

PRESS STATEMENT

EVENT: LAUNCH OF TI'S 2007 GLOBAL CORRUPTION REPORT (GCR 2007) AND A PREVIEW OF GII JUDICIAL CORRUPTION MONITORING EXERCISE IN GHANA WITH A SPECIAL FOCUS ON CORRUPTION IN JUDICIAL SYSTEMS

DATE: THURSDAY, 24TH MAY 2007, AT THE KAMA CONFERENCE CENTRE, LABONE.

TIME: 11.00AM PROMPT

ORGANISATION: GHANA INTEGRITY INITIATIVE (GII)

Ladies and Gentlemen of the Press, our Development Partners, and other stakeholders in the administration of justice! We have invited you this morning to share with you the contents of Transparency International's latest publication on corruption - the 2007 Global Corruption Report (or GCR 2007). We will also give you a sneak preview of a GII report that has monitored Judicial Corruption in Ghana..

PART ONE: TRANSPARENCY INTERNATIONAL (TI) GLOBAL CORRUPTION REPORT (GCR 2007) - CORRUPTION IN JUDICIAL SYSTEMS

Corruption is undermining judicial systems around the world, denying citizens access to justice and the basic human right to a fair and impartial trial, sometimes even to a trial at all. As aptly stated by Huguette Labelle, Chair of Transparency International, "*Equal treatment before the law is a pillar of democratic societies. When courts are corrupted by greed or political expediency, the scales of justice are tipped, and ordinary people suffer. "Judicial corruption means the voice of the innocent goes unheard, while the guilty act with impunity."*

It is therefore highly opportune that *Corruption in Judicial Systems* is the topic of the *Global Corruption Report 2007* issued today by Transparency International, the global coalition against corruption.

The GCR published annually is an overview of the state of corruption around the world. GCR (2007) publication brings together scholars, judges and civil society activists from around the world to examine how, why and where corruption mars judicial processes, and to reflect on reforms and activism that help remedy a corruption-tainted system. The GCR 2007 contains scholarly articles and reviews by TI national chapters of judicial corruption in 32 countries and empirical research on corruption related topics.

Corruption is defined by Transparency International as the misuse of entrusted power for private gain. In the context of the judiciary, corruption relates to acts or omissions that constitute the use of public authority for the private benefit of court personnel, and results in the improper and unfair delivery of judicial decisions. Such acts and omissions include bribery, extortion, intimidation, influence peddling and the abuse of court procedures for personal gain

THE BROADER JUSTICE SYSTEM

This year's GCR focuses on the broader justice system because Judges and courts are part of a complex web of interdependent institutions, including the police and prosecution, which make up the

justice system. Judicial corruption is not confined to the inside of court. Corrupt lawyers, prosecutors, police and bailiffs are all in a position to distort the course of justice. Police and prosecutors' offices, which are often branches of the executive, can be vulnerable to government or business pressure in prosecuting criminal cases. They may collude by tampering with evidence, distorting the facts in a case, losing files, deliberately ignoring credible lines of inquiry or in the worst case, extracting confessions under torture.

WHY IS THE JUDICIARY SO PRONE TO CORRUPTION?

Certain characteristics make Judiciary systems – whether public or privately funded, and whether located in rich or poor countries – vulnerable to corruption:

1. An imbalance of information prevails in judicial systems: Judicial Officials have more information about court proceedings, the constitution and other laws of our land more than citizens. Most citizens are ignorant of their rights and duties. The relationships between the Judiciary and the public are often opaque.
2. The complexity of Judiciary systems, particularly the large number of parties involved, exacerbates the difficulties of generating and analyzing information, promoting transparency, and detecting and preventing corruption
3. The appeals process, ostensibly an important avenue for redress in cases of faulty verdicts, presents opportunities for judicial corruption. When dominant political forces control appointment of senior judges, the concept of appealing to a less partial authority may be nothing more than a mirage. Even when appointments are appropriate, the effectiveness of the appeals process is dented if the screening of requests for hearings is not transparent.
4. Lack of proper mechanisms to check corruption
5. Undue influence by the Executive and Legislature branches
6. Social tolerance of corruption
7. Fear of retribution
8. Low judicial and court staff salaries
9. Poor training and lack of rewards for ethical behaviour
10. Collusion among judges

THE TYPES OF CORRUPTION IN THE JUDICIARY SYSTEM

Corruption in the judicial system can occur in many forms and under several guises:

- Political interference in the judicial process by the legislative or executive branch, and
- Bribery.
- Interference from politicians or civil servants to buy “legal” cover for embezzlement, nepotism, cronyism and illegal political decisions.

