

ADMINISTRATIVE AND GRAND CORRUPTION WITHIN THE JUDICIARY

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Workshop 2.5 – Administrative and Grand Corruption Within the Judiciary

Jade Bronze Room – 15:00 to 17:30 p.m.

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Hola!

We are much honored to be asked to organize a panel on what we believe is one of the most important crosscutting issues confronting the North and the South today, as well as this conference. Indeed, I believe our success in addressing what is an endemic problem in many countries will dictate, in large part, the success of most of the reforms we've been talking about at this conference, as well as those in prior and future TI conferences, as well as on-going discussions related to the implementation of the new UNCAC. Globalizing the rule of law has to be a front and center issue for all of us, and that means that all countries, donors, business and civil society groups, particularly human rights and anti-corruption groups, must take the issue of judicial corruption more seriously and make it among their highest reform priorities.

In the year of 2006, we now finally have enough empirical evidence, for the first time, to know that the scope and depth of the problem of judicial corruption explains why many international, institutional, economic and political reforms are never implemented in practice, why many corrupt officials and political parties remain in power, why many human rights and property abuses continue to occur with impunity and why so many people, particularly women, minorities and indigenous peoples, remain deeply entrenched in poverty and literally without any rights.

Now that organizations like TI and human rights groups are beginning to highlight this issue, we may have an opportunity to actually do something about it and to build upon some of the global recommendations made as far back as 1999, in the 1st Global Forum for Law Enforcement Officials, where over 150 law enforcement officials acknowledged, for the first time,

the endemic nature of this problem and declared that this was perhaps the most important reform issue of our time.

Even after 9/11 and other tragedies around the world, it would seem that this fundamental message, the need to globalize the rule of law, continues to resonate, for without judiciaries with integrity effective international judicial cooperation on a wide range of fronts is not possible. Neither is global integration at either the economic or political levels. So whether we are talking about addressing or preventing transnational terrorism, money laundering, transnational crime and corruption, the recovery of hidden assets or addressing corruption within an ever-globalized market and procurement process, it is clear that success in any of these areas is preconditioned on countries having judiciaries with integrity,

The main objective of this workshop is to highlight the issue of judicial corruption and to note how administrative or petty corruption and high level or grand judicial corruption affects everyone -- particularly when it is of a systemic nature. It is also to dare you to make this crosscutting, fundamental issue a high priority, no matter who you represent, and to dare you to agree upon, adopt to context and participate in a monitoring and reporting system that is geared towards addressing, rooting out and preventing judicial corruption. I believe we have a unique opportunity to seize on the opportunity the new UNCAC provides us to accomplish these important objectives and to call upon civil society groups and governments alike to finally adopt an anti-corruption judicial reform prevention agenda.

The Convention sets the stage for globalizing the rule of law, through minimal global judicial standards, systematized monitoring and reporting, civil society and business community leadership and donor coordination. However, as noted earlier, that Convention is premised, like the UDHR and many other conventions, on a country having an independent, impartial judicial with integrity.

If you examine its many components, you will readily see that the term rule of law or justice is either referenced or implied in virtually every paragraph of the Convention's preamble, and that it under-girds or is a precondition for numerous reforms required or recommended in the body of the Convention.

Let us hope that we don't see the majesty of the judicial forest for all of its corruptly infected trees as we think through how to make the UNCAC a

reality and as we all strive for justice for those who've never had the privilege of seeing much less tasting this fundamental human right.

As the organizers of this conference have noted, it is time we all reflect upon our own experiences and lessons learned and to commit ourselves to undertaking the next phase of anti-corruption reforms. This message would seem to be most relevant to the issue at hand.

For my own personal journey, I've labored in the judicial vineyards of many countries in all regions of the world since the fall of the Berlin Wall, and have been an early avid supporter and participant in the TI movement. After serving as the senior ROL and anti-corruption advisor to USAID for about 5 years, during much of the 1990's, I've worked for IFES and as a consultant to UNDP, the World Bank and the IDB, and have taught a course I created at AU's WCL entitled: Global Corruption and the Rule of Law. By the way, in the coming academic year, I have revamped this course in an effort to try to share my recent experience in China and will now call it Global Corruption and the Rule of Law Through a Chinese Lens.

