

THE INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY

Review Meeting

Corruption and Human Rights

Geneva, 28-29 July 2007

**THE RELATIONSHIP BETWEEN HUMAN RIGHTS AND CORRUPTION:
THE IMPACT OF CORRUPTION ON THE RIGHTS
TO EQUAL ACCESS TO JUSTICE AND EFFECTIVE REMEDY**

Victoria Jennett

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1. Corruption in the judicial system undermines democracy and human rights as well as diminishing economic growth and human development. The judicial system is the cornerstone of democracy: the enforcer and interpreter of the law passed by the legislature and implemented by the executive. It is also the final arbiter of disputes between parties. If a justice system is corrupt public officials and special interest groups can act in the knowledge that, if exposed, their corrupt and illegal acts will go unpunished. Public confidence in governance and the institutions of state is eroded as judicial corruption facilitates corruption across all sectors of government and society. Human rights are debased as citizens are not afforded their rights of equal access to the courts, nor are they treated equally by the courts. The international business community is reluctant to invest in countries – often developing countries that most need investment – where there is no certainty in the rule of law and no guarantee that contracts will be respected because the judicial system is in the service of those in power or with the deepest pockets rather than in service to the rule of law.
2. This paper will examine the impact of corruption in the judicial system on the most vulnerable and disadvantaged groups in society in the following way: the first part outlines the obligations that are conferred upon states to provide a corruption-free judicial system and to provide access to a justice system based on integrity, fairness, effectiveness. Part two analyses the forms that corruption can take within the judicial system. In part three, the wide range of actors who constitute the justice system, and who are open to corruption risks, is examined and the obstacles they face in carrying out their functions are described. Part four details examples of how judicial corruption affects the most vulnerable and disadvantaged. Finally, in part five, the many reforms and practical measures that can be taken to protect against corruption in the judicial system are set out and explained.

PART 1 INTERNATIONAL INSTRUMENTS THAT OBLIGE STATES TO COMBAT CORRUPTION IN THE JUDICIAL SECTOR

3. Human rights lawyers and activists are familiar with the range of rights that international and national bodies, notably the UN but also the Council of Europe, increasingly the EU, many regional bodies as well as national systems, have agreed that citizens should enjoy vis-à-vis access to justice as well as the obligations these bodies have conferred on states to provide fair, effective and prompt access to justice. They are perhaps less familiar with the “daily bread” of anti-corruption activists: the international obligations on states to prevent and combat corruption throughout all institutions of state and sectors of society¹ and to prosecute private sector companies that bribe foreign officials² as well as a menu of international and national criminal laws and soft laws tackling corruption.
4. There exist also myriad international instruments that regulate the behaviour of judges and the judicial system. Unfortunately many of these standards have not been fully implemented. However with strong political will they are ready and waiting to be invoked. These standards include the Bangalore Principles on Judicial Conduct (2002); UN Basic Principles on the Independence of the Judiciary (1985); UN Basic Principles on the Role of Lawyers (1990); UN Basic Principles on the Role of Prosecutors (1990); Council of Europe Recommendation no. R(94) 12 of the committee of Ministers to Member States on the Independence, Efficiency and Role of Judges (10/13/1993); Council of Europe European Charter on the Statute of Judges (07/08-10/1998); Latimer House Guidelines for the Commonwealth Judges (1998) and Latimer House Principles on the Accountability and Relationship Between the Three Branches of Government (2003); The Limassol Conclusions for Commonwealth Judges (2002); the International Bar Association, Code of Minimum Standards of Judicial Independence (‘New Delhi Standards’) (1982) amongst a great many others.
5. As indicated in the preceding paragraph, the international legal community has developed a great body of standards on judicial independence but it has been less active in developing standards on judicial accountability. In this regard anti-corruption conventions offer much to the promotion of accountability in the judicial sector.
6. UNCAC is of particular significance to those seeking to tackle corruption in the judicial system. Its provisions encompass a holistic understanding of the underlying causes of corruption and the myriad opportunities for corruption to fester and grow. It allows for countries to assess, promote and implement anti-corruption and judicial reforms and to measure the progress of their reforms. UNCAC covers a range of corrupt activities with the main focus on preventing and punishing the bribery of public sector officials including judges. Bribery encompasses payment and receipt of bribes, as well as diversion of property by public officials. UNCAC also covers the bribery of private sector employees and embezzlement by them. Apart from these criminal offences, corruption addressed by UNCAC includes nepotism and favouritism in public sector recruitment and promotion. Related offences covered include laundering the proceeds of corruption, aiding and abetting corruption and obstruction of justice.

