern for international justice. The same Government's continued action to obtain bilateral agreements with member States pursuant to article 98 of the Statute is a further concern.

51. With regard to the United Kingdom of Great Britain and Northern Ireland, though a former judge of the Canadian judiciary, the Hon. Judge Cory, has been appointed to consider allegations of collusion in the murders of, amongst others, Patrick Finucane and Rosemary Nelson and, if recommended, a public inquiry would be called, the delay resulting from this process could seriously jeopardize the effectiveness of a public inquiry if one is recommended by Judge Cory.

52. Countries in transition, particularly those in Eastern and Central Europe and Asia, need careful monitoring and the provision of technical assistance to structure or restructure their institutions for effective administration of justice, in particular a credible independent and impartial judiciary. In this regard, the Special Rapporteur has focused on Timor-Leste and intends to attend meetings in Rome in December 2002 and Kabul in January 2003 with regard to assisting the Judicial and Constitutional Commissions in their tasks under the Bonn Agreement.

53. The Special Rapporteur has expressed in his earlier reports how research intensive this mandate has grown to be. With resolution 2002/37 on the integrity of the judicial system having expanded the scope of the mandate, more resources, particularly competent human resources, are necessary for its effective implementation.

54. The Special Rapporteur wishes to put on record his appreciation to all member States, Chief Justices and judges from national judiciaries, international and regional NGOs and national bar associations that have readily cooperated with the Special Rapporteur. Without their cooperation, encouragement and assistance the Special Rapporteur would not have been able to accomplish the little he has done thus far for the promotion and protection of the independence of the judiciary and the independence of the legal profession.

55. The Special Rapporteur also wishes to put on record his appreciation to the Secretary-General, the Office of his Legal Counsel in New York, the United Nations High Commissioner for Human Rights in Geneva, the former High Commissioner, Mrs. Mary Robinson, the Deputy High Commissioner and all the staff at the Office of the High Commissioner for their invaluable assistance and cooperation throughout the last nine years.

## **B. Recommendations**

56. There needs to be greater monitoring of and vigilance concerning the implementation of the United Nations Basic Principles on the Independence of the Judiciary, the Guidelines on the Role of Prosecutors and the Basic Principles on the Role of Lawyers by member States.



57. The Special Rapporteur urges the Commission to endorse or at least take note in its resolution on this mandate of the Bangalore Principles of Judicial Conduct for greater judicial accountability.

58. On the impact of the war on terrorism on principles of due process, the Special Rapporteur urges the Commission to remind member States of the various resolutions of the General Assembly and Commission on States' obligations under international law, and in particular article 4 of the International Covenant on Civil and Political Rights.

59. With regard to Zimbabwe, the Special Rapporteur once again urges the Commission to consider and address appropriately its concerns about the deterioration in that country, inter alia with regard to the independence of the judiciary and its impact on the rule of law.

60. If the situation in Swaziland does not improve by the time of the Commission's fifty-ninth session, the Special Rapporteur urges the Commission to address appropriately its concerns about developments there, particularly the deterioration of the rule of law.

61. The Special Rapporteur urges the Commission to continue monitoring the needs of countries in transition in Eastern and Central Europe and Asia and to give technical and other assistance. In particular the needs of Timor-Leste and Afghanistan should be given priority.

62. The Special Rapporteur reiterates his previous recommendation that the Government of the United Kingdom of Great Britain and Northern Ireland should set up an independent public judicial inquiry into the murders of lawyers Patrick Finucane and Rosemary Nelson in Northern Ireland.

63. The Special Rapporteur urges the Commission to address appropriately the continued action of the Government of the United States to obtain bilateral agreements pursuant to article 98 of the Rome Statute of the International Criminal Court.

64. Finally the Special Rapporteur urges the Office of the High Commissioner to provide additional resources, particularly competent human resources, to assist the mandate in the light of the scope having been expanded by Commission resolution 2002/37.

**Annex**

**THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT**

**2002**

*(The Bangalore Draft Code of Judicial Conduct 2001  
adopted by the Judicial Group on Strengthening Judicial Integrity,  
as revised at the Round Table Meeting of Chief Justices  
held at the Peace Palace, The Hague, November 25-26, 2002)*

### *Preamble*

WHEREAS the *Universal Declaration of Human Rights* recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge.

