

# *Family Courts in Crisis*

## Newsletter

June 2014

## Global Corruption Report - Part II

by Transparency International



*Countries... have systematically denied the existence of organized crime. Believing that in this way the danger will disappear, like an ostrich that hides its head under its wing when danger approaches...*

***Know your enemy, because if you do not know what you are up against, you will have a hard time confronting it, a hard time combating it. And, if you [try to fight them] without knowing what you are facing, they will always have the advantage, that is to say, they will always be two steps ahead of you. That is what has happened in the world... and has been this way for a very long time, even today.***

*A World Without Fear,  
Baltasar Garzón*

*Therein lies the lesson for those who want to break through **the cocoons of silence that keep vital truths from the collective awareness.** It is the courage to seek the truth and to speak it that can save us from the narcotic of self-deception. And each of us has access to some bit of truth that needs to be spoken.*

*It is a paradox of our time that **those with power are too comfortable to notice the pain of those who suffer, and those who suffer have no power.** To break out of this trap requires, as Elie Wiesel has put it, the courage to speak truth to power.*

*Vital Lies, Simple Truths  
Daniel Goleman*

# Judicial Corruption & Discrimination Against Women within the Court

by Quenby Wilcox – January 2014

Campaigns against judicial corruption usually concentrate on bribery and influence peddling, particularly in terms of “grand corruption”, while discounting the importance &/or prevalence of “petty” corruption, and the more subtle social forces at play. For this reason, combating judicial corruption normally focuses on promoting judicial independence as the solution; assuming that if ‘external’ factors are removed, giving actors a ‘free-hand’, everyone will diligently fulfill their respective roles.

Unfortunately, with judicial systems consistently demonstrating 70-90% negligence rates, this is a dangerous & erroneous assumption. And, one which assumes that corruption is only influenced by ‘exterior’ forces of which actors are consciously and cognitively aware, as well as a false assumption of competence & diligence of said actors. The biases and cognitive limitations of people at play here are explained in *Perception & Misperception of Bias in Human Judgment* by Emily Pronina:

*People are not always accurate and objective at perceiving themselves, their circumstances & those around them. People's perceptions can be biased by their beliefs, expectations & context, as well as by their needs, motives & desires. Such biases have important consequences. They can compromise the quality of human judgment & decision making, & they can cause misunderstanding & conflict...*

*Much of human judgment & action is driven by nonconscious processes. People can form impressions of others, pursue goals, adopt attitudes & regulate their emotions – all without awareness, effort or intention. They claim freedom from racial bias & from gender bias, even in circumstances where they have shown these biases– at times even showing these biases more strongly the more objective they claim to be. When making judgments about who is ‘right’ in a conflict, people tend to side with the person who shares their ingroup identity but they again deny that bias.*

And, since ‘cognitive biases’<sup>1</sup> & ‘selective perceptions’<sup>2</sup> produce the stereo-types in our societies (creating the most insidious & dangerous type of corruption & immorality), it is important to understand what role they play in people’s decision-making process. As Robert Kohls states in *Survival for Overseas Living*;

*“Stereotypes are natural; they are one way people everywhere deal with things which are too complex to handle or about which they have inadequate information. [Nancy Adler](#) has said that due to the multiplicity of impulses that our brain is receiving as our sensory receptors are being flooded with stimuli, we have no choice but to ignore most of them in order to pay attention only to those few that we have learned to consider as most vital... another truism about stereotypes is that once formed in people’s minds, they outlive the partial truth that created them in the first place. They are also destructive in personal encounters because they are unfair and because they interfere with getting to know individuals as they really are...*

To further complicate matters (in examining the responsibility of a government to protect victims of domestic violence, and how judicial corruption, might impede the fulfillment of that obligation) is that corruption in family courts is not considered ‘important’ by governments and the human rights community because they fail to appreciate the role that homemakers play in a society and socialization of our young. As stated in *When Legal Worlds Overlap Human Rights, State & Non-State Law* by International Council on Human Rights;

*“family law [is seen] as ‘minor’ ... [creating] a distinction between ‘major’ & ‘minor’ human rights.”*

<sup>1</sup> a pattern of deviation in judgment, whereby inferences about other people & situations may be drawn in an illogical fashion, leading to perceptual distortion, inaccurate judgment, illogical interpretation, or what is broadly called irrationality <sup>2</sup>the process by which individuals perceive what they want while ignoring opposing viewpoints.

