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

14-15 December 2006
Addis Ababa, Ethiopia

REPORT

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LIST OF ACRONYMS

ADF.....	African Development Forum
ADB.....	African Development Bank
AGR.....	African Governance Report
APRM.....	African Peer Review Mechanism
AU.....	African Union
CSOs.....	Civil Society Organizations
ECA.....	Economic Commission for Africa
EU.....	European Union
GPAD.....	Governance and Public Administration Division
IT.....	Information Technology
MDGs.....	Millennium Development Goals
NEPAD.....	New Partnership for Africa's Development
NGO.....	Non-Governmental Organization
PRSP.....	Poverty Reduction Strategy Paper
REC.....	Regional Economic Community
SROs.....	Subregional Offices (ECA)
UN.....	United Nations
UNDP.....	United Nations Development Programme
UNECA.....	United Nations Economic Commission for Africa

I. INTRODUCTION

1. The Ad Hoc Expert Group Meeting on “Deepening Judiciary’s Effectiveness in Combating Corruption” took place in Addis Ababa from 14 to 15 December 2006. The main objective of the meeting was to review and discuss a draft technical publication prepared by the Governance and Public Administration Division (GPAD) of the Economic Commission for Africa (ECA). The paper analyses the role of the judiciary in selected African countries in combating corruption and provides recommendations on how to strengthen its crucial role as the custodian of basic rights and freedoms of citizens.

II. ATTENDANCE

2. The meeting was attended by eight experts drawn from the following African countries: Cameroon, Ethiopia, Malawi, Morocco, Namibia, South Africa, Tanzania and Zambia and staff of the (GPAD) of ECA. The experts were invited in their capacity as officials from governments or as persons with extensive experience and/or expertise in corruption issues and/or law enforcement activities as well as in public advocacy.

III. ACCOUNT OF PROCEEDINGS

Opening of the meeting

3. The meeting was opened by Mr. Guillermo Mangué, officer-in-charge of the Governance and Public Administration Division (GPAD) on behalf of the Director, Mr. Okey Onyejekwe. In his opening statement, Mr. Mangué welcomed the participants and thanked them for taking time from their busy schedules and responsibilities to attend and share with the Economic Commission for Africa (ECA) their invaluable expertise in the area of corruption.

4. Mr. Mangué informed the participants that ECA, as a regional United Nations body, conducts research on critical issues, advocates for sound policies, and assists member States in institutional capacity building. The meeting was being held to consider one of ECA’s research papers entitled “Deepening Judiciary’s Effectiveness in Combating Corruption.” The Commission had been prompted to undertake research on this topic for three main reasons. First, after ECA concluded its first-ever research-based work on governance, the African Governance Report (AGR), 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, as the AGR report shows, the experts’ panel and the household surveys both underscore the important role the judiciary could play in combating corruption. Secondly, during the fourth African Development Forum (ADF IV) on governance, which was held 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. Finally, the study is also in compliance with several United Nations General Assembly mandates, including the United Nations Convention against Corruption (adopted by the General Assembly, in its resolution 58/4 of 31 October 2003), A/58/422 the African Union (AU) Convention on Preventing and Combating Corruption (adopted by the second Ordinary Session of the Assembly of the Union on 12 July 2003), as well as the New Partnership for Africa’s Development (NEPAD) objectives. These instruments call on member States to strengthen their capacity in combating corruption, as one of the main obstacles to development and good governance.

Election of the Bureau

5. The meeting elected the following Bureau:

Chairperson: Ms. Beaty Naude

Rapporteur: Mr. Edward A. Hoseah

Adoption of the programme of Work

6. The experts adopted the Programme of Work without amendments (see Annex II).

IV. PRESENTATION OF THE WORKING DOCUMENT

7. Mr. Edward A. Hoseah, Consultant, presented a document entitled: “Deepening Judiciary’s Effectiveness in Combating Corruption.” By way of introduction, Mr. Hoseah indicated that good governance is a pre-condition for Africa to meet the Millennium Development Goals (MDGs). Good governance was a situation where public responsibilities were discharged in an effective, transparent, and accountable manner, while bad governance was associated with bad administration in the discharge of the various responsibilities discharged by public institutions. The term “governance” could be defined as the exercise of political power to manage a nation’s affairs. That implied a predictable, open policy-making process, a bureaucracy with professional ethos, where the executive is accountable for its actions, with a civil society participating in public affairs, while all these actors embrace the principles of the rule of law.

