



The Rule of Law, Judicial Corruption, and the Need for Drastic Judicial Reform in Sub-Saharan Africa's Nation States

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I. Introduction

Creating a viable judiciary and strengthening its democratic functions have been main concerns of both national governments and donors over the last two decades. A common purpose of these various efforts has been to make national legal systems function in a more efficient and fair manner. As the colonial powers began pulling out from Africa in the 1950s and 1960s, they made efforts toward developing and strengthening local capacity to operate each country's legal system. The efforts were mainly orchestrated by each country's former colonial power; i.e. the UK in Southern and East Africa, France in Central and West Africa, and Belgium in Central Africa.¹

Judicial reform is a very complex area, involving a multitude of institutions and actors. *Judicial reform* (also called *legal sector reform*) refers to efforts to improve the functioning of a country's legal system, both in terms of fairness and efficiency. The *legal system* encompasses the entire legal framework, including the constitution, statutes,

¹ Elin Skaar, Ingrid Samset, Siri Gloppen, *Aid to Judicial Reform: Norwegian and International Experiences*, CIMI Reports, 2004.

regulations, customary law and international legal obligations, as well as other institutions that interact to form the judicial process. Judicial reform is currently a priority in societies seeking to democratize their political system, and among donors seeking to favorably impact democratic reforms. Reform efforts have been made through various types of interventions including, (1) Law reform, (2) Court reform, (3) Judicial administration reform, (4) Legal community support, (5) Reform of legal education and training.²

Law reform focuses on the development of the legal framework in response to the needs of the particular society, and in accordance with international standards. *Court reform* is aimed at improving the courts' efficiency, capacity, integrity and responsiveness. *Reform of judicial administration* targets the efficiency of the legal process as a whole and increasing the independence and authority of the judiciary. *Strengthening of the legal community* is critical to the quality of the legal process and necessary to establish professional norms and standards that inform judicial accountability. *Reform of legal education and training* aims to develop curricula and training methods capable of producing competent legal practitioners and professionals that will be more sensitive to the concerns and values of society.³

Subject matter experts generally agree that long term, sustainable economic and social development requires democratic governance rooted in the rule of law. The importance of the justice system in the healthy socio-economic development of a nation has been well documented as a catalyst for success. The *rule of law* is the notion that the powers of the government can be exercised legitimately only in accordance with the

² *Id.* at 6.

³ *Id.* at 6-7.

applicable laws and established procedures. The movement towards respect for the rule of law is gaining both root and ground throughout most of Sub-Saharan Africa. A prime example of such an initiative is the African Peer Review Mechanism (APRM) under the auspices of the New Partnership for Africa's Development (NEPAD), which focuses on encouraging and assisting African states to institutionalize a culture of respect for democracy, human rights, the rule of law, social justice and economic development. Many Sub-Saharan African countries have set up independent anti-corruption agencies to fight this plague.

Clearly, one factor that investors consider when rating a country is whether they will have access to suitable mechanism by which to resolve disputes. Indeed, few investors will be keen to invest in any country or even to extend the scope of their existing investments without reasonable assurances not only that their fundamental rights and freedoms will be respected at all times, but also that the law will be correctly and effectively be applied, in cases of disputes or other differences. The human element is key to the development of the competence of a justice system; but the human element alone will not suffice if it is not adequately supported in terms of training, material resources and technology. Therefore, both human and material resources are equally essential to achieve appropriate level of competence that the justice system requires in Sub-Saharan Africa.

II. The Plague of Judicial Corruption in Sub-Saharan Africa

In 2005, the Economic Commission for Africa released the African Governance Report (AGR), the culmination of five years of research gathered from national research institutes across 27 African nations.⁴ Although the Report indicated many encouraging trends in governance across the continent, it also amply demonstrated that corruption presents the most important barrier to sustained development and the creation of an enabling environment for good governance in Africa.⁵

Corruption is defined generally as the abuse of entrusted authority for private gain.⁶ 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 justices 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, and 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.

Corruption occurs across a wide range of settings, involves many actors and may occur at national or local levels. An AGR survey of households in Ghana indicated that 62-87% of households paid bribes to government agencies, most often the police and the immigration service.⁷ More than 25% of households surveyed in Cameroon, Morocco, Nigeria and Tanzania reported that corruption was a serious problem.⁸ Much of the pervasiveness of corruption stems from the abject poverty and widespread unemployment

⁴ See African Governance Report – AGR 2005, Economic Commission for Africa, Addis Ababa, Ethiopia.