To try to make a long story short, about five years ago I felt personally compelled to try to capture the reform experience I had had in many countries around the world, as well as that of others I had come to know, in the field of judicial reform. I also wanted to try to outline, in collaboration with others, a reform agenda for the future. You can find many of those reflections and recommendations in various IFES White Papers that I will reference a little later in my remarks.

I should also note that this conference led me to reflect upon a similar panel I chaired at TI's global conference in Seoul several years ago, where we had outstanding panelists like the one's here today. I would strongly encourage you to review those panel discussions and recommendations in TI's global conference archives, since we don't have time to review them in detail, as we are going to try to build upon and not repeat them here today.

While the findings and recommendations from that conference were numerous, they emphasized a number of the themes of the 12th IIAC Conference, including the important role of broad based advocacy coalitions and systematic monitoring and reporting tools that could be used to promote the actual implementation of laws and reforms. At that conference several of us presented and discussed what were then some of the first global

frameworks for promoting independent, impartial judiciaries with integrity. Today you will also hear about a new monitoring and reporting system that the Due Process of Law Foundation is proposing for Latin America. As we all leave this conference, I hope the model frameworks you will now have in your possession, will be replicated, within proper country context, throughout the Americas and around the world.

The IFES framework, like the DPLF framework, as you will hear, are based largely upon a set of global and home-grown principles, concepts, and jurisprudence now found in many governmental and non-governmental international treaties and protocols, such as the UDHR, the UN Basic Principles on the Independence of the Judiciary, the Bangalore Principles of Judicial Conduct, the Inter-American Convention on Human Rights, the European Charter on the Status of Judges, the International Commission of Jurists, The Beijing Declaration on Judicial Independence, the African Charter on Human and People's Rights, USAID's Global Guide for Promoting Judicial Independence and Impartiality, which I had the honor of serving as its co-editor, and IFES global research and judicial independence declarations from virtually all regions of the world.

IFES recently adapted this framework just for the Americas at a regional conference sponsored by the Inter-American Development Bank, which you can find in English and Spanish on their web site, as well as ours. It is a framework you can adapt to suit your needs and purposes on your own, so I hope you will take a moment to examine and think about it (www.ifes.org).

Important case law from countries' judiciaries and international tribunals, as well as an analysis of lessons learned papers and dialogue with country experts was also included in this analysis. It includes a list of 18 core judicial integrity principles as well as minimal benchmarks for evaluating their implementation, with cites to supporting research and documents.

It is worth noting that the principles supporting this framework have literally gone unchallenged by those that have reviewed and recently used them, although they have been adapted to fit country and regional context. This includes leading experts and ngos from four countries in the Middle East – Jordan, Egypt, Morocco and Lebanon. Indeed, empirical stakeholder research from these countries that we are about to unveil at an upcoming conference in Jordan later this month, clearly reveals that the closely related issues of judicial corruption, judicial independence and judicial enforcement

should be high priority issues in each of those countries, just as they should be in many of the countries represented at this conference. Emerging research in China supports this proposition as well.

You can find reference to all of these documents in a series of White Papers that IFES has produced over the years, that cover a wide range of closely related judicial topics, such as Income and Asset Disclosure Requirements for Judges – Lessons Learned from Eastern Europe and Latin America, the Enforcement of Court Judgments, Lessons Learned From Latin America, A Model State of the Judiciary Report, A Strategic Tool for Promoting, Monitoring and Reporting on Judicial Integrity Reform and A Model Framework for a State of the Judiciary Report for the Americas. You can also find examples of State of the Judiciary reports that have actually been produced from these global and regional frameworks for countries like Honduras, Haiti, Egypt and Malawi.

And for those of you with a particular interest in how judicial corruption works in China and what can possibly be done about it, you can find a copy of an upcoming article I've authored for TI's upcoming GCR 2007 Report, on the IFES web site. I try to make the case that grand judicial corruption is more of an issue than administrative corruption, because of the many structural opportunities there are for interfering in the judicial appointments, judicial decision-making, judicial review and judicial enforcement process. In China, not unlike many other countries, the main problems seem to relate to pure financial bribery during these processes, or pure telephone justice in high profile cases or those involving prominent members of the monopolistic Party in power.