8. Some basic concepts were highlighted as the main pillars to good governance. These included:

- (a) **The rule of law:** This concept is seen by one scholar to mean the ability to have one’s grievances heard before an impartial judge. Doing justice is to apply its rules with equal favour to the high and to the lowly. It is the removal of a sense of injustice. Judges tend the gate between order and anarchy. They preserve our system of ordered liberties and are indispensable to a civilized society. Injustice originates in the feeling that one has been wronged by another without recourse -- or in other words, that one is denied some means to redress the conduct that one finds manifestly unjust, such that he or she becomes bitter and cynical;
- (b) **Judicial integrity:** This is considered as the heart of the rule of law in the sense that judges must be neutral in order to protect the above principles. These principles of rule of law may conveniently be summarized into three components: firstly, it emphasizes that the government is bound by the law; secondly, all people should be treated equally; thirdly, basic human rights must be protected. Judges must maintain neutrality for the rule of law to be maintained in a sustainable manner; and
- (c) **Judicial accountability:** 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 maintain that this element has gone too far to the extent of

threatening judges' freedom of action against control by the executive and legislative branches of government.

9. It was recalled that in the African context, the African Union (AU) and in particular, its New Partnership for Africa's Development (NEPAD) call upon member States for the setting up of coordinated mechanisms to combat corruption in the region and that one of the key institutions that were in position to bring about change in this respect, and restore stability in the region was the judiciary. An independent and impartial judiciary contributes to the equitable and stable balance of power within the government. The judiciary protects individual rights and preserves security of persons and their properties. The role of the judiciary is therefore important to countering both private and public corruption, reducing political manipulation and increasing public confidence in the integrity of the government.

10. Unfortunately, the Judiciary in most African countries lacked operational independence in the sense that they have no adequate funding to fulfill their mandate with the required efficiency and effectiveness. Judiciaries in most African countries were dependent for their policy and budget processing on the Ministry responsible for justice, an arm of the executive branch of government, and most of them are not adequately staffed. They lacked qualified and professional court administrators, information technology (IT) personnel and other staff to ensure the proper recording of proceedings and streamline docketing. They lacked adequate stationery and legal books for reference. These challenges and systemic weaknesses were often translated into conflict of interests, delay and lethargy in court cases, which sometimes made it necessary to resort to expensive private legal services. In addition, dishonesty and tolerance for illegality also fuelled corruption in any organizational setting. Over time, an honest individual working in a dishonest environment would adapt and behave in a more dishonest fashion.

11. Consequently, corruption had been given different meanings according to the context or a particular interest group, so that there was no single, comprehensive, universally accepted definition of corruption. However, corruption had been generally understood to mean an abuse of office for personal or private gain. The United Nations Convention against Corruption contained a list of specific types or acts of corruption, which could be resorted to in lieu of an exact definition.

12. The United Nations guidelines on Strengthening Basic Principles of Judicial Conduct which were passed by the General Assembly, clearly acknowledge the problem of corruption in the judiciary and underscore the fact that corruption of members of the judiciary, undermines the rule of law and affects public confidence in the judicial system. Thus, integrity, independence and impartiality of the judiciary were essential prerequisites for the effective protection of human rights and economic development. In that connection, the Bangalore Principles of Judicial Conduct (2002) provide standardized professional and ethical guidelines to members of the judiciary. These standards are intended to afford the judiciary a framework for regulating judicial conduct.

13. It was emphasized that certain cultures may regard certain behaviour patterns as corrupt practices while others may view them as cultural manifestations of gratitude and/or recognition. In all the cases, good governance within the judiciary was critical. For example, Courts are expected to be impartial in the dispensation of justice. In this regard, the judicial system was expected to be non-partisan, free to make its decisions unhindered by monetary influences or political pressure. Consequently, combating corruption should not be considered as an end in itself but rather as an

instrument to achieve the broader goal of instituting a more effective, fair, and efficient judiciary system, which in turn is associated with greater economic development.

14. Two categories of corruption identified are: “grand” and “petty” corruption. Grand corruption involved highly-placed public officials and, normally, large amounts of money, so that there is often an enormous impact on the economy. Typical examples were to be found in big contracts where “single source” contracts were secured. Petty corruption was always the kind of corruption involving less amounts of money or a “gift.” It was a way of supplementing low salaries paid to public employees including judicial officers.

15. The United Nations Convention against Corruption considered active and passive bribery as elements of corruption, whereby active bribery was referred to as the offering or paying of a bribe, while passive bribery was the actual receiving or accepting of a bribe. The latter would normally include cases where bribery was still being offered or negotiated, but not accepted yet.

16. In regard to the fundamental causes of corruption, a case study on governance and corruption conducted by a consortium of Nigerian institutions and focusing on citizens, government officials, and enterprise owners, identified the main causes of corruption as weak government institutions and an economic environment characterized by widespread poverty and unemployment. This situation could be considered as illustrative and relevant to the whole of Africa. The study concluded that corruption had permeated all aspects of the Nigerian society. The study also found that public officials often put their own welfare before that of the Nigerian people, due to greed and because salaries were inadequate to support a family and often were not paid on schedule. Most government agencies were seen as self-serving, poorly managed, unaccountable and not living up to their responsibility of protecting citizens and providing services to them.