This attitude has significant implication in terms of the application of human rights law, showing to what extent the rights of women & children within the family are not recognized by societies & human rights advocates. None of the actors involved in the problems (or potential solutions) are recognizing the vital role of the homemaker in producing healthy, well-functioning, productive societies:

*“...by her life within the home, woman gives to the State a support without which the common good cannot be achieved...women and the family often serve a crucial symbolic role in constructing group solidarity vis-à-vis society at large.” ... Thus, control over family law, and by extension women’s rights, is important to the power of state and non-state actors alike....State recognition of demands for distinct family laws therefore needs to be seen...as a **conscious political strategy that has profound human rights implications.**” [With the family considered as the] **“natural primary and fundamental unit group of Society”** [and] **“a moral institution possessing inalienable and imprescriptible rights...***

So in recognition of the fact that the homemaker & family unit, and thereby family law, has a profound human rights implications for the society in question, it is important for human rights advocates to examine the prejudices & biases of judges, lawyers, & psico-social teams within family courts. The most common of which are the following:

- The belief that women lie and make false accusations of domestic violence in order to gain preferential treatment during divorce (an illogical premise since women who file complaints for abuse (against them or their children) receive reprisals and detrimental treatment during divorce proceedings).
- The belief that women (particularly homemakers) are hysterical, stupid, don’t understand complex concepts ‘litigation/legal principles’ etc. As stated in (Coltrane 1998) “[they are] weak, lacked strength, their brains [are] too small...”
- The belief that homemakers “don’t do anything” and live-off the hard-work of their husbands. (This is the main reason that lawyers are failing to adequately reclaim common property assets during divorce, and judges are refusing to award alimony to women commensurate with contribution to home and family. As a consequence homemakers are left destitute by courts and denied access to common property assets during the entire process, effectively hampering their ability to defend themselves within the courts.)

In examining the case-study of Spain (see Nov. ‘13 & Jan. ‘14 [Family Courts in Crisis](#) newsletters) – judges award alimony in 11.4% of divorces with reported sums at €500/month (below poverty level) after an average of 15 years of matrimony with the average age of women, 42 years old. Many of these women who have not developed careers and dedicated themselves to raising children & assisting husbands in developing their careers (and elevated salary levels) are left penniless, and thrown into labor-markets where gender & age discrimination is rampant (with unemployment rates of 26.7%) condemning them to a life of extreme poverty. Basically, the courts are relegating the status of the homemaker to one of servitude with no recognition of her contribution to the family or society, & ‘workers’ rights (“safe conditions,” compensation, or pension, etc.) – in violation of Convention of Civil & Political Rights, & Intl. Covenant on Economic, Social & Cultural Rights)

Other social factors, influencing the attitudes, behavior & decisions of judicial actors are:

- Historically victims of domestic violence have been “silenced” by the community in order to protect the “honor” of the abuser (using tactics such as making victims feel “ashamed” & “responsible”, talking about abuse is not “polite” conversation, social ostracisation, restricting access to assets & funds, etc. Lawyers are (illegally) utilizing these same tactics in silencing victims (their clients); simply because this is how everyone has always handled the situation – common custom & habits. – Habits are hard to break, and nowhere is this more evident than in family courts...
- On average two-thirds of populations suffer from “abusive personality” disorders, with abusers more likely to seek jobs which put them in positions of authority and facilitate their access to victims. It

should be noted that the tactics used by lawyers, judges & court psico-social teams are those found in the [‘Power & Control’ - Duluth Wheel Model](#). **Unfortunately, these tactics have become so consolidated & integrated into court customs & procedures, they are widely accepted as ‘standard operating procedures’.** In order to ‘break the cycle of abuse’ in the courts, these procedures must be draconically challenged & eradicated. But first their existence must be recognized!

