

**OVERCOMING CONSTRAINTS IN THE JUDICIAL
SYSTEM TO STEM CORRUPTION**

United Nations Economic Commission for Africa

Table of contents

Foreword	ii
Acknowledgements	iii
1. Introduction	1
2. Defining corruption	2
2.1 Types of corruption	2
2.2 Factors contributing to corruption.....	3
2.3 Correlation between perceived and actual corruption	3
2.4 Causes of corruption.....	4
2.5 Effects of corruption.....	5
2.6 Patronage	6
3. Rule of law, judicial integrity and accountability	7
3.1 Rule of law	7
3.2 Judicial integrity.....	8
3.3 Judicial accountability.....	10
3.4 Corruption in the judiciary.....	12
3.5 Some causes of corruption in the judiciary.....	14
4. Challenges and systemic weaknesses	16
5. Recommendations for tackling corruption in the judiciary.....	18
6. Conclusion.....	21
7. Plan of action.....	23
8. Bibliography	26

FOREWORD

This publication is one of the practical commitments made by the Economic Commission for Africa (ECA) in its effort to promote good governance, which in turn will help spur economic growth, reduce poverty and facilitate the achievement of the Millennium Development Goals (MDGs) and objectives the New Partnership for Africa's Development (NEPAD).

The aim of the publication is to assist member States in identifying and disseminating best practices in the thematic area of good governance, with particular emphasis on the effectiveness of the judiciary in fighting corruption. It is also intended to facilitate and promote dialogue, international cooperation and technical assistance for preventing and combating corruption in Africa.

The publication contains examples of best practices from African countries on fighting corruption, as well as lessons learned from international and regional commitments. In particular, it addresses issues related to constraints on law enforcement institutions in investigating cases of corruption; corruption challenges within the judiciary itself; inefficiency or lack of independence of judges; qualification challenges and financial constraints facing the judiciary

Like many other similar endeavours, this publication benefited from many recent cross-national studies on the causes and consequences of corruption, with a special focus on Africa. These studies, which use a plurality of methods, address corruption from almost every perspective. Although some aspects have been studied in more detail than others, the overall conclusions are: (a) that corruption jeopardizes governance, economic development and social justice; and (b) that a good judicial system is crucial in the fight against corruption.

While the document does not suggest any easy solutions or models for combating corruption, it identifies government activities that are most prone to corruption and highlights relevant substantive laws and administrative procedures for combating corruption. The general recommendations of the document call for greater information and awareness campaigns, transparency in the prosecutor's office and courts, and strengthening of the responsibility and accountability of these institutions to the general public. The specific recommendations relate to the development of corruption investigation methods, improving the qualifications of judges, and promoting the honesty of judges and the predictability of court cases.

We hope that this document would be assistance to member States in the complex but inevitable fight against one of the major obstacles to good governance. We also hope that decision-makers, planners and researchers will find the data and information contained in this publication valuable.

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1. INTRODUCTION

1. Africa has been striving for so long to bring development and good governance to its people. The New Partnership for Africa's Development (NEPAD) has identified democracy, human rights and good governance as some of the major challenges for moving the continent forward. Good governance is a pre-condition for Africa to meet the Millennium Development Goals (MDGs).¹ The new leadership in Africa is now committed to systems and institutions that are accountable, transparent and responsive to people's needs.

2. Corruption is recognized as a major impediment to sustained development and the creation of an enabling environment for good governance in Africa.² It has permeated every facet of governance, including the judicial systems. The New Partnership for Africa's Development (NEPAD) identifies sound economic and corporate governance; political governance; peace and security as necessary conditions for development in Africa.³ It calls for the setting up of coordinated mechanisms to combat corruption in Africa.⁴ Emerging structures and processes such as the African Peer Review Mechanism (APRM) are designed to improve governance systems in Africa through the African Union (AU) mechanisms.

3. The importance of an effective and efficient judicial system to the good governance and development of any nation cannot be overstated. As one of the pillars of governance, the custodian of the rule of law and the upholder of justice and people's rights, the judiciary must be honest in carrying out all its functions. For the judiciary to be effective in combating corruption, it must not only be incorrupt, but must also be perceived as such. An incorrupt, independent and impartial judiciary is therefore vital to the integrity of any Government.

4. At the Fourth African Development Forum,⁵ which focused on governance, the importance of strengthening the capacity of the judiciary to combat corruption was emphasized. The judiciary protects individual rights and ensures the security of persons and their properties. Disputes are resolved fairly and in a transparent fashion that encourages fair competition and economic growth. The role of the judiciary is imperative to countering both private and public corruption, reducing political manipulation and increasing public confidence in the integrity of the Government.

5. Governance is defined as the exercise of political power to manage a nation's affairs.⁶ Good governance therefore may be described as the discharge of Government

¹ See Introduction to the Fourth African Development Forum (ADF IV), Governance for a Progressing Africa, 11-15 October 2004, in Addis Ababa, Ethiopia. Visit -- www.un.org/millennium/sg/report/summ.htm. These goals are: eradication of extreme poverty and hunger; achieve universal primary education; promote gender equality and empower women; to reduce child mortality; improve maternal health; combat HIV/AIDS, malaria and other diseases; ensure environmental sustainability; and develop a global partnership for development.

² African Governance Report 2005, Economic Commission for Africa, p.148.

³ Decision of the 37th Ordinary Session of the Assembly of Heads of State and Government of the OAU held in Lusaka, Zambia, in July 2001 as well as the Declaration adopted by the first session of the Assembly of the Union held in Durban, South Africa in July 2002, relating to NEPAD; See also the African Union Convention on Preventing and Combating Corruption, 2003

⁴ Ibid

⁵ African Development Forum IV, October 2004

⁶ UNDP, Governance for Sustainable Human Development, A UNDP Policy Document, UNDP, New York, January 1997

responsibilities in an efficient, effective, transparent and accountable manner. As an arm of Government, the judiciary has the responsibility to uphold the rule of law, justice and peoples' rights, which are all fundamental to good governance.

6. For the purposes of this paper, the judiciary will be taken holistically to encompass all aspects of the justice system, including prosecutors, court management systems, the Bar, the police, traditional rulers, court brokers and court assessors.

2. DEFINING CORRUPTION

7. Corruption is an elusive concept because what may be corruption in one society may not be considered corruption in another society. What for some traditions and beliefs can be a sign of gratitude, may be considered bribery in others. Nonetheless, corruption is everywhere in all societies. It is a global problem that affects virtually all countries. The only difference is the level and degree of tolerance a country has towards it. It is a general notion describing any organized, interdependent system in which part of the system is either failing to perform its duties, or performing them in an improper way, to the detriment of the system's original purpose. Corruption generally occurs when public officials or officers try to obtain a personal financial or political benefit in exchange for not pursuing, or selectively pursuing, a public duty.

