

STRENGTHENING JUDICIAL INTEGRITY

Workshop 1, Day 4, 9th International Anti-Corruption Conference

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Introductory Comments from the Chair

Let me first explain the reason for a workshop on judicial integrity.

A serious impediment to the success of any anti-corruption strategy is a corrupt judiciary. A corrupt judiciary means that the legal and institutional mechanism designed to curb corruption, however well-targeted, efficient or honest, remains crippled. It also means that the procedural equality of parties - 'the equality of arms' - which is an inherent element of a fair trial, is denied to those who seek the resolution of their disputes through the judicial process. Unfortunately, evidence is steadily and increasingly surfacing of widespread corruption in the judiciary in many parts of the world. A recent national household survey on corruption in Bangladesh, conducted by the TI national chapter in that country, revealed that 63% of those involved in litigation had paid bribes to either court officials or the opponents' lawyers, while 89% of those surveyed were convinced that judges were corrupt. In a similar survey in Tanzania, 32% reported payments to persons engaged in the administration of justice. In Uganda, only 9% were willing to say that corruption in judicial administration was 'greatly exaggerated'.

In several countries, judges have actually been prosecuted for corruption. For example, in Vietnam, a judge was recently sentenced to five years imprisonment for accepting a bribe of 6 million dong (\$428) -the equivalent of nine months salary - to settle an assault case in favour of the defendant, while a supreme court judge was imprisoned for two years for accepting a bribe of \$4000 from a party to civil litigation. In Argentina, a federal judge was charged with accepting a \$25,000 wardrobe for dismissing a case involving the death of a four-year-old, and was then asked to explain how he acquired a \$700,000 apartment on his \$5000 a month salary. In Italy, a senior judge was investigated for 'adjusting' cases in favour of the Mafia after earning the name 'verdict killer' for the number of convictions he quashed on technicalities. These, however are exceptions.

Meanwhile, both at the international and at the national levels, the emphasis continues to be on securing the independence of the judiciary through constitutional provisions, but not on ensuring the accountability of judges or meeting the challenge of developing methodologies to clean up a corrupt judicial service.

Corruption in the judiciary is a complex problem and it may need to be confronted through a variety of approaches. For example, in Venezuela, where 75% of the population reportedly distrusts the judicial system, a US\$120 million reform programme aims to eliminate corruption by making the system more open, with public trials, oral arguments, public prosecutors and citizen juries. But in many former British colonies in Asia and Africa, where these are standard features of the system, the judiciary nevertheless remains corrupt. Elsewhere, consequent to donor-driven reform initiatives, more and better equipped courts have been established, and judges' salaries have been increased but, in the public perception, the judiciary remains corrupt.

Corruption in the judiciary is not limited to conventional bribery. An insidious and equally damaging form of corruption arises from the interaction between the judiciary and the executive, as well as from the relationship between the judiciary and the legal profession. For example, the political patronage through which a judge acquires his office, a promotion, an extension of service, preferential treatment or employment after retirement, can give rise to corruption. Similarly, when a family member regularly appears before a judge, or when a judge selectively ignores sentencing guidelines in cases where particular counsel appear, the conduct of the judge would give rise, at least, to the suspicion of corruption. In certain countries, the active involvement of judges in community organisations has evoked a similar response.

The question of judicial accountability has not been, and is not being, addressed. For example, in a South Asian country, a donor-driven judicial reform programme has as one of its components the training of judges abroad. For this purpose, the minister of justice selects judges who then receive from him an all-expenses paid round-the-world air ticket. In the circumstances of that country, with a history of executive patronage of the judiciary, this component is calculated not to 'reform' but to perpetuate one of its fundamental weaknesses. The phenomenon of corruption in the judiciary, therefore, needs to be revisited.

It is for that reason that Transparency International decided to examine the problem of judicial corruption in depth, and seek to identify how it could be addressed, both in higher and lower levels of the judiciary, within the framework of the constitutional guarantees of judicial independence. We are not engaged in an academic exercise. What we seek are practical solutions to a very real problem which tens of thousands of people, across the continents, who access the judicial systems, are condemned to face.

This workshop will be conducted in two segments. In the first, we will have the benefit of the experience of five persons who are not only actively engaged in strengthening judicial systems, but have also practical experience of the debilitating impact of corruption on a country's judiciary. The first panellist is the former Chairman of the Malaysian Bar, a victim of his country's judicial system, for whose vindication an advisory opinion of the International Court of Justice was necessary, the United Nations Special Rapporteur on the Independence of Judges and Lawyers

since 1994, DATO PARAM CUMARASWAMY. The second is someone who has already addressed the plenary session and who therefore does not need to be introduced again, the Chief Justice of the Republic of Bangladesh, THE HON. MUSTAPHA KAMAL. The Centre for the Independence of Judges and Lawyers, established by the International Commission of Jurists and based in Geneva, has published nine annual reports so far on 'Judges Under Attack'. A year ago, Transparency International began a dialogue with the Centre on developing a concept of judicial accountability to complement the principle of judicial independence. The third panellist is the Director of the Centre, MONA RISHMAWI. The fourth is not a lawyer, but one whose background lies in the French gendarmerie, and who is now a senior officer of the United Nations Centre for International Crime Prevention in Vienna, actively engaged in designing anti-corruption strategies for a range of countries FERNAND BATARD. The final panellist on this session is a judge who was forced out of office because he had the strength of character to uphold the freedom of expression in his country, and is able to share with us not only the circumstances of his removal but also an insider's view of the pressures to which a judge is subjected to by a government which has little respect for the principle of judicial independence: former CHIEF JUSTICE KHILANI of Jordan.

'The second session of this workshop this afternoon will be chaired by Prof Phil Heymann, and addressed by Mr Dani Kauffman and Ms Linn Hammergren, both from the World Bank. It is hoped during that session to identify the criteria for evaluating the performance of the judiciary.