



Corruption

# Corrupt Judges – Threat to the Constitutional State

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Judges are at the heart of a functioning constitutional state under the rule of law, but unfortunately this does not mean that they are immune to corruption. Recent years have seen a number of high-profile cases, demonstrating that corrupt judges are a global problem. In the fight against judicial corruption, it is essential to seek solutions at the national level, but it is still valuable to gain a global perspective of this phenomenon.

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## Introduction

Franziska Rinke

Being a judge is more than just a profession. Judges are afforded a prominent position in the functioning of the state. They should be independent, i.e. free to make their own decisions, and bound only by law. They exercise an important oversight function and act as a vital counterweight to the legislative and executive branches. They form the backbone of a functioning constitutional state under the rule of law. Corrupt judges therefore represent one of the most serious threats to such a state. Laws – and particularly anti-corruption laws – are ineffective if they are enforced by judges who are themselves corrupt.

In order to determine the precise extent of judicial corruption, one must first define the term. This is no easy task. Even the United Nations Convention against Corruption,<sup>1</sup> which, with 186 ratifications, is the most comprehensive binding international treaty in the global fight against corruption, lacks a precise definition of the term. However, judicial corruption, as defined by Transparency International, should at least include: the misuse by judicial personnel of entrusted power for private benefit or personal gain, whether such gain be material or immaterial; any action relating to information or other exercise of influence on the judicial decision-making process; and political influence on the judiciary and its decision-making processes, in particular through politically motivated appointment and dismissal of judicial personnel.<sup>2</sup>

It is obvious that corruption undermines judicial integrity. However, the consequences in terms of maintaining an effective and impartial judicial system and judicial independence are much more serious. Many countries fail in their fight against corruption, not only in the justice system. What has been happening over recent years, and is there any hope that things could improve?

In 2015, the United Nations Office on Drugs and Crime (UNODC) adopted the Doha Declaration at the 13<sup>th</sup> Congress on Integrating Crime Prevention and Criminal Justice in Qatar.<sup>3</sup> The Declaration is action-oriented and based on four pillars, one of which is judicial integrity. The Global Judicial Integrity Network was launched in April 2018 – a network of judges for judges that adopts a peer-to-peer approach. It promotes peer learning and support activities, and most importantly provides further training based on the Bangalore Principles of Judicial Conduct.<sup>4</sup> The aim is to help judges strengthen judicial integrity and prevent corruption in the justice system. Its declared long-term aim is to build confidence in public institutions.

These global developments are to be welcomed but, first and foremost, it is national solutions that are needed in the fight against judicial corruption. Every country, region and continent is different – politically, economically, culturally and legally. There can be no one-size-fits-all solution. However, effective anti-corruption measures in one country can provide useful food for thought in other parts of the world. While highlighting specific examples of corruption

around the globe may be a painful business, they can provide practical solutions that serve as models for other regions to follow.

