



Economic Commission for Africa

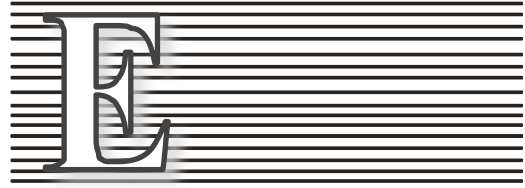
**Ad-Hoc Expert Group Meeting on**  
**Deepening the**  
**Judiciary's Effectiveness**  
**in Combating Corruption**

**REPORT**

**19-21 November 2007**  
**Addis Ababa, Ethiopia**



United Nations  
Economic Social Council



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## List of acronyms

ADF	African Development Forum
AfDB	African Development Bank
AGR	African Governance Report
APRM	African Peer Review Mechanism
AU	African Union
CPI	Corruption Perception Index
CRDA	Christian Relief and Development Association
CSOs	Civil Society Organizations
ECA	Economic Commission for Africa
EU	European Union
GPAD	Governance and Public Administration Division
GTZ	German Technical Cooperation Agency
MDGs	Millennium Development Goals
NEPAD	New Partnership for Africa's Development
NGO	Non-Governmental Organization
PAC	Partnership Africa Canada
PRSP	Poverty Reduction Strategy Paper
RECs	Regional Economic Communities
SROs	Sub-Regional Offices (ECA)
TI	Transparency International
UN	United Nations
UNDP	United Nations Development Program
UNECA	United Nations Economic Commission for Africa

# I. Introduction

1. The Ad-hoc Expert group Meeting on “Deepening the Judiciary’s Effectiveness in Combating Corruption” took place in Addis Ababa from 19 to 21 November 2007. The main objective of the meeting was for the experts to review and discuss a draft technical publication prepared by the Governance and Public Administration Division (GPAD) of the Economic Commission for Africa (ECA) entitled “Deepening the Judiciary’s Effectiveness in Combating Corruption” (Ref.: GPAD/TP/06/3/Rev.1). The paper analyzes the role of the judiciary in selected African countries to combating corruption and through best practices it provides specific recommendations on how to strengthen its crucial role as the custodian of basic rights and freedoms of citizens.

2. The meeting was a follow up activity as requested by a peer review meeting that took place in Addis Ababa from 14 to 15 December 2006. The meeting provided a platform for the experts to share their experiences, best practices and lessons and propose practical modalities to enhance the role of government, including the judiciary and anticorruption agencies, in combating corruption more efficiently at national, sub-regional and regional levels. Based on their discussions, the experts suggested concrete recommendations to curb the rising incidence of corruption in Africa, in a permanent and sustainable manner, so as to promote socio-economic development for the benefit of all.

## II. Participation

3. The meeting was attended by 44 experts drawn from the following African countries: Burkina Faso, Burundi, Congo (Republic of), Djibouti, Egypt, Ethiopia, Ghana, Kenya, Madagascar, Malawi, Mauritius, Mozambique, Nigeria, Senegal, South Africa, Sudan, Tanzania, Togo, and Zambia.

4. The following organizations also participated: African Union (AU), Africa Leadership Forum, APRM Secretariat, FEMNET, CONADHO, German Technical Cooperation Agency (GTZ), Partnership Africa Canada (PAC), Christian Relief and Development Association (CRDA), Inter Africa Group (IAG), Partners in Development Services, and Open Society Initiative for West Africa (OSIWA). The experts were invited in their capacity as officials from governments or with extensive experience and/or expertise in corruption issues and/or law enforcement activities as well as in public advocacy. The list of participants is attached in annex III.

### III. Account of proceedings

#### Opening of the meeting

5. The meeting was officially opened by Mr. Okey Onyejekwe, Director, Governance and Public Administration Division (GPAD) on behalf of the Economic Commission for Africa (ECA). In his opening statement, Mr. Onyejekwe welcomed the participants and thanked them for taking time from their busy schedules and responsibilities to attend and share with the ECA their invaluable expertise in the area of corruption. He also thanked the German Technical Cooperation Agency (GTZ) for their financial support to ECA's activities.

6. Mr. Onyejekwe informed the participants that ECA, as a regional UN body, conducts research on critical issues, advocates for sound policies, and assists member States in institutional capacity building. Today this meeting will consider one of our advocacy papers entitled "Deepening the Judiciary's Effectiveness in Combating Corruption." He further explained that the Commission has been prompted to prepare this study for three main reasons. First, during the fourth African Development Forum (ADF IV) on governance that took place here in Addis Ababa in October 2004, participants stressed the importance of reinforcing the capacity of the judiciary and its independence in order to effectively combat corruption. Secondly, after the Commission concluded its first-ever research work on governance, the African Governance Report (AGR-I), it became crystal clear that corruption remains a key obstacle to sustainable development and to the creation of a conducive environment for business in Africa. In this regard, and for some of you who have read the AGR-I report you may have noticed that both, the experts panel and the household surveys have underlined the important role the judiciary could play in combating corruption. Finally, the paper is also in compliance with several United Nations General Assembly mandates, including the UN Convention Against Corruption (adopted by the General Assembly, in its resolution 58/4 of October 2003), the African Union (AU) Convention on Preventing and Combating Corruption (adopted by the 2<sup>nd</sup> Ordinary Session of the Assembly of the Union in July 2003), as well as the NEPAD objectives. These instruments call on member States and development partners to strengthen their activities in combating corruption, as one of the main obstacles to development and good governance.

7. He informed the experts that the first draft of the paper was submitted to a peer review process from 14 to 15 December 2006 in Addis Ababa. The review meeting involved anticorruption commission and agency officials, who are tasked with the preparation and implementation of projects and programs on anticorruption or who raise the topic of corruption to the level of policy dialogue. That meeting recommended, among other things, that after their review of the paper, ECA should submit the revised version to an ad hoc expert group meeting involving specifically judiciary and law enforcement officials for them

to also provide their views/inputs into the paper before it can be finalized and disseminated. It is against this background that this meeting is being organized.