- Inappropriate influence on the impartiality of judicial proceedings and judgements and can extend to the bribing of judges for favourable decisions, or no decision at all.
- The misuse of judicial funds and power, such as when a judge hires family members to staff the court or manipulates contracts for court construction and equipment.
- Biased case allocation and in other pre-trial procedures, such as when bribed court clerks "lose" files and evidence. It can influence any trial or court settlement, and the enforcement - or not - of court decisions and sentences.
 - Embezzlement
 - Corruption in procurement
 - Breaches of the code of ethics of the judiciary in any manner that compromises standards in the application and enforcement of the law.

EFFECTS OF JUDICIAL CORRUPTION (GCR 2007)

Judicial corruption erodes the foundations of society.

- It undermines justice around the world, denying victims and the accused the basic human right to a fair and impartial trial, sometimes even to no trial at all.
- It allows criminals to go unpunished, destroying effective governance and democratic participation.
- It diminishes trade and economic growth.

Ordinary people suffer from judicial corruption.

- It is often the poor who lose when justice is denied. ‘Why hire a lawyer if you can buy a judge?’ is a common saying in Kenya. Petty bribery and political influence in the judiciary erode social cohesion: one system for the rich and another for the poor fractures communities. *“If money and influence are the basis of justice, the poor cannot compete,” said Akere Muna, TI’s Vice Chair and president of the Pan African Lawyers’ Union. “Bribery not only makes justice unaffordable; it ruins the capacity of the justice system to fight against corruption and to serve as a beacon of independence and accountability.”*
- Justice delayed is justice denied: demanding bribes for a speedy trial erodes the rule of law and undermines confidence in the justice system.
- By making justice unequal, corruption lets discrimination go unpunished or even reinforces it.
- It erodes the ability of the international community to tackle transnational crime and terrorism
- It diminishes trade, economic development, and most importantly, it denies citizens impartial settlement of disputes with neighbours or the authorities. When this occurs it fractures and divides communities by keeping alive the sense of injury created by unjust treatment and mediation.
- Judicial systems debased by bribery undermine confidence in governance by facilitating corruption across all sectors of government, starting at the helm of power. This sent a message that corruption is tolerated in this country.
- And for judges who refuse to be compromised, political retaliation can be swift and harsh. Unfair or ineffective procedures to discipline and remove corrupt judges can end up being used instead for the removal of independent judges. In Algeria, judges considered too independent are transferred to remote locations. Failure to appoint judicial officials on merit can lead to the selection of a pliant, corruptible judiciary. “Problematic” judges can be reassigned or have sensitive cases transferred to more pliable judges, a tactic used by former Peruvian president Alberto Fujimori.

CONCLUSIONS AND RECOMMENDATIONS

Transparency International offers detailed recommendations to strengthen judicial independence and fight judicial corruption, including:

Judicial appointments

1. An independent **judicial appointments body** should be at the heart of the judicial selection process. An objective and transparent appointments of judges ensures that only the highest quality candidates are selected, and that they do not feel indebted to the particular politician or senior judge who appointed them.
2. **Judicial appointments** should be merit-based, with clear and well publicised election criteria; candidates should be required to demonstrate a record of competence and integrity.
3. **Civil society**, including professional associations linked to judicial activities, should be consulted on the merits of candidates.

Terms and conditions

1. **Judicial salaries** should reflect experience, performance and professional development; fair pensions should be provided on retirement.
2. **Protections** to safeguard salaries and working conditions against interference by the executive and legislature branches should be established.
3. **Judicial transfers** should be based on objective criteria to protect independent and impartial judges.

Accountability and discipline

1. Judges should receive **limited immunity** for actions relating to judicial duties.
2. **Allegations against judges** should be rigorously investigated, including by an independent body.
3. The **removal process** should be transparent and fair, with strict and exacting standards; if there is a finding of corruption, a judge should be liable to prosecution.

Transparency

1. The judiciary should provide the public with **reliable information** about activities and spending.
2. **Access to information** on laws, proposed changes in legislation, court procedures, judgments, judicial vacancies and appointments is needed.
3. **Transparent prosecution**: The prosecution must conduct **judicial proceedings** in public and publish reasons for decisions.
4. **Judicial asset disclosure**: Judges should make periodic asset disclosures, especially where other public officials are required to do so.
5. **Judicial conflicts of interest disclosure**: Judges must declare conflicts of interest as soon as they become apparent and disqualify themselves when they are (or might appear to be) biased or prejudiced towards a party to a case; when they have previously served as lawyers or material witnesses in the case or if they have economic interest in the outcome.
6. **Quality of commentary**: Journalists and editors should be better trained in reporting what happens in courts and in presenting legal issues to the general public in an understandable form. Academics should be encouraged to comment on court judgments in legal journals if not the media.