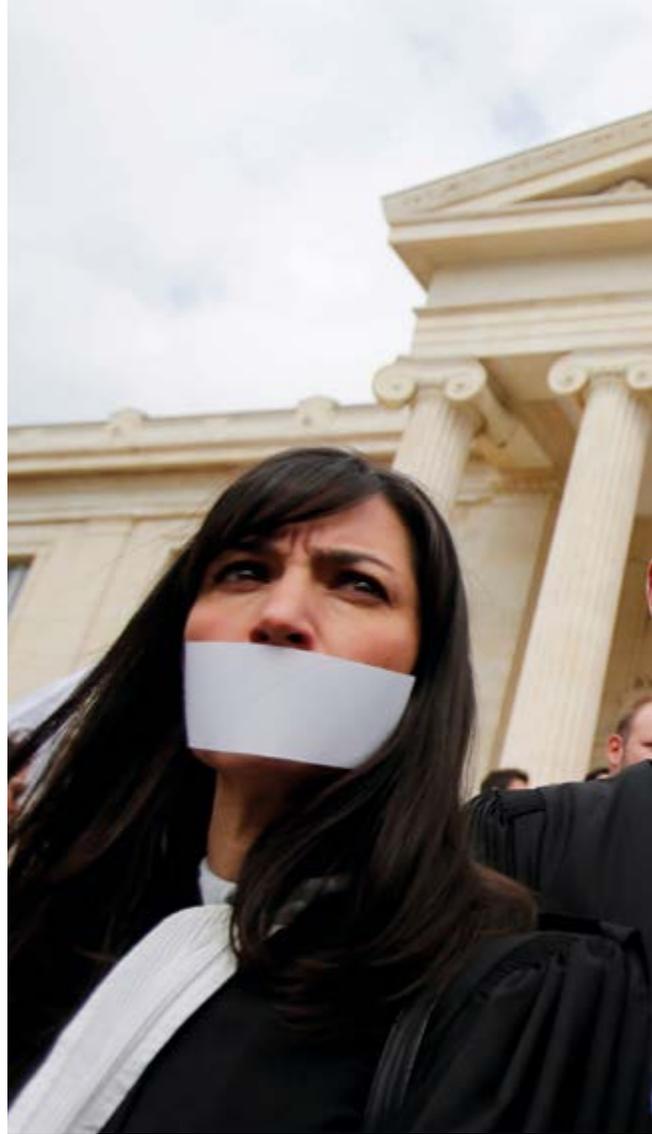
## Latin America

### Marie-Christine Fuchs

Judicial corruption is an everyday occurrence in Latin America and, for many decades, the government and public alike have viewed it as a minor evil. Those with money or power can easily secure the favour of corruptible judges by offering bribes or promising lucrative positions once their careers as judges come to an end. The fact that judges' salaries, particularly on the lower rungs of the ladder, are barely sufficient to feed a family heightens their susceptibility to taking illegal payments.<sup>5</sup> Even bona fide judges who want to behave in a law-abiding manner can be brought to heel by threats to their physical integrity or even their lives. Fear drives them to make decisions that have little to do with the objective application and interpretation of the law. In extreme cases such as Venezuela, where the rule of law has de facto ceased to exist under the dictatorial rule of Nicolás Maduro, the judiciary serves merely as the long arm of the executive; there is no judicial independence whatsoever.

In summer 2018, Peru was plagued by a corruption scandal that forced many high-ranking judges, prosecutors, lawyers, judicial and administrative officials, including the justice minister, the attorney general, the head of judicial administration and the head of the Election Commission, to resign from their posts. In the end, the scandal even triggered constitutional reform, and Peru's justice system has been shaken to its very core. The case involved secret phone recordings, which revealed that the Peruvian judiciary had been tainted by morally and ethically reprehensible behaviour on the part of judges and officials for many years. This ranged from requests for favours and assistance within the judicial, administrative and political network to shady deals involving cash payments to get the right verdict in favour of leading

politicians, as was the case in the affair relating to the port of Callao near Lima.<sup>6</sup> The summer of 2018 saw the almost daily publication of new, covert recordings that gradually revealed the scale of internal and external corruption in the justice system. The tapes were broadcast nationwide on local TV and radio stations. Thousands of people took to the streets. The judicial reform, initiated by plebiscite in response to the scandal, is to overhaul the judge selection process. In the past, appointments were made by a seemingly omnipotent council of judges much more prone to corruption. A newly created judge selection junta is to be filled with members whose most





Silent Judiciary? Judges exercise an important oversight function and act as a vital counterweight to the legislative and executive branches. [Source: © Jean-Paul Pelissie, Reuters.](#)

important selection criterion shall be their proven distance from politics. It is significant however that to date only one suitable candidate has been found. In addition, more than a year after the publication of the first tape recordings, only two of the eight planned legislative amendments have been implemented.<sup>7</sup>

Colombia has also had some sensational scandals in recent years, such as that surrounding the Constitutional Court judge Jorge Pretelt in 2015. It was proven that the judge unlawfully dismissed a lawsuit after receiving a considerable sum of money from the company *Fidupetrol*, which

would have been fined 7.5 million US dollars, had the case gone ahead.<sup>8</sup> Pretelt was removed from office and convicted of criminal offences.