8. He expressed confidence that at the end of the deliberations the experts will be able to draw up specific policy recommendations, program and action plans for the Judiciary to curb the raising incidence of corruption in Africa, in a permanent and sustainable manner, so as to promote socioeconomic development for the benefit of all. A full text of the opening statement is attached in annex I.

## Election of the Bureau

9. The meeting elected the following bureau:

Chairperson: Honorable Lady Justice Eusebia Nicholas Munuo  
(Tanzania)

Rapporteur: Mr. *Louis Amedee Darga* (*Mauritius*)

## Adoption of the Program of Work

10. The experts adopted the Program of Work without amendments (see Annex II).



## IV. Presentation of the Working Document

11. Mr. Guillermo Mangué, of the ECA Secretariat, presented a document entitled: “Deepening the Judiciary’s Effectiveness in Combating Corruption” (Ref.: GPAD/TP/06/3/Rev.1). As introductory notes, Mr. Mangué indicated that both the consultant who prepared the study and the Chairperson who presided over the first review meeting of the document were unable to attend the meeting due to some unforeseen circumstances and presented their sincere apology to participants. In view of this situation, Mr. Mangué was tasked to present the paper.

12. As a way of introduction, the presenter indicated that the Governance and Public Administration Division of the ECA commissioned this paper as part of the wider mandate of the Commission to help promote good governance towards achieving the Millennium Development Goals. The paper was also in response to the United Nations General Assembly mandates, particularly the UN Convention Against Corruption; the AU Convention on Preventing and Combating Corruption; the NEPAD development objectives; the Bangalore Principles of Judicial Conduct and the Rule of Law Initiative on anti-corruption. All these instruments call on States and development institutions to fight against corruption, and enhance the judiciary’s role in enforcing compliance and respect for the rule of law. He also indicated that the paper analyzes two main aspects: first, the role of the judiciary as the main actor in combating corruption and secondly, the challenges of combating corruption within the judiciary itself.

13. On the definition of corruption, the presenter explained that corruption has been given different meanings according to the context or a particular interest group. This is the reason why the UN Convention against Corruption, provides rather a list of specific types of acts that can be considered as corruption, in lieu of an exact definition. Therefore, there were no single, comprehensive, universally accepted definition of corruption. However, corruption has been generally understood as an abuse of office for personal or private gains.

14. The presenter distinguished two broad types of corruption: ‘Grand’ and ‘petty’ corruption. Grand corruption was described as being characterized of involving highly placed public officials and the amount of money involved is staggering and has enormous dent on the economy. Typical examples are found in big contracts especially in military purchases where single source contracts are secured. Petty corruption is always the kind of corruption involving less amount of money or a gift. It is a way of supplementing low salaries paid to public employees including judicial officers. In the UN Convention against Corruption: Active, passive and bribery are mentioned as corruption. Active corruption refers to the offering or paying of a bribe. Passive corruption is the receiving of a bribe.

15. Patronage was described as another form of corruption. It is often used to describe the use of state resources to advance the interests of an individual, 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.

16. The presenter further discussed factors contributing to corruption. In this respect, the presenter indicated that according to the AGR the increasing level of corruption in Africa is due to three main factors. First, the level of institutional weakness in many African countries, which makes it possible for political leaders and public servant to embezzle national resources and abuse their power without being checked. Second, the deteriorating economic and social conditions, including living standards of public servants in many countries, which make corruption a viable means of social livelihood. The third reason has to do with the role of external actors. Foreign companies and private interests often capitalize on weak institutional mechanisms and level of poverty in Africa to bribe public officials in order to gain undue advantage or secure political privileges in state policies.

17. Within the judiciary system, there are two types of factors that encourage corruption in it: (1) political interference in the judicial processes by either the executive or legislative branches of government and (2) bribery.

18. The presenter also discussed the issue of perceptions of corruption versus actual corruption. He emphasized the fact that there is a correlation between the perception and actual corruption in the context of governance. The perception of corruption is very high among court users and the challenge here is how to differentiate between perceptions of corruption and the actual corruption experienced by service users.

19. In addressing issues of the effects of corruption, the presenter cited the main effects of corruption as follows:

1. Corruption raises transaction cost. It acts as an added cost in doing business, and divert resources from public coffers;
2. Corruption as robbery, fraud and other form of crimes against property and people, undermines the investment climate and stifle entrepreneurial activity;
3. Corruption undermines the rule of law, lowers investment and retards economic growth, misallocates talents, lowers quality of infrastructure and the provision of public services.

20. With respect to the rule of law and judiciary integrity, the presenter indicated that Rule of Law could be summarized into three components: Firstly, that the law binds everyone, including the government. Secondly, that all people should be treated equally before the law and thirdly, that basic human rights must be protected by law.

21. Judicial Integrity was defined as the courage of judges to make fair decisions in their understanding of the law without fear or favor. 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 this principle. Judges should be guided by ethical standards that are reduced into codes of conduct to influence their behavior within their working environment and outside.

22. The presenter lamented the fact that there is a general feeling that corruption has permeated in most government institutions in Africa including the judiciary. The negative impact of a corrupt judiciary cannot be over emphasized. The implications are far reaching as it undermines trade, economic growth and human development and deprives citizens of justice. A judicial systems debased by corruption undermine confidence in governance and facilitates corruption across all sectors of government. There is a correlation between levels of judicial corruption and levels of economic growth because the 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 positive consequences for trade, investment and financial markets. Corruption dents judicial power and authority, to the extent that other branches of government are confident that their misdeed will never be punished, hence the attendant loss of legitimacy for the justice system is generally a death knell for the rule of law. Corruption in the judiciary creates a system that reeks of inconsistent decisions because they are not principled, but are anchored on expediency and size of the purse.