¹ United Nations Convention against Corruption (UNCAC); African Union Convention on Preventing and Combating Corruption; Organisation of American States

² Organisation for Economic Cooperation and Development Convention against Bribery of Foreign Officials (OECD Convention)

PART 2 TYPES OF CORRUPTION

7. What is corruption? Corruption – because it is hidden, because new and more inventive means of perpetrating it are constantly being invented – is difficult to define. However in broad terms corruption is taken to be the misuse of entrusted power for private gain. In the context of judicial corruption it refers 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.”³ The “private benefit” of actors within the judicial system who act corruptly includes both financial or material gain and non-material gain, such as the furtherance of professional ambitions. Any actor within the judicial system is acting corruptly if they apply inappropriate influence on the impartiality of the judicial process.
8. This definition of judicial corruption covers a wide range of corrupt acts carried out by various actors at different points within the judicial system. For example a judge may be paid a bribe to exclude evidence that would otherwise lead to the conviction of a criminal, a court official could be paid a bribe to allocate a case to a sympathetic judge, to lose a case file or to speed up the hearing of a particular case. In criminal cases police could tamper with the evidence or prosecutors could fail to bring a case or assess evidence in a fair manner.
9. In order to better understand judicial corruption, forms of corruption can be situated within one of two types: that of political interference by the executive or legislative branches of government and that of bribery.
10. Political interference in the judicial system refers to instances when those in political power use their influence (by threat, intimidation or bribery) to force or induce judges to act and rule according to their interests and not in accordance with the application of the law. Political interference also occurs when judicial appointments, salaries and conditions of service are manipulated, allowing those in political power to have leverage over judges, prosecutors and court staff and to create a judicial system which is pliant and deferential. Judges can be forced to stand down, reassigned from sensitive positions, not promoted or physically intimidated or harmed. Political interference also embraces the application of immunity laws and contempt laws to judges. Judges can shelter behind outdated immunity laws or indeed a lack of an immunity law can be used by political powers to mount vexatious cases against judges. Similarly draconian contempt laws may be used hound judges out of office or protect them unjustly.
11. Bribery can be a tool used by political powers to control judges, as suggested above, but in this typology it refers to bribes being demanded from or supplied by non-political powers in civil society, including the most vulnerable low-income citizens who can ill afford to pay. Every actor within the system from the judge to the court administrator to the police officer investigating a crime can potentially solicit bribes for the services that they should be providing as a matter of their normal duties. A corrupt judicial system can leave citizens with little choice but to pay a bribe in order to expedite their cases: those who cannot afford to pay cannot access the justice system at all.
12. Before further examination of the ways in which these two types of corruption can impact negatively on the most vulnerable in society, it is worth pausing to reflect on the range of actors within a judicial system who each in their way pose particular corruption risks, unless anti-corruption measures are implemented.

³ M.N Pepys, “Corruption within the Judiciary: Causes and Remedies” TI *Global Corruption Report 2007 Corruption in Judicial Systems*

PART 3 ACTORS IN THE JUDICIAL SYSTEM

13. There are many actors in the judicial system who can contribute to corruption in the judiciary. Judges, magistrates, prosecutors and judicial officers work in a complex environment, interacting with a range of other actors who can affect the way in which they perform or are perceived to have performed their duties. These other actors include judicial associations, politicians, citizens and businesses, journalists and other media actors, academics and NGOs as well as donors who support judicial reform programmes. In this section each actor is examined in turn in order to assess what duties or responsibilities they have to perform in order to challenge corruption in the judicial system. In so doing the kinds of obstacles they face – as duty-bearers to provide fair justice for all– are eked out.⁴

