

Catechism for Dismantling and Eradicating the Scourge of Corruption Embedded in the Judiciary Systems of Sub-Saharan Africa's Nation States

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Introduction

Judicial corruption is the “queen mother” and the most sordid of all corrupt behavior inflicted on the good people of Africa. The tentacles of corruption in the judiciary branch of most countries in Sub-Saharan Africa run far, wide, and deep. African judges must no longer ignore their constitutional obligations to the populace they serve, which often comes with perilous consequences. The citizenry of Sub-Saharan Africa's nation states are entitled to and deserve at a minimum, the same internationally recognized standards of honor, decency and reliability in their dealings with their judiciaries.

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

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Africa is widely considered amongst the world's most corrupt places, a factor contributing to the stunted development and economic impoverishment of many African nations. Of the ten countries considered to be the most corrupt in the world, six are in sub-Saharan Africa, according to Transparency International (TI), a leading global watchdog on corruption. A 2002 African Union study estimated that corruption costs the continent roughly \$150 billion a year. The United States has attempted to discourage corruption in Africa via aid tied to performance predicated on a series of governance indicators through a program administered by the Millennium Challenge Corporation (MCC).

A competent and incorruptible judiciary with fidelity to the vision of equal justice for all is the bedrock on which democracy and democratic practice are anchored. Corruption is pernicious by its very nature so that dishonorable conduct in their judiciary undermine and sap the confidence of the African people in the judiciary, which in turn, steers this most important bastion of democracy into a tailspin of self-destruction. Stated another way, the most important destructive force that can infect a state and militate against respect for the rule of law is judicial corruption. It is clearly a cancer in Africa's nation-states that desecrates the principle of the rule of law and systematically destroys the fabric of decent society and good governance.

The Scourge of Judicial Corruption in Sub-Saharan African Countries

Some corruption is found in the judiciaries of all countries—rich and poor, democratic and authoritarian, as well as in all types of legal systems, whether state-based or non-state based, formal or informal, applying civil law, common law, religious law, or customary law.²

The fact that corruption is a very “serious problem,” in forty of Sub-Saharan Africa's 46 nation states was confirmed recently by TI, which also lamented that there has been no improvement in powerhouses, Nigeria and South Africa.³ TI scapegoated Ghana, which has been rocked in recent times by an undercover sting operation initiated by a journalist (reminiscent of “Operation Greylord,” conducted in Chicago, Illinois, USA), that filmed judges taking bribes. Twelve Ghanaian high court judges and 22 lower court justices were filmed accepting money, and in one case, a goat – for Christ's sake!⁴

² Transparency International, *Global Corruption Report 2007*, pp. 129-137.

³ “No Progress on African corruption’ says watchdog,” *BBC News*, January 26, 2016.

⁴ “Ghana's top undercover journalist masters disguise to expose corruption,” Monica Mark, West Africa correspondent, *The Guardian*, September 24, 2015.

The story alleges that the 34 judges accepted bribes and extorted money from litigants to influence their decision. After 20 months of investigation, 20 of the judges were found guilty of bribery and were unceremoniously sacked. This is particularly perturbing because Ghana is reputed to be one of the continent's best democracies and fastest-growing economies, ranks 61 out of 175 countries on TI's corruption index, and was graced with the reward of a state visit by U.S. President Barack Obama during the first term of his presidency.

Kenya was also recently afflicted with a similar fate of highly publicized judicial misconduct. On February 26, 2016, the Associated Press, reported that the head of Kenya's Judiciary, following an internal probe, determined that a Supreme Court judge should be investigated formally over allegations that he received a 2 million shilling bribe to influence an election petition. The accused, Justice Phillip Tunoi, was alleged to have received a bribe to make a judgement favoring Nairobi Governor, Evans Kidero, whose March 2013 election was being challenged by his closest rival. The allegations is anticipated to test the credibility of Kenya's Supreme Court, which was constituted in 2010 when the country adopted a new constitution.⁵

Kenya is known to suffer frequent cases of lost or misplaced case files in the court system which impacts negatively on the administration of justice in the country. Poor record keeping practices at the Kenyan courts have also contributed to corruption in the judiciary. This characterization of the Kenyan courts sadly applies to other jurisdictions in Sub-Saharan Africa.⁶

When he assumed office in 2003, Chief Justice J.E. Gicheru of Kenya found that corruption in the judiciary had reached pandemic proportions. The maxim "why pay a lawyer when you can buy a judge" has achieved notoriety, and the majority of Kenyan judges had become "the best judges that money can buy." The Uganda Law Society found that prisoners' files were often "misplaced" when they were taken before magistrates in attempts to extract bribes from prisoners.⁷

One respected judge on the Appeals Court of Tanzania relayed an incident in which a High Court judge asked for a million shillings in return for a favorable decision. He

⁵ "Kenyan Judge to be Investigated over Bribery," *Associated Press*, February 5, 2016.