17. A major source of corruption in the judiciary, identified in the Nigerian case study, related to the manner in which judicial officials are appointed. The cultural phenomenon of extended family obligations, put pressure on public officials, including judicial officers to succumb to the temptations of corruption. The study also found that most public officials were morally bankrupt, because their primary motivation was to make money for themselves rather than serving the country. The sentiment is founded on the belief that Nigeria is a rich country with abundant oil and other natural resources and this wealth is not benefiting the people.

18. The case of Kenya was also highlighted, and here it emerged that corruption had assumed pandemic proportions in the Kenyan judiciary, and the Chief Justice had found that people subscribed to the maxim “why pay a lawyer when you can buy a judge” and the best judges had become “the best judges than money can buy.” In 2003, the report of a Committee appointed to look into the problem of corruption in the Kenyan judiciary, reported that corruption was prevalent in the judiciary, implicating five out of nine judges of the Court of Appeal, 18 out of 36 High Court judges, 82 out of 254 magistrates, and 43 out of 2910 paralegal staff. The principal forms of corruption the committee found included bribery, fraud, abuse of office, and receipt of favours. The committee’s conclusion was that “corruption reduces the temple of justice into a cave of venality and exploitation.”

19. It was pointed out that corruption should be seen as a crime like any other crime irrespective of who committed it, or where. In the context of the judiciary, it worked well in favour of a corrupt

official “when the potential benefits of being corrupt are high,” especially where the official has the sole discretion to provide an essential service to clients, such as issuing a license, permit, or a judgment. In this respect, deepening the effectiveness of the judiciary had to go hand in hand with confronting corruption in the judiciary itself because the phenomenon represented a serious impediment to access to justice, to the principles of fairness and quality of justice, and to public confidence in the courts, not to mention quality and timeliness of the court proceedings.

20. It was underscored that corruption being a global problem, it had to be addressed holistically to surmount the challenges it posed. Combating corruption was the fundamental to institutionalizing the rule of law and maintaining public order and security of citizens and their properties. It was also part of the broader objective of empowering the citizenry, and strengthening the law enforcement mechanisms and the judicial apparatus. The conduct of judges and magistrates both inside and outside the courtroom determined the level of confidence which the public could have in the administration of justice. Judges must not only be fair but must be seen to be so by the general public. Judges must observe basic standards of conduct because of their role and particularly, the high degree of authority and discretion their work entailed.

21. Some key recommendations were highlighted, on the basis of best practices and experiences obtained from selected countries in Africa and beyond. These recommendations are summarized below:

- (a) Needs assessment of the type of information, equipment, personnel, and space needed to carry out judicial functions is a pre-requisite for the judiciary to address the problem of corruption;
- (b) Adequate and timely funded budget is an important instrument to ensure an efficient and effective judiciary;
- (c) Judicial appointments in many countries in Africa are done through a Judicial Commission or Council as the case may be. However, to ensure meritorious appointment of competent judges it is advised the following should be considered: (i) Advertise judicial vacancies widely; (ii) Publicize candidates’ names and their background, selection process and criteria; (iii) Division of responsibility between the executive and judiciary (i.e. one nominates and the other selects and appoints); (iv) Allow for participation of the general public in selection process of the judges.
- (d) Delay of cases is one of the major constraints that fuels corruption in the judiciary. This is a management weakness within the judiciary. It is recommended that a case management system be installed in the judiciary. Train court users particularly through the introduction of court administrators who are professional managers to administer the system, which will release judicial officers from administrative functions and allow them to focus more on cases that are brought before them. In most judiciaries in Africa, administration of the courts is performed by Registrars of the court and this leaves less time for expediting the hearing of cases and speeding up the pre-trial proceedings. It is therefore recommended that the rules of procedure should allow Registrars to carry out the pre-trial proceedings of the cases before the case is ready for hearing by a judge;

- (e) Establish restrictions on 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 measures put in place to ensure their availability;
- (f) Access to justice through legal aid clinics and representation. Law schools can be used to ensure that indigent litigants have access to the justice system. As a training ground for young lawyers, legal aid centres will allow ordinary citizens to have access to justice;
- (g) The rights of accused persons should be respected and the courts should ensure that they are not violated and where violation has been established, the judge or magistrate in charge of the station must take immediate remedial action;
- (h) Training in ethics and introduction of codes of conduct where there is none or are deficient should be mandatory in order to uniformly regulate the conduct of judicial officers;
- (i) Inculcating judicial values, code of conduct and etiquette, particularly to the new judges and magistrates before they resume their duties on the bench should be made mandatory. The chief justices should ensure that no one is elevated to next rank within the establishment unless he or she has attended ethics training, which should be mandatory; and each year, a refresher course should be put in place for all judicial officers, to ensure that they understand and observe the code to the letter;
- (j) A complaints mechanism should be established, whose role and functions are clearly delineated, as a mechanism for redressing wrongs within the shortest possible time, and where possible, a period of seven days is recommended for simple complaints;
- (k) 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 of citizens' confidence in the judiciary. However, caution should be exercised to ensure that judges and magistrates are protected from frivolous or unfair attacks by unhappy litigants who use "Complaint Avenue" as an alternative to the appellate process or simply in a quest for revenge;
- (l) The court tracking management system should be able to produce reports that extract information from individual case files to present a picture of how the court operates as an organization, and
- (m) Political support is ultimately important and an effective strategy will build support within the political structure through alliances and advocacy. The support of the Ministry of finance is indubitably critical in implementing the needed judicial reforms.