7. **Donor integrity and transparency:** Judicial reform programmes should address the problem of judicial corruption. Donors should share knowledge of diagnostics, evaluation of court processes and efficiency; and engage openly with partner countries.
8. **Civil society engagement, research, monitoring and reporting:** civil society organizations can contribute to understanding the issues related to judicial corruption by monitoring the incidence of corruption, as well as potential indicators of corruption, such as delays and the quality of decisions.

PART TWO: OVERVIEW OF RESEARCH FINDINGS ON AFRICA (GCR 2007) - AFRICA

Judiciary is perceived to be Corrupt:

Africans have bleak perceptions of judicial corruption. A majority of people in seven of the eight African countries polled perceive the legal system/judiciary to be corrupt, according to TI's *Global Corruption Barometer*. South Africa was the exception.

The Africa region has a specific set of issues when dealing with judicial corruption including: political influence and direct interference in judicial process by threats, bribery and intimidation of judges as well as manipulation of judicial appointments, salaries and conditions of service; and social tolerance of corruption in many African countries where some view it as an acceptable way of doing business

Reality supports this Perception

- One in five people who had interacted with the judicial system paid a bribe.

Persistent problems in the region

- Political influence in the judicial process
- Political influence over the selection of judges in sub-Saharan Africa is especially serious (e.g. **Niger, Nigeria, Zambia, Zimbabwe**).
- **Zimbabwe**: The government allocated farms expropriated under the fast-track land reform programme to judges at all levels, from lower court magistrates to the Chief Justice, to ensure that court decisions favour political interests.
- **Algeria**: The judicial disciplinary body is not transparent and is often influenced by the executive.
- **Egypt**: The failure of the public prosecutor to address corruption and abuses by government employees has gained the office notoriety as a defender of the regime, in contrast with its constitutional mandate as the 'people's defender'.
- **Morocco**: The Minister of Justice heads the prosecuting authorities, which follow his instruction on when to commence proceedings, and he exercises extensive power through the judicial service commission. This limits the independence of the judicial system in the fight against corruption.

Lack of resources provides room for corruption, often denying access to justice for the poor.

- **Niger**: The country has fewer than 200 judges and law officers for a population of 11 million. The excessive workload of the lower courts slows down proceedings, allowing corruption and influence peddling to flourish.
- **South Africa**: Few courts are computerised and many transactions are not properly recorded, providing room for corruption. An audit of magistrate offices has uncovered significant misappropriation of funds with regard to maintenance, bail money, estates and deposits.
- **Zambia**: Lack of training and shortage of magistrates mean that poorly trained individuals are applying complex laws to difficult facts and must rely on the competence of lawyers, who may not be impartial, to guide them.

Social tolerance contributes to corruption.

- **Kenya:** The saying ‘why hire a lawyer, if you can buy a judge’ is common. Surveys and polls have mapped a widespread loss of public trust in the justice system.
- **Lesotho:** Until the Highlands Water Project, corporations doing business in the country had little expectation of being prosecuted for corruption. In that trial, evidence against Acres, the first corporate defendant, pointed to an established pattern of corruption by major corporations, suggesting that this is an acceptable way to do business in a poor African country.

Ongoing but limited Judicial Reforms

- **Nigeria:** Various judicial reforms in Lagos State have had some success, including a drastic reduction of delays in the trial process. Corruption is considered pervasive in Nigeria, and although the Lagos State has made significant efforts to tackle judicial corruption, many other Nigerian judiciaries have yet to implement anti-corruption initiatives.
- **Ghana:** Several reform initiatives have been introduced, such as computerization of the courts to reduce delays and judicial council review of the service conditions of judges.
- **Kenya:** Some argue that the policy of ‘radical surgery’, which saw the removal of the chief justice and suspension of 23 judges and 82 magistrates on grounds of corruption, has had a negative impact on the judiciary by violating safeguards on the security of tenure. Allegations of corruption and impropriety against judges were investigated under this policy, but the subsequent removal of judges was not considered constitutionally just and proper.