- Lawyers, judges & court psico-social professionals are in positions where they can easily & readily abuse their powers over women. – This is the reason that accountability of judicial actors by regulatory agencies is of the utmost importance in assuring transparency & accountability of family courts.
- There exists a false assumption that women lawyers, judges, etc. will automatically defend the rights of victims, when in fact these women are as likely, if not more likely, to discriminate against victims or cover-up abuse. As stated in the UN report *In-depth study on all forms of violence against women*:  
*“Women also commit acts of violence. While women commit a small proportion of intimate partner violence, they are involved to a greater degree in the perpetration of harmful traditional practices”*
- There exists a high level of nepotism, “old-school” networks, and antiquated “code of honor” traditions amongst lawyers (and other judicial actors) which encourage (if not obligate) the covering-up for “indiscretions” (negligence, malpractice, etc.) of colleagues
- Divorce courts are a huge money-making industry, with little incentive for lawyers to develop arguments and jurisprudence advancing the rights of women within the family or marriage. Yet, jurisprudence (supreme/constitutional court decisions) in the past few decades, regarding domestic abuse and family law, has made many inroads in advancing father’s rights and ‘abusers rights’, with little opposition/argumentation from family law lawyers. (This is an area which needs serious examination, and work, from a trans-national pool of legal experts in family law, in conjunction with human, civil and women’s rights lawyers.)
- Women’s rights movements have concentrated almost exclusively on women’s rights within the workforce and reproductive rights in the past decades – but not the home or marriage. This has left a “vacuum,” and women have not gained any rights within the family in the past 100 years, simply because no one is “requesting/demanding/arguing for” those rights in the courts. – Again, a simple matter of ‘customs’ and breaking with ‘customs’ – one of the hardest thing to do in a society  
– Feminists & women’s rights activists have traditionally considered homemaker’s role (house-keeping, child-raising, supporting husband’s career, even marriage itself) as ‘shackles of oppression’, so they have little incentive or desire to promote legal rights of homemaker in the courts or elsewhere
- There is no effective over-sight on family courts, with gag orders common when victims attempt to attract media attention; providing the opportunity for corruption in family courts to develop & thrive – **And, why media attention is so vital to bringing changes!**
- **There is an extremely high correlation between abusers and criminal activity.** Organized crime & white collar criminals develop extensive networks within judicial systems, and utilize these during divorce proceedings & DV cases. Some of the tactics utilized (and typical of the problems seen in family courts) are enumerated [The Global Corruption Report: Corruption in the Judiciary \(2007\)](#), Transparency International, and are as follows:
  - *Judicial civil servants manipulate the dates of hearings in order to favor one party over another*
  - *Judge make inexact summary-decision / distort testimonies of witnesses before handing down a sentence*
  - *Judges refuse the introduction of evidence or testimonies in order to favor one party over another*
  - *Civil servants —lose a document*
  - *Prosecutors block avenue of legal reparation*
  - **[Noting that] corruption is more likely in judicial procedure where journalist do not have free access to all fact or lack of activist groups who push for reform.**

*Examining the Links Between Organized Crime and Corruption* by Center for The Study of Democracy, further exposes the influence white-collar criminals/abusers have at their disposition, recalling that abuse is about power & control;

*“white-collar criminals exert more pressure on the judiciary, as they have easier access to social networks that facilitate corruption... organised crime uses social, professional & political networks to influence the judiciary... Certain type of companies, such as law firms are in high demand by organised crime as middlemen... Attorneys have a significant competitive advantage over all other intermediaries – they can provide services through the whole institutional chain, starting with police & going all the way to prosecutors and even judges... ‘Collusion’ is often a more appropriate way of describing professionals’ corrupt behaviour, including that of lawyers...*

The factors which influence corruption in family courts, their failure to protect victims, and failure to recognize the rights of women and children involve a large range of factors, which must be examined from an intersectional approach by women’s & human rights organizations, as well as regulatory agencies when evaluating the actuation of judicial actors. Additionally, prosecutorial agencies must take a proactive role, and a hard stance, when investigating and evaluating criminal negligence, with severe sanctions & reparations to victims for monetary loss as well as personal suffering.

Unfortunately, regulatory agencies, beginning with Bar & Judge Associations are not proactively investigating cases where victims have been denied protection and/or rights violated, justifying their refusal to investigate under the erroneous contention that it violates the judicial independence of lawyers and judges. **(A full examination of judicial independence vs. accountability/transparency, & their inter-dependence rather than mutual exclusivity, will be covered in upcoming FCC newsletters.)**

In the case of Bar Associations in the USA, the sanction rate of complaints received is 2 – 2½ % (with legal malpractice & negligence rates in the USA at an est. 70-75%). And, the Bar Association of Madrid has contended, in writing, that it is the **“right of a lawyer to violation their client’s rights under the principle of judicial independence”** (see Preliminar 859/13 <http://worldpulse.com/node/80671>).

The failure of government regulatory agencies (arguing that ALL agencies which fulfill a public function or authority are ‘government agencies’) to fulfill their obligation to assure transparency and accountability of those they license, regulate, and sanction **is one of the principle and the root causes of the failure of family courts to protect & defend the rights of victims.**

Sadly, lack of ‘good governance’ of regulatory agencies is not found only in those who supervise court systems, but is rampant in all sectors of societies and industries, and in countries across the globe (as the current global economic crisis is testimony). In the USA for example, we see it in the banking/financial markets and the SEC; the environment and the EPA; health-care systems and the HHS, FDA, AMA & APA, etc.; the list goes on. But, paradoxically political campaigns, promises and rhetoric are never directed at reforming these systems, promoting ‘good governance’, or eradicating rampant abuses of power and corruption within them. – **Until and unless political leaders are willing (and able) to address these issues and problems, the world will continue on its current spiraling descent.**

**A perfection of means and confusion of aims, is the underlying problem. This is the true challenge of the 21<sup>st</sup> century, and will determine if humanity survives the 22<sup>nd</sup> century.**