⁶ "Africa's 'Lions on the Move,'" Swithin J Munyantwali, *IBA Global Insight*, February/March 2016.

⁷ U.N. Econ. Commission for Africa, Governance & Public Admin. Div. *Deepening the Judiciary's Effectiveness in Combating Corruption*, Addis Ababa (Dec. 14-15, 2006), at 10.

added, "Clerks and support staff who operate their own rackets would go out and say: 'If you want the favor of a judge, you must offer a figure commensurate to his stature.'"⁸ These anecdotal accounts provide just a glimpse of the scourge of corruption that has spread across the judicial systems of the Sub-Saharan African region.

In May 2015, President Obiang Nguema Mbasogo of Equatorial Guinea issued Decree 36/2015, which summarily dissolved the entire judiciary "in the interest of providing a better service and in accordance with the presidential power under Art 41(h) of the Fundamental."⁹ The cries of the international community calling the move, "clearly disproportionate," has thus far fallen on deaf ears. Even South Africa's judicial system, reputed to be one of the closest to international standards on the African continent, has also come into disrepute in recent years. Half of survey respondents in the Global Corruption Barometer 2013, considered the South African judiciary to be corrupt or very corrupt.

It is obvious that the rain of justice sector corruption pouring down on Africa today must be stopped by any means necessary and requires all hands on deck. African nations and their external partners and stakeholders must put forth a mammoth effort to interrogate this important continental issue. To be a judge, or in some cases judge and jury, over your fellow man is to be placed in the stead of God over mankind. For this reason alone, for any member of the Judiciary to venture to indulge in bribery and other corrupt practices, is to abuse this trust in the most atrocious manner.

It bears mentioning that when judicial corruption reared its ugly head in the city of Chicago, Illinois, it was quickly and decisively decapitated by "Operation Greylord." The operation is important in the annals of public corruption investigations in the United States.¹⁰ Disgusted with the corruption that permeated the Cook County court system, a local lawyer, Terrence Hake, became the FBI's mole in its unprecedented undercover investigation of judicial corruption utilizing listening devices. At the conclusion of the investigations, nearly 100 people had been indicted, and all but a handful were convicted. Of the 17 judges indicted, 15 were convicted. The tally of convictions included 50 lawyers, as well as court clerks, police officers and sheriff's deputies. If the United States of America can overcome judicial corruption, so can Africa.

⁸ *Id.*

⁹ "Dissolution of Equatorial Guinea's judiciary 'clearly disproportionate,'" *IBA Global Insight*, August/September 2015 Human Rights News.

¹⁰ "Investigations of Public Corruption, Rooting Crookedness out of Government," *FBI News*, March 15, 2004.

As former U.S. President Teddy Roosevelt once observed, “Unless a man is honest we have no right to keep him in public life, it matters not how brilliant his capacity, it hardly matters how great his power of doing good service on certain lines may be...No man who is corrupt, no man who condones corruption in others, can possibly do his duty by the community.”

The above said, there is still much hope that judicial corruption can be substantially reduced in Sub-Saharan Africa. Africa must not throw in the towel for it is said that “man must struggle for to resign one’s self to faith is to be crippled fast.” Therefore, deployment of remedial measures should not be viewed as a futile exercise of attempting to install or insert square pegs into round holes.

A Checklist of best practices for effectively reducing corruption in the judiciary of Sub-Saharan African nations

- **Building up the socio-economic status of judges and judicial personnel.** This is by far the most important justice sector corruption reduction factor. The theme echoed in this factor is that judiciary careers are poorly regarded in many African countries, which is reflected most poignantly by the associated low salaries and poor working conditions. This makes it difficult for judges to maintain a sense of professional dignity, and the general perception is that judges who do not respect themselves as professionals are less likely to resist the temptations of corruption. Respectable remuneration is a necessary element to reducing petty corruption among judges because unless they are able to meet the basic needs of their families, they are vulnerable. Significantly increasing salaries when they were previously extremely low is the fastest way to improve the status of the judiciary, increase the self-respect of judges, render them much less vulnerable to corruption, and attract the best and brightest to the noble endeavor.
- **Care should be taken to ensure decent tenure for judicial personnel.** The duration of a judicial appointment at each level of a court system which protects judges against arbitrary dismissal, salary reduction, etc. is also essential to the success of anti-corruption efforts in the judiciary.
- **Closely related to the above is, improving working conditions for judiciary personnel.** In order to raise public expectations of professionalism for the judiciary and attract qualified persons to the judiciary, working conditions for judicial personnel must be superior to all and inferior to none. This will quell most of the vulnerability or susceptibility towards corrupt practices

