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Short Session Report: Game Changers

Session Title: Assessing corruption risks in the judiciary: what role for the community?

Date & Time: 3 September 2015, 8.30-10.30am

Report prepared by: Dr Sofie Schütte, senior advisor, U4 Anti-Corruption Resource centre

Experts:

- Ms Radha Friedman, Director Of Programs, World Justice Project
- Mr Haemiwan Z. Fathony, Former Deputy Coordinator, Judicial Reform Team, Indonesia
- Hon Justice Kashim Zannah, Chief Judge, Borno State High Court; Nigeria
- Hon Prof. Dr. H.C. Rudolf Mellinghoff, President of the Federal Supreme Tax Court of Germany and member of the Judicial Integrity Group.

Moderated by: Elodie Beth Seo, Regional Anti-Corruption Advisor (UNDP)

Session coordinated by: Sofie Schütte (U4), Fabian Klemme (GIZ) Elodie Beth Seo (UNDP).

Main issues raised in kick off remarks. What's the focus of the session?

A functioning judiciary is crucial to hold the corrupt to account and to restore justice after the fall of abusive regimes. However, justice sector institutions are increasingly undermined by vested powers and corruption – which in turn is fuelling impunity. Corruption reduces the accessibility and quality of justice and the legitimacy of not only judicial institutions but the state more generally. By undermining contract enforcement and property rights, corruption in the justice sector can impede much needed investment in developing and transitioning countries. Only when the corruption risks in the justice sector can be assessed adequately, can effective counter-measures be developed.

Moderator Ms Elodie Seo Beth opened the session with the story of Jana Dubcova, formerly a judge in Slovakia who initiated a survey at her court that uncovered the high frequency of bribe payments to court officials. She found herself investigated by the judicial council and eventually left the judiciary, got elected a member of parliament and successfully brought forward a bill on the publication of all judicial verdicts that has allowed TI Slovakia to analyse and compare verdicts on corruption cases (resulting in the finding that most cases are petty cases with only very few grand corruption cases going to court/ leading to a conviction).

Ms Radha Friedman briefly explained the methodology of the Rule of Law Index, a survey administered annually to households and experts in 102 countries (to date). This allows for international and regional comparison. Current limitations are its time-sensitiveness (respondents may be influenced by current affairs), hence it only provides a snap-shot, and the data of the household surveys is collected in urban areas only. This year, an outreach to more rural areas in a survey on Afghanistan is undertaken. The World Justice Project has used the assessments as an entry point to engage in innovative solutions at local level, such as a project in South Africa that engages a network of international law students in providing research assistance to judges and a documentary on corruption cases in Mexico City called “Lawyers with Cameras” in which lawyers followed the cases step by step.

Mr Haemiwan Fathony shared experiences with judicial reform in Indonesia after the end of the Soeharto regime. It required a lot of endurance with the law to ensure judicial independence from the

Ministry of Justice only being enacted in 2004. A unit was set up within the Supreme Court that consists of representatives from the private sector, civil society and lawyers that has been assisting reform in the court from within. A so-called Judicial Mafia task force analysed the modus operandi of corruption in the court system and identified where risks were highest. They could not address the root causes but brought light into the processes, for example through the publication of court verdicts, and according to Haemiwan, corruption in the judiciary has been declining.

Judge Kashim Zannah shared lessons learnt of the assessment of judicial integrity in Nigeria in 2001 and 2007 and resulting reforms. The objective of the assessment was to map out objectives on access to justice, timelines and quality of court processes and verdicts, integrity and oversight of courts, public trust and coordination across justice sector institutions. Based on the baseline study in three states, action plans were mapped out in collaboration with the community, represented among other by civil society organizations and faith-based bodies. The second assessment in 2007 showed that there were indeed many areas of improvement. External stakeholders were not only included in the diagnosis of the problems but also in their treatment. Public complaints committees were set up, consisting of lawyers, police, state security and NGOs that handle complaints about judicial misconduct. In Borno state, such complaints have led to the dismissal of several judges. Zannah stressed that the public trust this created in the judiciary protected it from attacks by Boko Haram more recently.

Judge Rudolf Mellinghoff stressed that it was important to define what judicial reforms are to achieve and that this definition is different from country to country. He and his colleagues form the Judicial Integrity Group have formulated core values: the Bangalore Principles of Judicial Conduct and implementation measures for both the state and judiciaries. Nevertheless, the approach to realise these principles needs local adaptation. Areas of particular attention are: assignment and distribution of cases; the selection of the court administration by the judiciary itself; access to justice; transparency in the exercise of judicial office, judicial training, including in international human rights, the remuneration, tenure and the immunity of judges (but where corruption occurs, they must be brought before the courts). Hierarchy in the court system and decisions is necessary, but should never lead to the influencing of judges at lower courts.