*There are those who believe destiny rests at the feet of the gods, but the truth is that it confronts the conscious of man with a burning challenge. – Eduardo Hughes Galeano*



# ***GLOBAL CORRUPTION REPORT 2007***

## ***Corruption in Judicial Systems – Part II***

Transparency International

### **Lawyers and Corruption: a View from East and Southern Africa**

Arnold Tsunga and Don Deya

In the countries of East and Southern Africa lawyers are integral to the concept of the separation of powers because judges, especially those serving at the higher echelons of the judiciary, are almost entirely appointed from among legal practitioners. The independence of the judiciary and the quality of the legal profession are therefore intricately linked. Most countries of the region have lawyers' associations to regulate the conduct of the profession and secure its independence from the political or business powers of the country. Yet all too often, these function as cartels, controlling access to a lucrative profession, or are targets of manipulation or persecution by the state, or others acting on its behalf.

#### **Corruption involving lawyers and legal associations**

Behaviour among lawyers who act as a cog in the judicial corruption machine can be characterized in three ways:

- Lawyers who act as 'couriers', conveying litigants' desires to judicial officers, and judicial officers' demands to litigants
- Lawyers who sense from the conduct of the court that their client must have 'seen the judge' (to corrupt him or her), but turn a blind eye to it
- Lawyers whom the rank and file of the profession know to be corrupt, but who are not brought before a disciplinary mechanism.

Promises to speed up delays in the administration of justice are another avenue for corruption and an important source of corrupt revenue for lawyers. The nature of the delay varies across countries, but includes criminal and civil cases, property transfer and registration, company registration, notary deeds registration, labour disputes, administrative justice and immigration cases. Some lawyers bribe officials to expedite the resolution of their cases; others see a delay in resolution as an opportunity for financial gain on behalf of, or from, their clients.

Most lawyers' associations in southern Africa are autonomous and self-regulating bodies with a mandate to:

- Control admission to practise as members of the legal profession
- Maintain registers of members
- Promote the study of law and contribute, undertake or make recommendations on legal training
- Promote justice and defend human rights, the rule of law and judicial independence
- Control, manage and regulate the legal profession, including oversight on compliance with ethics and an acceptable code of behaviour in the practice of law.

Beyond this formalised mandate, lawyers' associations play three additional, implicit roles:

- Trade union for lawyers
- Regulator of the profession
- A wide – usually statutory – public-interest role.

Balancing these roles, particularly the first two, is difficult since they tend to clash. Acting as a trade union means the association and its principals will protect and be lenient to, or at least understanding of, its members. However, the bar association's regulatory role requires it mercilessly to wield the disciplinary stick on the same members. This becomes difficult when the governing council or disciplinary committee of the association is directly elected by the membership.

The easiest way out of this potential quagmire is to insulate the regulatory or disciplinary branch of the profession from direct election. This entails appointment by the appropriate governmental arm, such as the Ministry of Justice, attorney general or a similar office. In Malawi, the Legal Education and Legal Practitioners Act created a disciplinary committee, composed of the solicitor general (a state legal officer) and two members elected by the society, to conduct enquiries into allegations of indiscipline. If necessary and appropriate, matters can be referred to the attorney general.<sup>8</sup> The perception in the Malawi legal profession is that the disciplinary committee is fairly independent, and has a strong voice in fighting for public and private accountability.

Such a process, however, may open the profession to manipulation if the government appoints officers who may be seen as biased. Swaziland and Tanzania, for example, have lawyers' associations but their effectiveness in ensuring true independence is hampered by a disciplining process that is perceived as mainly, if not solely, controlled by the executive.<sup>10</sup> In other countries that have not suppressed corruption and which have declining standards of democracy and poor human rights records, lawyers' associations are often targets of manipulation and persecution by the state. Without a primary focus on its ethical, disciplinary and regulatory roles, lawyers' associations operate as virtual cartels...

### **Recommendations to the profession and lawyers' associations**

Here are seven recommendations to engender more independent and effective lawyers' associations that can assert adherence to rules and ethics amongst their members. Such associations can also insulate lawyers from corruption in the wider political and socio-economic context.

- **Establishment of lawyers' associations by statute**

Lawyers in most Southern African countries experience improved ethical behaviour when the legal profession regulates itself, rather than answering to the executive or another govt. office

- **Structures must support associations' ability to discipline members**

Disciplinary proceedings should be brought before an impartial disciplinary committee established by the profession, an independent statutory authority or a court, and should

be subject to independent judicial review. This may mean insulating the regulatory/disciplinary arm of the association from direct election by members toward appointment by another appropriate office (i.e. Minister for Justice, or attorney general), although this might imply a risk of political interference.