8. Corruption has been defined differently by different interest groups. There is no single, comprehensive, universally accepted definition of corruption. However, corruption has been generally understood to refer to an abuse of office for personal or private gain. It is the perversion or destruction of integrity in the discharge of public duty by bribery or favour. It is in this context that Max Weber (1969) observed that in the modern State, public affairs are no longer considered a source of income to be exploited for rents.⁷ Langseth explains that during the negotiations of the United Nations Convention against Corruption it was felt that defining the term "corruption" would not serve any useful purpose, leading the Convention to instead provide only a list of specific types or acts of corruption.⁸

2.1 Types of corruption

9. There are two broad types of corruption: grand and petty corruption. Grand corruption usually involves highly placed public officials and the amount of money at play is staggering and creates an enormous dent in the economy. Typical examples are found in big sole-source contracts, especially for military purchases. Mungiu-Pippidi (2006) writes that "predatory elites", in the process of generating prosperity for themselves, produce a degree of poverty otherwise unwarranted in the society.⁹ Petty corruption is always the kind of corruption involving less amounts of money or gifts. It is a way of supplementing low salaries paid to public employees, including judicial officers.¹⁰

⁷ Max Weber, *Economy and Society III*, New York, Bedminster, 1969, p. 159

⁸ Peter Langseth, *Discussing the United Nations Convention against Corruption*, UNCDO, Proceedings Document on the Strengthening Judicial Integrity and Capacity in Indonesia, Kendari, October 7-8, 2004

⁹ Alina Mungiu-Pippidi, *Corruption: Diagnosis and treatment*, *Journal of Democracy* Volume 17, Number 3 July 2006, National Endowment for Democracy and The Johns Hopkins University Press.

¹⁰ *ibid*

10. The United Nations Convention against Corruption talks about active and passive corruption. Active corruption refers to the offering or paying of a bribe, which is an offence spelled out in many anti-corruption legislations, while passive corruption is the receiving of a bribe. Passive corruption would also involve cases where a bribe is offered but is not accepted or is still being negotiated.

11. Two types of corruption affect the judiciary: political interference in the judicial process by either the executive or legislative branches of government, and bribery.¹¹

12. Judicial corruption may then be defined as acts or omissions that constitute the use of public authority for the private benefit of judges, court personnel, and other justice sector personnel that results in the improper and unfair delivery of judicial decisions. Such acts include bribery, extortion, intimidation, influence peddling and the abuse of court procedures for personal gain¹² and any inappropriate influence on the impartiality of the judicial process by any actor within the court system.

2.2 Factors contributing to corruption

13. The AGR states that the increasing level of corruption in Africa is due to three main factors. First is the level of institutional weakness in many African countries, which makes it possible for political leaders and public servants to embezzle national resources and abuse their power without being checked. Second is the deteriorating economic future and living standards of public servants in many countries, which make corruption a viable means of social livelihood. Third is the role of external actors, as foreign companies and private interests often capitalize on weak institutional mechanisms and level of poverty in Africa to bribe State officials in order to gain undue advantage or secure political privileges in State policies.¹³

2.3 Correlation between perceived and actual corruption

14. Combating corruption is not in itself an end; rather, it is instrumental to the broader goal of a more effective, fair and efficient judiciary, which in turn is associated with greater economic development.¹⁴

15. There is a correlation between perceived and actual corruption in the context of governance. In Ghana, for example, the AGR documented that 62-87 per cent of households had paid bribes to Government agencies, with the police and immigration service topping the list of bribe-takers.¹⁵ The Report further notes that corruption is perceived to rank very high on the list of problems in Africa. A World Bank study on Ethiopia found that corruption is the biggest problem that households face after poverty. The situation is similar in other African countries, with corruption ranking among the top

¹¹ Executive Summary, Global Corruption Report by Transparency International, 2007

¹² Mary Noel Pepys, a US-based senior attorney specializing in the rule of law, international legal and judicial reform.

¹³ African Governance Report 2005, op. cit; p. 148.

¹⁴ Jeremy Pope, 'Elements of a successful Anti-corruption Strategy' 'Curbing Corruption Toward a Model for Building National Integrity', Edited by Rick Stapenhurst and Sahr J. Kpundeh, p. 97

¹⁵ African Governance Report 2005, op. cit; p. 148

three problems behind poverty and unemployment. In Cameroon, Morocco, Nigeria and Tanzania, more than 25 per cent of the households surveyed said corruption was a serious problem.¹⁶

16. The perception of corruption is very high among court users and the challenge here is how to differentiate between perceived and actual corruption. In the case of South Africa, perceptions are much higher than actual experiences.¹⁷ In South Africa, the Constitution requires the Government to act accountably and transparently, thereby raising the threshold of accountability and transparency. In addition, the Administrative Justice Act requires public officials to follow procedures that are fair and impartial and to explain their decisions. The Access to Information Act provides easy access to information from Government departments and agencies under specified rules and procedures.¹⁸

2.4 Causes of corruption

17. There are various causes of corruption. In Africa, “survival” is a contributory factor to corruption because of abject poverty. The need to make ends meet and to respond to extended family pressures causes individuals to consider violating established norms by seeking bribes.

18. In Nigeria, a survey on governance and corruption¹⁹ conducted by a consortium of Nigerian institutions and focusing on citizens, government officials and enterprise owners, concluded that corruption has permeated all segments of Nigerian society. It cites weak Government institutions and an economic environment characterized by widespread poverty and unemployment as principal determinants of corruption.²⁰

19. The study also found that “public” officials often put their own welfare before that of the Nigerian people, due to greed and because salaries are inadequate to support a family and often are not paid on schedule. Government agencies are seen as “self-serving, poorly managed, unaccountable and not living up to their responsibility of protecting citizens and providing services to them.”²¹ This finding is true in most African countries and reflects the realities on the ground. The study identified further that a major area of corruption is the manner in which judicial officials are appointed.²²

20. Contributory to corrupt practices is the tendency in Africa for the rich to be idolized, even if they acquired their wealth illicitly or corruptly.²³ Mungiu-Pippidi put it more succinctly, saying that there is an important qualitative difference between a State bribed by a firm to provide a tax break and a State whose executives are also its main businesspeople and gradually transform public assets into their private property. Those who are supposed to guard against corruption are themselves the corrupt. In turn, the

¹⁶ *ibid*

¹⁷ *ibid*

¹⁸ *Ibid*, p. 146-147

¹⁹ Policy Considerations: Forums on the Nigeria Governance and Corruption Survey Study, Summary Report, 2001

²⁰ *ibid*

²¹ *ibid*

²² *ibid*

²³ *Ibid*

system is also likely to be organized hierarchically, much like a criminal group, with those at the bottom collecting bribes that feed the upper levels of Government.²⁴

21. The Nigerian study further found that most public officials are morally bankrupt, because their primary motivation is to make money for themselves rather than serving their country. The sentiment is founded on the belief that “Nigeria is a rich country with abundant oil and other natural resources; this wealth is not benefiting the people.”²⁵

2.5 Effects of corruption

22. Corruption dents judicial power and authority and makes other branches of Government feel that their misdeeds will never be punished. This generally leads to a loss of legitimacy for the justice system.

23. Corruption raises transaction costs and “triggers the bidding competition for judicial services that escalates prices for those who participate.”²⁶ At the same time it slows down or otherwise discourages those who cannot afford to participate. As a result, the pace of litigation is driven by corruption rather than by the legal process. Consequently, the rules are circumvented for money and public confidence in the judiciary becomes threatened, thus undermining the rule of law and the integrity of the justice system itself.

24. Corruption, like robbery, fraud and other forms of crimes against property and people, undermines the investment climate and stifles entrepreneurial activity. Hence, the judiciary could directly contribute to economic development by fighting corruption. It could play an important role in the development of a nation by setting standards of conduct and promoting essential values of the nation.²⁷

25. Corruption undermines the rule of law, reduces investment and delays economic growth, misallocates talents, lowers the quality of infrastructure, the public service and the legal system, and compromises the confidence of citizens.