I. Responsibilities of Judges

14. Judges, as individuals, have many responsibilities and with these come a range of risks of corruption. Their responsibilities pertain to the following areas, which map up to principles of good, clean judiciaries: “independence and impartiality”, “integrity”, “education”, “legal accountability”, “administrative accountability”, “judicial office is not to be abused”, “conflicts of interest must be avoided”, “freedom of speech and association” and “discipline and removal from office”. The following paragraphs will detail a judge’s responsibilities within each of these areas and illuminate the risks of corruption pertaining to each of these responsibilities. Human rights lawyers and activists will no doubt recognise these responsibilities and be able to re-cast them in terms of rights and obligations of citizens and states vis-à-vis access to justice requirements (including administrative procedures) under international human rights law.
15. In terms of maintaining a judge’s *independence and accountability*, when making a decision a judge should not accept any kind of incentive or inducement and should not be influenced by external pressures or threats. A judge should not improperly influence his/her peers when they are required to make an independent decision. What is more, a judge should not be biased and should not make comments that may improperly influence the outcome of proceedings, or that may be perceived to be biased.
16. High standards of *integrity* and *probity* are expected of judges, and this must extend beyond their work and into their lives. In this context judges should carry out their functions with integrity, due diligence and professionalism, and always seek to uphold the dignity of judicial office. Judges must also adhere to a code of conduct and professional conventions, and support and offer confidential advice to colleagues in relation to the suspected or actual offers of inducement or threats that they may have received.
17. A judge’s *education* and training is ongoing throughout their career and is necessary in order to ensure fair judgments and to protect judges against unscrupulous lawyers who may pounce on a judge’s incompetence in order to threaten or bribe a judge to rule in a particular way. Judges should make the effort to attend all required judicial training programmes and remain up-to-date with legal developments. Judges should also act with due diligence and take individual responsibility for their own knowledge, competence and development.
18. Judges must be *legally accountable*: reasons for decisions must be given and recorded with competence and due diligence.

⁴ See the Transparency International “Diagnostic Checklist for Assessing Safeguards against Judicial Corruption”, which includes judicial actors’ responsibilities as well as institutional system requirements that ought to be in place in order to establish a clean judicial system based on integrity and the rule of law. For more details contact Dr. Victoria Jennett at vjennett@transparency.org

19. Judges must ensure *administrative accountability*: all reasonable measures must be taken by a judge to ensure that cases and appeals are heard without undue delay.
20. *Judicial office is not to be abused*. Contempt of court procedures should not be abused to intimidate court users. Judges should also know that immunity does not protect them from prosecution for committing crimes such as bribery or abuse of office.
21. *Conflicts of interest must be avoided*. Any conflicts of interest should be declared by a judge as soon as they become apparent. When a judge is unable to decide a matter impartially, or when it might appear to an objective observer that he or she would not be able to decide the case impartially, a judge must disqualify him or herself from the case. Judges should take all reasonable steps to avoid circumstances in which they will have to disqualify themselves. No family member or any person, business or entity close to a judge may appear before him or her. Judges should be aware of their own financial interests and those of their family, and of any other entity in which they have an interest or from which they derive a benefit.
22. Judges should be encouraged, and should be able to, practice *freedom of speech and association*. Judges should be able to, and encouraged to, make speeches, teach, participate in debates concerning the law and legal development, and serve as members of official bodies where it is not inconsistent with their impartiality and political neutrality. However judges should not participate in political activities of any kind although they should be able to join and form professional associations.
23. *Disciplinary mechanisms* have a crucial role to play in holding judges to account and care should be taken over the very sensitive issue of *removing judges from office*. A judge should submit to disciplinary proceedings where necessary and must not seek improperly to influence removal proceedings in his or her favour. In the event that a judge is accused of misconduct, he or she may assert his or her right to representation, a fair hearing and appeal.

II. Responsibilities of the Judiciary

24. The judiciary as a whole, as distinct from individual judges, has particular responsibilities regarding several key areas that are essential to the overall integrity of judicial systems. The following paragraphs outline the responsibilities and risks of corruption in relation to the principles of “judicial independence”, “ethical conduct”, “clean appointments systems”, “accountability and transparency” and “discipline”.
25. The judiciary must uphold the overall *independence* and dignity of the courts and speak out when the government clearly threatens the judiciary or a judge. It should also be responsible for its own administration, financial planning, accounting and reporting, so as not to lay itself open to the risk of political interference and manipulation of these administrative matters which could be used by political powers to coerce judges to act in a certain way.
26. *Ethical conduct* should be promoted by the judiciary. It should develop and promulgate a code of judicial conduct based on the Bangalore Principles of Judicial Conduct (2002)⁵ and ensure that judges understand and adhere to it, and that clear substantiated breaches of the code result in disciplinary consequences. The judiciary has also a responsibility to work with judges’ associations and support judges in dealing with the corrupt inducements that are offered or the threats they receive. Finally the judiciary needs to keep itself informed of anti-corruption issues, laws and practices in order to be ready to combat it within its ranks.

⁵ This is a code of conduct for judges that has been adopted by a number of national judiciaries and was endorsed by the UN Economic and Social Council in 2006. They set out the core values of judicial competence and diligence and incorporate elements of education and training.