⁵ *Id.*

⁶ USAID *Anticorruption Strategy*, December 2005.

⁷ African Governance Report at 148.

⁸ *Id.*

in SSA nations. However, weakness and corruption within the very institutions designed to fight corruption, such as the judiciary, also contribute to the occurrence of corruption. A Governance and Corruption Survey conducted in Nigeria in 2001 indicated that the main causes of corruption could be attributed to weak government institutions and an economic environment characterized by widespread poverty and unemployment.⁹

Corruption in the judiciary has become widespread across Sub-Saharan Africa to put it mildly. When he assumed office in 2003, Chief Justice J.E. Gicheru of Kenya found that corruption in the judiciary had assumed pandemic proportions. The maxim “why pay a lawyer when you can buy a judge” had achieved notoriety, and the majority of Kenyan judges had become “the best judges that money can buy.”¹⁰ The Uganda Law Society found that prisoners’ files were often “misplaced” when they were taken before magistrates in attempts to extract bribes from prisoners.¹¹

One respected judge on the Court of Appeal of Tanzania related an incident in which a High Court judge asked for a million shillings in return for a favorable decision.¹² He 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.’”¹³ 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.

⁹ United Nations Economic and Social Council, Economic Commission for Africa, Ad Hoc Experts Group Meeting on Deepening the Judiciary’s Effectiveness in Combating Corruption, Addis Ababa, Ethiopia, 19-21 November 2007, p. 4.

¹⁰ United Nations Office on Drugs and Crime, Report of the Fourth Meeting of the Judicial Integrity Group, Vienna, 27-28 October, 2005, p. 6.

¹¹ Deepening the Judiciary’s Effectiveness in Combating Corruption, p. 10.

¹² *Id.*

¹³ *Id.*

Corruption in the judiciary typically takes the form of bribery, fraud, abuse of office, or political interference in the justice system, commonly by the executive and legislative branches of government. As the upholder of justice and individual rights, an impartial and incorrupt judiciary is essential to the good governance and development of any nation. A corrupt judiciary may negatively impact all sectors of government by stunting trade, economic growth and human development, and by depriving citizens of justice. Combating judicial corruption must be of paramount importance to Sub-Saharan Africa.

III. Methods of Reform

Judicial systems that routinely provide adequate access to justice, timely and impartial delivery of justice, and generally uphold the rule of law typically display five main qualities: independence, integrity, accountability, transparency and efficiency. Combating corruption in Sub-Saharan Africa will require precise programmatic changes directed at improving these qualities across the judicial system. Measures aimed at improving the effectiveness of the judiciary will assist in ensuring timely and satisfactory access to justice for all residents of Sub-Saharan Africa. It will also encourage foreign investment with attendant economic development.

a. Judicial Independence

Perhaps the most important element to judicial reform and anti-corruption is the independence of the judiciary, including independence from the executive and legislative branches of government and freedom from political and social influences. The

Constitutions of the majority of Sub-Saharan African states mandate judicial independence. For example, Article 78 of the Constitution of Namibia dictates,

The Courts shall be independent and subject only to this Constitution and the law.

No member of the Cabinet or the Legislature or any other person shall interfere with Judges or judicial officers in the exercise of their judicial functions, and all organs of the State shall accord such assistance as the Courts may require to protect their independence, dignity and effectiveness, subject to the terms of this Constitution or any other law.¹⁴

In a similar fashion, Article 125 of the Constitution of Ghana states, “Justice emanates from the people and shall be administered in the name of the Republic by the Judiciary which shall be independent and subject only to this constitution.”¹⁵ The Constitution of Uganda proclaims in Article 128, “In the exercise of judicial power, the courts shall be independent and shall not be subject to the direction of any person or authority.”¹⁶

Despite these assertions of judicial independence, many Sub-Saharan African countries face a judicial system constrained by the influence of other institutions of government and society. Constitutional provisions alone cannot guarantee the independence of the judiciary. A major factor inhibiting judicial independence is the control of the executive branch over elements such as the appointment, promotion and remuneration of judicial officers and the judicial budget. In many Sub-Saharan African countries, the selection and appointment of judges and other judicial officers rests with

¹⁴ Justice A.M. Akiwumi, *Towards an Independent and Effective Judiciary in Africa*, African Development Forum, Governance for a Progressing Africa, 11-15 October, 2004, Addis Ababa, Ethiopia, p. 2.

¹⁵ *Id.*

¹⁶ *Id.*

the executive branch.¹⁷ Thus the prospects of career mobility for judges often depend on political patronage. The appointment and control of judicial officers by the Executive directly contradicts the principle of an independent judiciary free from the direction of outside authority.