For me, at the end of the day, in many countries the issue of grand judicial corruption may be the more important one to address first, because so much of what happens in the judiciary, at least on the most important criminal, economic and political cases, is driven from the top-down. Where grand corruption is endemic and well organized among the various powers that be, it is virtually impossible to instill public or business confidence in the judiciary or a rule of law culture. However, this is not to discount issues of petty or administrative corruption within the context of long-term or holistic reform, since they are often the issues that affect the poor and disenfranchised the most. Thus, a two tiered reform track would seem to make sense in many countries.

One of my main challenges to each of you today is to take the time to review these frameworks and country reports, and to tell us how you think they can be improved or adapted for use in your country or region. But let's not continue to discuss whether they can be useful or not and exactly what the monitoring and reporting process should look like. Whether we are talking about the implementation of the UNCAC or your own constitution and laws or judicial reform programs, adopting and implementing a systematic framework and process for promoting these reforms is key to our individual and collective success.

I trust I've not wasted too much of our time with references to what is already out there and past discussion, but I thought it is important to remind everyone that we have come a long way in a short period of time, but we are truly only half-way there. We now have much of the legal infrastructure, analytical tools, research, monitoring and reporting frameworks and benchmarks for promoting judicial reforms and integrity, but the next phase of actually implementing these reforms will be the most difficult. However, in my view it is not as difficult as many would conveniently have you believe.

Indeed, we now know that the best way, if not the only way, to promote the actual implementation of governance reforms, such as those in the important areas of procurement or, labor and the environment, is by building up the demand for reform through the following reform formula, which today I would dub, with Helen's permission, The Mack Solution. It has five key elements:

The Mack Solution

- (i) promoting broad based coalitions and public awareness
- (ii) promoting access to information
- (iii) promoting safety-oriented whistleblower laws and policies that are laced with incentives;
- (iv) promoting systematic monitoring and reporting by both governmental and non-governmental frameworks and mechanisms and
- (v) promoting local, country and international peer pressure, voluntary compliance and rule of law culture.

The only question today is how to get governments, judiciaries and civil society to follow this formula for real action. I can tell you that experience

over the last several years has taught us that this is not an easy road to go down, and that some of those most resistant to change include not only the judiciary itself but civil society itself.

Our discussion today is going to be very open-ended, so that we can leave as much time as possible for discussion and debate. So with further adieu, let me briefly introduce our first panelist, and move right into the discussion.

Por Favor Helen.

Panelists:

1. Helen Mack Chang -- Helen has been hailed by many for her leadership and personal courage and persistence in seeking justice and in end to impunity in high places. She has dedicated a large portion of her life to socially oriented non-profit education and housing projects in Guatemala. Her life changed in 1990 when her sister, Myrna Mack, a social anthropologist who studied problems of displaced wartime people, was brutally assassinated by a military commando. Certain that her sister's death was a political crime, and after many years and threats, her untiring efforts led to the conviction of a military soldier as well as the generals and colonels who ordered the assignation. Sadly, during the trial, the brave policeman who was investigating the crime was also assassinated. For her perseverance and courage, Helen has received The Right Livelihood Award and founded the Myrna Mack Foundation, which undertakes important research, advocacy and training activities throughout Guatemala. Let us hear from Helen how judicial corruption affected her life and that of others and what she thinks can be done about it. Helen, please.....

2. Judge Dolores Espanol – Dolores is a founding member of TI/Berlin and TI/Philippines and was a judge on the Philippine's Intermediate Court for ten years. She will focus on the nexus between corruption within the executive and judicial branches.

3. Edwardo Bertoni – Edward is the Executive Director of the Due Process of Law Foundation (DPLF). He is an Argentinean lawyer and a former legal advisor to Argentinean Minister of Justice. He is also the former Special Rapporteur for Freedom of Expression at the OAS. The DPLF is a Washington based non-profit whose overarching mandate is to promote development of policies aimed at improving policies and to

promote reforms related to the administration of justice in the Western Hemisphere. He will focus on high level internal corruption within the judiciary and present a framework for monitoring and reporting that the DPLF is developing for Central America.

4. Katya Salazar - - Katya is the senior Program Manage at DPLF and has worked for the Peruvian government and NGOs throughout America and Europe on various human rights and justice reform issues.