V. GENERAL DISCUSSIONS

22. During the general discussions, the experts indicated that the paper presented, addressed pertinent issues from an African point of view. However, they noted that the paper needed to be

restructured and enhanced in many parts to capture the reader's attention. In this respect, it was suggested that the paper should begin with a clear definition of corruption and explain the correlation between good governance and corruption in the judiciary. In addition, the section on accountability of the judiciary did not properly articulate how to ensure that accountability. The paper should also analyse how the judiciary system with its present mandate and expectations could be used as a remedy to corruption, as well as to elaborate the changes that ought to be made to the judiciary in order to effectively equip it to deliver a corruption-free society. It was also pointed out that the paper should emphasize the aspect of training on morals and values in the judiciary and popularize the laws to the citizens (awareness campaigns, corruption hotlines, involvement of the media, etc.). The paper may also look into the possibility of making judicial reform an integral part of a broader and holistic approach to combating corruption, given the interrelatedness and cross-cutting nature of the many factors contributing to corruption. It was also pointed out that there was a noticeable trend away from using the term "causes" in preference to risk factors, or factors contributing to corruption.

23. On the role of the judiciary in combating corruption, the experts pointed out that it was necessary to analyse further, the potential role of the judiciary in combating corruption, and to underline the shortcomings in the judiciary system that needed to be alleviated, as well as the necessary activities that should be carried out in order to empower the judiciary and enable it to perform more effectively. Some analysis should also be provided on the many factors contributing to corruption, which include, but are not limited to, the following:

- (a) Government interventions, especially in the form of trade restrictions such as tariffs and import quotas;
- (b) Protective industrial policies such as subsidies and tax exemptions;
- (c) Price controls, multiple exchange rate practices and foreign exchange allocations;
- (d) Government-controlled provision of credit;
- (e) Bureaucratic red tape;
- (f) Political instability, and weak legislative and judicial systems; and
- (g) Poorly paid civil servants.

24. The experts were of the opinion that corruption -- just like robbery, fraud, and other crimes against property and persons -- undermined the investment climate and stifled entrepreneurial activity. In this respect, the judiciary could directly contribute to economic development. It could play an important role in national development, by setting standards of conduct and promoting national values. In that regard, the paper should review the question as to how corruption harmed the investment climate (through its distortionary effect on policy-making, and its tendency to undermine the credibility of government, act as a tax on entrepreneurial activities, and divert resources from public coffers). It was also suggested that the paper should define how more efficient courts could help in reducing the risks faced by firms and how the importance of courts was bound to grow as the number of large and complex long-term transactions increased. In this respect, an

effective correlation between the level of economic activity and the effectiveness of the judiciary was essential in the fight against corruption and it was felt that this aspect should be further elaborated in the paper.

25. The experts noted that the paper dwelt quite a bit on working conditions of the judiciary, and more specifically on the importance of low remuneration as a contributing factor to corruption. However, large-scale corruption did not occur within the low-paid civil service cadres. In the case of Cameroon, for instance, at certain times the salary of judges was doubled whereas those of the civil servants were reduced or maintained at the same level, and yet this situation did not reduce the incidence of corruption in the judiciary. In this respect, the experts observed that while there was a tendency to consider poverty as a major factor contributing to crime and corruption, the fact was that, globally, only 12-15 per cent of all crimes are committed by females (this applies to Africa as well) although they are the poorest of the poor. It was, rather, greed that could be considered as one of the main factors contributing to corruption.

26. The experts indicated that since the title of the paper is “Deepening Judiciary’s Effectiveness in Combating Corruption”, it was important that the paper begins by spelling out clearly the main weaknesses within the judiciary and also come up with concrete recommendations on how to strengthen it. This entails the need to redefine the term judiciary in its broad sense to include not only judges and magistrates, but also all law-enforcement agencies such as the police as well as traditional systems of justice. It also means that the concept “deepening judiciary’s effectiveness” should be redefined. The paper should differentiate between the causes and the factors contributing to corruption, between perceptions of corruption and actual corruption, and between rights and needs of the people, in addressing corruption issues.

27. Experts recognized that many African countries had, by signing the international and regional conventions against corruption, demonstrated their political will to combat corruption. However, there was still a lack of political support, which is more important than political will. In this respect, it was pointed out that governments should enact domestic laws to reinforce international conventions against corruption at the national level. Overall, it was recognized that political support is more important than political will. The creation of special courts to deal with corruption was felt to be necessary to effectively and efficiently combat corruption.

