

Final Report
12th International Anti-Corruption Conference
Guatemala City, Guatemala
15-18 November, 2007

This submission serves as the final report of the rapporteur concerning panel **WS. 7.5 / “Denying Safe Haven to the Corrupted and Those that Corrupt Them, and Their Assets”** / 17 November 2007, 15:00-17:30/ Moderator **Diane Kohn**, U.S. Department of State/ Rapporteur, **Charles A. Caruso**, Asia Law Initiative, American Bar Association.

Panelists: **Dr. Jose Ugaz**, former Special Prosecutor, Peru, **Kathleen Hamman**, U.S. Department of Justice, **John Githongo**, Founder of TI Kenya and former Chairman of the Kenya Anti-Corruption Commission, **Chairman Nuhu Ribadu**, Economic and Financial Crimes Commission, Nigeria.

Main Issues Covered:

- Understanding the nature of impunity and what has expanded its growth;
- Denying Safe Haven to kleptocrats and those who corrupt them;
- Methods of using the Denial of Safe Haven policy to deter public corruption;
- Challenges faced by the Economic and Financial Crimes Commission of Nigeria

Main Outcomes: During the course of their respective presentations each of the speakers made the following general observations.

As a general observation Dr. Ugaz highlighted certain commonly encountered characteristics of corruption offenses and made observations as to how they impacted corruption prosecutions. As an example, Ugaz pointed out that corruption is regarded by those who engage in its practice as an exercise in cost analysis, i.e., danger of punishment versus possibility of gain. Thus, inasmuch as enormous profits are available and punishment thus far has been the exception rather than the rule, corruption thrives and is outstripping efforts to combat it. Ugaz pointed out that in many areas, the rule has become that public figures defraud those who have entrusted them with public funds and at the end of their terms in office, flee to hospitable jurisdictions to enjoy the proceeds of their efforts.

In more specific terms, Dr. Ugaz pointed out the place of various legal devices currently in use that have a deleterious effect on the prosecution of corruption cases thereby

contributing to impunity, including: parliamentary immunity; the use of political asylum to individuals who are sheltered by governments based on exaggerated and false claims of political persecution; the use of overly complicated extradition processes that have far exceeded their original intentions of protecting singular rights; and finally, the use of bank secrecy laws that now are used to protect the proceeds of corruption rather than the privacy rights of citizens.

Kate Hamman noted that while corruption as an issue is not resolved it has in fact come a significant distance in the recent past. Hamann pointed out that since the 3rd Global Forum on Corruption, the concept of complicity in the corrupt act by those who shelter the corrupted and their assets has become generally recognized. This premise of complicity has supported the proposition that by insuring sure and reasonably swift prosecution accompanied by an uncompromising policy on the return of stolen assets, the next generation of corrupt public officials can be deterred. Hamann also noted that the Patriot Act, now in force in the U.S, defines foreign bribery as a predicate act for money laundering prosecutions in the U.S., thus adding an important tool to anti-corruption efforts.

Chairman Ribadu described the recovery of stolen assets as the most important aspect of anti-corruption work in Nigeria inasmuch as 80 percent of the assets resulting from corrupt practices have left the country. Ribadu observed that the failure of the affected governments in developing countries is due entirely to this phenomenon. Ribadu also lauded as a significant measure Act 419, which outlaws internet schemes to defraud, and is being used in Nigeria to return purloined assets to victims.

Chairman Ribadu emphatically stated that unless the developed Western nations, to which the corrupt generally flee and in which they hide their illegal assets, assist the developing nations in recovering these assets, the battle of the most vulnerable nations against corruption can never be won. As an example of this, Ribadu cited the case of President Abacha, who is said to have absconded with 6 billion dollars of public funds from his country. Ribadu asserted that some 2 billion dollars of that had been repatriated from one of the developed Western nations and had been used to build approximately 20,000 kilometers of roadway in his country. Ribadu likewise made the point that while the money used for this project was, in terms of the economies of developed countries, rather insignificant, it was of major significance to countries such as his where it was not considered a modest sum.