Other Forces of Change

- **Political reform:** In **Egypt**, the call for a more representative democracy and improved judicial independence came from the judges themselves. The Judges’ Club, concerned that its role as the electoral supervisory body would force it to legitimise rigged polls, demanded greater independence from the executive and permission to supervise all stages of the election process.
- **Civil society:** In **Zambia**, rural NGOs are working with the judiciary and development agencies to train local court personnel in law, procedure and social issues to equip them with the skills to handle cases and reduce corruption.

PART THREE: RESEARCH FINDINGS ON GHANA IN GCR 2007

The GCR 2007 has findings from survey research conducted in Ghana which deserves special mention:

Public perceptions of corruption:

Surveys show that the public widely perceives corruption to exist within the judicial system. A 2004 governance profile by the World Bank found the majority of respondents (40 percent) believed the judiciary to be ‘somewhat’ corrupt, followed by 39 percent who believed it to be ‘largely or completely’ corrupt. This compared to 80.2 percent who believed the legislature to be ‘above or largely free from’ corruption and 66.2 percent who said the same of the Executive.

In 2005 Afrobarometer carried out a survey of perceptions of the performance of public institutions in Ghana, found that the courts were one of the least trusted institutions, second only to the police, with only a marginal increase in trust between 2002 and 2005. It is important to note that the above survey did not differentiate between ‘administrative corruption,’ where judicial support staff take a small sum for typing out a judgment quickly or carrying the file to the next desk, and ‘operational corruption’ where a judge’s decision is influenced as a result of external incentives and pressures.

Court users are more likely to experience ‘administrative corruption’ when they interact with staff who are managing their files or processing applications. Interaction with judges is usually through a lawyer and evidence of ‘operational corruption’ is harder to find.

However, the survey findings also include some laudable initiatives implemented by the Judiciary in Ghana. In 2000 several initiatives were launched to enhance efficiency and speed up court processes. In 2005, the Reform and Project Management and Implementation Division of the Judicial Service was set up to oversee all reform projects. The Judicial Council carried out a review of the service conditions of judges which led to a request for C50 billion (US \$ 5.6 million) be allocated to the project in the next budget. Other measures to improve its efficiency are the introduction of ‘fast track courts’ that aim to resolve cases within three months of initiating proceedings and provide access to documents and transcripts within 24 hours of a hearing, a comprehensive code of ethics for judges and judicial officers launched in January 2005, the introduction of electronic processes in some courts, the establishment of a commercial court in March 2005 among others.

Nonetheless, questions remain as to whether these reforms have succeeded in reducing corruption in the judiciary.

It is noteworthy that there have been no successful prosecutions of judicial officials for corrupt practices to date, even though documented allegations of judicial corruption abound. The case against Judges Boateng and Owusu has been marred by delays, adjournments, the prosecutor’s poor health and the construction of new court buildings. It will be a land-mark in the fight against corruption and demonstrate a political will to deal with corruption if verdicts of such cases emerge.

GII’s RECOMMENDATIONS

GII joins the TI movement worldwide to urge governments especially in low-income countries, such as Ghana, to increase their political will and expand efforts to fight corruption in order to reap the fruits of democracy and development.

We specifically call on our government to expedite action on the passage of a credible freedom of information Act to facilitate public access to information about the activities of government, the

judiciary and other sectors to enhance accountability and transparency and increase trust in government and the judiciary

We further recommend the following:

- i Review and strengthening of the public office holder asset declaration regime, and
- ii Speedy elaboration and adoption of the conflict of interest prevention regulations developed by CHRAJ in collaboration with the Ghana Anti-Corruption Coalition (GACC).

The new *Global Corruption Report* concludes that a corrupt judiciary erodes the international community's ability to prosecute transnational crime and inhibits access to justice and redress for human rights violations. It undermines economic growth by damaging the trust of the investment community, and impedes efforts to reduce poverty. We believe that the recommendations contained in the GCR 2007 are relevant and applicable to Ghana as well as other developing economies.

THE GII JUDICIARY WATCH PROJECT (JWP)

Independent of the 2007 GCR, but highly complimentary to it, GII, the Ghana Chapter of TI has conducted a study of corruption in Ghana's judiciary under its Judiciary Watch Program. The report, which is in the final stages of completion, seems to corroborate many of the findings of the 2007 GCR. The final report of the GII Judiciary Watch Report will be released in a few weeks.

For further information and references on the GCR 2007, contact Gilbert Sam, Gifty Ofori and Sandra Gakson on the following numbers: 0244-208209, and (021) 782364/5. You may also visit GCR website www.globalcorruptionreport.org or the GII website www.tighana.org