WHEREAS the *International Covenant on Civil and Political Rights* guarantees that all persons shall be equal before the courts, and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law.

WHEREAS the foregoing fundamental principles and rights are also recognized or reflected in regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions.

WHEREAS the importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice.

WHEREAS a competent, independent and impartial judiciary is likewise essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law.

WHEREAS public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society.

WHEREAS it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.

WHEREAS the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country.

AND WHEREAS the *United Nations Basic Principles on the Independence of the Judiciary* are designed to secure and promote the independence of the judiciary, and are addressed primarily to States.

THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.

*Value 1:*

**INDEPENDENCE**

*Principle:*

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

*Application:*

- 1.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.
- 1.2 A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.
- 1.3 A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.
- 1.4 In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.
- 1.5 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.
- 1.6 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

*Value 2:*

**IMPARTIALITY**

*Principle:*

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

*Application:*

- 2.1 A judge shall perform his or her judicial duties without favour, bias or prejudice.

- 2.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.
- 2.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.
- 2.4 A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.
- 2.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where
- 2.5.1 the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
  - 2.5.2 the judge previously served as a lawyer or was a material witness in the matter in controversy; or
  - 2.5.3 the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:

Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

*Value 3:*

## **INTEGRITY**

*Principle:*

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

*Application:*

- 3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.
- 3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

*Value 4:*

**PROPRIETY**

*Principle:*

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

*Application:*

- 4.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
- 4.2 As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.
- 4.3 A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.
- 4.4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.
- 4.5 A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.
- 4.6 A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.
- 4.7 A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.
- 4.8 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.
- 4.9 A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.

- 4.10 Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.
- 4.11 Subject to the proper performance of judicial duties, a judge may:
- 4.11.1 write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
  - 4.11.2 appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;
  - 4.11.3 serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or
  - 4.11.4 engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.
- 4.12 A judge shall not practise law whilst the holder of judicial office.
- 4.13 A judge may form or join associations of judges or participate in other organisations representing the interests of judges.
- 4.14 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.
- 4.15 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.
- 4.16 Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

*Value 5:*

**EQUALITY**

*Principle:*

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

*Application:*

- 5.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes (“irrelevant grounds”).
- 5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.
- 5.3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.
- 5.4 A judge shall not knowingly permit court staff or others subject to the judge’s influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.
- 5.5 A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

*Value 6:*

**COMPETENCE AND DILIGENCE**

*Principle:*

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

*Application:*

- 6.1 The judicial duties of a judge take precedence over all other activities.
- 6.2 A judge shall devote the judge’s professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court’s operations.



- 6.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.
- 6.4 A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.
- 6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.
- 6.6 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.
- 6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

### **IMPLEMENTATION**

By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

### **DEFINITIONS**

In this statement of principles, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

*"Court staff"* includes the personal staff of the judge including law clerks.

*"Judge"* means any person exercising judicial power, however designated.

*"Judge's family"* includes a judge's spouse, son, daughter, son-in-law, daughter-in-law, and any other close relative or person who is a companion or employee of the judge and who lives in the judge's household.

*"Judge's spouse"* includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.

*Explanatory note*

1. At its first meeting held in Vienna in April 2000 on the invitation of the United Nations Centre for International Crime Prevention, and in conjunction with the 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Judicial Group on Strengthening Judicial Integrity (comprising Chief Justice Latifur Rahman of Bangladesh, Chief Justice Bhaskar Rao of Karnataka State in India, Justice Govind Bahadur Shrestha of Nepal, Chief Justice Uwais of Nigeria, Deputy Vice-President Langa of the Constitutional Court of South Africa, Chief Justice Nyalali of Tanzania, and Justice Odoki of Uganda, meeting under the chairmanship of Judge Christopher Weeramantry, Vice-President of the International Court of Justice, with Justice Michael Kirby of the High Court of Australia as rapporteur, and with the participation of Dato' Param Cumaraswamy, UN Special Rapporteur on the Independence of Judges and Lawyers) recognized the need for a code against which the conduct of judicial officers may be measured. Accordingly, the Judicial Group requested that codes of judicial conduct which had been adopted in some jurisdictions be analysed, and a report be prepared by the Co-ordinator of the Judicial Integrity Programme, Dr Nihal Jayawickrama, concerning: (a) the core considerations which recur in such codes; and (b) the optional or additional considerations which occur in some, but not all, such codes and which may or may not be suitable for adoption in particular countries.

