

JUDICIAL CONFERENCE OF THE UNITED STATES

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TO THE GLOBAL FORUM ON FIGHTING CORRUPTION: SAFEGUARDING INTEGRITY AMONG JUSTICE AND SECURITY OFFICIALS

The purpose of this statement is to inform you that our Committee has some concerns about the "Guiding Principles For Fighting Corruption and Safeguarding Integrity Among Justice and Security Officials," and it cannot support the document in certain respects as presently written. Simply stated, we believe that several of the "Effective Practices" recommended in the document are inappropriate when applied to an independent judiciary.

We recognize that paragraph two of the Preamble states in part:

It is anticipated that these guiding principles will be implemented by each government in a manner appropriately tailored to the political, legal, economic and cultural circumstances of the country. Due to the different functions and missions of the different judicial, justice and security officials, not all effective practices are applicable in all categories.

Nonetheless, we believe that it is necessary to point out our concerns about some of the recommendations in more detail.

Some of the recommendations as applied to the federal judiciary in this country would be unconstitutional or in violation of existing statutes. Others, even if otherwise lawful, would be considered unacceptable, either because the practice would be an inappropriate intrusion upon the independence of the federal judiciary or because effective alternative policies and procedures are already in place. For example:

- o The document recommends that judges initially serve a probationary period. This would be unconstitutional with respect to our federal courts because justices and

judges of the Supreme Court, the appellate courts, and the district courts serve for life unless impeached and removed by the Congress for serious misconduct.

- o The document recommends that an impartial and specialized institution be established to administer an ethical code. By law, our federal judiciary's ethical code is enforced by the judges themselves, with the sole exception of an impeachment proceeding.
- o The document also makes recommendations regarding an "inspector general" or "independent ombudsman." The Judicial Conference of the United States strongly opposes the creation of an inspector general for our federal courts because it poses a serious threat to the independence of judicial decision-making and has serious implications for the separation of powers. Rigorous and effective mechanisms for audit, review and investigation already exist within the federal judiciary.

There are several other examples. We believe that the problem with the recommendations is that they make no effort to distinguish between effective measures to monitor and discipline security personnel and measures that can effectively address corruption concerns when dealing with what is hopefully an independent judiciary.

We recognize that under our Constitution, with its separation of powers among the executive, legislative, and judicial branches, we maintain a judicial independence that may be more clearly defined than in most common law and civil law countries.

We are not suggesting that there is only one right way to do something — our way. We did want you to know, however, that in the context of our laws and experience, several of the recommendations as applied to our federal judiciary would be inappropriate. We have great respect for the decisions you make regarding how the Rule of Law is best established and maintained in your country.

Our Committee, as well as all other federal judges in this country, share your commitment to the honest performance of official duties.



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International Judicial Relations Committee