One possible approach to avoid external pressures in the selection of judicial officers is to institute a council of judicial personnel who are solely responsible for the selection and appointment of judges. The constitutions of numerous African nations provide for the establishment of Judicial Service Commissions, comprised of judges and other members of the legal profession, to recommend or nominate judicial officers. However, these commissions also often consist of delegates designated by the Executive.¹⁸ To avoid this problem, Sub-Saharan African states may choose to follow the example of Egypt, which has established a Supreme Judicial Council consisting entirely of judges or judicial personnel.¹⁹ It may also be beneficial to require candidates to complete a course of academic study and pass examinations prior to becoming eligible for judicial appointment.

Another approach is to allow the election of judges by the public. However, the selection of judges by election may also threaten the independence of the judiciary by leaving the system open to political influence and potential corruption. The practice of electing judges often poses unreasonable risks of politicizing the judiciary. This may occur when, for example, a judicial officer is elected with the support of a specific

¹⁷ African Governance Report at 204.

¹⁸ Akiwumi, *supra* note 14, at 6.

¹⁹ *Id.* at 7.

political party, leading to a feeling of indebtedness to those who have helped him obtain the office.

Regardless of which approach is implemented, the selection of judicial officers must be entirely merit-based in order to fully rid the judicial branch of political influence and pressure from external interests. Judicial selection should involve independent screening of candidates and the establishment and publication of objective selection criteria based on factors such as merit, competency, and experience.

In addition to the appointment of judges, judicial tenure must fall within the independent discretion of the judiciary. Where judges serve short terms that are subject to the whims of political authorities, the judiciary is especially susceptible to political influence and potential corruption. Lifelong tenure for judicial officers (subject to good conduct and a mandatory retirement age) or set terms of office often promotes judicial independence.

There also must be safeguards against improper removal of judicial officers. In several Sub-Saharan African nations, such as Zambia, Zimbabwe, and Uganda, the process for removal of a judge from office involves the appointment of an investigative tribunal by the President.²⁰ This tribunal then looks into the alleged misconduct of the judicial officer, and if necessary, recommends removal. The final authority to order removal of judges then rests with the President.²¹ This process of the removal of judges from office by the executive endangers the autonomy of the judiciary. To reinforce judicial independence and the doctrine of separation of powers, states must impose a

²⁰ *Id.* at 9.

²¹ *Id.*

system that prohibits sole executive control over the proceedings for the removal of a judge from office.

Security of tenure is not the only challenge to judicial independence and the prevention of corruption. Adequate remuneration for judges and other court personnel and protection against arbitrary reduction or suspension of pay are also essential to combat corruption and increase public access to justice. Poor remuneration leads to reduction in motivation and commitment to the judicial system and can often lead judicial officers to seek bribes as a means of achieving financial security.

South Africa presents an excellent example of a system of safeguards and regulations regarding the terms of office, the removal of judges from the bench and remuneration intended to ensure the independence and impartiality of the judiciary. The Judges' Remuneration and Conditions of Employment Act of 2001 dictates that a judge serves until age 70 if they have served for at least ten years by that time; if not, the judge continues to serve until they reach ten years of active service.²² Section 177 of the South African Constitution provides that, in order to remove a judge due to incapacity, incompetence or gross misconduct, the JSC and at least two-thirds of the National Assembly must vote for the judge's removal.²³ The Constitution further states that the "salaries, allowances, and benefits of judges cannot be reduced."²⁴ Thus the tenure and remuneration of the judiciary in South Africa are safeguarded against threats of removal or salary reduction as a means of influence or punishment by external authorities.

²² Amy Gordon, *Transformation and the Independence of the Judiciary in South Africa*, The Centre for the Study of Violence and Reconciliation, p. 24, available at <http://www.csvr.org.za/docs/transition/3.pdf>

²³ *Id.*

²⁴ *Id.*

The assurance of adequate budgetary resources and administrative autonomy over the use of judicial funds are also necessary elements for the promotion of judicial independence. The budget and funds of the judiciary in many Sub-Saharan African nations are controlled by the executive branch of the government, often in the form of a Ministry of Justice.²⁵

In Zambia, for example, bureaucrats in the Ministry of Finance and National Planning determine funding for the judiciary, which is heavily dependant on court fees to conduct its operations because approved budgets are rarely disbursed in full.²⁶ In Swaziland, the performance of the judiciary is affected heavily by the lack of financial autonomy; the Ministry of Justice directly controls the budget and funds of the courts.²⁷

This control over judicial funds allows the executive branch to exert influence over the actions of the judiciary, often fueling corruption and further reducing the independence of the judicial system. Giving the judiciary substantial control over the administration and budget of the courts allows it to function independently and prevents the executive or other external powers from exerting influence over the judiciary and thus the outcome of cases. It is therefore necessary that the judiciary play a substantial and direct role in the formulation of the judicial budget and the administration of funds.