- **Establishing and strengthening independent judiciaries.** Enhancing the power of the judicial branch vis-à-vis the other branches of government is also crucial to improving professional self-image and strengthening independent judicial bodies such as constitutional courts, supreme courts, and judicial councils.
- **Upgrading or reengineering judicial career pathways.** Improvements in the selection system of judges such as utilizing merit-based criteria in the promotion systems, setting of salaries and benefits, etc. is also important. This will reduce political interference and reduce financial temptation.
- **Strengthening judicial administration and self-governance.** The objective in this regard is to make the judicial branch more independent and to distinguish judges from civil servants in the rest of the government. It goes without saying that this will inevitably insulate the judiciary from political pressure exerted through the budget process by the legislative and/or executive branch of government.
- **Building up the capacity of independent judicial and legal associations.** Building competent judicial associations strengthens the independence of the judiciary as a whole and espouses the importance of an independent judiciary. The ability of private lawyers to practice freely and courageously is also important in the context of the emerging democracies of Sub-Saharan Africa where former authoritarian military regimes repressed lawyers and other civil society organizations to deter their ability to use the legal system to prevent abuses of state.
- **Encouraging judicial professional development and access to the laws.** Judges must be afforded access to ongoing training opportunities and other programs aimed at strengthening judicial education through establishing or improving training institutions and continuing legal education programs. Study or training tours to Western Europe and the United States is deemed to be very attractive to African judges.
- **Stimulating the citizenry to support unfettered judicial independence is also an asset in reducing judicial corruption.** Citizen awareness and oversight are critical factors. African nations must institute effective judicial watch programs, public awareness programs, advocacy initiatives, and judicial outreach and education of the populace which bolsters the independence and effectiveness of the judiciary.
- **Closely related to the above is close scrutiny of the judiciary by civil society, academics and the media.** The external monitoring of courts is helpful in enhancing the impartiality, independence, and effectiveness of the judiciary, especially when transparent procedures are deployed within the judicial system. Information about the financing and operation of the judicial system must be readily available to the public, including informative periodic reports to the public by the

judiciary. Proactive efforts must be made by civic leaders to encourage broad awareness of the costs of judicial corruption, as well as the benefits of judicial integrity. The public should also have an avenue to express their views about their experiences within the justice system, such as the media and use of surveys.

- **Improving the system's component targeting efficient administration of justice.** Programs to improve transparent and efficient administration utilizing automation for purposes of improvements in case tracking and management always reduces the incidence of corruption through transparency. Cases assigned to judges through an impartial system that protects against "judge shopping" is paramount, as they protect the integrity of the system. This usually reduces the problems of inadequate record keeping and poor procedures that promote a lack of accountability, corruption, and partiality in the legal system.
- **Improving the investigative capacity of law enforcement such as prosecutors and the police.** Since criminal laws are investigated and prosecuted by the police and prosecutors, respectively, improving their investigative capacities helps in discouraging corruption in the judiciary as it renders indulging in corruption much more dangerous and likely to be uncovered through effective investigative processes.
- **Mandating disclosure of judges' assets, income, benefits, and membership in associations.** This is generally deemed to be an effective means for discouraging corruption. When the applicable laws require that judges disclose assets and liabilities when initially appointed and annually thereafter, it results in the glass-house syndrome and makes it easier to detect unexpected acquisitions of wealth by judiciary personnel.
- **Regular sector-wide anti-corruption awareness and training is helpful.** The legal profession led by the bar associations, law societies, law schools, and private law firms should engage more in the process to inform and train its own professionals for the benefit of society as a whole and is certainly one of the key elements of successfully reducing corruption in the judiciary.
- **Mandating that all law schools in Sub-Saharan Africa develop strong ethics/anti-corruption curriculums.** Law schools and law programs should mandate anti-corruption courses for every year of law school in increasing complexity. Post-law school licensure examinations must also include strong ethics and anti-corruption content.
- **Judicial ethics and institutional integrity must be constantly emphasized.** There must be clear and strong ethical codes for judges, court personnel, and the larger members of the legal profession. The measures in place must foster compliance

with ethical codes, and when possible ethics counselors and mentors should be made available to judges and court personnel to guide members faced with ethical questions in the proper direction.

