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ILF Sends Letter to UN Security Council

On June 29, 2010, the UN Security Council held an open debate on “the promotion and strengthening of the rule of law in the maintenance of international peace and security.” The International Legal Foundation sent a letter to member states urging them to consider the role of defense counsel in building rule of law in post conflict countries.

The following is the text of the ILF’s letter:

Re: 29 June 2010 United Nations Security Council Open Debate on “the promotion and strengthening of the rule of law in the maintenance of international peace and security”

Dear Ambassador:

The International Legal Foundation (ILF) welcomes the UN Security Council’s scheduled debate in the above referenced matter. This Open Debate presents the ideal opportunity for the UN Security Council, UN system and individual Member States to address the serious imbalance currently present in rule of law efforts in post-conflict countries and regions in transition. Although there is a growing focus on rule of law efforts in those regions, the focus is almost exclusively on strengthening the judiciary, prosecution, police, and corrections. Little if any attention is given to the critical element of defense and particularly indigent criminal defense for the poor. Without quality criminal defense services for the poor, who represent most defendants

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in any criminal justice system, there is no check on the authorities and no one in the courtroom to protect the fair trial rights of the accused. If this debate could accomplish one goal, the redress of this current imbalance, it would have great impact on the development of the rule of law.

The ILF, an international, nongovernmental organization based in New York, is guided by the principle that defense lawyers—as guardians of due process—are indispensable to any fair system of justice. It was created in 2001 to assist post-conflict countries and those in transition to establish public defender systems that provide quality criminal defense services to the poor. As demonstrated by ILF’s work in Afghanistan and Nepal, one of the keys to strengthening and rebuilding justice systems in post-conflict nations rests in the creation of an effective and sustainable system for free legal aid and the development of a strong criminal defense bar.

Access to counsel for the poor is a very serious problem in post-conflict countries. In 2003, when ILF opened its first public defender's office in Afghanistan, the right to defense was virtually non-existent. The vast majority of defenders were too poor to hire a lawyer and there was no functioning legal aid system. Today, the ILF has established a country-wide public defender system that is the primary provider of criminal defense services to the poor. Similarly, in Nepal, the ILF is laying the foundation for a national public defender system.

The ILF has documented, through its work in Afghanistan and Nepal, that lawyers play a critical role in ensuring that governments adhere to the rule of law. Judges interviewed in Afghanistan stated that defense lawyers were “*working hard to keep the system and particularly the prosecutor and police in check.*” According to one judge in Herat “*at first the judges did not pay much attention to the defense and did not appreciate the role of the defense attorneys in court. To be honest,*” said the judge, “*they opened our eyes to the irregularities that existed in the judicial system.*” Without access to counsel, suspects and defendants are more vulnerable to arbitrary detention, coerced and tortured confessions, wrongful convictions and other abuses.

The Security Council, UN system and Member States should call on post-conflict governments to take responsibility for the provision of counsel to the indigent accused. Toward this end, we urge you to support the following recommendations in your statement at the Open Debate:

1. The UN and Member States should work together to ensure the draft UN Guidelines on Legal Aid in Criminal Justice Systems based on Resolution 2007/24, are adopted and become recognized international standards. In addition to specifying the circumstances in which legal aid should be available, the Guidelines on Legal Aid in Criminal Justice Systems require governments to provide adequate budgets to support legal aid services, and to work with partners – including professional bodies, universities and civil society– to ensure adequate coverage throughout countries and communities.
2. Indigent defense should be included in the UN’s pilot initiative to develop a comprehensive, coherent and coordinated strategy for UN support to the rule of law.

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3. Member States, donors, UN entities and non-governmental organizations, should make clear that it is every country's responsibility to establish and sustain indigent defense systems that provide effective, high quality representation to the poor.
4. The UN should draft and adopt guidelines that establish minimum international standards of practice for lawyers that provide legal representation to the poor in criminal cases.

Sincerely,



Natalie Rea

Executive Director



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