- **Regulate the admission of new lawyers into practice/partnerships**

Statutes must empower associations to regulate the admission of new lawyers into partnerships to protect the public from unscrupulous, incompetent and unqualified practitioners. This may mean setting minimum periods of tutelage or assistantship before lawyers are empowered to run their own practices. Pay rates for non-partnered lawyers may need to be reviewed by associations. If lower-ranked lawyers are grossly underpaid compared to partners, they may resort to separately charging clients or receiving payment outside the office to supplement their incomes.

- **Periodic renewal of practice certificates**

Legislation that allows associations periodically to renew practising certificates can strengthen their ability to maintain the integrity of the profession. In Botswana, Namibia, South Africa, Tanzania, Zambia and Zimbabwe, lawyers' associations require a clean audit certificate on trust funds before practice certificates can be renewed. Such scrutiny of audit certificates can effectively prevent corruption and money laundering by lawyers.

- **Continuing legal education as condition for renewal of practice licences**

Lawyers' associations can set minimum compulsory continuous legal education for members as a condition for renewal of practising licences. Legal education should include ethics, anti-corruption law and practice, and other areas to improve competence, reducing the temptation to cut corners.

- **Codes of conduct for legal practitioners**

Lawyers' associations should establish codes of conduct in accordance with recognized international standards and norms. **Since cases of corruption are difficult to prove, lawyers' associations should use their power to ensure that unethical conduct, even if it falls short of criminality, is promptly investigated and punished. This includes cases where charges against a lawyer for criminal conduct or corruption are dismissed in a court of law.** The association should reserve the right of inquiry in the interests of protecting the profession's reputation.

- **Monitoring compliance with codes of conduct**

Legislation creating statutory lawyers' associations in Malawi, Namibia, South Africa, Zambia and Zimbabwe allows them to define methods for testing compliance with ethical conduct. If used wisely, spot checks can be potent in detecting corrupt behavior and rooting it out.

## **Broader reforms to fight corruption in the legal profession**

- **Use of alternative dispute resolution (ADR) to reduce backlogs**

ADR mechanisms, whereby the plaintiff and defendant try to reach a settlement outside court, could significantly reduce backlogs, speed up hearings and limit incentives for corruption. There is recognition in principle of the need for these



improvements in most countries of East and Southern Africa though implementation has yet to get off the starting block.

- **Computerisation and use of information and communication technologies**

Computerisation allows for better accessibility of files and improved monitoring, reduces backlog and limits loss of information. Bringing computer-based systems into legal practice narrows the scope for rent seeking or other corrupt activity. This is an area where lawyers' associations and law schools could lead by example., Compulsory IT training for legal professionals should be made a requirement for renewal of licences to practise. Partnerships between IT and law faculties in universities could produce prototypes of case file-management systems, making it more difficult for government to say that it is impossible, difficult or expensive. Lawyers' associations could help members to procure law chambers' information systems. Once a critical mass of chambers has become computerised, courts that are manual will be less acceptable.

- **Involvement in judicial appointments by legal practitioners**

Authorities wanting to appoint judges from the bar should involve the heads of lawyers' associations to ensure that appointees have clean practice records. Representatives of lawyers' associations – as well as representatives of other civil society organisations – should be included in the judicial decision-making processes (e.g. on the judicial service commission).

- **Anti-corruption education in law faculties and post-graduate law schools**

There is now a significant body of international and regional conventions, national statutes, and international, regional and national case law to sustain a one-semester course on corruption prevention. The course should be multi-disciplinary, incorporating economic analyses of the negative effects of corruption on economies, and on economic, social and cultural rights.

- **Mentoring programmes**

Mentoring programmes that expose promising lawyers to reputable senior judges and magistrates have been shown to improve legal-judicial performance while maintaining transparency and accountability.

- **Other types of organisations to support corruption prevention among lawyers**

Lawyers' associations tend to be conservative clubs. Experience in East Africa shows that other constellations of lawyers tend to be more dynamic and proactive. For instance, women lawyers' associations<sup>21</sup> have been able to address not only traditional women's issues, such as property and inheritance rights, but wider governance issues including constitutional reform and budget advocacy. Other membership organisations, such as the Kenyan Section of the International Commission of Jurists, have a consistent programmatic focus on judicial integrity and have become a key knowledge repository on the issue. Looking beyond traditional associations, incorporating whistleblower protections or anti-corruption telephone hotlines can help strengthen the fight against corruption in the profession.