26. Corruption harms the investment climate by distorting policymaking, undermining the credibility of Government, increasing the cost of doing business, and diverting resources from public coffers. There is a clear correlation between the level of economic activities in the country and the judiciary’s effectiveness in fighting corruption. Where the courts punish corrupt elements appropriately, a clear message is sent to the public that corruption is intolerable. The prompt, impartial and just dispensation of cases by the courts is another important aspect of the judiciary’s commitment against the scourge of corruption.

²⁴ African Governance Report 2005, op. cit.

²⁵ Ibid

²⁶ Ibid

²⁷ Opinion expressed at the Ad-Hoc Expert Group Meeting on Deepening Judiciary’s effectiveness in Combating Corruption, 14 – 15 December 2006, Addis Ababa, Ethiopia.

2.6 Patronage

27. Another form of corruption is “patronage”, a term often used to describe the corrupt use of state resources to advance the interests of individuals, groups, families, ethnicities or races in exchange for electoral support, appointment to a public office or being awarded a contract without any merit or laid down provisions of the law.²⁸

28. Nepotism is one form of patronage that exposes conflicts of interest. Conflict of interest exists when a public employee is influenced by personal considerations in the performance of a public duty. Most often, a public official such as a judicial officer would use his or her position or power to solicit and obtain a favour and then render a decision through corrupt means. This could include securing a job for a family member, a close relative or a friend from institutions on the promise of reciprocity.

29. In Nigeria, a study revealed with dismay that the increasing prevalence of “godfathers” has sustained corruption in public life and the support of the “godfather” is viewed as an investment and should yield a financial dividend or an obligation to receive that support. This leads to the “godfather” being compensated through inflated contract pricing and other unethical favours, which often involve bending the rules, thus undermining the ability of Government to deliver social services.²⁹

30. Jeremy Pope (2000) states that the objective is to prohibit a public official from using or abusing her public office to land a public job for relatives or close friends.³⁰ Cronyism is a wider concept than patronage because it covers situations where preferences are given to friends and colleagues – old school ties or club ties.³¹

31. Dakolias and Thachuk (2000) analyze the same problem as follows: One of the most prevalent forms of corruption is clientelism or patron – client relationships. This is basically a situation in which individuals use public offices for personal aggrandizement or to gain favourable advantages for themselves or their friends. This system is largely the result of a complex network of personal affiliations and ties that take precedence over the commitment to public policies and indeed the Constitution.³²

32. In Zambia, most respondents of the Governance Baseline Survey conducted in 2004 said that judicial or court decisions were influenced by corruption or favours. This was a serious obstacle because on average cases took 1 month to 75 months to resolve. Asked whether based on their experiences with the courts they were likely to sue again, 36.5 per cent of the business respondents who had taken legal action before indicated that they were extremely unlikely to do so.³³

²⁸ See <http://en.wikipedia.org/wiki/Patronage>

²⁹ See UNODC, Assessment of the Integrity System and Capacity of the Justice System in Three Nigerian States, Technical Assessment Report, January 2006

³⁰ Jeremy Pope, *Confronting Corruption: The Elements of a National Integrity System*, Transparency International, London, 2000, p.197

³¹ *ibid.*, p. 198

³² Maria Dakolias and Kim Thachuk, ‘Attacking Corruption in the Judiciary: A Critical Process in Judicial Reform’, 18 *Wisconsin International Law Journal* 353, Spring 2000

³³ Zambia National Governance Baseline Survey Report, Government of Zambia, August 2004, p.94

33. The Nigerian study also found that business enterprises use gratification to influence court decisions, criminal proceedings and avoid regulation.³⁴ The study concludes that people do not report corruption incidences because they are not taken seriously and no investigations are carried out. Cases that are investigated take too long to be resolved, to the extent that they become useless.³⁵

34. Corruption is a cultural problem that continues to plague society. Rose-Ackerman (1999) argues that though culture is dynamic and constantly changing, certain cultures would regard certain behaviour as corrupt while others may view it as gift-giving.³⁶ In this regard, the prevalence of patronage in Africa essentially entails protection of incompetent personnel who are employed because of connections with high officials, without meritorious considerations.

35. This problem affects all public sector institutions and has also been identified as one of the major weakness within the judiciary, which undermines its independence. The “godfather” culture is a manifestation of nepotism in any organizational setting and contributes to inefficiency and lack of discipline.³⁷

3. RULE OF LAW, JUDICIAL INTEGRITY AND ACCOUNTABILITY

3.1 Rule of law

36. According to some scholars, this concept means the ability to have one’s grievances heard before an impartial judge.³⁸ Doing “justice” means applying its rules with equal favour to members of society and eliminating any sense of injustice. Judges tend the gate between order and anarchy. They preserve our system of ordered liberties and are necessary to a civilized society. Injustice breeds the feeling that one has been wronged without recourse to justice: that is, one is denied the means to redress the conduct that one finds manifestly unjust, thus becoming bitter and cynical against the judiciary.³⁹

37. Eighteenth-century scholars and philosophers propounded the rule of law. Most recently, Professor Dicey (1979), whose thinking has had an influence on the understanding of the concept of “Rule of law,” has suggested three conditions for its maintenance. First, no one can be made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. Second, the rule of law not only implies that no one is above the law, but that every man whatever his rank or condition is subject to the ordinary laws of the land and subject to the jurisdiction of the ordinary courts.⁴⁰ Third, the principles of natural justice must be observed and protection of individual freedoms guaranteed.⁴¹

³⁴ *ibid*

³⁵ *ibid*

³⁶ Susan Rose – Ackerman, *Corruption and Government, Causes, Consequences and Reform*, Cambridge University Press, 1999, p.110

³⁷ UNODC, *Assessment of the Integrity System and Capacity of the Justice System in Three Nigerian States*, Technical Assessment Report, January 2006

³⁸ Jennifer A Widner, *building the Rule of law, Francis Nyalali and the Road to Judicial independence in Africa*, W.W. Norton & Company Inc., New York, p.41

³⁹ Frank M. Johnson Jr, *Civilization, Integrity. And Justice: Some Observations on the function of the Judiciary*, 43 W.L.J. 645, October 1989

⁴⁰ See H.W. Arthurs, *Rethinking Administrative law: A Slightly Dicey Business*, York University, Canada, 1979

⁴¹ *ibid*

38. In Dworkin's (1977) formulation, Governments must treat their citizens with concern and care, that is, like human beings who have the ability to suffer and to be frustrated, and who can form an opinion and act on intelligent conceptions of how their lives should be lived. Governments should not only treat their people with equal concern and respect; they must also not distribute goods or opportunities unequally on the ground that some citizens are entitled to more because they are more worthy.⁴²

39. Hayek (1977) has provided the clearest and most powerful formulation of the ideal of the rule of law, saying that Government in all its activities is bound by rules fixed and announced beforehand, which make it possible to foresee with a fair amount of certainty how the authority will use its coercive powers in given circumstances, and to plan one's individual affairs.⁴³

40. Hayek advocated for the independence of the judiciary as one of the virtues of the rule of law. Methods of appointment of judges, their security of tenure, their salaries and other conditions of service are important pointers as to judicial independence. Prosecution authorities should not be allowed to decide not to prosecute for commission of certain offences, or crimes committed by certain classes of offenders. The police should not be allowed to allocate resources so as to avoid all efforts to prevent and detect certain crimes or prosecute certain classes of criminals.⁴⁴

3.2 Judicial integrity

41. Judicial integrity is considered to be the heart of the rule of law, in the sense that judges must have integrity in order to protect the principles of the rule of law. These principles can conveniently be summarized as follows: firstly, the law binds the Government; secondly, all people should be treated equally; thirdly, basic human rights must be protected. Judges must maintain integrity for the rule of law to be sustainable.⁴⁵

42. Justice as a moral construct, rather than a technical legalistic device, must shape the behaviour of judicial officers in their task of dispensing justice to all. Judges should be guided by ethical standards that are reduced into codes of conduct to govern their behaviour both inside and outside their working environment. The preservation and sustenance of public confidence is the crucial indicator as to the propriety of the judiciary in the delivery of justice, seen by the members of society to be fair and independent decision-making without external influence or fear.