27. Where the judiciary is involved in *judicial appointment* decisions it should make its recommendations concerning appointments or promotions on the basis of demonstrable merit and good faith. In addition it should communicate clearly with the appointments body on the required competencies, skills and merits of judges at all levels. Misinformation can lead to corrupted processes and incompetent judges being appointed.
28. The judiciary itself can contribute to greater *accountability and transparency* within its ranks. It should develop objective procedures for case assignment that are regularly assessed; it should produce guidelines for judges on ways to reduce delay and engage the legal profession in efforts to ensure practitioners neither overstretch themselves nor seek unnecessary adjournments, and that individual judges do all they can to finish one case before moving on to another. Finally, judicial proceedings should be conducted in public (with limited exceptions) and judicial decisions should be published.
29. *Discipline* of judges, as indicated above, is a sensitive area as the abuse of disciplinary mechanisms can lead to the removal of judges unpopular with the government of the day, and consequently, such political interference results in the corruption of judicial proceedings. Judiciaries have an obligation to ensure that internal disciplinary measures and investigative procedures include a means of receiving complaints confidentially from litigants, lawyers and judges. What is more judiciaries should ensure that the details of initial complaints and investigations into judicial conduct remain confidential, unless the individual concerned requests a public investigation. This responsibility may seem counter-intuitive to principles of transparency and accountability but it is essential that public trust and perception of the judiciary is not undermined by vexatious investigations. Indeed this responsibility is based on recognition of a judge's privacy and the harm that can be done to the justice system by political hounding of judges on spurious claims.

III. Responsibilities of Politicians (Legislature and Executive)

30. As mentioned at the outset of Part 3, actors beyond the justice system play a key role in its fair and clean operation. The relationship between political actors both within the executive and the legislature and the judiciary is finely calibrated. Members of the executive and the legislature have the crucial responsibility to not place pressure on individual judges or the judiciary as a whole by making public statements that unduly influence the actual or perceived security and independence of any judge. Indeed such political actors should not interfere with or change the structure of the appeals process unless as part of a general reform initiative that is widely publicised and consulted on. The executive also has the responsibility to enforce judicial decisions, including any judgment against the government and no attempts should be made to interfere with the appeals process or to limit judicial review of decisions by members of the executive.
31. Those in political power must allocate adequate resources to enable the judiciary to carry out its functions properly and effectively. This includes allocating, and not withholding on pain of judicial compliance, funds for judges' security, adequate funding for appointments, education, salaries, court administration and the court service, technical support and communication services as well as fair pensions for judges. Political actors should not manipulate provision on security of tenure and remuneration of judges with the aim of influencing them.
32. In the area of judicial appointments in many jurisdictions executive and legislative actors have a role to play. Where they are legitimately expected to participate in the appointment of judges, they must take all reasonable measures to maintain the integrity and transparency of the process, and give reasons for any decisions taken. Political actors may also have a legitimate role in the discipline of judges. The executive however must not attempt to remove judges from office for

personal or political reasons and the process for removal of a judge can only be set in motion when a fair and rigorous internal investigation by the judiciary warrants it. Where the legislature is involved in determining whether or not a judge should be suspended or removed, it must carry out its functions fairly and transparently without undermining judicial independence.

33. The executive can play a vital role in bringing transparency to the workings of judicial systems and educating the public about the law, legal and court systems, legal rules and procedures, as well as legislation and judicial information.

IV. Responsibilities of Judges' Associations

34. Judges' associations have responsibilities in three main areas that pertain to a healthy fair justice system: that of protecting "judicial independence", "promoting judges' training and public education" and ensuring "judicial accountability".
35. A judges' association should be established and be accessible to all judges. This provides an *independent* forum for judges, consisting of judges elected by themselves to represent them in their interactions with the state. Such an association should respect and support judicial independence. A judges' association can provide fora for debates on legal developments, particularly judicial ethics and anti-corruption laws and best practice. Indeed the association can work with the judiciary and the judicial training body to develop best practices in judicial training as well as to develop skill sets in giving reasons for decisions. It can also act as a support for individual judges on ethical matters and provide a safe point of reference for judges who fear that they may have been compromised in some way.

V. Responsibilities of Prosecutors

36. Prosecutors must protect their independence. They should submit themselves to appropriate oversight of the prosecution service. They are obliged, like judges, not to accept or seek gifts or allow threats or any improper inducements to influence a decision about when to prosecute. They should never withhold evidence so that they only mount an ineffective challenge to defences or weaken arguments in favour of conviction or penalty.
37. Prosecutors are obliged to hold themselves to the same accountability standards as judges. They should report regularly on the exercise of their prosecutorial functions. They ought to adopt, publish and monitor and enforce codes of conduct for prosecutors. In places where private prosecutions are possible the public prosecutor has the power to take over such matters and either continue or terminate them, but only on the application of principles that are clearly defined and publicly known. Performance measures should be set that target conduct and not merely results: if results are the measure of success prosecutors may be tempted to indulge in corrupt means or respond to outside influences to prosecute unjustly.
38. Principles of transparency also apply to prosecutors. They should conduct their proceedings in public (with limited exceptions, for example concerning children). They should produce publicly accessible prosecution guidelines to direct and assist decision-makers during the conduct of prosecutions.
39. Prosecutors have key responsibilities with regards to their role in the discipline and removal of judges. They should not accept trivial or vexatious complaints against judges and only prosecute judges for corruption following a rigorous disciplinary hearing that finds such action is warranted.