23. In terms of factors contributing to corruption in the judiciary, the presenter indicated that various factors influence corruption in the judiciary, among which the main ones were:

- Independence of the judiciary. In most African countries, the judiciary lacks independence particularly where the appointments and tenure of office of judges depend on the president of the country or the ministry of justice (which is a part of the executive arm of government).
- Political affiliation. A judicial system is required to be non-partisan, free to make their decision unhindered by influence of money or political pressure.
- Inadequate funding for the judiciary, and poor remuneration of judges and other court personnel.
- Undue influence by the executive and legislative arms of government. It has been found that the executive and legislature have significant control over the judiciary in many countries despite constitutional guarantees of separation of powers.

24. In addressing some of the challenges and systemic weakness confronted with by the judiciary, the presenter indicated that the paper identifies the following as main challenges and systemic weaknesses in the judiciary:

1. Non-involvement of judges and magistrates in the reform of the judiciary, which results in inefficiency and lack of ownership by the judiciary.
2. Lack of adequate human and financial resources to maintain independence;
3. Lack of adequate infrastructure: The smooth functioning of courts is constrained by inadequate facilities, run down conditions, inadequate space distribution, poor lighting system, poor maintenance, lack of decorum, poor location among others, are serious shortcomings.
4. Judicial appointments are not transparent and fair.
5. Inadequate training for judges and magistrates due to lack of financial resources.
6. Absence of an effective code of conduct in some jurisdictions: which if not properly inculcated to its members and understood properly and applied correctly in their public and private life respectively, the integrity of judiciary may be compromised.
7. Conflict of interest and bias; a judicial officer should refrain to handle a matter that he/she has a personal interest because accusation of bias will be imminent.
8. Lack of strong and effective mechanisms to control delays in delivering judgments;

25. The presenter also raised the issue of judicial accountability as being highlighted in the paper. In this respect, he indicated that an independent judiciary should be able to account for its existence and relate to the society for which 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. Judicial accountability is a recent development that has been added to the notion of judicial independence. It is not opposed to judicial independence. Accountability should rather be seen as a means of combating judicial corruption, especially today where concerns have been raised that there is corruption in the judiciary like elsewhere in other sectors.

26. As a way of conclusion, the presenter highlighted the following major conclusion from the paper:

1. For the judiciary to be effective in combating corruption, the institution itself must be free from corruption.
2. 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, including training.
3. The public is not sufficiently enlightened as to what they expect from anti-corruption structures and institutions so that they can put pressure on such structures to perform accordingly.
4. The conduct of judges and magistrates both within and outside the court should determine the level of confidence, which the public reposes in the justice system. Judges must not only be fair but must be seen to be so by the general public.
5. Eradicating corruption is the fundamental pre-requisite 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, strengthening the law enforcement and the judicial capabilities.

27. The presenter highlighted some key recommendations based on the best practices and experiences obtained from selected countries in Africa and beyond. These recommendations are summarized below.

1. Good governance within the judiciary is critical. Courts are expected to be impartial in the dispensation of justice.
2. Judicial appointments should be transparent. In this respect, judicial vacancies should be advertised extensively. Candidates' names, background and competencies should be publicized. Selection process and criteria should be clearly expressed and publicized.
3. Rules should be put in place to restrict undue postponement of court cases, and where possible each case be given a particular time frame to be disposed of.
4. 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.
5. Safe and confident mechanisms to report corruption cases should be put in place for victims to report their experiences.

28. The presenter finally indicated that as a result of the first review meeting, a Plan of Action was introduced to the document. The Plan of action represents a strategic and operationally oriented framework towards combating corruption in Africa. It addresses two major areas: (1) Public education and communication; and (2) Reforms of the Judiciary system itself. It also suggests actions to be undertaken by each actor (government, private sector and civil society organizations), as well as the time frame and success measuring technique.

## V. General Discussions

29. During the general discussions that followed the presentation of the main paper, the experts indicated that corruption in the judiciary should be viewed in the wider framework of general systemic weakness in governance. The judiciary being just one element in the justice system it was agreed that all other aspects that make up this system must also be taken into account while addressing issues of corruption. In this respect, fighting corruption (in the judiciary) should be seen within an overall campaign for good governance at country level. However, for the judiciary to be effective in combating corruption, the institution itself must be free from corruption. In addition, experts were of the opinion that the issue of poverty was a fundamental contributory factor to corruption as well as the lack of appropriate education on ethical principles.

30. The participants further noted that the paper in addressing issues of corruption, religious aspects, traditional values and beliefs need to be taken into consideration and that the recommendations of the meeting should not be considered as stand alone section of the document, rather, they should be put in the context of the main issues addressed in the background document.

31. Participants stressed the issue of “time cycle in the conclusion of cases” as an important aspect that gives room for corruption to occur, whereby lawyers sometimes play a role in contributing to the prolongation of cases in using delay tactics by asking for adjournments. Therefore the Bar and other court officials must also be taken into account when tackling the issues of corruption in the judiciary, particularly with respect to postponement of cases.

32. The meeting noted that the definition of corruption should not be limited to what the paper offers but possibly expanded for deeper understanding to include the impact of corruption on people and development at large.

33. On the issue of perception of and actual corruption in the judiciary, the experts were of the opinion that it was downplayed and more attention needed to be paid to this issue because of the ‘trust factor’ which needed to be reposed in the judiciary by the people. In addition to this, there must be effective communication to and education of the public on how the judiciary functions. The judiciary corruption should also be seen in a supply chain, to include other links such as the law enforcement organs, the Directorate of Public Prosecution (DPP) office and Lawyers.

34. Participants expressed concerns about issues of externalities, which in their view were omitted from the paper. Apart from Multinationals who influence the judiciary, repositories for stolen funds should also be included in the analysis.

35. The meeting indicated that to properly address the issue of corruption in the judiciary the meeting should first address two main questions: (a) does the judiciary has a role to play in combating corruption? and (b) if it does,

does it have the capacity? The two issues needed to be examined in light of the constitutional roles of the judiciary. The issue of costs also needs to be addressed in terms of affordability and accessibility to justice by ordinary citizens.