43. Justice Kennedy of the US Supreme Court, commenting on the integrity of the court, stated:

“That a commitment to the Constitution is not something that is genetic. It is not inherited, is not automatic. It has to be taught and each generation must learn about

⁴² Ronald Dworkin, 'What Rights do we have?' *Taking Rights Seriously*, 1977

⁴³ F.A Hayek, *The Rule of law and its virtue*, *The law Quarterly Review* (1977)

⁴⁴ *Ibid*

⁴⁵ See David Barnhizer, 'On the make: Campaign Funding and the Corruption of the American Judiciary', 50 *Catholic University Law Review* 361, Winter 2001

the Constitution and the values of constitutional institutions within the context of their own time, within the environment of their own time. And if we are in an era in which there is a loss of confidence in the judicial system, and even worse, a misunderstanding of the judicial system, then we must take steps to correct it.”⁴⁶

44. These observations by Justice Kennedy are relevant to Africa today. Judges should be men and women of integrity. They must be honest, straightforward and upright. Justice Black put it more elegantly that “courts stand against any winds that blow as heavens of refuge for those who might otherwise suffer because they are hopeless, weak, outnumbered, or because they are nonconforming victims of prejudice and public excitement”.⁴⁷

45. It is a fair assumption by our societies that the worth and integrity of the judiciary is not measured by the extent to which its judgments are popular or accepted by some ephemeral majority, however defined, but rather by the extent to which judgments of the courts spare us from the disorders that otherwise inevitably result from injustice.⁴⁸

46. Judges give the law its humanity and life through their decisions, which should be guided by a sense of justice and practical wisdom. They are regarded as priests of the rule of law. Lawyers are key stakeholders in the preservation of judicial integrity and the rule of law. If the public’s perception of the judiciary’s integrity plummets, so will its respect for the law. Corruption is likely to keep away better candidates for judicial office because they will not be willing to be associated with dirty and denting associates.⁴⁹

47. Judicial integrity may be defined as the courage of our judges to make fair decisions based on their understanding of the law without fear or favour. Courts are respected and heeded to, because they speak from the moral heights of our society and when they don’t, their integrity is compromised.⁵⁰ Calmness of temperament, accuracy of judgment, unblemished character, and sound legal views should be clearly reflected to earn judicial integrity.⁵¹

48. The Bangalore Principles of Judicial Conduct⁵² provide standardized professional and ethical guidelines to members of the judiciary. They are intended to afford the judiciary a framework for regulating judicial conduct. They include the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge.⁵³

⁴⁶ Ibid, See also Frontline: Justice for Sale/ PBS television broadcast, November 23, 1999, www.pbs.org/wgbh/pages/frontline/shows/justice

⁴⁷See Frank M. Johnson, Jr., ‘Civilization, Integrity, and Justice: Some Observations on the function of the Judiciary’, 43 Southwestern Law Journal 645, October 1989

⁴⁸ Ibid

⁴⁹Edited by Yassin El -Ayouty, Kevin J. Ford and Mark Davies, op. cit.

⁵⁰ Frank M. Johnson Jr, op. cit.

⁵¹ ibid

⁵² The Bangalore Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25 – 26, 2002

⁵³ ibid

49. Value 3 of the Bangalore Principles states that integrity is essential to the proper discharge of the judicial office. A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer. The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.⁵⁴

50. Most importantly, value 4.14 states that a judge and members of the judge's family shall neither ask for, nor accept any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.⁵⁵

3.3 Judicial accountability

51. Judicial accountability is a recent development that has been added to the notion of judicial independence. Critics of this element see it as an affront to judicial independence and that it has gone too far, to the extent of threatening judges' gains against control by the executive and legislative branches of Government, respectively.⁵⁶

52. The purpose of independence of the judiciary, as explained by Justice Akiwumi, "is not to create an absolute independence of the judiciary, but rather a relative independence which is intended to provide protection of judges from improper or unlawful influences, direct or indirect, on the way in which the judicial officer carries out his/her judicial functions."⁵⁷

53. However, it is contextually understood that judicial accountability is not diametrically opposed to judicial independence. Rather, it stresses the following important elements:

(a) That the judiciary as a corporate body may have excessive control over its own composition, creating a self-perpetuating and self-protecting caste;

(b) A concern that the removal of traditional external controls may allow the judiciary unparalleled and possibly abusive freedom in managing its own resources;

(c) A concern that judges' ability to interpret laws as they apply them may give them excessive power in reshaping the legal framework according to the values and views shared neither by the public nor by the other branches of Government; and

(d) A concern that institutional mechanisms for defining standards for controlling and correcting judicial behaviour are inadequate.⁵⁸

⁵⁴ *ibid*

⁵⁵ *Ibid*, -- value for propriety.

⁵⁶ See Linn Hammergen, 'Judicial Independence and Judicial Accountability: The Shifting Balance in Reform Goals', in *Guidance for Promoting Judicial Independence and Impartiality*, Technical Publication Series, Revised Edition, USAID, Washington, D.C., January 2002

⁵⁷ *ibid*

⁵⁸ *ibid*

54. Judicial accountability represents a demand that an independent judiciary should be able to account for its existence and relate to the society it serves by justifying its actions, and be responsive to the society's perception of its own integrity and fairness in the dispensation of justice to all.

55. Accountability is part of the new reform that seeks to improve judicial performance, which has given rise in recent times to complaints about delays of cases, corruption and unethical conduct of some members of the judiciary.⁵⁹

56. To understand judicial accountability, it is essential to answer the implicit question: Are the two elements (independence and accountability) mutually exclusive? Hammergen seems to suggest that accountability is better understood as referring to an institutional accountability to political and civil society; and that while other branches of Government are critical to enforcing judicial accountability, especially in impeachment proceedings of a judge, it redefines the limits of legal powers and the extent to which the judiciary serves the society as a whole.⁶⁰

57. Accountability can be distinguished from independence. Independence focuses on prior control of judicial action, while accountability is about ex-post-control, which refers to the requirement that the judiciary explain both its administrative and its functional operations and outputs.⁶¹ Accountability sets out standards for justification of judicial actions and in this sense strengthens the independence of the judiciary and not weakens it.