28. There were divergent points of views as to whether corruption should be tackled with preventive or curative strategies. Some participants highlighted the fact that prevention implies protecting the body from being infected, and that therefore since corruption had become nearly endemic in most African countries, strategies should be in the form of cure rather than prevention.

29. The experts felt that the main causes of impropriety in the judiciary gravitated around disappearances of case files, postponement of case hearings, high prosecution expenses and legal fees, and resort to networking and old-boy connections, particularly among the rich and privileged. Most of these failings were to the detriment of the poor and less privileged, and were compounded by poor remuneration for judiciary staff. In this respect, it was suggested that:

- (a) The paper needed to make recommendations for concrete incentives for the stakeholders to be involved in the implementation of anti-corruption measures – including at the level of heads of government;

- (b) Recommendations are needed for sensitizing the public on what to expect from anti-corruption structures and institutions, and for training them to put pressure on those structures to perform;
- (c) Recommendations are needed for the training curricula to include familiarizing the staff of the judiciary as well as those of anti-corruption agencies, on issues of corruption, as well as on the importance and nature of their independence, autonomy and responsibilities;
- (d) Given the sensitive nature of these issues and the many vested interests, there should also be recommendations in the direction of more dialogue and collaboration among stakeholders to avoid power struggles;
- (e) Concrete recommendations are needed for levelling the field in the judiciary so that the needs of the underprivileged classes are fully served by the legal system; and
- (f) Recommendations are needed on planning in the judiciary, so as to cover a range of issues including the scheduling of cases, transparency, accountability, monitoring, and integrity.

VI. COUNTRY/AGENCY EXPERIENCES

Cameroon

30. The experts were informed that Cameroon was classified as one of the most corrupt countries in the world, in 1998 and 1999. As a result, the government adopted a series of legal instruments to combat corruption. These instruments are: the 1997 Anti-corruption Plan, the 1998 Ad Hoc Committee against Corruption (headed by the Prime Minister), and the creation in 1999 of the Anti-corruption Observatory, which was approved by Decree No. 001/PM of 4 January 2000. In addition to these instruments, every ministry/department has an anti-corruption unit, which reports to the Minister responsible and to the National Observatory. Transparency Cameroon has also undertaken anti-corruption campaigns through cartoons in newspapers as well as a poster campaign. However, these institutions seem to be mere formalities and corruption is still rampant in the country to the extent that Cameroon still ranks, according to the Transparency International corruption index, as one of the most corrupt countries in the world, with a corruption index of 2.1 in 2004.¹

31. In response to this situation, the government decided again to create the National Anti-corruption Agency by decree No. 2005/187 of 31 May 2005 and the National Anti-corruption Commission, by Decree No. 2006/088 of 11 March 2006, but the Commission is yet to become fully operational. An Auditor-General's Office was also created in the Supreme Court. The first report of that Office is expected to be out by January 2007.

¹ Transparency International, Annual Reports 2004 and 2006. The index is on a scale from 0-10. The less the index, the more corrupt is the country.

32. The experts were also informed on the issue of effectiveness and the fact that most anti-corruption officials believe that the activities of that person or institution should not be scrutinized. The ideal situation however, is that anti-corruption officials should be able to prosecute anyone if he/she is suspected of wrongdoing --- including those who appointed them.

33. One of the major challenges is that in Cameroon, the institutions that are meant to combat corruption are mostly ineffective or not operational at all. In this regard, the real problem is the implementation of the decisions or measures taken by the government, for which the AU through the African Peer Review Mechanism (APRM) process could help the countries to combat corruption.

34. The experts underscored the fact that 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 that 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 or competence may be the cause of ineffectiveness. In this respect, the experts noted the case of Ghana's anti-corruption commission, which is under the oversight of parliament but is less effective than the Nigerian one, which falls under the President's office.

35. It was also noted that to ensure independence of the anti-corruption institution, there should be an oversight body with multiple and diverse membership.

Ethiopia

36. The meeting was informed that the ethics and Anti-Corruption Commission in Ethiopia is established by legislation. The mandates of the commission are to elaborate the overall governmental anti-corruption programme with a strategy to curb corruption, assist the government in detecting and preventing corrupt practices within the public sector, investigate allegations of corruption, disseminate, promote and create awareness on ethics, and educate the various departments about the fight against corruption. More recently, new legislation has been put in place which empowers the Commission to prosecute and investigate corruption cases.

37. For the commission to act, it has to prove that there is a violation of the law. The way the commission operates is by conducting a preliminary test without the knowledge of the suspect and by collecting documents and other evidence on the alleged case of corruption. The commission also conducts an investigation when there is sufficient proof of corruption. There is one ethics officer in every government department. Their function is to advise the director of the department on anti-corruption measures and alert it on possible cases of corruption within the department. These officers do not handle corruption cases within the private sector.

38. One of the challenges facing the Anti-Corruption Commission is the narrow scope the enabling legislation affords it in the investigation of certain offences.