- **There must also be an impartial, effective and easily accessible procedure for filing complaints against unethical behavior and for timely-investigation and adjudication of complaints, as well as appropriate disciplinary action being imposed impartially where violations are uncovered.** Safeguards should also be in place to protect due process in disciplinary proceedings.
- **Investigations and punishment of corrupt practices must be even-handed in order to build credibility and respect for the system.** The capacity to investigate, prosecute, and resolve allegations of corruption fairly must be fundamentally fair, and the judiciary must have an oversight rule in the disciplinary system itself.
- **Sanctions for judges, court officials, and lawyers found to have indulged in corrupt activities must always include forfeiture of all illicit gains.** A strong discouragement to indulge in corruption should always include prison terms and disqualification from ever serving in public office. When fair outcomes are reached in both criminal and civil court proceedings in cases of judicial corruption, the punishment and civil penalties must be enforced including disgorgement of the ill-gotten gains.
- **Adopting a process of financing the judiciary that does not leave the sector vulnerable to executive influences.** The budget for the judiciary must always be protected against arbitrary reduction by the executive and legislative branches of government. The budget should always provide abundantly for reasonable compensation for judges, core personnel, operation and maintenance of the courts, investment in equipment, facilities, technology and education. And the judiciary should have enormous say in setting and managing its own judicial budget but with reasonable oversight.
- **The creation of anti-corruption agencies have also proven effective in the fight against judicial corruption.** Special anti-corruption prosecutors and police with special prosecutorial powers manned by professional and well-trained personnel, who are imbued with integrity and are themselves supremely incorruptible should be deployed. *For example, under Nuhu Ribadu, Nigeria's Economic and Financial Crimes Commission recovered \$5 billion in stolen public funds and secured 250 convictions.* He was incorruptible and was provided adequate resources by then Nigerian President, Olusegun Obasanjo. He was also afforded political protection from rich and influential targets of his investigations.

- **The use of aggressive investigative techniques such as authorized wire taps, undercover informants, and well-orchestrated sting operations to track down those who compromise the judicial system is essential.** When the members of the judiciary know of the use of these aggressive techniques, they are less likely to indulge in corruption as frequently, as they never know who is listening in and who is sitting in front of them seeking to have them compromise their integrity.
- **Care must be taken to provide procedures to guard against misuse of anti-corruption policies and improper or politically motivated investigations of innocent judges.** It is important to be vigilant with respect to protecting judges who dispose of their duties without fear or favor, as sometimes such ethical judges become a target for refusing to partake in corruption.
- **It is also important to place adequate emphasis on prevention by identifying all court procedures that invite or attract corruption and modifying them expeditiously.** It is said that an ounce of prevention is better than a pound of cure, no matter the context.
- **Encouragement of whistle-blowers and protection of them under the law to encourage reporting bad behavior by judges.** This factor may require the amendment of existing anti-corruption laws to enable judges presiding over corruption matters to admit into evidence recorded conversations between the bribe taker and the bribe giver, or statements of witnesses as evidence, without having to compel the reporting citizen or whistle-blower to appear in court in order to protect their identity.
- **Non-criminal misconduct should also be clearly understood and discouraged.** This includes improper influences apart from criminal acts that distort judicial outcomes.
- **Laws to criminalize ex-parte communication between judges and litigants in the course of judicial proceedings must be created and utilized where they do not already exist.** This point is not always taken to heart and considered very serious in some African nations, as it is in the United States and other Western nations. Because of the unique cultures of African nation states, litigants always strive to quickly identify and find close relatives such as a spouse, or close friends of judges, and attempt to utilize that avenue to influence a decision, or decisions in their favor by offering gifts, including money and sometimes farm animals (cow, goat, white chicken, pig etc.)
- **Judgments must be supported by well-written and publicly available opinions, either printed or online.** Making judicial opinions publicly available will afford

the general public, the media and other stakeholders interested in fair and even-handed application of the laws to be supportive or critical based on the soundness as well as fairness of the legal reasoning of decisions.

- **Established committees on ethics code to provide opinions on questionable conduct is helpful.** The committee will serve as an advisory board and be able to issue advisory opinions to judges and other court personnel who are unsure about the appropriateness of certain proposed actions or conduct.
- **Finally, some proponents have espoused using the pulpit to condemn corruption and social vices in the continent of Africa, especially because many African nations are religious or have strong religious consciousness or dispositions in their body politic.** In this regard, the religious denomination (Hindu, Christian, Muslim, native, Buddhist, etc.) does not really make much of a difference, as long as the holy occupier of the pulpit is preaching an anti-corruption message. In fact, there is now a trend in Nigeria amongst some evangelical churches to preach anti-corruption regularly, believing that the younger generation could and should be salvaged from the entrenched corrupt behavior of the older generation, and that this may be the only light at the end of Africa's corruption tunnel.