## Courts, culture and corruption

*The justice system does not exist in a vacuum. Society, broadly understood, has a role in moulding justice systems and continually monitoring them. Marina Kurkchiyan describes how some countries have managed to internalise the principles identified with the vocation of judge, while others discover that the impartiality required of the profession conflicts with the networks of family, religion or friendship that define who judges are as individuals. Barrister Geoffrey Robertson focuses on the role the media must play in teaming up with whistleblowers to expose corruption in the courts – and the legal obstacles that are in place to prevent them doing so. In Central America, civil society organisations are exploring inventive ways to highlight judicial corruption through research, diagnostics, networks to promote dialogue about the need for judicial reform and by monitoring the implementation of international conventions, as described by Katya Salazar and Jacqueline de Gramont. Parts of society experience the justice sector, and judicial corruption, differently. In Asia and Africa, as Stephen Golub describes, NGOs are working with paralegals to raise awareness about corruption in the non-judicial justice systems to which an estimated 90 per cent of the developing world's population resorts in order to settle their disputes. Celestine Nyamu Musembi examines the gender dimensions of corruption in the administration of justice and argues that the currency of corruption is not always monetary.*

### ***Judicial Corruption in the Context of Legal Culture***

*by Marina Kurkchiyan*

#### **The context of legal culture**

Why does a judge become corrupt? What determines the frequency and severity of corruption? Why does the magnitude and nature of corruption vary from country to country? Economists typically seek answers to such questions through cost-benefit models which posit that removing incentives and maximising penalties for corrupt behaviour makes it difficult for anyone to offer a bribe to a judge, and detrimental for a judge to accept it. Affording judges the highest degree of independence, while still holding them to account, enables judges to resist inducements or pressure. Previous chapters have analysed the carrots and sticks that may be used to combat corruption, including paying higher salaries, strengthening audit procedures, and imposing effective mechanisms of control and punishment. But, as this essay will explore, fine-tuning the institutional framework perhaps by applying a cost-benefit analysis, whilst important, is not sufficient by itself.

By way of illustration of this, in the early 1990s, a group of Italian judges was strong enough to expose a nationwide scandal and bring down a corrupt political regime. This earned high respect for the judges, both in Italy and beyond. Despite the scale of their achievement in the *mani pulite* (clean hands) campaign, it was actually conducted by only 5 per cent of Italy's 7,000 or so judges and therefore signified little about the judiciary as a whole. It did not stop many other judges from colluding with politicians and big business in illegal acts....

#### **Legal culture**

Understanding and transforming 'legal culture' offers a different approach to tackling judicial corruption. If judges are examined in their local context, one gains a deeper insight into just

what it means for them to use public office for private gain. In this part of the essay we explore both the legal culture of judges and the legal culture of the general public in order to understand the attitudes, behaviours, allegiances and pressures that affect judicial activity. Technically legal culture is understood as legally oriented behaviour that derives from shared attitudes, social expectations and established ways of thinking.

The perspective of legal culture shows us the importance of self-identity; the feelings of honour and pride that come with group membership; the habit of networking in societies where survival may depend on it; the instinctive trust felt for some people and not for others; the social and family relationships that enmesh everyone from judges downward; and above all the extent to which corruption is socially tolerated. An emphasis on legal culture allows us to understand corruption in the context of how each society has evolved its own well-oiled ways of doing things. The perspective does not suggest that corruption is incurable, but it demonstrates that whatever kind of social engineering is chosen to stamp it out must be sophisticated rather than simplistic, and meticulously tailored to fit the shape of the society it is intended to help.

### **Life as a judge**

Within the legal-culture perspective, judicial corruption is a distinct form of behaviour that arises at the interface between what sociologists call the 'internal legal culture', shared by the legal professionals, and the 'external legal culture' – the culture generated by the general public. Analytically the two spheres of judiciary and society are quite distinct, but in practice they are so closely intertwined that it is not possible to draw a clear line between them. In the conditions that prevail in those societies, judges must be fully integrated into the legal culture of the general public if they are to survive. They find themselves under pressure not only from substantial groups and institutions, such as politicians, big business and organized crime, but from the looser, still potent informal networks formed by extended family, friends, neighbours and other groups with whom they associate. To a judge working in this setting, the form, extent and significance of corrupt practices become indistinct because they reflect local norms of networking, exchanging favours and gifts, and offering and receiving payoffs to ensure favourable outcomes. The manner in which long-established informal networks can undermine well-intentioned reform is demonstrated in 'Informality, legal institutions and social norms'.

### **Legal culture of the general public**

Where negative expectations about the practice of the law act in combination with a general habit of informal problem solving, the social inhibition of shame loses its force – because people do not feel that they are doing anything that others would not do. Famously, the typical defence of politicians and businessmen brought to account in the Italian 'clean hands' trials was that they did what everyone else was doing; the system forced them to behave that way. This does not mean that collective behaviour reflects the true values of citizens at the personal level, or that people think of bribery, shortcuts and other corrupt practices as desirable and rational. Quite the opposite. People often act against their own values when they conform to the general practice; they do it because they feel they must, not because they want to.