Malawi

39. In the case of Malawi, the Anti-Corruption Bureau is the highest authority in the fight against corruption. It was created by the Anti-Corruption Act which was passed by Parliament in 1995. According to the Act, the bureau is supposed to be independent, with powers to investigate and prosecute cases of corruption. However, in operationalizing the activities of the bureau, there seems to be some kind of conflict between the director of the bureau and that of the public prosecutor's office. The bureau also has the mandate to educate the general public about the fight against corruption.

40. One of the major challenges facing the bureau is with respect to its independence. A very confusing factor in this regard is that in the past eight years, the director of the bureau has been changed three times. Another challenge is posed by the reluctance of the judiciary to receive instructions from the bureau. The recent case involving a former head of state illustrates this malaise between the Anti-Corruption Bureau and the judiciary. There are lengthy and sometimes deliberate delays in processing corruption cases at the judiciary level. The issue of patronage is prevalent in the appointment of certain judges.

41. The experts observed that while the legislation may be good, its application is often flawed. Legislation by itself is not enough to curb corruption. It needs a strong political will to be really effective.

Morocco

42. The Agency charged with the prevention of corruption in Morocco was created following the recommendation of the United Nations. The involvement of civil society organizations (CSOs) in the agency's activities is very noticeable. According to Transparency International- Morocco, the country's ranking has improved; however the score (3.2 in 2005) is still a matter of concern for the country. This situation is a catalyst to the government to take corruption issues more seriously. Indeed, a new law has been enacted to compel all high-ranking civil servants to declare their assets when taking office.

43. According to a Gallup survey, in decreasing order of importance, the police, justice and health services are the most affected departments by corruption. The law has been made more stringent against people guilty of corruption.

44. The establishment of the Anti-Corruption Commission is under way and has been discussed at the highest governmental levels as well as with international funding agencies such as the World Bank and the European Union.

Namibia

45. Namibia has launched a campaign of "zero tolerance" on corruption. It is among the best-ranked countries with regard to the corruption index and it is working hard to keep its good reputation in this area. The country has an Anti-Corruption Act, which stipulates mechanisms for the prevention and the establishment of the Anti-Corruption Commission. This commission is an

independent body. Its mandates, among others, are to educate the public, and to investigate, initiate and support initiatives against corruption.

South Africa

46. South Africa is undergoing important changes. The former government oppressed people by means of discriminatory legislation, state violence and the active encouragement of corruption to circumvent international sanctions. However, the country has since the end of the **apartheid regime** in 1994, adopted a very good set of laws to combat corruption. As this is a process, it will take time for people to adapt to the new environment and to change their mentality. There are many good proposals on paper but there is still a lack of resources and personnel to implement many of these measures. Recent research findings indicate that actual experiences of corruption in the South African justice system are low (with the exception of the police), yet more than half of court users perceive the justice system as corrupt. Many factors contribute to this misperception, including poor police investigations, weak management, unmotivated staff, inefficiency and long delays in proceedings. Furthermore, most court users view the courts as the preserve of the rich and the powerful and more than half were of the opinion that the government controlled the justice system and that it was therefore not independent. This is a very difficult situation that cannot be resolved overnight, given that perceptions are real to the perceiver and the justice system will have to make a concerted effort to improve the system.

47. One of the major challenges is the correlation between perceptions of corruption and the actual corruption experiences. Thus, although there is a correlation between the two, in the case of South Africa perceptions are much more pronounced than actual experiences, in the case of South Africa. The witness protection programme is also still at an embryonic stage. Another dimension is that there is some tension between the Anti-Corruption Commission, which used to be considered as an offshoot of the police force, but has now been moved to the judiciary, and the “Scorpions” unit, which operates under the Director of Public Prosecutions.

Zambia

48. In Zambia, an Anti-Corruption Commission has been in existence since 1982. At the beginning, it was located in the police department. The director-general of the Anti-Corruption Commission is appointed by the President. Investigations on corruption cases go through various processes before the case goes to court. The experience has been that 80 per cent of the cases are dropped in court. This showcases the need for training of judges on issues of corruption, because in most cases, they do not understand the corruption phenomenon. The funding of the Anti-Corruption Commission comes mainly from the government and international funding agencies, and activities are mostly devoted to preventing corruption. In this respect, the government is trying to elicit as many ideas as possible from stakeholders and the general public as to what are the best mechanisms to counter corruption. The ideas from stakeholders, and the general public across the nine provinces of the country will be compiled and become a policy document.

49. There are plans under way to establish integrity committees in all departments, but unfortunately, it is not yet envisaged that such committees will be established within the judiciary itself. This is a lacuna that needs to be corrected. It is felt that establishing an integrity committee in the judiciary, should significantly reduce corruption within that department.