VI. Responsibilities of Lawyers

40. Lawyers have a role in protecting the independence and enhancing the accountability of the judicial system. They can also represent corruption risks if their behaviour is not carefully considered. Lawyers should not seek to influence the decisions of judges in any way that is improper or outside the bounds of the law and legal procedure. They should not mislead the court or clients, nor should they accept gifts, bribes or inducements of any kind.
41. Lawyers have a responsibility concerning the work they take on and carry out. They are responsible for the management of their caseloads and must not overstretch themselves otherwise they run the risk of cutting corners and impeding justice. They should not accept new cases knowing that a hearing will clash with an ongoing case or seek adjournments unnecessarily or for the sake of their own convenience or personal gain. They also have a duty to report any unethical behaviour to the relevant professional body that uses settled complaints procedures. Indeed should they be privy to criminal behaviour or anything that improperly influences judicial decisions, they have a duty to report it to the relevant law enforcement body.

VII. Role of Individuals and Businesses

42. Litigants and defendants have a responsibility not to undermine the independence of the judicial system. They must respect the legitimacy and authority of the courts. Indeed they must accept the decisions of the courts and submit to any enforcement procedures. They should not seek to improperly influence the decisions of judges whether by words, acts of violence or the paying of bribes.
43. They also have a responsibility to enhance accountability in the justice system. Individuals should report suspected or actual breaches of the code of conduct, or corruption by judges, court administrators or lawyers, using formal complaints procedures that are safe, confidential and rigorous. They must not seek to influence the outcome of any disciplinary proceeding or initiate vexatious or malicious proceedings.

VIII. Role of the Media and Journalists

44. Journalists need a safe working environment in which to report on the activities of the judiciary and legal proceedings. They have a role in bringing transparency to the workings of the judicial system and informing the public of the work of the judiciary. Journalists must take care to respect judicial independence and not use their publications and media outlets to seek to influence or intimidate judges. However this principle is not to be used to prevent journalists from commenting fairly on legal proceedings, and reporting suspected or actual corruption or bias. Journalists should not be prevented in law from reporting on legal issues, nor should they themselves be intimidated or prevented from operating. Should defamation charges be brought against journalists and media outlets and proven, the amount of damages awarded should not be punitive.
45. Steps should be taken to ensure that journalists are trained in legal reporting so that reports of cases, judicial activities and anti-corruption procedures or inquiries are fair and accurate. Journalists should be encouraged to comment on any complaints or disciplinary procedures where they are made public, holding to account those involved on either side of disciplinary procedures by making transparent their workings.

IX. Role of Civil Society

46. Civil society in this context refers to academics and NGOs. They too have a significant role in shedding light on the workings of the judiciary thereby helping to mitigate any risks of corruption that are fostered by shady dealings in secret places. In order to shed this light on judiciary practices and hold the system to account, academics and NGOs should not be restricted from accessing information about the judiciary. They, like the media, must guard against undermining judicial independence or integrity through overzealous or malicious criticism of judicial competence. Indeed academics and NGOs can play a key role in participating in public education about the court system and accountability mechanisms. They can also contribute to the understanding of issues relating to judicial corruption by monitoring potential indicators of corruption, such as the incidence of corruption, engineered delays and the quality of decisions and by commenting on the decisions of judges. Their expertise can be shared with judges in developing training strategies for judicial actors.