John Githongo defined regulations concerning Politically Exposed Persons (PEPs) as an important tool in anti-corruption efforts. Githongo lauded as an important tool Presidential Proclamation 7750, now in effect in the U.S., which denies visas to those who have committed corrupt acts that affect the national interests of the U.S., has an effect on stemming corruption. Githongo noted likewise that when the proceeds of corruption cannot be utilized, the incentive for corruption is reduced. The Media and Civil Society can help by exposing tax havens because they are sensitive to public exposure.

Main Outputs: The following assertions were urged and supported by the panel:

Impunity against corruption is enhanced by legal regimens which overly complicate and pervert the intent of norms originally designed to protect private citizens;

Developing nations cannot successfully combat corruption, or as importantly, recover purloined assets, without the complete support and assistance of developed nations;

Civil society and public media can and should play a major and indispensable role in the fight against impunity;

An independent judiciary is a necessity in deterring and combating corruption.

Recommendations and Conclusions:

The Denial of Safe Haven must be a part of any anti-corruption strategy and must include the dual concept of denying access to the proceeds of corruption while at the same time insuring a swift and sure prosecution. This would include:

- Bringing together major financial centers to develop best practices to deny financial haven to the proceeds of corruption;
- Enhancing information sharing with foreign partners and financial institutions on corrupt officials;
- Uncovering and seizing stolen funds and returning them to their rightful owners;
- Ensuring greater accountability of development assistance to nurture new hope and horizons for societies and their children around the world.

Workshop Highlights:

During the course of the discussion period, participants raised several issues relative to topics discussed during the individual presentations. Among these was the question of where the issue of human rights concerns intersected the measures used to combat corruption in general and 'denial of safe haven regimens' in particular. A member of the audience addressed the panel as a whole and Dr. Ugaz and Chairman Ribadu in particular generally expressing the idea that corrupted officials were benefiting unfairly from human rights norms. The participant sought the views of each panelist on the subject.

While both Chairman Ribadu and Dr. Ugaz agreed that the law must be followed as a basic premise of civilized society, both approached the problem from different perspectives. Chairman Ribadu pointed out that while in some instances injustices seem to result from the application of human rights norms to those who have violated the basic human rights of others, civilized society could not be seen to be enforcing anything less

that the entire panoply of national and international law depending upon existence of the corruption aspects of the offenses. Ribadu stated “We must in all instances follow the law without exception.”

Dr. Ugaz, while agreeing with the general premise that human rights standards must be observed in corruption cases as well as the law generally, noted that there are aspects of current law that seem to have been perverted by some to serve purposes for which they were not intended. As an example, Ugaz pointed out that extradition procedures have become far more complicated, time consuming and unnecessarily burdensome than originally intended and are now being used by corrupt officials as a weapon rather than as a safeguard. Ugaz mentioned the issue of parliamentary immunity as having now become a shield for those who have committed crimes rather than as a safeguard to protect lawmakers from harassment. In short Dr. Ugaz stated that “We are losing [the fight against corruption] and formerly constructive and useful laws are contributing to that decline.”

John Githongo stated that “What the corrupt want is to enjoy their money. Do not underestimate the impact of denying them the ability to enjoy their money. It is a slap in the face to them when they cannot go to Disney World or their wives cannot go shopping in Harrod’s.” This sentiment was echoed by several of the other members of the panel as well.

Chairman Nuhu Ribadu, in accord with an earlier theme also emphasized that “While the proceeds of corruption forwarded to developed economies are insignificant to the viability of those economies, they are enormous in terms of the economies of the countries which has suffered their loss.”

Kate Hamman in explaining the U.S. policy on the denial of safe haven, quoted former Secretary of Commerce Don Evans at the Third Global Forum, in Seoul, South Korea when he warned corrupt actors “You and your money cannot hide here.”