VII. RECOMMENDATIONS

50. The experts made the following general recommendations:
- (a) The scope of the paper should be broadened, so as to include all aspects of the judiciary and law enforcement agencies (i.e. the police, traditional leaders, etc.);
 - (b) The paper should start with a positive narrative highlighting some of the new developments taking place in Africa with respect to the fight against corruption, particularly those orchestrated by continental institutions (e.g. the efforts of AU, NEPAD, APRM and the African Development Bank) as well as some best practices at the country level. It should also give examples where progress has been made in terms of research findings and achievements; and
 - (c) Expand the recommendations section of the paper to also include the additional aspects recommended by the experts.
51. On specific aspects, the experts recommended that the paper should:
- (a) Define key terms, e.g. judiciary, which should also include prosecutors, court personnel (and maybe also the police and traditional justice systems). Refer to research findings that corruption rates are highest in the police (at investigating level) and prosecutors (at prosecuting stage);
 - (b) Give examples of types of corruption to create awareness of its many forms, e.g. accepting gifts, shares, free holidays, etc;
 - (c) Focus on both perceptions of corruption, -- which are real to the perceiver -- as well as to actual experiences of corruption. Discuss the many factors, which have an impact on perceptions in the courtroom (long delays, frequent postponements, neglect of the rights and needs of victims or witnesses, no feedback on case progress, etc.); and
 - (d) The paper should also discuss factors contributing to corruption (e.g. poor training of the judiciary, lack of independence, poor human rights culture, inadequate financial resources, poor resourced courts, inadequately trained court personnel, lack of refresher courses, and low focus on restorative justice processes at the pre-trial level). Other contributing factors that have an impact on corruption should also be discussed, such as long delays of cases in the court as a result of unnecessary bureaucratic procedures in service departments, poor liaison between key departments, poor governance and lack of political will, political and economic instability, lack of transparency, and so on;
 - (e) Discuss the Africa dilemma to distinguish between gifts and other expressions of gratitude, as part of traditional African custom and how this can have an impact on dealings at the official level, especially in the case of poorly educated members of the public;

- (f) Indicate the importance of a Victims' Charter and standards and norms for dealing with victims during the judicial process;
- (g) Briefly sketch the impact of a Western-style legal system on Africa (e.g. repression of customary law); also discuss the different Western legal systems in Africa (adversarial and inquisitorial; Anglophone versus Francophone and Lusophone);
- (h) Emphasize that the judiciary is part of, and reflects the broader society. It can never be seen in isolation. The government should set an example by dealing firmly, effectively, uniformly and transparently with corruption at all levels;
- (i) Discuss the dilemma of achieving an independent multi-disciplinary anti-corruption agency in terms of mandate, powers, making appointments, own budget and an independent oversight body as well as the importance of civil-society involvement in this process. Having all these functions under the oversight of the government may undermine the autonomy of these agencies;
- (j) Stress the need for ongoing evidence-based research to evaluate the effectiveness of measures implemented to reduce corruption in the judiciary;
- (k) Stress the need to regularly monitor, by means of independent researchers, the public and the judiciary's experiences of corruption and whether the anti-corruption measures that are being implemented are effective;
- (l) Debate the value of specialized courts to improve their effectiveness (e.g. commercial crimes tribunals, sexual offences courts, etc.) and the value of outsourcing prosecutors (by using private-sector lawyers) if the judiciary lacks the experience or staff to handle complicated cases;
- (m) Debate the issue of sentencing guidelines for certain offences as a means of combating corruption;
- (n) Discuss the importance of signing and ratifying the United Nations and AU Anti-Corruption Conventions;
- (o) Discuss the need to focus on morale and job satisfaction, job descriptions, regular assessment of performance of the judiciary by means of peer review or special committees;
- (p) Discuss the need for the establishment of integrity committees to monitor the operations and functioning of the judiciary; and
- (q) Indicate the role of the judiciary in the national and regional development plan.

VIII. PROPOSED ACTION PLAN

52. Based on the contents of the paper and in order for it to become an effective tool in combating corruption, the expert group meeting developed the following action plan. The experts agreed that this action plan should become an integral part of the final paper.

ACTION PLAN

a) PUBLIC EDUCATION AND COMMUNICATION

Challenge	Contributing factors	Recommended action	Responsible Sector	Timeframe	Measuring technique
Improve public perceptions of the judiciary	Lack of information on their rights; lack of access to information on the judiciary	Public seminars, multi-media approach (radio, TV, newspapers, magazines; part of school curriculum)	Government Civil Society.	long term	Ongoing evidence-based research among 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; provide effective witness and whistleblower protection programmes	Government Civil Society	long term	Ongoing evidence-based research among public
Lack of confidence in the judiciary	Lack of openness by government on how to report corruption and outcome of cases	Establish independent body (integrity committees) to deal with reported cases of corruption; publish outcome of cases widely; publish annual reports (also on the internet) on the outcome of reported cases	Judiciary.	long term.	Annually published reports which should be made public