X. Role of Donors Supporting Judicial Reform Programmes

47. Judicial reformers, whether they be international institutions such as the World Bank, the International Bar Association, the American Bar Association, bilateral donors or indeed national institutions such as Ministries of Justice or national bar associations, have traditionally focussed their reform efforts on bolstering judicial independence against interference from other organs of state, particularly the executive. While this is right and proper this emphasis has meant that less attention is given to the role of accountability measures in tackling corruption. Indeed accountability mechanisms can themselves serve to strengthen judicial independence since they are not just a means of holding the judiciary to account for its actions and decisions, but they are also a way of making transparent the relationship between the judiciary and political power and guarding against undue political interference in the judicial system.
48. Donors have a special set of responsibilities if they seek to reform judicial systems. First, like all development cooperation projects, they should incorporate judicial reform measures into judicial reform programmes. When they assist in judicial sector reform they must respect the independence of individual judges and the judiciary. Second, they must respect local priorities. At a country level they should collaborate closely with the judiciary to develop a government-donor strategy that is clearly led by the priorities and problems of each judiciary. They should involve other key actors, such as judges' associations, lawyers, civil society and the media in devising judicial reform programmes. They should also encourage local actors to favour long-term programmes that achieve sustainable results and that are sensitive to the general legal and cultural environment in which a particular justice system operates. Imposed, top-down, donor-led reform does not garner the support of local actors and can lead to a lack of ownership and personal investment in a judicial system which exposes the system to corruption risks. Finally donors can encourage transparency in the judicial system. They can share their knowledge of diagnostics, the evaluation of court processes and efficiency. Indeed they can maintain transparency by engaging openly with partner countries.

PART 4 EXAMPLES OF THE IMPACT OF JUDICIAL CORRUPTION ON THE POOR

49. In this part examples are shared of how judicial corruption affects the most vulnerable and disadvantaged citizens in countries around the world. Most obviously, judicial systems that impact in a particularly harsh manner on the poor are those in which bribe-paying is the norm in order to get access to justice. This type of corruption may be framed “petty corruption” and its impact on the poor may be more directly observed. However judicial corruption involving political interference in the selection of judges or the assignment of cases also impacts on the poor as those with political connections or deep pockets are favoured: there is one system for the rich; another for the poor.

I. Examples of Bribery’s Impact on the Poor

50. The following examples of bribery in the judicial system are taken from the Global Corruption Report 2007. For further examples please see the Global Corruption Report Part 2 at http://www.transparency.org/publications/gcr/download_gcr#7 “In Bangladesh⁶ Corruption is perceived as pervasive and continues to be a source of concern in Bangladesh’s lower courts. A 2005 household survey by TI Bangladesh (TI-B) found that two thirds of the 18.8 per cent of respondents who used the courts in the preceding year had paid an average bribe of TK7, 370 (around US \$108) per case, equivalent to 25 per cent of their annual income. Magistrates and judges exercise extensive discretionary power since there are limited accountability mechanisms in place. A district judge’s salary is equal to that of a joint secretary, although they do not enjoy comparable status. The salary scale is inadequate to support a lifestyle worthy of a judge and is a disincentive to the professionals whose appointments might otherwise contribute toward raising the integrity and reputation of the courts. Heavy workloads and poor disciplinary procedures are incentives to bribe taking and other corruption. The paucity of courts and judges is a major obstacle to justice delivery, along with organisational weakness, lack of qualified support staff and lacunae in procedure that permit lawyers to prolong hearings. A 2003 report noted that there were 968,305 pending cases, 344,518 in judicial courts, 395,905 in magistrates’ courts, 127,244 in the high court and 4,946 with the Supreme Court.¹⁰ This backlog strangles the rule of law and due process. Corruption enters through the case-rescheduling process; by bribing the right person, a docket can be moved forward for hearing.”
51. In South Africa the poor are hit hardest by court corruption. Transparency South Africa describes “a survey of the lower courts found that of 400 people servicing and using the courts, 52 per cent felt that corruption was one of the main reasons for their lack of confidence in the justice system, with 7 per cent of prosecutors and 11 per cent of court personnel indicating they knew of bribes paid to expedite cases. The survey emphasised factors commonly regarded as weakening the image of the court system, including lack of resources and capacity, weak management and low motivation. The survey suggested that some 70 percent of magistrates were unhappy with their working conditions. A dispute between magistrates and government over increased vehicle allowances is indicative of this dissatisfaction. In early 2006 the president awarded magistrates increased vehicle allowances but the finance division was unable to pay for them, leading magistrates to go on strike. They are now being investigated for bringing the profession into disrepute. Heavy caseloads and the mounting backlog frustrate judicial officers and court users alike. Briefing documents submitted to the Justice Portfolio Committee in March 2006 indicated that 157,932 and 47,112 cases were outstanding in the district and regional courts, respectively. Shortcomings in financial management are recognised as an ongoing challenge in combating corruption. At one point the chairperson of the Portfolio Committee on Justice and Constitutional Development, J. de Lange (promoted to deputy minister of justice after the 2004 elections), commented: “The DoJCD has not reconciled its books since 1959 . . . Of the 518

⁶ See Transparency International: Global Corruption Report 2007: Part Two Country Reports on Judicial Corruption

courts under the department's jurisdiction, only 30 are computerised and many transactions are not properly recorded.' In response, the DoJCD requested the auditor general to audit selected magistrates' and masters' offices in 2001–02, one of the largest audits in South African history. The DoJCD's finance officer, Alan Mackenzie, suggested that the real tragedy of such corruption 'is that it is largely the poorer sectors of the population who are the victims – people who post cash to courts to pay maintenance orders'. The Minister of Justice, in response to a parliamentary question on the subject, indicated that the audit had uncovered significant misappropriation of funds with regard to maintenance, bail money, estates and deposits in some of the targeted offices. As a result, over 2,000 disciplinary and 162 criminal proceedings were initiated."