### **Long-term success against corruption requires the justice system to democratise from within.**

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However, unlike in many other countries where corruption regularly goes unpunished in the

highest judicial circles, the fact that Colombia has carried out large-scale convictions of those involved provides grounds for hope.<sup>9</sup> Additionally, the Colombian system for allocating court cases, which was previously prone to abuse, has also been reformed. It is now more transparent and accessible to the public.<sup>10</sup> Although the detection and prosecution of corruption cases has not yet had a deterrent effect across the board, it still provides the country's citizens and honest judges with a glimmer of hope that, in future, bribery in the justice system will be less likely to go unpunished. However, long-term success in this respect requires the justice system to democratise from within. Judges must be selected strictly on merit as part of a transparent process. Judges have to be more conscious of the dignity of their office. This is the only way that the lost trust in the judiciary in Latin America can be gradually restored.

## Asia

Gisela Elsner / Aishwarya Natarajan

In Asia too, the ability to secure justice can often be a question of who you know and how much you can pay. The countries of this region are extremely heterogeneous in terms of their politics, religion, culture and society. This also has an impact on how people view justice and the rule of law. There is widespread corruption in the judiciary, as well as a lack of accountability and inadequate procedural rules, such as for investigating irregularities or appointing judges. This is illustrated by the following examples from Indonesia, India and Malaysia.

Akil Mochtar, a former member of Indonesia's House of Representatives, was appointed to the Constitutional Court of the Republic of Indonesia in 2008 and elected its president in 2013. His rise to the highest judicial position in the country came as something of a surprise, as he was not known as a legal luminary or a leading expert.<sup>11</sup> But, after just six months as president of the Constitutional Court, Mochtar was removed from office by then Indonesian President, Susilo Bambang Yudhoyono.<sup>12</sup> Mochtar

was arrested by the Anti-Corruption Commission and found guilty of accepting bribes to the tune of several million US dollars in relation to a pending lawsuit.<sup>13</sup> In 2014, for the first time in its history, the Anti-Corruption Court handed down a life sentence.<sup>14</sup> Even after Akil Mochtar was removed from office and convicted, the issue of judicial corruption continued to call into question the legitimacy of the Constitutional Court. Another scandal erupted in 2017 when Indonesia's anti-corruption authority arrested Constitutional Court Justice Patrialis Akbar on suspicion of bribery.

The then Chief Justice of the Supreme Court in India, Dipak Misra, also faced allegations of impropriety in 2017. He attempted to allot pending court cases in which he was an interested party to his own court. Despite an order for the establishment of a committee of inquiry, Misra used his powers as the Chief Justice to reverse it and refer the case to the Chamber, which he himself chaired as presiding judge. He should have declared a conflict of interest, which would have prevented him presiding over the case or assigning it to a panel of judges. The case highlights the lack of clear rules governing the powers of the Chief Justice. It also reveals the lack of procedures for filing and investigating allegations of corruption against high-ranking judges.<sup>15</sup>

The Malaysian example is characterised by the buzzwords trial fraud, embezzlement and political influence. More specifically, a scam was carried out by nominees of politicians getting into contracts with the government, but once the government withdrew from the contracts, the private parties sued the government for compensation. If this was awarded by a sympathetic court, the money came from the public purse. What is particularly striking is the interplay of several powers that are actually responsible for maintaining checks and balances in a country. All too often, court officials stay silent about such allegations in order to further their careers. However, the Malaysian case was different. An appellate judge exposed the scam in an affidavit.<sup>16</sup>



Cases such as these not only damage the reputation of a court but also compromise its legitimacy. Ultimately, this leads to a lack of public confidence in the judiciary. In order to address these challenges, there is an urgent need to introduce institutional reforms and monitor their implementation. It is also important that senior figures in the judiciary gain greater awareness of their key role as exemplary and honest actors in a constitutional democracy. For judges, prosecutors and everyone involved in judicial administration, this awareness-raising process needs to

begin during their law studies and continue as part of an ongoing professional training.

### Sub-Saharan Africa

Arne Wulff/Nils Seidel

148 billion US dollars is a lot of money: it could pay for around 20 Berlin airports,<sup>17</sup> 13 budgets of the Federal Ministry for Economic Cooperation and Development,<sup>18</sup> and represents about one quarter of the average GDP of all African



Against corrupt judges: In Asia too, the ability to secure justice can often be a question of who you know and how much you can pay. Source: © Cheryl Ravelo, Reuters.

countries. According to an estimate by Vera Songwe, Executive Secretary of the United Nations Economic Commission for Africa, this is the amount that the continent loses every year due to corruption.<sup>19</sup> Corruption transcends geographical and linguistic boundaries and permeates every political, social and economic sphere on the African continent, but its extension to the judiciary is of particular concern.