b) IMPROVING THE JUSTICE SYSTEM

Challenge	Contributing factors	Recommended action	Responsible Sector	Timeframe	Measuring technique
Inadequate ethical guidelines/codes of Ethics for all sectors of the judiciary	Lack of awareness among all sectors of judiciary of accepted good practices	Draft appropriate ethical guidelines/codes of conduct for relevant sectors and display widely in courts	Law,. Social Civil Society	short term Govt.	Regular surveys among all sectors of judiciary and public
Improve court management to prevent delays/postponements of cases.	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; determine measures to deal effectively with these problems; appoint 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 an awareness of the values of restorative justice processes for victims and offenders	Law schools Government	long term	Regular surveys to establish victim/offenders 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 perpetrators transgressors to be made public
Greater focus on	Lack of awareness	Draft a Victims' Charter	Government	long term	Monitor

victim rights and needs	among judiciary and public about victim rights and needs	standards and norms; advertise and display widely; print brochures	Civil Society		implementation of norms and standards; regular public surveys
Poor judicial involvement in the 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 surveys and workshops targeting the judiciary on major African development challenges
Provide information to court users	Lack of professional work ethics; lack of training	Establish court information desks to inform victims/witnesses case progress, delays; training courses for court personnel	Government	long term	Monitor by means of court 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.
Inadequate funding	Dependence on the Ministry of Justice	Provide adequate grants/funding to ensure independence	Government	long term	Regular independent monitoring

*** There was not consensus among the experts about the relevance of this issue to be considered as part of the proposed plan of action.

IX. THE WAY FORWARD

53. The meeting requested ECA to have the paper submitted, after its revision, to another Ad Hoc Expert Group meeting or a workshop involving judiciary officials, prosecutors, magistrates and court officials to further review and improve upon the paper. Their comments, suggestions and recommendations should be included in the paper, before it is finalized and widely disseminated.

54. 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.

X. SPECIAL STATEMENT

55. An expert among the participants made a special statement to thank ECA in general and the Governance and Public Administration Division (GPAD) in particular for the invitation extended to them and to afford them the opportunity to share their views on the corruption issue, which was such an important issue for Africa's development.

XI. CLOSING OF THE MEETING

56. In his closing remarks, the officer-in-charge of GPAD, Mr. Guillermo Mangué, thanked the participants 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 with other stakeholders, including ECA. In addition, Mr. Mangué assured participants of the fact that all their comments and observations would be given due consideration in the final paper, which would be circulated to all of them.

57. Mr. Mangué also assured the experts that ECA would do its best to convene the follow-up meeting suggested, in the shortest time possible, so that the paper could be finalized and disseminated.

58. Finally, Mr. Mangué thanked ECA in general and GPAD staff in particular, for having organized and successfully concluded the meeting, which had allowed the participants to come to know each other and to exchange views on their respective areas of expertise regarding the role of the judiciary in combating corruption. On this note Mr. Mangué declared the Ad Hoc Expert Group Meeting on Deepening Judiciary's Effectiveness in Combating Corruption closed.

ANNEX I

Opening Statement by Mr. Guillermo Mangué, OIC, GPAD

Distinguished experts,
Dear colleagues,

On behalf of the Director of the Governance and Public Administration Division, Prof. Okey Onyejekwe, 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 Judiciary’s Effectiveness in Combating Corruption.” I thank you for taking time from your busy schedules and responsibilities to attend this meeting and thus share with us your invaluable expertise in this area.

As most of you know, the Economic Commission for Africa (ECA), as a regional UN body, conducts research on critical issues, advocates for sound policies, and assists member States in institutional capacity building. This meeting is for you to consider one of our research papers entitled “Deepening Judiciary’s Effectiveness in Combating Corruption.”

We have been prompted to undertake a research on this topic for three main reasons. First, after we concluded our first-ever research-based work on governance, the African Governance Report (AGR), 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 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.

Secondly, 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.

Finally, the study 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 2nd Ordinary Session of the Assembly of the Union in July 2003), as well as the NEPAD objectives. These instruments call on member States to strengthen their capacity in combating corruption, as one of the main obstacles to development and good governance.

Dear Participants,

The main objective of our meeting today and tomorrow is, therefore, to review and thoroughly discuss the draft paper before you, with a view of proposing practical modalities to enhance the role of the judiciary in combating corruption. I am firmly convinced that as a result of your deliberations you will be able to draw up specific policy recommendations, programmes 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 socio-economic development for the benefit of all.

As you will notice, the paper before you is just a thoughts-provoking document. It attempts 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.

I believe that each of us 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.

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

I thank you for your kind attention.

ANNEX II

Ad Hoc Experts Group Meeting on Deepening Judiciary's effectiveness in combating corruption

Addis Ababa, Ethiopia
14-15 December

PROGRAMME OF WORK

Day One: Thursday, 14 December 2006

09:00 - 09:15	Welcoming 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 on Country/Agency experiences

Day Two: Friday, 15 December 2006

09:00 - 11:30	Recommendations
11:30 - 11:45	Coffee/Tea Break
11:45 - 13:00	Recommendations (Continued)
13:00 - 14:30	Lunch
14:30 - 16:00	Action Plan and Way forward
16:00 - 16:30	Closure of the meeting

ANNEX III

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