58. Accountability should therefore be seen as a means of combating judicial corruption, especially today when concerns have been raised that there is corruption in the judiciary like in other public sectors, and it must be addressed.⁶²

59. Hammergen has identified five factors that feed into judicial accountability. These are:

(a) Changes in public attitudes toward authority, including the judiciary, as citizens now expect their officials to explain their actions and no longer take them on faith;

(b) Informal systems of internal control and decision-making no longer guarantee predictability and standardized outcome s;

(c) The expanding importance of the judiciary especially in judicial decisions that affect the lives of citizens ;

(d) The explosive myth of the judiciary's neutral application of the law ; and

(e) The emergency and reliance of constitutional challenges by ordinary citizens against executive action.⁶³

⁵⁹ *ibid*

⁶⁰ Linn Hammergen, *op.cit*

⁶¹ *ibid*

⁶² *ibid*

⁶³ *ibid*

3.4 Corruption in the judiciary

60. As has been said earlier, corruption has permeated most Government institutions in Africa, including the judiciary. The negative impact of a corrupt judiciary cannot be over-emphasized. A corrupt judiciary stunts trade, economic growth and human development and deprives citizens of justice. It should also be noted that judicial systems debased by bribery undermine confidence in governance by facilitating corruption across all sectors of Government. There is a correlation between levels of judicial corruption and levels of economic growth, because enforcement of contracts and impartial resolution of disputes are fundamental to investors and underpin sound business development and growth. An independent and impartial judiciary has important consequences for trade, investment and financial markets, as experienced by China and Nigeria.⁶⁴

61. The Kenya judiciary has conceded that corruption has assumed pandemic proportions, and Chief Justice (CJ) J.E. Gicheru has found that people go by the maxim “why pay a lawyer when you can buy a judge” and the best judges have become “the best judges than money can buy”.⁶⁵ In 2003, the report by a committee appointed by the Chief Justice to look into the problem of corruption in Kenya’s judiciary and suggest remedies noted that corruption was prevalent in the judiciary, with 5 out of 9 judges of the Court of Appeal, 18 of 36 High Court judges, 82 out of 254 magistrates, and 43 of the 2,910 paralegal staff being implicated. The principal forms of corruption the committee found included bribery, fraud, abuse of office, and receipt of favour without consideration. The committee concluded that, “corruption reduces the temple of justice into a cave of venality and exploitation”.⁶⁶

62. It is reported also in Kenya that a more insidious structure sometimes exists where the executive has an influence over the judiciary, while the most significant problem in Benin is the lack of access to courts and a resulting shift to popular justice familiarly called a “*vindicate populaire*”⁶⁷

63. Explaining the prevalence of corruption in the judiciary, one lawyer put it that corruption had created a system that “reeks of inconsistent decisions because they are not principled, but are anchored on expediency and size of the purse”.⁶⁸

64. An impartial judiciary will reduce the influence of Government officials, legislators, political parties, and other powerful elites who are used to operating above the law. The realities of corruption on the ground are well explained by a judge himself who said, “magistrates would physically go and find cases in the registry from which they could make money. Villagers could not believe that one can win a case unless they paid a bribe to a magistrate. Magistrates would adjourn cases to leave time for litigants to get money to pay them off”.⁶⁹

⁶⁴ Executive Summary, Transparency International Global Corruption Report 2007.

⁶⁵ UNODC Report of The Judicial Integrity Group, Vienna, 27 – 28 October 2005

⁶⁶ *ibid*

⁶⁷ *ibid*

⁶⁸ R. N. Ben Lobulu after being interviewed by Jennifer A. Widner, *op. cit.*; p.274.

⁶⁹ Judge William Maina interviewed by Jennifer A. Widner, *op. cit.*; p. 275

65. Another respected judge of the Court of Appeal in Tanzania, when interviewed by Widner,⁷⁰ confirmed that “one judge in the High Court asked for a million shillings. The judge was no longer on the Bench. Clerks and support staff who operate their own rackets would go out and say: “If you want favour of a judge, you must offer a figure commensurate to his stature”.⁷¹

66. The Uganda law society complained in its memorandum that when prisoners were taken before magistrates, their files “developed feet” or were misplaced and therefore not available. This is one of the tricks used to get a prisoner to pay some money to the magistrates, after which the file was found.⁷²

67. A study by Jennifer Widner found that court clerks would see a decision of the court in advance of its pronouncement, and then sell the judgment to the winning party, claiming that the judge or magistrate was still undecided. The person who paid the bribe would then hear the judgment read in court and assume that his or her money had helped secure the result, even when the judge or magistrate knew nothing about the transaction.⁷³

68. A former Chief Justice of Tanzania lamented that the execution of court decrees by court brokers has mushroomed into a profiteering and fraudulent business. The court broker would retain a property, put it under his custody for an inordinate period of time so as to charge increased storage fees. This has led winning sides to loose money and end up bankrupt.⁷⁴

69. Nigeria has been rated as one of the most corrupt countries in the world, where experts have found that by far the most harmful and destructive effects of corruption are on the rule of law, especially when the efficiency of the criminal justice system, which should be seen as the epitome of integrity, is undermined and compromised by corruption.⁷⁵

70. It has also been established that companies with low levels of capital have greater difficulty accessing the courts as compared with larger ones and they tend to receive worse services from the courts. The size of the company seems also to influence its likelihood to be confronted with corruption in the courts. Findings from Lagos State have confirmed that the smaller the company, the more likely it is to perceive the judicial system as corrupt and as a result, display a lower level of trust.⁷⁶

71. The United Nations Economic and Social Council Guidelines on Strengthening Basic Principles of Judicial Conduct, clearly acknowledge the problem of corruption in the judiciary thus:

⁷⁰ Jennifer A. Widner, *op.cit*; p.276

⁷¹ *ibid*

⁷² *Ibid*, p.276

⁷³ *Ibid*

⁷⁴ *Ibid*, p. 277

⁷⁵ *ibid*, p. 3

⁷⁶ *ibid*, p. 117

“Corruption of members of the judiciary undermines the rule of law and adversely affects public confidence in the judicial system, and, that the integrity, independence and impartiality of judiciary are essential prerequisites for the effectiveness protection of human rights and economic development.”⁷⁷

3.5 Some causes of corruption in the judiciary

72. One of the causes of corruption in the judiciary is the lack of independence. In most African countries, the judiciary lacks independence, particularly where the appointments and tenure of judges depend on the President of the country or the Ministry of Justice (which is part of the executive arm of the Government). Good governance within the judiciary is critical. Courts are expected to be impartial in the dispensation of justice. In this regard, a judicial system is required to be non-partisan, free to make decisions unhindered by influence of money or political pressure. The judiciary as an organ entrusted with interpreting the law and it has an important role in the system of checks and balances. To discharge this crucial role, judiciaries in Africa have to examine their levels of competence and the degree of independence from the executive.

73. In 2000, the United Nations Economic Commission for Africa commenced a project to measure and monitor progress towards good governance in African countries, which resulted in the publication of the African Governance Report (AGR). It conducted surveys of households and experts in different countries to assess their perception of governance. The judiciary was targeted as a crucial institution and the surveys found that its capacity varies widely depending on the levels of competence and the degree of independence from the executive. Despite constitutional guarantees of an independent judiciary, the perception prevalent in most African countries is that the judiciary is only partially independent.⁷⁸

74. Contributory to the lack of independence is the fact that the judiciary’s policy and budget processing in most African countries is controlled by the Ministry of Justice, an arm of the executive branch of Government.⁷⁹ The budgets for the judiciary in Kenya, Swaziland, Tanzania, Uganda and Zambia, to mention but a few, are processed through their Ministries of Justice.⁸⁰ The rationale for this is that though they are independent, as prescribed in the Constitution, the judiciaries have to process their budgetary requirements through the Ministry of Justice, because it is the minister responsible for constitutional and legal affairs who is accountable to parliament for all the budgetary needs of his department, including the judiciary.