36. Several experts indicated that financial independence of the judiciary was of paramount importance. The environment where the judiciary operates was also pointed out as crucial factor to guarantee its independence. It was further noted that the issue of verification in terms of how laws have been applied? Who are the auditors and how are they elected? All these aspects were also important and deserved proper analysis in the paper.

37. Most participants stressed the fact that media have a crucial role to play in awareness campaigns. However, in most African countries they are not granted the freedom and the space they need to operate adequately.

38. In terms of the plan of action it was pointed out that the training of lawyers is very important as regulation in most African countries requires that judges practice as lawyers first.

39. The experts also indicated that the paper should also analyze how the judiciary system with its present mandate and expectations can be used as a tool and as a remedy to corruption, as well as to elaborate the changes that ought to be made to it (the judiciary) to render it more able to deliver a corruption-reduced society. It was also pointed out that the paper should emphasize the aspect of training on morals, ethics and values in the judiciary and popularize the laws to the citizens (awareness campaigns, corruption hot lines, involvement of the media, etc.), for effective fight against corruption. The paper may also look into the possibility of making judicial reform an integral part of a broader and holistic approach to improving good governance in the countries, given the interrelatedness and crosscutting nature of the many factors contributing to corruption.

40. On the role of the judiciary in combating corruption, the experts pointed out that it was necessary to analyze a bit more, the potential role of the judiciary in combating corruption, and to underline the shortcomings (the gaps) in the judiciary system that have to be removed as well as the necessary activities that must be carried out to empower the (judiciary) system in order to enable it to perform more effectively.

41. Experts recognized that many African countries by signing the international and regional conventions against corruption were demonstrating their political willingness to combat corruption. However, still there was a lack of political support, which is more important than political willingness. 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 willingness. The creation of special court for corruption was felt to be necessary to effectively and efficiently combat corruption.



## VI. Country/Agency Experiences

42. During the meeting, 11 experts shared their country experiences in combating corruption. These are: Burkina Faso, Burundi, Congo (Republic of), Djibouti, Ghana, Madagascar, Malawi, Mauritius, Nigeria, Tanzania and Zambia. The following is a summary of the presentations.<sup>1</sup>

### Burkina Faso

43. The representative of Burkina Faso informed the meeting that in his country, like elsewhere, corruption issues are a major concern in the country and people are encouraged to talk about it openly. This is evidenced by the fact that politicians, private sector, civil society and media consider corruption as an issue that needs urgent and continuous attention of everyone.

44. According to the criminal law Article 156 defines different aspects that can be considered as corruption and it says that corruption is any abuse or intention of abuse of public responsibilities or resources for personal gain and that the active and the passive corruption should be equally punished by law.

45. He further indicated that in Burkina Faso corruption has several manifestations and that the primary role of government to fight corruption is to determine the different types, magnitudes and areas where corruption occurs. In this respect, the government has adopted the following instruments:

- Leadership firm commitment to fight corruption;
- Encourage citizen's active participation to fight corruption;
- Enhance institutional and legal framework to combat corruption;
- Strengthen judicial activities in the areas of corruption;
- Enhance international cooperation and measures to fight corruption.

46. In terms of government structures to fight corruption, the presenter indicated that government puts emphasis on preventive measures to combat corruption and financial crimes. In this respect, the following institutions have been put in place: The general inspectorate of the State, created in 1988 and reformed in 1990 to reinforce its activities and mandate. The inspectorate is the highest authority to fight corruption in the country. Other institutions and/or agencies include: the general inspectorate of finance; the service general inspectorates; the general directorate of financial control; the national ethics committee; and the high anticorruption authority.

47. Anticorruption activities are also undertaken by civil society organizations. In this respect, the National network against corruption was established on 20 December 1997 by a coalition of civil society organizations operating in the country. The network main objectives are: (1) undertake

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<sup>1</sup> The full text of presentation of country experiences could be found at [www.uneca/gpad/](http://www.uneca/gpad/) .....



awareness campaigns on the issues of corruption; (2) ensure that legal instruments are effectively implemented and applied; (3) receive and investigate allegations of corruption; (4) ensure that government undertakes effective measures to prevent and combat corruption within the country and when conducting international business involving third countries; and (5) ensure that their voices are heard on issues related to the fight against corruption.

48. In conclusion the Burkina Faso representative stressed the fact that a lot of efforts are being made in the country to fight against corruption but achievements are still far from being better. In this respect, he indicated that fighting corruption is not an easy task. It would require continuous efforts and improvements and above all good and proven political will as well as the commitments of all citizens.

## Burundi

49. The experts were informed of the variety of tools and mechanisms existing in Burundi for preventing and fighting against corruption. The presenter underlined the major tools adopted by the government which are: (a) the constitution, which is the backbone on which all the other national tools on prevention and fighting against corruption are built; (b) the law on measures to prevent corruption and related to breach of law, which is meant to preventing and repressing corruption and infractions within public and private organizations and civil society; (c) the law on the creation, organization and functioning of the court of accounts; (d) the law on the establishment and functioning of the court of anti-corruption; (e) the law related to the creation and functioning of the anti-corruption brigade specialists and (f) the decree related to the organization and functioning of the General Inspection of the State.

50. At government level, the State General Inspection has a mission to inspect and control the functioning and management of public services and public enterprises or private associations submitted to its control. Furthermore, there is the Anti-corruption Court, which is the only competent body to recognize corruption infractions and the related infractions considered by the law. There is also the court of accounts, which assist the parliament in the control and the execution of finance law.

51. Apart from the above government entities, there were others related to civil society associations such as the Observatory on the fighting against corruption and economic embezzlement, the Burundian consumers' Association and the Observatory of government. All these are considered to be private national mechanisms for the prevention and fighting against corruption.

## Congo (Republic of)

52. The meeting was informed of the fact that despite the adverse socioeconomic conditions that the country found itself during the period of the

civil war between 1993-2000, after the war the government has made considerable efforts to advance economic and democratic governance in the country. In this respect, after the national conference for reconciliation the government undertook to restore the rule of law principles throughout the country.