Furthermore, withholding resources puts pressure on judges and threatens the impartial administration of justice. Lack of adequate monetary resources may leave judicial officers vulnerable to corrupt political pressure from other branches of government. In addition, inadequate resources may further the ineffectiveness and

²⁵ African Governance Report at 204.

²⁶ *Id.*

²⁷ *Id.*

inefficiency of the judicial system. In Sub-Saharan African nation states such as Nigeria, some jurisdictions have had to vie with rundown office buildings, insufficient supplies, and habitual power outages.²⁸ Adequate funds are needed to attract the best and the brightest workforce, provide reasonable working conditions, implement education and training on ethical conduct, and improve the efficiency of court administration. Judicial budgets must be performance-based, reflecting the efficiency of case resolution and management and the volume of cases presented to the court. The adequate provision of resources allows the judicial system to operate effectively without hindering judicial independence or promoting corruption.

Efforts to promote judicial independence are essential to the control of corruption and the promotion of economic development. By creating an autonomous system for the selection of judicial officers, securing judicial tenure and remuneration, and safeguarding against the improper removal, Sub-Saharan Africa can present a cohesive front against corruption in the judicial system.

b. Judicial Integrity

Another key tool in the fight against judicial corruption in Sub-Saharan Africa is the promotion of judicial integrity. Judicial integrity is deemed the heart and soul of the rule of law. To support a judiciary that embodies integrity, it is necessary to establish clear codes of conduct, provide ethics training and education to judicial officers, and create adequate mechanisms for receiving complaints from the public and other judicial officers.

²⁸ Olisa Agbakoba, *Current Concepts and Issues in Justice Sector Reform*, Olisa Agbakoba & Associates, May 30, 2011, p. 5.

A clear code of conduct, which provides a model for ethical judicial behavior, is essential to reform. The most widely used ethics code is the 2002 Bangalore Principles of Judicial Conduct.²⁹ The Bangalore Principles present six values essential to the proper performance of judicial office and to the maintenance of high standards of judicial conduct.³⁰ These values include: 1) independence; 2) impartiality; 3) integrity; 4) propriety; 5) equality; and 6) competence and diligence. The Bangalore Principles state,

THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.³¹

A group of distinguished Justices from nations across the globe came together to form the Judicial Group on Strengthening Judicial Integrity and draft the Bangalore Principles by examining and considering principles from numerous codes of judicial conduct. The final version of the Bangalore Principles is the product of several meetings of the Judicial Group and extensive commentary and review by judges and scholars around the world.³² While it is not necessary for Sub-Saharan African nations to adhere directly to the Bangalore Principles, implementing and following a similar code of ethics will aid in the protection of judicial integrity and efficacy. It must be emphasized that

²⁹ USAID, *Reducing Corruption in the Judiciary*, Office of Democracy and Governance USAID Program Brief, June 2009, p. 12.

³⁰ *The Bangalore Principles of Judicial Conduct*, Round Table Meeting of Chief Justices, The Hague, November 25-26, 2002.

³¹ *Id.* at 11.

³² *Id.*

codes of conduct will be rigorously applied and that judicial personnel are expected to fully adhere to them.

Judicial ethics training and education programs will also help strengthen the integrity of the judicial system and reinforce ethical behavior in judicial officers. In 2001, Nigeria implemented a program aimed at strengthening judicial integrity under the leadership of the then Chief Justice of Nigeria, M.L. Uwais.³³ Part of the program involved ethics training for judicial officers “intended to create a forum for judges to consider a variety of ethical problems and to discuss appropriate responses.”³⁴ This ethics training program, in combination with various other anti-corruption initiatives put into practice in the Nigerian judiciary has led to significant positive progress in the areas of rule of law and control of corruption since 2003, according to the World Bank’s 2008 Report, *Governance Matters*.³⁵

Overall, a comprehensive system aimed at increasing the integrity of judges and other judicial personnel is essential to any anti-corruption program. Establishing a clear set of ethical principles or a formal code of conduct and implementing a system of ethics training and education are both key steps in the push towards judicial integrity.

c. Judicial Accountability

Although seemingly somewhat at odds with the concept of judicial independence, holding judicial officers accountable for their conduct is also a necessary prerequisite to an efficient and effective justice system. Accountability requires not only strict adherence

³³ United Nations Office of Drugs and Crime, *Judicial Ethics Training Manual for the Nigerian Judiciary*.