2. In preparing a draft code of judicial conduct in accordance with the directions set out above, reference was made to several existing codes and international instruments including, in particular, the following:

- (a) The Code of Judicial Conduct adopted by the House of Delegates of the American Bar Association, August 1972.
- (b) Declaration of Principles of Judicial Independence issued by the Chief Justices of the Australian States and Territories, April 1997.
- (c) Code of Conduct for the Judges of the Supreme Court of Bangladesh, prescribed by the Supreme Judicial Council in the exercise of power under Article 96 (4) (a) of the Constitution of the People's Republic of Bangladesh, May 2000.
- (d) Ethical Principles for Judges, drafted with the cooperation of the Canadian Judges Conference and endorsed by the Canadian Judicial Council, 1998.
- (e) The European Charter on the Statute for Judges, Council of Europe, July 1998.
- (f) The Idaho Code of Judicial Conduct 1976.
- (g) Restatement of Values of Judicial Life adopted by the Chief Justices Conference of India, 1999.
- (h) The Iowa Code of Judicial Conduct.
- (i) Code of Conduct for Judicial Officers of Kenya, July 1999.

- (j) The Judges' Code of Ethics of Malaysia, prescribed by the Yang di-Pertuan Agong on the recommendation of the Chief Justice, the President of the Court of Appeal and the Chief Judges of the High Courts, in the exercise of powers conferred by Article 125 (3A) of the Federal Constitution of Malaysia, 1994.
- (k) The Code of Conduct for Magistrates in Namibia.
- (l) Rules Governing Judicial Conduct, New York State, USA.
- (m) Code of Conduct for Judicial Officers of the Federal Republic of Nigeria.
- (n) Code of Conduct to be observed by Judges of the Supreme Court and of the High Courts of Pakistan.
- (o) The Code of Judicial Conduct of the Philippines, September 1989.
- (p) The Canons of Judicial Ethics of the Philippines, proposed by the Philippines Bar Association, approved by the Judges of First Instance of Manila, and adopted for the guidance of and observance by the judges under the administrative supervision of the Supreme Court, including municipal judges and city judges.
- (q) Yandina Statement: Principles of Independence of the Judiciary in Solomon Islands, November 2000.
- (r) Guidelines for Judges of South Africa, issued by the Chief Justice, the President of the Constitutional Court, and the Presidents of High Courts, the Labour Appeal Court, and the Land Claims Court, March 2000.
- (s) Code of Conduct for Judicial Officers of Tanzania, adopted by the Judges and Magistrates Conference, 1984.
- (t) The Texas Code of Judicial Conduct
- (u) Code of Conduct for Judges, Magistrates and Other Judicial Officers of Uganda, adopted by the Judges of the Supreme Court and the High Court, July 1989.
- (v) The Code of Conduct of the Judicial Conference of the United States.
- (w) The Canons of Judicial Conduct for the Commonwealth of Virginia, adopted and promulgated by the Supreme Court of Virginia, 1998.
- (x) The Code of Judicial Conduct adopted by the Supreme Court of the State of Washington, USA, October 1995.
- (y) The Judicial (Code of Conduct) Act, enacted by the Parliament of Zambia, December 1999.

- (z) Draft Principles on the Independence of the Judiciary (“Siracusa Principles”), prepared by a committee of experts convened by the International Association of Penal Law, the International Commission of Jurists, and the Centre for the Independence of Judges and Lawyers, 1981.
- (aa) Minimum Standards of Judicial Independence adopted by the International Bar Association, 1982.
- (bb) United Nations Basic Principles on the Independence of the Judiciary, endorsed by the UN General Assembly, 1985.
- (cc) Draft Universal Declaration on the Independence of Justice (“Singhvi Declaration”) prepared by Mr L.V. Singhvi, UN Special Rapporteur on the Study on the Independence of the Judiciary, 1989.
- (dd) The Beijing Statement of Principles of the Independence of the Judiciary in the Lawasia Region, adopted by the 6th Conference of Chief Justices, August 1997.
- (ee) The Latimer House Guidelines for the Commonwealth on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights to ensure the effective implementation of the Harare Principles, 1998.
- (ff) The Policy Framework for Preventing and Eliminating Corruption and Ensuring the Impartiality of the Judicial System, adopted by the expert group convened by the Centre for the Independence of Judges and Lawyers, February 2000.