53. With respect to the fight against corruption, which is the central pillar for technical assistance in the country, the Congo has signed most of the international conventions against corruption, such as the UN and the AU Conventions against corruption.

54. Following the recommendations from a survey conducted by the High Commission for Civic Education in 2005, the government decided to establish a Ministerial anti-corruption commission with the assistance of UNDP. The Commission in turn, recommended the adoption of a national strategy to fight corruption.

55. Since this strategy was government driven, its effectiveness, integrity and independence was questioned. This prompted the creation by decree No. 16-2007 of 19 September 2007 of the National Corruption Observatory. The mandate of the Observatory is to review and follow up any anti-corruption mechanism put in place, particularly in the petrol, mines and forestry sectors.

56. It is also important to note that the President has recently issued a decree establishing a national commission against fraud and corruption. The Commission is composed of 16 members and it is chaired by a Former Interior Minister.

## Djibouti

57. The participant from Djibouti *made a presentation on his country experiences on fighting corruption. He indicated that although there is no an anti-corruption commission yet established in Djibouti, however, there is a commission on good governance, funded by UNDP and based in the office of the President, that oversees all issues related to good governance both democratic and economic governance, including corruption issues.*

58. The presenter then indicated that due to the nature of the national economic structure, which is based on services, the national authorities adopted the necessary reforms in order to create an enabling environment for foreign investors, in particular to secure their investments and properties. In this context, an Accounting court specialized on corruption, investigation, cross checking and reporting was created in 1999. However, the court is facing some difficulties in implementing the recommendations that come out from investigations. For example, identified corrupted civil servants were not prosecuted or the few prosecuted ones stayed in custody for a very limited period of time. This situation is even worsening due to the limited independence of the press and media, which would have reported on the cases and promote awareness for the ordinary citizens.

59. Finally, the presenter indicated that while there are reported corruption cases and the needed laws exist families' interventions and appeals make the prosecution of such cases worthless. In this regard, the main challenge that the country is facing is to change citizen behaviors. More specifically, there is a need to educate and sensitize citizen on the impact of corruption on their life.

## Ghana

60. A representative from Ghana, in-charge of the Anti-Corruption Department in CHRAJ, shared his country's experience in combating corruption by (i) giving a brief historical account of Ghana's attempt at fighting corruption, (ii) examining the role of the Ghana Commission on Human Rights and Administrative Justice in fighting corruption, including fostering good relations with CSOs, Media and other stakeholders in the fight against corruption, and (iii) explaining the challenges the CHRAJ encounters in the discharge of its functions.

61. Since 1957, the usual justification given by the military juntas for the different coups was that the country was going through widespread corruption, which necessitated their interventions. This situation demanded that effective measures be taken to combat corruption. Based on this background, since 1970s, a number of commissions of enquiry were set to investigate either individual persons or corporations for corruption practices. Various structures and institutions were established to deal with corruption, such as the Citizens Vetting Committee. Despite these strategies corruption had continued to occur significantly and with impunity in the country and the corruption even has worsen in the recent years with Ghana scoring 3.9 on TI's CPI of 1999; it scored 3.3 with a rank of 72<sup>nd</sup> in 2004, and it scored 3.3 in 2005. In 2007, Ghana scored 3.7, the second highest since Ghana was included in the CPI. In this context, national authorities provided an enabling environment within which anticorruption agencies can effectively operate, through the creation and adoption of anticorruption policy, an appropriate legal and institutional framework, a responsible media, civil society/citizen engagement, coalitions, international cooperation, and above all political will.

62. The CHRAJ was established in 1993. It combines three offices: a National Human Rights Institution, Ombudsman and an Anticorruption Agency. The CHRAJ has direct responsibility for the investigation of corruption and is operationally independent, which is guaranteed constitutionally. The Commission investigates complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his/her official duties. It investigates all instances of alleged or suspected corruption and misappropriation of public moneys by officials. The commission adopts a three-prong strategy to fight against corruption: Investigations, Prevention, and Education. For each strategy the commission develops tools, for example it combines investigations, prevention with education to heighten public awareness about the evils of corruption. It

does this through workshops, seminars and public forums targeting specific sectors of the public. It also uses the media for advocacy.

63. The presenter finally highlighted the main Challenges that the commission is facing in its daily work in combating corruption, which includes the following: (a) lack of Prosecution powers (b) inadequate resource allocation for anticorruption agencies, especially the CHRAJ and (c) weak political will and support.

## Malawi

64. A participant from Malawi informed the meeting that in Malawi, the new Constitution, which came into effect in 1995, expressed the new democratic Malawi's commitment to public trust, transparency, financial probity and good governance. In conformity with this commitment, an Anti-corruption Bureau was established. Since this constitutional establishment of the Anti-corruption Bureau and the enactment of the corrupt Practices Act, a lot of legal and social-political developments have taken place in the country. However, there is a slow progress in the fight against corruption. The causes of the failure are due to the fact that the Anti-corruption Bureau is understaffed in terms of legal expertise. It has suffered from what can be called "the high profile cases syndrome" for not being able to complete as number of cases for many years. The same is suffering from lack of independence, lack of expertise in the judiciary and most importantly due to political interference.

65. In response to this situation the representative of Malawi indicated that there was a need for a multi-sectoral approach to combat corruption in Malawi. In addition, the country needed a strong political will, which must come from both sides of the political isle. Attractive compensation for lawyers and other staff will ensure strong investigation and prosecution teams to serve the anti-corruption Bureau.

## Madagascar

66. A representative from Madagascar presented briefly the existing institutional framework on fighting corruption in Madagascar. As a global policy to enhance good governance in the country, the government has set up institutions such as the High Court on combating corruption (CSLCC), which is currently in charge of the National System on Ethics. CSLCC designed an anti-corruption law and created the *Bureau independent anti-corruption (BIANCO)* - Independent Anti-corruption Bureau in 2004.