³⁴ *Id.*

³⁵ USAID, *Reducing Corruption in the Judiciary*, at 15.

to codes of conduct and ethics but also appropriate punishment for breaches of those ethics. Article 11 of the United Nations Convention Against Corruption emphasizes the importance of judicial accountability, stating,

Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary.³⁶

While the appeals process presents one appropriate accountability mechanism with regard to judicial decisions, other methods must also exist to ensure that judges are accountable to the public and punished for lapses in ethical conduct. In response to allegations of widespread corruption, in 2003 the Chief Justice of Kenya created an ad hoc committee to investigate and conduct hearings regarding alleged corrupt acts.³⁷ Several judges were suspended, leading to the voluntary retirement and resignation of some, while others were forcibly removed.³⁸ While seemingly a step in the right direction, inconsistent efforts to remove corrupt officials, lapses in due process, and protracted delays in proceedings led many to criticize the efforts and suggested a tolerance of corruption and weak capacity to pursue corruption cases.³⁹ To avoid similar criticisms, investigation and punishment for corrupt acts must be fair and consistent. Proceedings in corruption cases must also be efficient, transparent, and in line with the Constitution and the laws of due process of the state.

³⁶ United Nations Office on Drugs and Crime, *United Nations Convention Against Corruption*, New York, 2004, Ch. 2, Article 11, p. 13.

³⁷ USAID, *Reducing Corruption in the Judiciary*, at 15.

³⁸ *Id.*

³⁹ *Id.*

Furthermore, the judiciary must be open to complaints and suggestions from the public, while also protecting judicial officers from frivolous and groundless accusations from individuals or institutions seeking retribution for past adverse judgments. This requires a formal system for the lodging of complaints and standardized and publicized procedures for investigation and review.

Although still plagued by judicial corruption, since 2007 Kenya has achieved some positive results through the implementation of its Transparency and Accountability Mechanism (TAM).⁴⁰ The KMJA, an association for the members of the Kenya judiciary, originally launched TAM in 2007 as a means of allowing court users to air grievances with the court system and providing the judiciary with an opportunity to respond meaningfully to the feedback it receives.⁴¹ TAM consists of four inter-related elements: judiciary dialogue cards, court user committees, peer review committees, and judiciary dialogue boards.⁴²

Judiciary dialogue cards are small survey cards consisting of multiple-choice questions and free space for respondents to make suggestions or complaints about specific cases.⁴³ Information from the dialogue cards is then placed in a computer spreadsheet, allowing the courts to create statistical reports on data extracted from the cards.⁴⁴

Court user committees, comprised of magistrates and representatives such as police, prosecutors, members of the bar, prison authorities, and NGOs, meet to review the

⁴⁰ Barry Walsh, *In Search of Success: Case Studies in Justice Sector Development in Sub-Saharan Africa*, II KENYA LAW REVIEW 1-72, 32 (June 2010).

⁴¹ *Id.*

⁴² *Id.* at 33.

⁴³ *Id.*

⁴⁴ *Id.*

feedback and statistical information gleaned from the judiciary dialogue cards and to discuss and attempt to resolve systemic problems.⁴⁵ If dialogue cards specifically allege that a judge or magistrate has participated in unethical or corrupt behavior, a peer review committee, made up of magistrates, reviews the allegation.⁴⁶ The committee will then discuss the allegation and determine an appropriate response.⁴⁷

Finally, judiciary dialogue boards are used to display the feedback by the court user committees and the peer review committees in regards to each dialogue card.⁴⁸ Judiciary dialogue boards are placed in public areas so that members of the public may review the complaints and the responses and feedback of the committees.⁴⁹ This system provides a cost-effective, transparent and efficient method for dealing with corruption allegations.

The implementation of similar enforcement procedures and formal complaint systems in the judiciaries across Sub-Saharan African states will aid in combating the spread of corruption and promote justice systems that are open and effective for all members of society.

d. Judicial Transparency

Open access to the public and transparency in procedures and actions of the judiciary further promotes an effective and incorruptible justice system. USAID suggests six critical steps to maintaining transparency in the judiciary, including:

⁴⁵ *Id.* at 34.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

- Annuals reports by the judiciary on its activities, financing, governance, and organization;
- Publication of laws and judicial opinions;
- Public access to judicial proceedings;
- Declaration of assets and income by judges and senior judicial staff;
- Civil society monitoring of the administration and operation of the courts; and
- Working through the media, including press offices in the judiciary and training for journalists.⁵⁰

A right to information is necessary to enhance judicial transparency, raise public awareness about corruption and allow society to engage in the fight against corruption.