Yet the belief that corruption has become the norm prepares the ground for social tolerance of it. The level of tolerance is one of the most powerful forces preventing or abetting corruption. Where tolerance is high, even a case where an abuse of office has become public knowledge need not result in communal condemnation and exclusion. Values such as family ties, friendship or the social need to keep in touch are considered more important than the moral impulse to distance oneself from a corrupt person. Only in a climate of extreme social tolerance is it possible to pervert the course of justice...

### **Conclusions and policy considerations**

A powerful vehicle in constructing people's views in the contemporary world is the mass media. Politically censored and economically motivated media can be a major contributor to shoring up a corrupt society by covering up for those responsible by distorting facts and providing misleading commentaries. Media that command trust and respect, by contrast, can have not only a constructive, but even a dramatic, impact on how people view the world, how they behave toward it and how they feel about their role in it...

## ***The Media and Judicial Corruption***

by Geoffrey Robertson QC

The media have a crucial role to play in combating the scourge of corruption throughout the world. All the conventions, laws and disclosure regulations on the subject will be ineffective unless they are enforced by independent judges and monitored by a free press – a press protected from reprisal when it exposes corruption or criticises judges for lacking independence. In the movement for greater transparency too little attention is paid to the interdependent relationship between the justice system and the media. It is no coincidence that corruption thrives most in countries where judges are corrupt, either because they are personally venal or because they are compliant with governments that seek to muzzle the press. Editors and journalists who have no 'public interest' defence when they make credible allegations about malfeasance in the justice system, or who are liable to go to jail if they allege judicial misconduct, cannot fulfil their role as public watchdogs.

Little headway will be made in freeing the media to expose corruption until these laws are changed: and unless all states are required to adopt the 'open justice' principle and provide public interest defence for media outlets that contain criticism of judicial and political chicanery.

Corruption generally comes to light only through a partnership between courageous members of both professions. It takes lawyers of integrity – often members of independent bar associations – to alert journalists to improper behaviour, which would otherwise go unnoticed by outsiders. Then it takes real dedication by journalists and editors to dig for proof, usually by cultivating sources or encouraging whistleblowers in the police or court services to come forward under firm guarantees of confidentiality. Publication is always a problem and requires access to international newspapers, NGOs or the internet. Only then will governments and their anti-corruption agencies conduct any sort of inquiry.

The performance of the media in supporting judicial and legal reform varies from country to country: the only generalisation that can be made is that it is uneven and underwhelming. The challenge of law reform is twofold: to the media, in equipping their practitioners with the skills to understand and explain to the public the importance of having an advanced justice system; and to parliaments and courts, in appreciating the importance of giving the media more freedom to investigate and expose, however uncomfortable (and, sometimes, erroneous) their conclusions. The occasional error is a small price to pay for the media's capacity to expose and deter corruption.

It must be emphasised that media investigation of judicial corruption is difficult when it is a matter of bribery and exceptionally difficult if it involves a court that has buckled under political pressure. It calls for reporters knowledgeable about law, judicial systems and procedures, and for editors and proprietors prepared to stand up to threats, fines and imprisonment. It calls for media practitioners skilled not only in reporting the courts but in presenting legal issues comprehensively for the general public. Above all it calls for 'integrity partnerships' between journalists and lawyers with the courage to risk their careers by speaking out, or at least informing, against judges who betray their calling by turning the rule of law into rule by corrupt lawyers.

## ***Gender and Corruption in the Administration of Justice***

by Celestine Nyamu-Musembi

### **Introduction**

Corruption raises particular concerns when it occurs in justice institutions because they are fundamental to enforcing citizens' rights and probity in public office. Figures on people's perceptions and experiences of corruption in the justice sector range from total loss of faith to suggestions that a significant proportion of judicial officers are highly corrupt.<sup>2</sup> It is an exceptional country whose citizens perceive justice officials as corruption-free. Given these challenges it may seem unimportant to dwell on the gender dimensions of corruption in the administration of justice. But in order to understand how corruption in judicial institutions undermines the trust of ordinary people in the administration of justice, violates the rights of ordinary people and denies them access to justice, it is imperative to examine the experiences of different people by gender, religion, ethnicity, race, class or caste.