67. The presenter focused his expose on the BIANCO realizations since its establishment in 2004. In this regard, in order to improve professionalism of judges and the quality of the anti corruption penal court, BIANCO has organized training workshops for judges in 6 regions of the country. The main objective of the training was to enhance ethics in the judiciary sphere, in an environment

where judges were considered corrupted (see 2006 World Bank study). Against this background, BIANCO also set up a strategy, which is based on three-fold: Education of citizens, Prevention of corruption, and proper application of laws.

68. Regarding the perspectives, the main objective in the upcoming years is to implement the National anticorruption program. This program has two challenges: reduction of level of corruption (currently scoring 5.0 on TI's CPI) and limitation of the proportion of household revenue used to corrupt civil servants up to a maximum of 1.5 per cent.

## Mauritius

69. The meeting noted that Mauritius corruption has become a major issue in recent years. For this reason new Anti-corruption laws have been set up to raise awareness and to explain the consequences of corrupt practices in every sphere of the society. The prevention of corruption Act (POCA) of 2002, which is a landmark in the fight against corruption and a comprehensive piece of legislation, was enacted to provide for the prevention and punishment of corruption and fraud. The POCA has then set up the Independent Commission Against Corruption (ICAC) whose functions amongst others are to educate the public against corruption and to detect or investigate any act of corruption. To strengthen the fight against corruption, the POCA was followed by other laws such as the Financial and Anti-money Laundering Act (FIAMLA), the banking Act of 2004, which provides that the ICAC Commissioner may apply to a judge in chamber for the disclosure of information; and the Public Procurement Act of 2006 providing for modern procurement system and procedures offering more transparency and accountability.

70. The meeting was also informed that Mauritius has ratified the SADC Protocol Against Corruption in 2002, the UN Convention Against Transnational Organized Crime in 2003 as well as the UN Convention Against Corruption in 2004. Mauritius has also signed the African Union Convention on Preventing and Combating Corruption in 2004.

71. The presenter stressed the fact that Mauritius fight against corruption is gradually succeeding due to three main reasons. First, judicial officers are accountable and such accountability helps to have an efficient judiciary free from corrupt practices. Secondly, in Mauritius there is a vigilant and dynamic citizenry and press enjoying freedom of expression and a fearless legal profession, a human right Commission an ombudsman. Thirdly, the government of Mauritius is committed to systems and institutions that are accountable and transparent.

## Nigeria

72. *A representative of Nigeria presented the case of Nigeria.* The presenter provided the background of his country history in combating corruption. He indicated that the long years of military Rule had entrenched corruption in

Nigeria; almost becoming institutionalized. Corruption reached its zenith during the reign of President Abacha who is known to have stolen between 4-5 billion USD between 1994 and 1998. During his mandate, law and order had collapsed and the rule of law took a back seat in the face of tyranny, despotism and impunity. In the international arena, Nigeria became a pariah state with TI rating Nigeria as the most corrupt country for several years. Foreign Direct Investment (FDI) took flight. As a consequence, the economy plummeted, witnessing double digits inflation and poverty became pervasive.

73. To address these issues the national authorities undertook bold steps. In May 1999, President Obasanjo declared zero tolerance to corruption and the current President, Umaru Musa Yar' Adua, elected in 2007, has also followed by declaring that he will personally lead the fight and publicly declared his assets upon assumption of office.

74. Nigeria approached the Anti-corruption program as part of a national economic reform program, through the National Economic Empowerment and Development Strategy (NEEDS). To fight against corruption, laws have been adopted that allowed the adoption of the following: (i) Independent Corrupt Practices Commission (ICPC) Act, 2000, (ii) Economic and Financial Crimes Commission (EFCC) Act, 2004.

75. In addition, the authorities have put in place strategy aimed at targeting specific areas or personalities well known to be involved in corruption practices, for maximum impact among the citizens. This strategy allowed convicting high ranking former officers, such as Provincial governors, Inspector General of Police, former provincial governors, the Senate President, etc. As of November 2007, over 200 convictions for corruption, money laundering and bank fraud were recorded. Assets worth over US\$5 billion were recovered in less than five years by the EFCC alone.

76. Finally, the presenter highlighted the main challenges that Nigeria is facing in its efforts to combating corruption more effectively. These include: Politicization and blackmail, Constitutional Immunity, Slow justice system, and International assets recovery frustrations.

## Tanzania

77. The representative of Tanzania informed the meeting that war against corruption is gaining momentum in Tanzania. In order to promote and guarantee good governance, peace, justice and stability in the country Tanzania has put in place a Constitution that provides for the establishment of the Human Rights Commission and Good Governance and the Secretariat of the Leadership Code. There is also the Leadership Code of Ethics Act of 1995, which applies to judicial officers and all senior government officers in the judiciary and in the civil service.

78. In criminal matters, the Prevention and Combating of Corruption Act No 11 of 2007 establishes the Prevention and Combating Corruption Bureau (PCCB) to detect, investigate and prosecute corrupt offenders in the courts of law.

79. The experts were also informed that the Prevention of Corruption Act 1971 Cap 329 RE 2002 was repealed and replaced by the now operative Prevention and Combating of Corruption Act No11 of 2007, which came in effect on 20th June 2007. The law encompasses a wider range of corruption offences including bribing foreign officials, abuse of office, trading in influence, etc. On the employment arena, corruption is prohibited by the Professional Ethics Codes for the respective professions and by the constitution.

80. In Tanzania, the constitution provides for the independence of the judiciary, the appointment and removal of judges. In terms of security of tenure, Judges and magistrates take oaths before taking office. In spite of all these tools and instruments corruption will remain a thorn in the flesh of humanity in many parts of the world. Nonetheless, Tanzania is determined to wage a continuous war on corruption and successful eradication.

## Zambia

81. The representative of Zambia presented a paper on Zambia's experiences in activities towards combating corruption. The presentation stated that it was generally accepted that there was no single definition of corruption, however it was generally accepted that corruption was as an abuse of office for personal or private gain. Zambia has been facing the challenge of corruption in both the public and private spheres, which had been attributed to a number of factors ranging from poor public service delivery systems, to other myriad factors. Zambia, as a Least developed country (LDC), corruption is a major factor that has a direct impact on public service delivery to vulnerable groups. Different international studies also pointed out that corruption has discouraged Foreign Direct Investment (FDI) in the country. Although Zambia had an Anti Corruption Commission since 1980, corruption was still prevalent, in particular from 1991 to 2001. In this context, the country has taken a number of initiatives in an effort to fight corruption.