General Lessons Learned about Effectively Reducing Judicial Corruption in the Developing World which are Applicable in Sub-Saharan Africa.

A number of international development organizations have reviewed their developing world experiences, especially in Latin America and Eastern Europe, and have published reports that reach highly consistent conclusions and contain helpful recommendations for reducing corruption in the judiciary.¹¹ In general, these reports reflect the following as common features of successful efforts to ameliorate judicial corruption:

¹¹ See e.g., Anderson, James H., and Cheryl W. Gray, *Anticorruption in Transition 3: Who is Succeeding...and Why?*, World Bank, 2006, <http://siteresources.worldbank.org/INTECA/Resources/ACT3.pdf>; Sousa, Mariana, "A Brief Overview of Judicial Reform in Latin America: Objectives, Challenges, and Accomplishments," in Lara, Eduardo, *The State of State Reform in Latin America*, Inter-American Development Bank, 2007; Fischer, Eveline, "Lessons Learned from Judicial Reform: The ADB Experience," ADB Experience," ADB Press Release 6, October 20, 2006, <http://www.asialii.org/asia/other/ADBLPRes/2006/6.html>; Langseth, Petter, "Judicial Integrity and Its Capacity to Enhance the Public Interest," United Nations Office on Drugs

- Must consider and address the legal, political, social, economic and cultural context in which the judiciary operates;
- Must become very familiar with the local legal system, including its history, procedures, practices, institutions, and relationships that affect the administration of justice;
- Must weigh and consider the readiness of leaders to take risks of confronting corrupt interests, the strength of motivations and incentives for change of various stakeholders, and the capacity of local institutions to implement change;
- Give high priority to the independence of judges to decide cases on their merits, balanced by the need for judges to be accountable up to international standards of integrity, effectiveness, and management of public resources;
- Encourage a broadly inclusive, locally grown program that teaches adherence to high standards of judicial integrity through sound policies, competent institutions, and transparent procedures;
- Foster harmonized international support for locally owned programs, including enhanced incentives for sustained improvement in achieving measurable results;
- Deploy a coherent system of case management which eliminates backlogs, shortens waiting time, and diminishes vulnerability to mismanagement;
- Utilize performance standards for the judiciary and the judges, with time-based, volume-based and disposal-based indicators;
- Employ consistent and objective criteria in the administration of justice, including in assessing and implementing fines, fees and sentences;
- Provide clear ethical markers and guidelines for judges at every level of the judicial hierarchy;
- Instill a common admirable vision for the judiciary and leading by example by the Chief Justice to assure unity of vision and purpose;
- Adoption of full transparency in the justice process at all times, including in public hearings, documented decisions are open to public scrutiny, and right of appeal to the higher courts are deemed paramount; and
- Learn from lessons of forward-looking and thinking institutions through strategic partnerships with progressive judiciaries and law-related organizations.

We must also be mindful that efficient management of a judicial system requires a range of quantitative data about resources, inputs and outputs. For instance, it is useful to know

and Crime, October 2002, <http://www.unodc.org/pdf/crime/gpacpublications/cicp8.pdf>;
 Transparency International, *Global Corruption Report 2007: Corruption in Judicial Systems*, 2007, <http://www.transparency.org/publications/gcr.pdf>.

the ratio of judges to population, the volume of pending cases and current workload, and the volume of cases entering and leaving the system. Capital inflow tends to improve case clearance rates and higher clearance rates tend to be associated with a reduced incidence of judicial corruption.

Conclusion

The judicial systems of Sub-Saharan African nations can work toward overcoming the challenges of corruption and achieve high levels of integrity and public confidence. While the task is daunting, the rewards of success are great. As has been shown, adherence to high standards of judicial independence and impartiality, integrity, accountability, and transparency does diminish corruption.

World Justice Project ROL Index, Factor 12.3, counsels,

“The integrity of the justice system is upheld by competent, impartial judges who have a duty to exercise independent judgment and are broadly representative of the communities they serve, are adequately trained, are of sufficient number, have adequate resources, abide by high ethical and professional standards, and are selected, promoted, assigned, compensated, funded, dismissed, and subject to discipline in a manner that fosters both independence and accountability.”

4826-3097-9889, v. 8