II. Examples of the Impact of Political Interference on the Poor

52. In Sri Lanka there have been problems with Chief Justice Silva who is perceived to be in the pockets of those in political power. He has control over case listing and this has led to the sidelining of experienced judges and the selection of judges who are deferential to the interests of those in power. "The Chief Justice controls which Supreme Court judge hears which case. The Court sits in benches of three for each case. It is the Chief Justice who approves the bench list, nominates judges for benches and appoints a fuller bench for matters warranting a divisional bench. The counsel appearing in petitions challenging the Chief Justice's appointment sought a fuller bench in order of seniority, the normal course of action when constituting a divisional bench. Notwithstanding protests by lawyers and the public, Silva appointed a bench of seven judges in ascending order of seniority, which excluded the four most senior judges. The decision set a precedent and Silva has controlled the listing of cases ever since. Prior to his appointment, the convention had been for the court registrar to list cases and the Chief Justice formally to approve it. From 1999 to 2003 the senior Supreme Court judge, Justice Fernando, was excluded from almost all important constitutional cases. This led to his retirement in early 2004, two and half years before the end of his tenure. Survey data from the Marga Institute is helpful in displaying the breadth and depth of corruption in the lower judiciary. An in-depth survey in 2002 of 441 legal professionals and litigants, all with experience with the judiciary, revealed that 84 per cent did not think that the judicial system was 'always' fair and impartial, and one in five thought it was 'never' fair and impartial. Among judges, lawyers and court staff, 80 per cent considered the judicial system was 'not always' fair and impartial. Among respondents as a whole, 83 per cent held that the judicial system was corruptible with a mere 17 per cent holding that it was never corruptible. The same survey showed that of 226 incidents of bribes reported by judges, the largest single bloc of officials who benefited were court clerks (32 per cent). Bribes were typically offered to influence the issuance of a summons and choice of the trial date. Other beneficiaries were public prosecutors, police and lawyers. The lowest incidence of bribe taking was among judges. It is worth noting, however, that it was judges who identified at least five of their colleagues as bribe takers."
53. In Turkey there have been severe problems of political interference in judicial appointments. As the Global Corruption Report country report 2007 describes: "A key structural organ in the judicial system is the high council of judges and prosecutors, to which all judges and public prosecutors are attached and which has responsibility for ensuring the integrity of the judicial system. But it is also a source of the system's vulnerability. The high council is composed of seven members: the Minister of Justice and his undersecretary, three judges from the judicial appellate court (*Yargıtay*) and two from the appellate court of government administrative affairs (*Danıştay*). The high council meets in the Ministry of Justice, which serves as its secretariat. President Ahmet Necdet Sezer emphasised this divergence from the principle of judicial independence in a speech at the opening of the 2005 parliamentary year and it was criticised in the European Commission's 2005 Progress Report on Turkey's negotiations to join the EU. One cause for decay in the judiciary is political interference in the filling of judicial posts and the Ministry of Justice's influence on appointments to the high council. The latter finalises all key

personnel decisions; appoints judges and prosecutors at all levels, including to the appeal court; and is in charge of promotions, transfers and the lifting of immunity. Appointment and transfer lists, however, are first vetted by the Ministry of Justice, which exerts critical influence on the removal of judges and prosecutors from cases. To take one example, Ömer Süha Aldan, the prosecutor responsible for uncovering a gang that used its contacts to influence high court decisions in the Operation Scalpel case in 2003, was transferred. One member of the gang was Cenk Güryel, a lawyer and son of a former head of the high council.⁸ Güryel was sentenced to six months in jail, later reduced to a fine and a three month suspension of his licence to practise.”