82. In 2002, the country has adopted a strategy of zero tolerance on corruption. The President has created a Task Force on corruption, which was mandated to investigate corruption from 1991 to 2001. Since then high profile official such as the former president (1991-2001) faced corruption charges. However, this Task Force was established by the President's discretionary authority and not by an Act of Parliament.

83. Corruption cases in Zambia are initiated and prosecuted in the Magistrates Courts, which were also manned by lay magistrates (magistrates not trained as lawyers). Owing to the complexity of corruption cases, which most of the time involved former high government officials, it has become paramount



for the Judiciary to retrain its magistrates and has also been on recruitment drive to employ legally qualified magistrates.

84. Finally, the presenter stated that experience in fighting cooperation had also revealed the importance of public-private partnership to fight corruption, noting the important role that the private press, civil society and other non state actors have played in sensitizing people on corruption and exposing corruption when it has occurred.

85. After the above presentations, participants asked questions and sought clarification on specific issues. The presenters provided answers on questions asked.



## VII. Conclusion and Recommendations

### a) Conclusion

86. In terms of overall conclusions, the experts noted the following:

1. That fighting corruption (in the judiciary) should be seen within an overall campaign for good governance at country level.
2. That for the judiciary to be effective in combating corruption, the institution itself must be free from corruption.
3. That the paper in addressing issues of corruption, traditional values and beliefs need to be taken into consideration.
4. That the recommendations of the meeting should derive from the main issues addressed in the background document, which should be revised thereupon.

### b) Recommendations

87. Further to the Rapporteur's interim report on the deliberations, the experts, to ensure good governance in the judiciary and enhance its effectiveness in combating corruption, made the following recommendations:

1. That national governments should underscore and implement the separation of powers particularly the independence of the judiciary as enshrined in the constitutions and make it a reality in practice.
2. That governments set up mechanisms to ensure transparency in terms of appointments, promotion, postings and removal of judges and magistrates.
3. That on the principle of independence of the judiciary, the judges and magistrates must be bold enough to uphold this independence by being pro-active in their conduct and judgments and not render themselves sub-ordinate to the executive or legislative arms of government.
4. That information and communication technology (ICT) should be put in place to inform and assist in speeding up the process and determination of judicial cases.
5. That alternative dispute resolution (ADR) methods should be institutionalized and adopted to complement the modern judicial system, as a way of reducing pressure on courts. Thus, liberalizing judicial space for speedy trial of corruption cases.
6. That 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.
7. That the judicial process and outcome in corruption cases should be open for public information through media reporting and/or publicly accessible through ICT interface.

8. That institutional and citizen driven anti-corruption checks and balances mechanisms should also be placed at local government authority levels.
9. That adequate human, material and financial resources should be made available to the judiciary for the effective performance of their work.
10. That in the case of abuse of office by a judge or magistrate dismissal from office should not be the end of the matter. The offense should be further prosecuted in a court of law and appropriate penalty given to serve as deterrence.
11. That there should be a strict assets and liability declaration regime for all judicial officials, that is transparent, regular and accessible to the public.
12. That as monitoring mechanisms for the activities of the judiciary, the ethics committee already in place in some countries, should be transparent, and make publicly accessible, information related to code of conduct and ethics. Additional to public accessibility, codes of conduct and ethics guidelines should be more detailed and comprehensive.
13. That a system of “complaints boxes” be put in ministries and public offices so that victims of corruption can drop their complaints anonymously and have them addressed.
14. That in order to make the Judiciary more visible, known, and accessible there should be guidelines written in simple language to enable the public to understand the court procedures and judicial processes, particularly on issues related to corruption. Also, in order that the judiciary is demystified in the purview of the public, the judiciary can organize open fora so that the general public can meet and discuss issues with judges and magistrates openly.
15. That judicial ethics should be taught as a subject in all law schools and faculties. There should also be continuing legal education – with a minimum number of days per year- for judges and magistrates as well as lawyers.
16. That State Parties who have not yet ratified the AU Convention on Preventing and Combating Corruption and the United Nations Convention Against Corruption should do so as soon as possible.
17. That State Parties are encouraged to create particular divisions within courts to deal with corruption and economic crimes cases as a way of speeding up dispensation of such cases.
18. That best practices in deepening the judiciary’s effectiveness in combating corruption should be documented and disseminated to all countries for emulation and/or reference to.
19. That State Parties should put in place mechanisms to monitor the effective implementation of these recommendations.

## VIII. The Way Forward

88. The meeting requested ECA that the final paper should be disseminated to all member States and to major African institutions such as the African Union Commission, the African Development Bank, the NEPAD Secretariat, all the Regional Economic Communities, and other relevant stakeholders across the continent.

## IX. Vote of Thanks

89. An expert among the participants made a special statement to thank the Chairperson for the able manner in which she chaired and guided the deliberations. He also thanked ECA Secretariat in general and GPAD in particular, for the invitation extended to different experts which afforded them the opportunity to share their views on such an important issue for Africa's development as the corruption issue.

## X. Closing of the Meeting

90. In his closing remarks, Mr. G. Mangué, thanked all the participants, on behalf of ECA for their outstanding level of discussion and contributions during the meeting. He called upon the experts not to consider the discussions on judiciary and corruption closed, but to feel free to continue the debates among themselves and between themselves and other stakeholders, including ECA. In addition Mr. Mangué assured participants that all their comments and observations will be given due consideration while finalizing both the main paper and the report of the meeting and that both drafts will be circulated to all of them before they can be finalized and disseminated. Before concluding, Mr. Mangué also thanked the German Development Cooperation Agency (GTZ) for their technical and financial support to the meeting. Finally, he invited the Chairperson to deliver her closing statement.