It is difficult to estimate the true extent of judicial corruption in Sub-Saharan Africa because there are no precise figures on the cases involved. As Mario Fumo Bartolomeu Mangaze, Chief Justice of the Supreme Court of Mozambique, stated: “Although statistical surveys of corruption cases processed by courts are not available, it is not difficult to see that such figures are too low, because judicial corruption is a grey area.”<sup>20</sup> These days, it is increasingly difficult to uncover evidence of corruption. Bribes are often no longer paid in cash or by cheque but transferred electronically to accounts abroad or via the internet. Allegations of judicial corruption are often kept out of the public gaze because those accused are not prosecuted. However, the lack of official figures does not mean the problem is fictitious. Individual disclosures have repeatedly shed light on the actual extent of judicial corruption.

This is exemplified by a case in Ghana in 2015. Over the course of two years, the investigative journalist Anas Aremeyaw Anas posed as a friend or relative of accused individuals. He filmed 34 judges accepting bribes – and, in one case, a goat – in exchange for shorter sentences. The footage was finally published as a film, *Ghana in the Eyes of God*, and led to the dismissal of 13 high court judges, 20 lower court judges, and 19 court officials and interpreters.

However, the independence of the courts is not only threatened by private individuals and companies, but also by organs of the state in the form of political influence. That is why the spotlight regularly turns to the judge nomination process. In Ethiopia, for example, there is a growing tendency to recruit public prosecutors and judges

from active members of the ruling party or its regional affiliates.<sup>21</sup> This phenomenon is even more evident in the countries of Sub-Saharan Africa, which either lack judicial councils to make binding decisions on candidates for judicial office, or have councils that are not sufficiently independent in their decision-making. For example, Tanzania’s Judicial Council makes the final decision on candidates, but all its members are appointed by the country’s president.<sup>22</sup> What is more, the president is not bound by the recommendations of the Judicial Council when appointing judges.

### Trust in the flawlessness of judicial decisions is precisely the origin of legal authority.

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According to a representative survey conducted by the Gallup Institute, 52 per cent of respondents from all African countries stated that they had no confidence in their judicial systems.<sup>23</sup> Trust in the flawlessness of judicial decisions is precisely the origin of legal authority. The judiciary itself has no means of legislation and enforcement; its power lies solely in its public acceptance as an arbitrator over the powers, and as a peaceful mediator of all kinds of disputes. Ultimately, confidence in the justice system and in the integrity of its decision-makers can only be engendered by combatting judicial corruption.

#### South East Europe

##### Hartmut Rank/Mahir Muharemović

If one is to believe the media and public perception, judges in most of Southeastern Europe are politically dependent and corrupt. For example, in recent years the Serbian media<sup>24</sup> has reported on how criminal proceedings have been instituted against judges in individual cases and how they have been convicted of corruption. Amnesty International also confirms that the judiciary in these countries is perceived as dependent and corrupt, a trend that is set to

worsen.<sup>25</sup> However, apart from the individual cases in Serbia, which are low-profile cases of corruption with no political context or relevance to the system as a whole, isolated charges against judges have been made, but these did not lead to final convictions.

How can this discrepancy be explained? It could be that the media artificially inflated the scale of corruption in the judiciary in order to exert pressure on it. There is certainly a grain of truth in this, as the region's media are not renowned for their independence. However, corruption in the judiciary has deeper roots than can be discerned objectively (in the sense of final convictions).<sup>26</sup>

A recent case in Bosnia and Herzegovina provides a good example of this. A local businessman secretly filmed a meeting with the president of the High Judicial and Prosecutorial Council (HJPC), Judge Milan Tegeltija, and a police inspector in a bar. It shows Tegeltija promising to "review" his case with the chief prosecutor. The public prosecutor's office was not effectively investigating the allegations of the businessman who has previously pressed charges against some influential people. Later, the video shows the police inspector accepting a substantial sum of money from the businessman. Tegeltija was not with them at this point, but the businessman says the money should be passed on to him. Shortly afterwards, Tegeltija was acquitted of any wrongdoing by his colleagues on the HJPC.<sup>27</sup> In the criminal proceedings, he is not even listed as a suspect. In Romania, on the other hand, several judges (up as high as the Supreme Court) have been convicted of corruption over recent years, and some have been given long prison sentences.<sup>28</sup>