At its second meeting held in Bangalore in February 2001, the Judicial Group (comprising Chief Justice Mainur Reza Chowdhury of Bangladesh, Justice Claire L’Heureux Dube of Canada, Chief Justice Reddi of Karnataka State in India, Chief Justice Upadhyay of Nepal, Chief Justice Uwais of Nigeria, Deputy Chief Justice Langa of South Africa, Chief Justice Silva of Sri Lanka, Chief Justice Samatta of Tanzania, and Chief Justice Odoki of Uganda, meeting under the chairmanship of Judge Weeramantry, with Justice Kirby as rapporteur, and with the participation of the UN Special Rapporteur and Justice Bhagwati, Chairman of the UN Human Rights Committee, representing the UN High Commissioner for Human Rights) proceeding by way of examination of the draft placed before it, identified the core values, formulated the relevant principles, and agreed on the Bangalore Draft Code of Judicial Conduct. The Judicial Group recognized, however, that since the Bangalore Draft had been developed by judges drawn principally from common law countries, it was essential that it be scrutinized by judges of other legal traditions to enable it to assume the status of a duly authenticated international code of judicial conduct.

The Bangalore Draft was widely disseminated among judges of both common law and civil law systems and discussed at several judicial conferences. In June 2002, it was reviewed by the Working Party of the Consultative Council of European Judges (CCJE-GT), comprising Vice-President Reissner of the Austrian Association of Judges, Judge Fremr of the High Court in the Czech Republic, President Lacabarats of the Cour d’Appel de Paris in France,

Judge Mallmann of the Federal Administrative Court of Germany, Magistrate Sabato of Italy, Judge Virgilijus of the Lithuanian Court of Appeal, Premier Conseiller Wiwinius of the Cour d'Appel of Luxembourg, Juge Conseiller Afonso of the Court of Appeal of Portugal, Justice Ogrizek of the Supreme Court of Slovenia, President Hirschfeldt of the Svea Court of Appeal in Sweden, and Lord Justice Mance of the United Kingdom. On the initiative of the American Bar Association, the Bangalore Draft was translated into the national languages, and reviewed by judges, of the Central and Eastern European countries; in particular, of Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo, Romania, Serbia and Slovakia.

The Bangalore Draft was revised in the light of the comments received from CCJE-GT and others referred to above; Opinion no.1 (2001) of CCJE on standards concerning the independence of the judiciary; the draft Opinion of CCJE on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality; and by reference to more recent codes of judicial conduct including the Guide to Judicial Conduct published by the Council of Chief Justices of Australia in June 2002, the Model Rules of Conduct for Judges of the Baltic States, the Code of Judicial Ethics for Judges of the People's Republic of China, and the Code of Judicial Ethics of the Macedonian Judges Association.

The revised Bangalore Draft was placed before a Round-Table Meeting of Chief Justices (or their representatives) from the civil law system, held in the Peace Palace in The Hague, Netherlands, in November 2002, with Judge Weeramantry presiding. Those participating were Judge Vladimir de Freitas of the Federal Court of Appeal of Brazil, Chief Justice Iva Brozova of the Supreme Court of the Czech Republic, Chief Justice Mohammad Fathy Naguib of the Supreme Constitutional Court of Egypt, Conseillere Christine Chanet of the Cour de Cassation of France, President Genaro David Gongora Pimentel of the Suprema Corte de Justicia de la Nacion of Mexico, President Mario Mangaze of the Supreme Court of Mozambique, President Pim Haak of the Hoge Raad der Nederlanden, Justice Trond Dolva of the Supreme Court of Norway, and Chief Justice Hilario Davide of the Supreme Court of the Philippines. Also participating in one session were the following Judges of the International Court of Justice: Judge Ranjeva (Madagascar), Judge Herczegh (Hungary), Judge Fleischhauer (Germany), Judge Koroma (Sierra Leone), Judge Higgins (United Kingdom), Judge Rezek (Brazil), Judge Elaraby (Egypt), and Ad-Hoc Judge Frank (USA). The UN Special Rapporteur was in attendance. The "Bangalore Principles of Judicial Conduct" was the product of this meeting.

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