91. In her closing statement, Justice Munuo thanked all the participants for the confidence they placed on her to chair the meeting and above all, and most importantly, for the quality of their interventions throughout the deliberations. She also thanked each and everyone who was involved in one way or another with the preparation and actual delivery of the meeting. She particularly thanked ECA Secretariat for the background documents and for bringing different experts from different countries to exchange their views and experiences on such an important topic to Africa's development.

92. Finally, Justice Munuo appealed to all participants to keep in mind that the fight against corruption was not and cannot be considered as an event, rather as a process. In this respect, she invited all the experts to continue with what they are doing and to add the little they have been able to share during the meeting. In addition, Justice Munuo indicated that participants should try their best to ensure that the suggestions and recommendations agreed upon at the meeting are implemented first and foremost in their respective areas of responsibility, and when possible, to encourage others to implement them as well.

93. On this note, Justice Munuo declared the Ad-hoc Expert Group Meeting on “Deepening the Judiciary’s Effectiveness in Combating Corruption” formally closed.

## Annex I

Opening Remarks by  
Mr. Okey Onyejekwe  
Director  
Governance and Public Administration Division

Mr. Chairman,  
Distinguished Experts,  
Dear Colleagues,  
Ladies and Gentlemen:

On behalf of the Economic Commission for Africa (ECA), and indeed, on my own behalf, I wish to extend to all of you a warm welcome to Addis Ababa and to this Ad-hoc Expert Group Meeting on “Deepening the Judiciary’s Effectiveness in Combating Corruption.” I thank you for taking time from your busy schedules and responsibilities to come to this meeting and share with us your invaluable expertise in this area.

The main objective of our meeting today is to review and discuss the draft paper before you, with a view of proposing practical modalities to enhance the role of the judiciary in combating corruption. After your review and comments and having incorporated your suggested changes into the paper it will be published and widely disseminated so that the necessary awareness could be raised to combat corruption on the continent.

For your information, the first draft of this paper was submitted to a peer review process from 4 to 5 December 2006 here in Addis Ababa. The review meeting involved anticorruption commission and agency officials, who are tasked with the preparation and implementation of projects and programs on anticorruption or who raise the topic of corruption to the level of policy dialogue. That meeting recommended, among other things, that after their review of the paper, ECA should submit the revised version to an ad hoc expert group meeting involving specifically judiciary and law enforcement officials for them to also provide their views/inputs into the paper before it can be finalized and disseminated.

It is against this background that this meeting is being organized. I am firmly convinced that at the end of your deliberations you will be able to draw up specific policy recommendations, program and action plans for the Judiciary to curb the raising incidence of corruption in Africa, in a permanent and sustained manner, so as to promote socioeconomic development for the benefit of all.

Ladies and Gentlemen

As most of you know ECA, as a regional UN body, conducts research on critical development issues, advocates for sound policies, and assists African countries in capacity building. Today this meeting is to consider one of our advocacy papers

entitled “Deepening the Judiciary’s Effectiveness in Combating Corruption.” We have been prompted to prepare this paper for three main reasons.

First, during the fourth African Development Forum (ADF-IV) on governance that took place here in Addis Ababa in October 2004, participants stressed the importance of reinforcing the role and capacity of the judiciary and its independence in order to effectively combat corruption.

Secondly, after we concluded our first-ever research-based work on governance, the African Governance Report (AGR-I) in 2005, it became crystal clear that corruption remains a major impediment to sustainable development and to the creation of a conducive environment for business in Africa. In this regard, and for some of you who have read the AGR-I report you may have noticed that both, the experts panel and the household surveys underlined the importance of involving the judiciary in combating corruption.

Finally, the study is in compliance with several United Nations General Assembly mandates, including the UN Convention Against Corruption (adopted by the General Assembly, in its resolution 58/4 of October 2003), the African Union (AU) Convention on Preventing and Combating Corruption (adopted by the 2<sup>nd</sup> Ordinary Session of the Assembly of the Union in July 2003), as well as the NEPAD objectives. All these instruments call on member States and development partners to strengthen their capacity in combating corruption, as one of the main obstacles to development and good governance.

Dear Participants

The paper before you attempt to analyze the role of the judiciary in selected African countries to combating corruption and provides some recommendations on how to strengthen its crucial role as the custodian of basic rights and freedoms of citizens. I, therefore, call upon you to undertake a critical examination of the issues raised in the working document for this meeting and improve upon.

I believe that each of you here has a valuable expertise in one aspect or another of this paper, and I hope that your contributions will not only help enrich the paper, but and most importantly, will bring fresh perspectives to it and to the general discussions.

Before I conclude, allow me to acknowledge and thank the German Technical Cooperation Agency (GTZ) for their continuous support to ECA’s activities, particularly for their financial contribution toward the organization of this workshop.

With these few remarks, I wish to thank you all, once again, for the pleasure of being here with us and wish you successful deliberations.

I thank you.

## Annex II

### Draft program of work

#### Day One: Monday, 19 November 2007

09:00 – 09:15	Opening remarks by the Director GPAD
09:15 – 10:30	Presentation of the background paper
10:30 – 10:45	Tea/coffee break
10:45 – 13:00	General discussions
13:00 – 14:30	Lunch
14:30 – 16:00	Country/Agency experiences
16:00 – 16:15	Tea/Coffee break
16:15 – 17:30	Discussions

#### Day Two: Tuesday, 20 November 2007

09:00 – 11:30	Discussion (continued)
11:30 – 11:45	Coffee/Tea Break
11:45 – 13:00	Conclusion and Recommendations
13:00 – 14:30	Lunch
14:30 – 16:00	Conclusion and Recommendations (Continued)

#### Day Three Wednesday, 21 November 2007

08:30 – 13:00	Secretariat prepares draft Conclusion and recommendations
13:00 – 14:30	Lunch
14:30 – 16:00	Adoption of the Conclusion and Recommendations
16:00 – 16:30	Closure of the meeting



## Annex III

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