75. Another cause of corruption in the judiciary is inadequate funding and poor remuneration of judges and other court personnel. The survey of experts mentioned above has also found that in many countries in Africa, the judicial system as a whole is poorly funded and judicial officers are poorly remunerated. This demotivates them, promotes corruption and reduces commitment. In addition, courts have poor facilities, especially the

⁷⁷ ECOSOC Resolution 2007/22

⁷⁸ African Governance Report 2005, UN Economic Commission for Africa, 2005, p.128

⁷⁹ Ibid, p.204

⁸⁰ ibid

lower courts. In Malawi, the judiciary remains underfunded despite recent efforts. Over one third of the total prison population was on remand. This figure demonstrates that courts do not have the capacity to deal with the volume of cases placed before them.⁸¹

76. According to the AGR, the overall consequences of these deficiencies is the restricted access to justice for many poor and marginalized people. The experts surveyed in Cameroon, Ethiopia, Lesotho and South Africa, for example, said that the first instance or lower courts are rarely or never accessed by citizens within three days. These delays impede the maintenance of the rule of law and access to justice for all.⁸² Also, most of the judiciaries in Africa are not adequately staffed; they are poorly trained and lack the tools to facilitate the delivery of justice. They lack a qualified and professional workforce such as court administrators and information technology personnel to smoothen the recording of proceedings and streamline docketing.

77. The AGR also notes that the Gambia relies heavily on expatriate judicial officers hired on contract. Of the seven judges in the High Court, only two are Gambians, two are on technical assistance, one is a foreign judge on contract and two seats are vacant. In Uganda, the judicial system is extremely slow due to a shortage of judicial officers. The same applies to Swaziland, where due to a shortage of judicial officers, the system of justice delivery is hamstrung. For example, out of the 3,430 cases registered in the five busiest magistrate courts, 1,480 cases remained unprocessed. Many of the courts lack adequate stationery and legal reference books. The situation is worse in rural areas.⁸³

78. It is pertinent to note, however, that though poor remuneration for judicial officers has been used as a justification for rampant corruption within the judiciaries in Africa,⁸⁴ this is not always the case. At the Ad Hoc Experts Group Meeting held in Addis Ababa from 14 to 15 December 2006, it was observed that large-scale corruption did not occur within the low-paid civil service cadres. In the case of Cameroon, for example, at certain times the salaries of judges were doubled but those of the civil servants were reduced or remained at the same level, yet this did not reduce corruption in the judiciary.

79. It should be noted, therefore, that big salaries alone are not enough to reduce corruption. Vincent Green (2000), drawing from his experience as a law enforcement officer for many years, noted that “in almost all cases individuals involved in corrupt relationships do so because they feel the following:

- (a) They are knowledgeable about the area they are conspiring to defraud;
- (b) There is an opportunity to implement the plan that could be completed successfully; and

⁸¹ African Governance report, op. cit, p. 206

⁸² Ibid. p. 206

⁸³ Ibid, p. 205 – The survey shows that in Tanzania and Zambia, adjournment of cases is the order of the day and reasons advanced for such adjournments include lack of court folders and stationery for writing proceedings which end up being done by hand.

⁸⁴ Ibid, p. 205—For example in Malawi, the judiciary remains underfunded, with consequences on institutional capacity. See the Presidential Commission of Inquiry against Corruption in Tanzania, Executive Summary, World Bank, 1996, p.21 – The Commission found that corruption was widespread in the judiciary. Court clerks, court assessors were also involved in corruption to the extent that confidence of the citizens in their judiciary was undermined.

(c) The environment or the attitude within the organization lends itself to corrupt behaviour.”⁸⁵

80. Another cause of corruption in the judiciary is that of undue influence by the executive and legislative arms of Government. It has been found that the executive and legislative branches have significant control over the judiciary in many countries, despite constitutional guarantees of equality. In countries where the rule of law is weak, the judiciary is often seen as a malleable branch of Government, and judges in weak judiciaries are deferential to politically connected individuals.⁸⁶

4. CHALLENGES AND SYSTEMIC WEAKNESSES

81. Various studies⁸⁷ by expert groups and judicial integrity workshops have identified the following challenges to and systemic weaknesses of the judiciary:⁸⁸

(a) Disappearances of case dockets, postponement of case hearings, high prosecution expenses and legal fees which favour the rich, high networking ability and old-boy connections between the rich and the staff of the judiciary and political connections on the part of the privileged. Most of these failings are at the expense of the poor and less privileged, and are compounded by poor remuneration of judiciary staff in the face of high inflation, cultures of conspicuous consumption and social glorification of achievement as exemplified by property ownership among certain members of society;

(b) Non-involvement of judges and magistrates in the reform of the judiciary results in inefficiency and lack of ownership by the judiciary;

(c) Lack of internal capacity to maintain independence;⁸⁹

(d) Court infrastructure: The smooth functioning of courts is constrained by inadequate facilities, rundown conditions, inadequate space distribution, poor lighting systems, poor maintenance, lack of decorum, poor location, among others;

(e) Judicial appointments are not transparent in order to prevent the perception of nepotism or politicization. It is observed that in some jurisdictions, the judicial appointment process is manipulated to the extent that cases are assigned by a compliant Chief Justice to control which judge hears a case of importance to the Government;⁹⁰

⁸⁵ Edited by Yassin El-Ayouty, Kevin J. Ford and Mark Davies, *Government Ethics and Law Enforcement: Toward Global Guidelines*, Praeger Publishers, New York, 2000, p. 162

⁸⁶ Mary Noel Pepys, *Corruption within the judiciary: causes and remedies*, Global Corruption Report, 2007

⁸⁷ Guidance for promoting Judicial Independence and Impartiality, revised Edition, Technical Publication Series, USAID, January 2002; UNODC -sponsored international judicial groups.

⁸⁸ Workshop on Judicial Integrity in Uganda (Jinja, 15 -17 December 2002)

⁸⁹ The problem of judicial performance can be seen from the following indicators: Management of the budgeting process; management of the relationship with other branches of Government; organization and delivery of services to the trial court and court management assistance programmes to improve the performance of the court in delivery of justice; development of statistical capability to measure the performance of the judiciary; development of policy involving all levels of the legal system; development of managerial training programmes for those assuming positions in the governance structure; supervision of the Bar; strategic corporate planning and implementation.

⁹⁰ Guidance for Promoting Judicial Independence and Impartiality, op. cit.