Article 10 of the United Nations Convention Against Corruption emphasizes the need for public information regarding the activities and legal decisions of the judiciary, stating:

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decisionmaking processes, where appropriate. Such measures may include, inter alia:

- (a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;
- (b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and
- (c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.⁵¹

Part of this right to information includes publicizing laws and case decisions in order to promote public understanding of the law. Unfortunately, the publication of

⁵⁰ USAID, *Reducing Corruption in the Judiciary*, at 16.

⁵¹ *United Nations Convention Against Corruption*, Ch. 2, art. 10, p. 13.

statutes, judgments and other pronouncements of the courts has been neglected by the judiciaries of many Sub-Saharan African nations, due to a lack of adequate resources or efficient mechanisms for publishing and disseminating legal information. Private commercial law publishers may aid in the dissemination of legal information. However, such private publishers seek to earn commissions for the publication of legal materials, and the high levels of poverty in many Sub-Saharan African nations makes the widespread purchase of legal materials highly unlikely. The lack of consistent and adequate Internet access across the Sub-Saharan African region also restricts accessibility to legal information. In order to increase public access to and understanding of the law, greater resources must be devoted to strengthening the Internet infrastructure and to editing and preparing legal materials for online publication.

Kenya has made great strides towards providing transparent and accessible legal information for the public. In 1994, the National Council of Law Reporting (NCLR) was established in order to publish reports known as the Kenya Law Reports, containing judgments, rulings and opinions of the Superior Courts of record.⁵² The NCLR receives funds from the government of Kenya in order to employ staff dedicated to the publication of the Kenya Law Reports.⁵³ Since 2001, the NCLR has significantly reduced a 20-year backlog of unpublished cases through publication in bound volume reports and online versions of reports from 1992 onwards.⁵⁴ The NCLR achieved these results through the adequate provision of resources and by introducing computerized indexing and storage systems and establishing efficient systems for collecting and editing legal materials.

⁵² Walsh, *supra* note 40, at 54.

⁵³ *Id.*

⁵⁴ *Id.*

In addition to the publication of cases and laws, public access to information regarding the assets and income of judicial personnel and the financing of the judiciary may help enhance judicial transparency and further the fight against corruption. South Africa has recently proposed a draft bill that includes a provision requiring judges to declare their assets.⁵⁵ There is not unanimous support for this measure, due mainly to concerns about practicality;⁵⁶ a judge who takes a bribe is not likely to disclose it as part of his assets. However, the disclosure of the assets and income of judges may help to promote judicial transparency by increasing the public's faith in the impartiality of the judiciary and assuring the public that judicial officers are not being influenced by external interests.

Publicizing information related to the financing of the judicial system also promotes transparency. Article 9 of the United Nations Convention Against Corruption suggests that the judiciary publicly distribute information relating to procurement procedures and contracts,” and ensure the “[t]imely reporting on revenue and expenditure.”⁵⁷ Encouraging public participation in the judicial process may also support judicial transparency. Professional and civic associations that play an active role in the judicial system by monitoring court performance, engaging in public discussion and disseminating information assist in promoting judicial efficiency and raising public awareness about corruption.

Judicial transparency must be imbued within the entire judicial system, from the selection and appointment of judges, to the publication of case outcomes and information

⁵⁵ Gordon, *supra* note 22, at 42.

⁵⁶ *Id.*

⁵⁷ *United Nations Convention Against Corruption*, Ch. 2, art. 9, p. 12-13.

regarding financial and administrative decisions. Enacting such measures to promote transparency will ensure effective participation of the public in the judicial process and encourage the fight against judicial corruption.

e. Judicial Efficiency

Perhaps one of the most challenging but essential areas of improvement for Sub-Saharan African judicial systems lies in the efficiency and organization of the judiciary and the court systems themselves. An efficient and effective judicial system minimizes opportunities for delay, abuse, and corruption and provides timely public access to justice. Such a system may be achieved by establishing proper case management, including the computerization of record management and court administration, launching credible case assignment systems, and providing alternative dispute resolution to the public.