Such an examination leads to a fuller understanding of the problem, and more focused and effective solutions. This essay therefore selects and concentrates on how gender impacts on people's experience of corruption in the justice system. In exploring the gender-differentiated consequences of corruption in the justice system, a dilemma arises that is common to any context characterised by the system's general failure to deliver. Identifying gendered consequences of such failures is not the most difficult task. More difficult is the question of attribution. How much do we attribute failure to lack of adequate resources or sheer incompetence? How much can be attributed to corruption, defined as the abuse of entrusted power for private gain, and how much is due to gender bias?<sup>4</sup> Another key question is how tangible the 'private gain' needs to be. Is it corruption when the 'private gain' is self-gratification, or actualisation of a deeply held prejudice against women holding certain entitlements? When is gender bias itself a form of corruption? Are there instances when it is



strategic to name bias – whether on the basis of gender, ethnicity, religion or other sectarianism – as corruption? Do all instances of non-delivery or bias in the delivery of justice earn the label ‘corrupt’?

This essay explores these questions and aims to provoke debate, rather than provide definitive answers. It covers both formal and informal justice institutions. Formal justice institutions include courts, registries, prosecution and probation services, and the police. The term ‘informal-justice institutions’ refers to systems that have evolved around tradition or religion, but it incorporates a wide range of community-based systems. These include those that have little interaction with formal state structures, such as intra-family mediation and quasi-judicial forums sponsored or created by the state to apply norms such as customary or religious law.

This essay makes three propositions on the relationship between gender bias and corruption:

- Gender relations shape the currency of corruption
- Corruption in the justice system affects men and women differently
- Gender relations play a central role in shaping networks of corruption.

**Lack of clear regulation of the interface between formal and informal institutions exposes women and children to disproportionate risk of corrupt practices**

...In contexts where domestic violence, rape and other sexual assaults are perceived as ‘family matters’, there is likely to be more pressure to keep them ‘quiet’, and therefore victims – mostly women and children – suffer disproportionately from this susceptibility to corrupt practice...

**Gender relations shape networks and opportunities for corruption**

...In such gender-imbalanced settings, informal channels often come to matter more than formal procedures for decision making, leaving room for undue influence and limiting accountability. It is therefore useful to ask whether undertaking measures for gender (or ethnicity, race, class or caste) inclusiveness can reshape the ‘power map’. Under what conditions can such inclusiveness dilute the influence of the exclusive networks that foster corruption? Considering the relationship between inclusiveness and corruption in public office must, however, guard against slippage into a popular but simplistic claim that increasing proportions of women in public institutions is in itself a measure against corruption.

Informal justice institutions do not differ much from formal institutions when it comes to gender imbalance. Perhaps the significant difference is that informal institutions tend to operate in a narrower social circle. The chances that excluded groups can tap into those circles to influence decisions, or even enter spaces where they convene, is low due to unspoken social rules and norms....

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*Family Courts in Crisis* Newsletters are prepared by **Quenby Wilcox**, Founder of Global Expats ([www.global-xpats.com](http://www.global-xpats.com),) and [Safe Child International](http://www.safechildinternational.org).

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**Free, downloadable copies of *Family in Crisis* (May–present) Newsletters are posted on <http://worldpulse.com/node/71182> and are as follows:**

- March's newsletter featured the Intl. Council on Human Rights & Transparency International's *Corruption and Human Rights: Making the Connection & Integrating Human Rights in the Anti-Corruption Agenda*
- February's newsletter featured the Intl. Human Rights Council's report *The Relationship between Human Rights & Corruption* & the Center for the Study of Democracy's report *Examining the Links between Organised Crime & Corruption*
- January's newsletter featured Amnesty International's report *What Specialized Justice?*
- December's newsletter featured the United Nations Secretary General's report *Advancement of Women: In-depth Study on All Forms of Violence Against Women*
- November's newsletter featured Save the Children report - *The Spanish Justice System Confronted with Sexual Abuse Within the Family*
- October's newsletter featured *The Emperor's New Clothes* – Domestic Violence, International Divorce, and a State's Obligation to Protect under International Law
- September's newsletter [\*Hague Convention Domestic Violence Project\*](#)
- August's Newsletter featured important works by Barry Goldstein, Dr. Mo Hannah and Elizabeth Liu
- July's Newsletter featured the documentary *Now Way Out But One* by Garland Waller & Barry Nolan
- June's Newsletter featured [\*Safe Kids International\*](#) & [\*Damon's List\*](#)
- May's Newsletter covering the *Battered Mother's Custody Conference (BMCC)*, *Mothers of Lost Children (MOLC)* White House Demonstration, and *National Safe Child Coalition (NSCC)* lobbying efforts on Capitol Hill.

If you should have any questions about these issues or my on-going lobbying work (all posted on my [World Pulse Journal](http://www.worldpulse.com)). I can be reached at [quenby@global-xpats.com](mailto:quenby@global-xpats.com), 00.1.202-213-4911, or skype: quenby.wilcox2.

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