- (f) Inadequate training for judges and magistrates and poor grooming of judicial staff on issues of corruption and those of anti-corruption agencies on the importance and nature of their independence, autonomy and responsibility;
- (g) Absence of an effective code of conduct in some jurisdictions: if the code is not properly explained to judicial staff and understood and applied correctly in their public and private lives, the integrity of the judiciary may be compromised;
- (h) Lack of a clear law or rules for declaration of assets and gifts received in the course of discharging judicial functions;
- (i) Conflict of interest and bias; a judicial officer should refrain from handling a matter in which he has a personal interest to avoid accusation of bias;
- (j) Lack of an inspectorate division, particularly in rural areas, to monitor and evaluate the performance of the judiciary;
- (k) Inadequate remuneration,⁹¹ which leads to corruption in the judiciary. However, as has been said earlier,⁹² corruption does not occur among low-paid civil servants, as was found in Cameroon. In this respect, the experts have observed that while there is a tendency to consider poverty as a cause of corruption, it is indeed not a direct cause of corruption, but a contributory factor;⁹³
- (l) Inappropriate socializing between judges and lawyers: where a judge has his personal needs being taken care of by an advocate, or where the judge is seen mingling freely in a social setting with an advocate whose clients have matters pending before the judge;
- (m) Inconsistencies in sentencing: imposition of a fine or the discharge of an accused in a criminal case where the law provides otherwise;
- (n) Lack of strong and effective mechanisms to control delays in delivering judgments; and
- (o) The fact that justice systems have not proven to be effective in handling more complex court cases involving corruption and organized crime. Only few corruption cases are being brought to court and even fewer cases end up in a conviction. The Ethiopian experience has demonstrated that the courts are reluctant to accept cases investigated by the Anti-Corruption Commission because of the perceptions and understanding of corruption.⁹⁴

⁹¹ See Government of United Republic of Tanzania, Financial and legal Sector Management Upgrading project (FILMUP): Legal sector Report, Dar es Salaam, January 1996.

⁹² Para.54 of paper, Deepening the Effectiveness of the Judiciary

⁹³ Opinion expressed at the Ad Hoc Expert Group Meeting on Deepening the Judiciary's Effectiveness in Combating Corruption, op. cit.

⁹⁴ *ibid*

5. RECOMMENDATIONS FOR TACKLING CORRUPTION IN THE JUDICIARY

82. National governments should underscore and implement the separation of powers, particularly the independence of the judiciary as enshrined in their Constitutions and make it a reality in practice.

83. On the principle of judicial independence, judges and magistrates should be proactive in their conduct and judgments and not subordinate themselves to the executive or legislative arms of Government.

84. The judicial commission or council (as the case may be) is the mechanism set up by governments to regulate judicial appointments, promotions, postings and removal of judges and magistrates in many countries in Africa. Therefore, to ensure transparency, the following steps are recommended:

(a) Judicial vacancies should be advertised extensively;

(b) Candidates' names, backgrounds and competencies should be publicized;

(c) Selection processes and criteria should be clearly expressed and publicized;

(d) Division of responsibility between the executive and judiciary should be clear, with one nominating and the other selecting and appointing. (Another school of thought suggests that a body that is independent from the executive and legislative arms of Government should handle judicial appointments);⁹⁵

(e) Civil society should participate in the selection process, as this will give credibility to the commission or council and ensure transparency, so that the quality of candidates is ensured,⁹⁶ and

(f) There should be a strict assets declaration regime for all that is transparent, regular and accessible to the public.

85. The penalty for abuse-of-office offences by a judge or magistrate should not be limited to dismissal from office. The offender should be prosecuted in a court of law, and appropriate penalty should be meted out to emphasize the gravity of the offence and serve as deterrence to others.

86. Delay of cases is a major critical management weakness and a crucial factor fuelling corruption within the judiciary. It is recommended that a case management system managed by professional court administrators be installed⁹⁷. This will release judicial officers from administrative functions and enable them to focus on cases that are brought

⁹⁵ Executive Summary of the Global Corruption Report 2007

⁹⁶ Opinion expressed at the Ad Hoc Expert Group Meeting on Deepening the Judiciary's Effectiveness in Combating Corruption, op. cit.

⁹⁷ Preserving a comprehensive case tracking through a CTM system that ensures comprehensive case record management.

before them. In most judiciaries in Africa,⁹⁸ the courts are administered by registrars, who could help expedite the hearing of cases by speeding up pre-trial proceedings. It is therefore recommended that the rules of procedure should be reformed to allow registrars to carry out the pre-trial proceedings before cases are ready for hearing by a judge.

87. Adequate human, material and financial resources should be made available to the judiciary to perform its work. Information and communications technology (ICT) should also be put in place to inform and assist in speeding up the processing and determination of judicial cases.

88. The experts recommended strongly institutionalizing and adopting alternative dispute resolution (ADR) mechanisms to complement the modern judicial system. The ADR should be included in the civil procedure code to ensure that litigants are encouraged to settle their disputes where necessary out of court.⁹⁹ This is to reduce pressure on the courts, thus freeing up judicial space for speedy trial of corruption cases.

89. Rules should be put in place to restrict postponement of cases, and where possible, each case should be given a particular time frame for disposal. Parties to the case should be notified in advance and their availability ascertained.

90. Training in ethics and introduction of codes of conduct should be mandatory to uniformly regulate the conduct of judicial officers. There should be continuing legal education for judges, magistrates and lawyers with a minimum number of days per year set aside for training.

91. As monitoring mechanisms for the activities of the judiciary, the ethics committees already in place in some countries should be transparent by making information related to the code of conduct and ethics accessible to the public.

92. Inculcating judicial values, codes of conduct and etiquette, particularly to new judges and magistrates before they take up their duties on the bench, should be made mandatory. The chief justices of each country should ensure that no one is promoted unless she or he has attended ethics training and a refresher course on the code.

93. A complaints mechanism should be established to provide redress to wrongs as quickly as possible; seven days has been recommended for simple complaints.¹⁰⁰

94. Reported cases of corrupt practices must be dealt with objectively, transparently and seriously, in order to send the necessary deterrence signals to would-be-offenders. This process will enhance accountability and restore citizens' confidence in the judiciary. Balance must be exercised to ensure that judges and magistrates are protected from

⁹⁸ Botswana, the Gambia, Tanzania, Kenya, Uganda, Nigeria, Malawi, Swaziland, Lesotho, Zambia and Zimbabwe.

⁹⁹ In Tanzania, the ADR has been introduced and it has been successful, though no research has been carried to establish its efficacy.

¹⁰⁰ In Tanzania and Zambia, Integrity Committees have been introduced in all government structures to address corruption and unethical behaviour of public officials to supplement the existing disciplinary mechanisms. See for analogy purposes Decentralized Self Regulation, Accountability, and Judicial Independence Under the Federal Judicial Conduct and Disability Act of 1980, 142 *University of Pennsylvania Law Review*, 1994

frivolous or unfair attacks by unhappy litigants who use the complaints avenue as an alternative to the appellate process or simply an outlet for revenge.

95. African countries are encouraged to create special divisions within courts to deal with cases of corruption and economic crimes as a way of speeding up the judicial process.

96. Increased openness and accountability, which would allow the chief justice to monitor the performance of judges and employees under his jurisdiction, should be encouraged. Access to and transparency of the justice system, fairness in protecting procedural and substantive rights, and equality before the law demand an accurate and open information system on court operations and decisions.

97. In corruption cases, the judicial process and outcome should be open for full public information through media reporting and/or publicly accessible ICT interfaces.

98. Good court management requires the capacity to understand and act upon management information. The court tracking management system should be able to produce reports that extract information from individual case files to show how the court operates as an organization.¹⁰¹

99. It is recommended that to make the judiciary more visible, known and accessible, there should be guidelines written in simple language to enable the public to understand court procedures and judicial processes, particularly on issues related to corruption. To help demystify the judiciary in the eyes of the public, the judiciary may organize public forums where the general public can discuss issues with members of the judiciary.

100. Institutional linkages and cooperation: The law enforcement agencies, prosecutor's offices, prison systems, probation officers/ social workers, doctors and other experts in the field of criminology and penology should work harmoniously with the judicial system to solve interrelated problems.¹⁰²

101. Bar associations, law enforcement agencies and other civil society organizations should be empowered to address issues of integrity and ethics in the dispensation of justice. Synergy should be created between all stakeholders to support anti-corruption initiatives.