PART 5 RECOMMENDATIONS

54. A series of recommendations have been articulated by Transparency International, based on an assessment of the most pressing problems of judicial corruption in countries around, to tackle corruption in the judicial system. This section outlines these TI main practical measures that can be taken to combat corruption in a systemic, holistic way, and thus improve the ability of vulnerable and disadvantaged groups to obtain remedy or redress through the justice system.
55. With regard to appointing judges there should be an independent judicial appointments body. An objective and transparent process for the appointment 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. At the heart of the process is an appointments body acting independently of the executive and the legislature, whose members have been appointed in an objective and transparent process. Representatives from the executive and legislative branches should not form a majority on the appointments body. Judicial appointments should be based on merit. Election criteria should be clear and well publicised, allowing candidates, selectors and others to have a clear understanding of where the bar for selection lies; candidates should be required to demonstrate a record of competence and integrity. Civil society groups, including professional associations linked to judicial activities should be consulted on the merits of candidates.
56. The terms and conditions for judges and other actors within the judicial system should be decent otherwise inadequate salaries give rise to the temptation to accept or solicit bribes. Judicial salaries must be commensurate with judges’ position, experience, performance and professional development for the entirety of their tenure and fair pensions should be provided on retirement. Laws should safeguard judicial salaries and working conditions so that they cannot be manipulated by the executive and the legislature to punish independent judges and/or reward those who rule in favour of government. Objective criteria that determine the assignment of judges to particular court locations ensure that independent or non-corrupted judges are not punished by being dispatched to remote jurisdictions. Judges should not be assigned to a court in an area where they have close ties or loyalties with local politicians. Case assignment that is based on clear and objective criteria, administered by judges and regularly assessed protects against the allocation of cases to pro-government or pro-business judges. Judges must have easy access to legislation, cases and court procedures, and receive initial training prior to or upon appointment, as well as continuing training throughout their careers. This includes training in legal analysis, the explanation of decisions, judgment writing and case management, as well as ethical and anti-corruption training. Security of tenure for judges should be guaranteed for around 10 years, not subject to renewal, since judges tend to tailor their judgments and conduct towards the end of the term in anticipation of renewal.
57. Judges must be subject to appropriate accountability and disciplinary mechanisms. Limited immunity for actions relating to judicial duties allows judges to make decisions free from fear of civil suit; immunity does not apply in corruption or other criminal cases. Disciplinary rules

ensure that the judiciary carries out initial rigorous investigation of all allegations. An independent body must investigate complaints against judges and give reasons for its decisions. Strict and exacting standards apply to the removal of a judge. Removal mechanisms for judges must be clear, transparent and fair, and reasons need to be given for decisions. If there is a finding of corruption, a judge is liable to prosecution. A judge has the right to a fair hearing, legal representation and an appeal in any disciplinary matter. A code of judicial conduct provides a guide and measure of judicial conduct, and should be developed and implemented by the judiciary. Breaches must be investigated and sanctioned by a judicial body. A confidential and rigorous formal complaints procedure is vital so that lawyers, court users, prosecutors, police, media and civil society can report suspected or actual breaches of the code of conduct, or corruption by judges, court administrators or lawyers. An independent judges' association should represent its members in all interactions with the state and its offices. It should be an elected body; accessible to all judges; support individual judges on ethical matters; and provide a safe point of reference for judges who fear they may have been compromised.

58. With regards to promoting transparency in the judiciary and thereby accessing the information that can be used to hold the judicial system to account, the judiciary must publish annual reports of its activities and spending, and provide the public with reliable information about its governance and organisation. The public needs reliable access to information pertaining to laws, proposed changes in legislation, court procedures, judgments, judicial vacancies, recruitment criteria, judicial selection procedures and reasons for judicial appointments. The prosecution must conduct judicial proceedings in public (with limited exceptions, for example concerning children); publish reasons for decisions; and produce publicly accessible prosecution guidelines to direct and assist decision makers during the conduct of prosecutions. Judges should make periodic asset disclosures especially where other public officials are required to do so. 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 an economic interest in the outcome. Formal judicial institutional mechanisms ensure that parties using the courts are legally advised on the nature, scale and scope of their rights and procedures before, during and after court proceedings. Journalists must be able to comment fairly on legal proceedings and report suspected or actual corruption or bias. Laws that criminalise defamation or give judges discretion to award crippling compensation in libel cases inhibit the media from investigating and reporting suspected criminality, and should be reformed. 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 in the media. Civil society organisations 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. 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.
59. This essay makes the plea to the human rights community: demonstrate and explain to those in the anti-corruption community where and how human rights principles can be used to advocate for the systemic changes that are outlined above in order to tackle corruption. Inform anti-corruption activists which human rights can be invoked in order to bolster the common concern, of human rights and anti-corruption activists alike, for a corruption-free judicial system which enables access to justice for all especially the most vulnerable of citizens in countries across the world.