The first step towards increasing judicial effectiveness and efficiency lies in the automation of court management and the adjudication process. Computerization of records allows for easier access and better organization and prevents the loss of paper files and improper interference with documents. The court system in Ethiopia has benefited from the use of technology in improving court records management. Ethiopia's Court Administration Reform Project phase II (CAR II) aims to improve court efficiency by developing an efficient system of recording and transcribing evidence, implementing a case tracking system, and improving case scheduling and standards of document processing in court registries.⁵⁸ A system of color-coding court files was put in place to

⁵⁸ Walsh, *supra* note 40, at 25.

increase record management efficiency.⁵⁹ Additionally, audio recordings were implemented in court hearings in order to facilitate the production of transcripts of proceedings.⁶⁰ Electronic filing has been instituted in numerous jurisdictions, allowing judges to easily review files and preventing the potential for manipulation of court records, common source of corruption.⁶¹ New electronic information kiosks allow members of the public to access the court's case management databases.⁶² The project also enhanced case management and administration by improving buildings and service facilities.⁶³

Another area that is particularly susceptible to corruption and abuse is the judiciary's discretion in deciding which judge will preside over each case. Computerization and automation of case assignments provides an efficient method for achieving a randomized case assignment system. Ethiopia's CAR II computerized case tracking system has provided such a system and also allows judges to assign priority to certain cases, and better allocate their time.⁶⁴ Setting up similar automated systems for the random assignment of judges to cases will allow other Sub-Saharan African judiciaries to safeguard against potential abuse.

Finally, increased access to justice and the judicial system may be achieved through the implementation of alternative dispute resolution methods. These methods will not only increase public access to justice, but will also reduce the burden on the judiciary, allowing resources to be devoted to anti-corruption and the more efficient and

⁵⁹ *Id.* at 26.

⁶⁰ *Id.*

⁶¹ *Id.* at 27.

⁶² *Id.*

⁶³ *Id.* at 25.

⁶⁴ *Id.* at 27.

effective resolution of cases. Nigeria has implemented an alternative dispute resolution system that has proven effective in increasing access to justice and judicial efficiency. The Citizens' Mediation Centre (CMC) processes legal disputes through mediation for individuals who cannot afford to go to court.⁶⁵ It entails a public complaint office that receives complaints, analyzes whether the claim and the claimant are suitable for mediation and then refers them to a mediator employed by CMC.⁶⁶ Similar effective systems of alternative dispute resolution will lighten the burden on judges and court systems in Sub-Saharan Africa. By decreasing the volume of cases seen by judges, alternative dispute resolution will allow the judiciary to devote more resources towards anti-corruption measures.

Overarching measures aimed at increasing judicial efficiency are essential to combat corruption. By implementing computerization of court record and case tracking systems and by providing alternative dispute resolution resources, Sub-Saharan Africa may take positive steps towards achieving efficient and incorruptible judicial systems.

IV. Formulating and Designing a Reform Plan

For judicial reform projects to enjoy viability, attention must be paid to all stages of the reform process: First and foremost, in the design phase, proper diagnostics, appropriate project design, getting on board relevant stakeholders, and fitting the specific project into a larger reform context are all crucial. Secondly, at the implementation phase, success depends on proper coordination of efforts and the extensiveness of the reform protocol. Thirdly, at the evaluation phase, relevant indicators must be developed to assess

⁶⁵ *Id.* at 44.

⁶⁶ *Id.*

the project. Finally, having adequate local political, financial and administrative support is a crucial factor. Donor initiated reform efforts without internal political buy-in are seldom sustainable.

Some of the most ardent obstacles to judicial reform efforts in the emerging markets of Sub-Saharan Africa include: *Too little participation* by the lawyers, legal professionals and others in the target country who would either have to carry out the reforms or who would be affected by them; *An exclusive focus on the formal legal system* to the exclusion of customary law and the other informal ways to resolve disputes; and, finally *A lack of cultural sensitivity*, as the American legal system was exported to foreign countries without factoring the local legal culture, sensitivities and environment into the equation. Because of lack of local initiative and generally insufficient diagnosis of existing problems, patterns of judicial reform pursued by international actors have tended to be highly standardized and transplanted, relatively superficial, as opposed to policy proposals which reflect specific local needs and power relations. Stated succinctly, they have been culturally incompetent.⁶⁷

Data is the foundation of an evidence-based approach to justice reform. Strong diagnostics should inform the design of interventions by providing data on the actual functions of the justice system, the political economy of reform and its risks, and the way potential reforms might translate into progress towards justice. The evidence-based approach should be clear throughout the project cycle, from design to monitoring and evaluation. There is limited empirical data on the functioning of justice systems in many

⁶⁷ The World Bank: *New Directions in Justice Reform: A Companion Piece to the Updated Strategy and Implementation Plan on Strengthening Governance, Tackling Corruption*, May 2012.