102. Institutional and citizen-driven anti-corruption checks and balances mechanisms should also be placed at the local government level.

¹⁰¹ See Centre for Democracy and Governance, Case Tracking and Management Guide, Technical Publication Series, Washington DC, September 2001

¹⁰² Case management committees have worked very well and could be adopted in judiciaries in Africa to solve common problems confronting users of the court. In Tanzania, this committee has been introduced at all levels of the court hierarchy and members are drawn from the court itself, the Attorney General's Chambers, the police, immigration, prisons, the Bar and social welfare, to deliberate on common problems facing the justice system.

103. Reporting/complaints boxes should be put in ministries and public buildings for victims of corruption to drop their complaints anonymously or otherwise to have them addressed.

104. States that have not yet ratified the African Union Convention on Preventing and Combating Corruption and the United Nations Convention against Corruption should do so at the earliest opportunity.

105. Best practices in deepening the judiciary's effectiveness in combating corruption should be documented and disseminated to all countries for emulation and/or reference.

106. States should put in place mechanisms to monitor these recommendations and ensure their implementation.

6. CONCLUSION

107. For the judiciary to be effective in combating corruption, the institution itself must rid itself of corruption. The paper has attempted to highlight various factors that cause corruption in the judiciary and has also made suggestions for tackling corruption in the judiciary.

108. The effectiveness of the judiciary will be enhanced when there is political support. The support of the Ministry of Finance is absolutely critical to carry out the needed judicial reforms.¹⁰³ Experts recognized that many African countries, by signing the international and regional conventions against corruption, were demonstrating their political willingness to combat corruption. In this respect, it was pointed out that governments should enact domestic laws to reinforce international conventions against corruption at national level. Overall, it was recognized that political support is more important than political will. The creation of special corruption courts was felt to be necessary to effectively and efficiently combat corruption.¹⁰⁴

109. The public needs to be educated about what to expect from anti-corruption structures and institutions and trained to put pressure on such structures to perform. The training curricula should include the grooming of judicial staff on issues of corruption, as well as those of anti-corruption agencies on the importance and nature of their independence, autonomy and responsibilities.

110. The independence of an anti-corruption commission should not be determined according to its attachment to a ministry or even to the office of the President, and this should not be seen as a condition for efficiency or inefficiency. The efficiency of an anti-corruption commission depends mainly on the independence, integrity and honesty of the person in charge. Lack of creativity and competence may lead to ineffectiveness. In this respect, experts illustrated the case of Ghana's anti-corruption commission, which is under the parliament but is less effective than the one in Nigeria, which is in the President's

¹⁰³ Opinion expressed at the Ad Hoc Expert Group Meeting on Deepening the Judiciary's Effectiveness in Combating Corruption, *op. cit.*

¹⁰⁴ *ibid*

office. The experts further noted that to ensure independence of anti-corruption institutions, there should be an oversight body with multiple and diverse memberships and funding should be provided.¹⁰⁵

111. The conduct of judges and magistrates both inside and outside the court determines the level of confidence which the public has in the justice system. Judges must not only be fair, but must also be seen to be fair by the general public. Judges must scrupulously comply with basic standards of conduct, because of their role and the high degree of authority and discretion their work entails.

112. Eradicating corruption is the fundamental prerequisite for institutionalizing the rule of law, maintaining public order and security of citizens and their properties. It is also part of the broader objectives of empowering the citizenry and strengthening law enforcement and judicial capabilities.

113. The paper has offered recommendations based on the best practices and different experiences obtaining in many countries in Africa and beyond, because corruption is a global problem and one that has to be addressed holistically. The Plan of Action presented below is the strategic and operationally-oriented framework towards combating corruption in Africa.

¹⁰⁵ *ibid*

7. PLAN OF ACTION

(a) Public education and communication

Challenge	Contributing factors	Recommended action	Lead sector	Timeframe	Measuring technique
Improve public perceptions of the judiciary	Lack of information regarding their rights; lack of access to information	Public seminars, multi-media approach (radio, television, newspapers, magazines); part of school curriculum	Government Civil society	Long term	Ongoing evidence-based research among the public
Provide safe mechanisms to report experiences of corruption	Poor implementation of national reporting mechanisms and lack of security measures	Advertise corruption hotlines widely in courts, police offices, brochures, multi-media outlets ; provide effective witness and whistleblower protection program mes	Government Civil society	Long term	Ongoing evidence-based research among the public

(b) Improving the justice system

Challenge	Contributing factors	Recommended action	Lead sector	Timeframe	Measuring technique
Inadequate ethical guidelines/codes of ethics for all sectors of the judiciary	Lack of awareness of accepted good practices in the judiciary	Draft appropriate ethical guidelines/codes of conduct for relevant sectors and display widely in courts	Law societies Civil society	Short term Government	Regular surveys among all sectors of the judiciary and the public
Improve court management to prevent delays/ postponements	Poor training of court personnel/ prosecutors ; poor investigations by police; poor liaison between different sectors; poorly resourced courts; lack of court administrators	Regular training courses for all court personnel; workshops with police and prosecutors to assess problems; measures to deal effectively with these problems; appointment of court administrators	Government	Long term	Regular monitoring of performance; workshops; evidence-based research to determine court users' satisfaction with the functioning of the judiciary
Make more use of restorative justice processes	Lack of awareness of these processes among the judiciary and the public	Train the judiciary to create awareness of the values of restorative justice processes for victims and offenders	Law schools Government	Long term	Regular surveys to establish victim/offender satisfaction with the restorative justice processes
Holding the judiciary accountable	Lack of official control mechanisms	Maintain assets register in which disclosure should be made of all assets received	Government	Long term	Monitoring and control of the register; action taken against transgressors to be made public
Greater focus on victim rights and needs	Lack of awareness among the judiciary and the public about victim rights and needs	Draft a victims' charter and norms and standards; advertise and display widely; print brochures	Government Civil society	Long term	Monitor implementation of norms and standards; regular public surveys
Poor judicial involvement in development efforts ***	Inadequate awareness of the Africa development strategies	Awareness programmes on the role of the judiciary in meeting the development goals	Judiciary , Government Civil society	Long term	Regular workshops targeting the judiciary on major African development challenges

Challenge	Contributing factors	Recommended action	Lead sector	Timeframe	Measuring technique
Provide information to court users	Lack of professional work ethics; lack of training	Establish court information desks to inform victims/witnesses regarding case progress, delays; training courses for court personnel	Government	Long term	Monitor by means of course user surveys and staff workshops
Make courts affordable	Lack/insufficient legal aid and witness fees	Provide legal aid to those who need it; advertise service to public, police, courts.	Government	Long term	Regular surveys of court users
Improve staff morale	Inadequate remuneration; poor job satisfaction; lack of support services; poorly resourced courts and poor security	Improve court resources and security; provide support services (health, psychological) to staff who need it; regularly review/adjust salaries	Government	Long term	Monitor staff morale and satisfaction by means of regular surveys.
					Monitor staff morale and satisfaction by means of regular surveys.
Inadequate funding	Dependence on the Ministry of Justice	Provide adequate grants/funding to ensure independence	Government	Long term	Regular independent monitoring

*** There was no consensus among the experts about the relevance of this issue to be considered as part of the proposed plan of action

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