What initiatives have been showcased? Briefly describe the Game Changing strategies/ ideas (if applicable)

The session was highly interactive and there were many valuable contributions from various countries and agencies. Due to the shortage of time and space for the initial short report, we can unfortunately not list everything. Most prominent was the discussion of the following initiatives:

- The Rule of Law Index (<http://worldjusticeproject.org/rule-of-law-index>) by the World Justice Projects measures and local “incubator” projects (see above).
- Judicial Integrity Group www.judicialintegritygroup.org (see above and also http://www.judicialintegritygroup.org/images/resources/documents/giz_implementing_the_bangalore_principles_en.pdf).
- The publication of verdicts
In Slovakia and Indonesia the publication of verdicts has been a game changer, in that it allows for external scrutiny and the comparison of verdicts. In Indonesia, the Supreme Court started publishing court verdicts in 2008. Today about 1.5 million verdicts can be looked up and scrutinized online. Journalists detected sloppiness in some of the verdicts, which just copied and pasted from existing verdicts. A group of researchers based at the University of Indonesia has compared 500 verdicts on rape cases and the relationship of evidence and resulting sentences. Their plan is to do similar analysis for corruption cases, comparing the sentences requested by the prosecutors in their indictments with the actual sentences. It is important to make the format of the verdicts searchable.
- Publication of asset and interest declarations has been suggested as a tool of oversight. Asset declarations in the judiciary are mandatory in Indonesia, but not in Germany (where tax oversight is strident, but there are no asset declarations for public officials in general). In Nigeria asset declarations are required for judges but not published. For a discussion of asset

declarations in the judiciary, please see <http://www.u4.no/publications/the-case-for-asset-declarations-in-the-judiciary-identifying-illicit-enrichment-and-conflicts-of-interests/>.

Briefly describe the highlights including the thematically interesting questions and ideas that were generated from the discussion or from the floor, and session quotes.

What to do with the “judicial inheritance” from an autocratic regime? The special expertise needed does not allow for firing everyone, so a vetting process is needed. The Ukraine is undergoing such a vetting process for its 7000 judges. And judges are reassigned according to performance assessments (with best performers assigning to higher courts).

It is also problematic if donor agencies provide capacity training to judges that have been indoctrinated and are part of an intricate elite patronage network, as one participant reported to be the case in Bahrein.

Quotes:

Justice Kashim Zannah: “There is nothing to fear from involving the community”; “Independence within the judiciary is equally if not more important [than independence from external influence].

Justice Mellinghoff “Every judgement must be published.”

Mr Haemiwan Fathony “Help those who work hard from the inside”.

Cristina Tarna (ACC, Moldova): “Corruption the judiciary is an obstruction of anti-corruption efforts”

What are the key recommendations, follow-up Actions (200 words narrative form)

There was general agreement of the speakers and participants that remedies for corruption in the judiciary need to be based on careful assessments, involving internal and external stakeholders. Ideally, these stakeholders will continue to be involved in the reform process

and its monitoring. No single assessment tool will capture all aspects to be considering in a particular jurisdiction. Any tool needs to be adapted, in fact a combination of several assessments tools might be needed for a holistic diagnosis and treatment (see also: <http://www.u4.no/publications/corruption-risks-in-the-criminal-justice-chain-and-tools-for-assessment/>). Also there was a recognition that the community has a role to play in promoting accountability within the justice sector when civil society is able to access information on verdicts and trials. Openness in the judiciary can foster not only integrity but also professionalism on the part of judges.

Recognising that more analysis and case studies on specific country experience with assessment tools and reform approaches are needed, UNDP has initiated the development of a Compendium of case studies on Promoting integrity and addressing corruption in the justice sector. Compared to other sectors, positive experiences of successful reforms in the justice sector are quite scarce.

Special anti-corruption courts are not a panacea: the causes for underperformance need to be analysed. If it is legal loopholes or a weak investigation process, then these need to be addressed (The U4 anti-corruption resource centre is currently conducting a comparative study on anti-corruption courts, forthcoming in early 2016).

Key Insights that could be included in the IACC Declaration

Rapporteur's name and date submitted

Sofie Schütte, 3 September 2015

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