Sub-Saharan African countries, and even less evidence on the impact and dynamics of reform efforts. This is not unconnected to tough information challenges, outcomes that are difficult to measure, causal chains that are hard to trace, and lengthy reform processes.⁶⁸

Reform efforts should be strategic and targeted to prove fruitful when utilizing a problem-solving approach. A problem-solving approach to justice reform is one in which initiatives are dedicated to solve identifiable problems. Interventions should focus on the identification and resolution of binding constraints that may impede improvements to justice system performance. Reform strategies should take on concrete functional problems, rather than pursue some ideal justice system model. Rather than starting with the question of how to modernize the court system, such efforts should begin by asking where failings of the justice system are a constraint to advancements in development.⁶⁹

A problem solving approach to justice reform is characterized by many of the risks of political economy, of a tenuous and largely unproven results chain that affect much public sector governance work. A results focus needs to be better integrated into the design, monitoring, and evaluation of justice reform strategies and operations. Given the inherently complex nature of justice, indicators are invariably simplified proxies, and their use and interpretation require much caution. Good practice therefore requires using clusters of indicators derived from a variety of sources.⁷⁰

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

Greater emphasis on functional problem solving, and on monitoring and evaluation, usually lead to significant improvements in design. Particular emphasis should include engaging in:

- *Strengthening the human resources of justice institutions..* Some reforms have struggled because of a lack of in-country professionals interested in and capable of implementation. The concept of professional court administrators—those who are in a position to oversee court reforms—emerged in the United States in the 1950s and has spread more recently to Canada, Australia, and much of Europe. However, such court professionals are still relatively uncommon in Sub-Saharan Africa. Thus, training of justice sector staff and supporting a cadre of people who have the authority and capability to lead reforms are crucial to success. This may require building technical assistance components into projects and supporting management training for those in leadership positions in justice institutions.⁷¹
- *Incorporating the experience of justice institutions at the local level.* Taking account of the experience of justice at the local level including hybrid and customary institutions, and the involvement of legal aid and legal empowerment organizations will benefit justice reform projects. This emphasis flows from recognition that for many citizens of Sub-Saharan African nations, the most important institutions of justice lie outside the

⁷¹ *Id.*

formal system. Engaging with the complex relationship between customary and formal justice systems is certainly relevant in this context.⁷²

- *Increasing the application of core public sector management expertise to justice sector institutions.* Areas like budget reform, financial management, and human resources are critical for improving the performance of any state institution. But partly because of concerns about independence of the judiciary, court systems have been slow to adopt general public sector reforms. However, it is possible to modernize management by incorporating performance data and meritocratic principles into budgeting and human resources management—without compromising independence.⁷³

V. Conclusion

Many Sub-Saharan African nations have taken great strides towards eliminating corruption in the judiciary, most notably South Africa. However, there is still much room for improvement. For African Judiciaries to be effective in combating the plague of corruption endemic in the region, the Judiciary institution itself must be completely rid of corruption. There must also be a focus on the qualities of judicial independence, integrity, accountability, transparency, and efficiency. By promoting these principles, Sub-Saharan African nations may achieve model judicial systems, embodying the ideals of impartiality, efficiency, efficacy and commitment to the rule of law.

⁷² *Id.*

⁷³ *Id.*

Additionally, these nations must follow the path, like all serious judiciaries in the world, of employing court technology in the discharge of its responsibilities. They must implement a Judicial Information Technology Policy (JITP) that will boldly chart a transformational course. They must invest in laying the technical infrastructure, in terms of acquiring the hard and software and nurturing the technical support manpower. The effort will require a lot of funding or financial sacrifice initially, but it will eventually pay dividends, not just in terms of attraction of foreign investments, economic growth, societal peace and harmony, but also in monetary terms.⁷⁴

The great tragedy of the African judicial conundrum is that judicial independence is well enshrined in many African constitutions. Theoretically therefore, the legislature, the judiciary and the executive should be distinct and independent arms of the government, but practically, these arms are often very hard to distinguish. Given the disparity between the theoretical and practical aspects of the African judicial process, there is a dire need for a reconstruction of the judicial and related civil society institutions.

⁷⁴ Hon. Justice Dahiru Musdapher, *The Nigerian Judiciary: Towards Reform of the Bastion of Constitutional Democracy*, Nigerian Institute of Advanced Legal Studies, 2011.