It is difficult to prosecute judges when corruption has reached the highest levels of the judiciary. What is rather needed, is the dissolution of existing interdependencies. Many countries in Southeastern Europe have a culture of cronyism that extends far beyond the judiciary. Clientelism is rife and sometimes openly practised at the very top of the justice system. This has serious consequences, such as lack of competence, dependency, impunity and loss of trust. The

only way to counter this is through a profound lustration, as is currently the case in Albania. In 2018, a comprehensive review of all public prosecutors and judges was initiated, known as a vetting process. In May 2019, after 140 judges or prosecutors had been vetted, only 53 were confirmed in office.<sup>29</sup> Most of the dismissals were due to the fact that the judges and prosecutors concerned could not plausibly prove how they had acquired their assets.

In future, what can be improved in the face of corruption that has become public knowledge, patently wrong decisions by judges, and a limited legal process? Strict transparency and the disclosure of all financial circumstances are undoubtedly instruments that can partially restore the public's lost confidence in the justice systems of Southeastern Europe. There is probably no way around a profound lustration that should result in unencumbered lawyers with a better professional ethic who are immune to third party influence.

## **Middle East and North Africa**

### **Anja Schoeller-Schletter**

In January 2017, a deputy supreme judge at the Egyptian Administrative Court made the headlines when he was arrested and charged with accepting bribes.<sup>30</sup> However, there was no media coverage of the legal details of the case.<sup>31</sup> In May 2017, a Moroccan judge was sentenced to one year in prison for bribery, and his trial was also held in camera.<sup>32</sup> Several high-ranking members of Iran's judiciary were recently arrested as part of an internal anti-corruption campaign.<sup>33</sup> A campaign to curb corruption was also launched in Lebanon earlier this year.<sup>34</sup> Along with the few other known examples of corruption in the MENA region, these anti-corruption cases all have one thing in common: the public is generally kept in the dark about specific charges, the outcome of investigations and legal proceedings.

In the countries of the MENA region, a growing sense of solidarity and political affiliations

play an important role. A Lebanese judge has described the three greatest risks faced by judges in his country as follows: “Firstly, judges’ attempts to further their careers by trying to gain the goodwill of influential people. Secondly, trying to become part of the elite, forgetting about the judicial restraint that is required in the judicial function. And thirdly – and most dangerously for decision-makers in the judiciary – abandoning the neutrality required by their position in favour of old loyalties, thereby countering political ambitions that seek to invade the legal area.”<sup>35</sup>

### **In the MENA region, the public is generally kept in the dark about specific charges, the outcome of investigations and legal proceedings.**

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Widespread scepticism within the judiciary about the requirements of transparency, the traceability of decisions and accessibility of information do not exactly help to promote public confidence in the judiciary. There are also deeper structural issues that make it difficult for judges to remain free of external pressures or undue influence when reviewing cases. Furthermore, the fundamental challenge within the MENA region is that most countries have a very strong executive, which predominates over the legislative and judicial branches.<sup>36</sup>

The main areas of concern are the processes of nomination and promotion. The candidates’ suitability for the role is either not reviewed in a transparent way, or it is not done according to defined, verifiable criteria. This paves the way for members of the government or political interest groups to push certain candidates. Financial dependencies also play a role. This includes insufficient funding of the judicial system, whether deliberate or through neglect.

Conscious of the need for a functioning, professional, independent and predictable judiciary,

many countries in the region have instigated reforms. Based on the experience of the region’s countries, these will involve structural guarantees of judicial competence and independence, increased transparency and greater traceability. Depending on their circumstances, each country will find different ways of achieving these aims. This could be helped by drawing up fixed business allocation plans; establishing nomination and promotion procedures based strictly on traceable criteria; developing press and PR strategies; and providing constructive support for the increasing numbers of professional associations and federations of judges that are springing up in the region.

### **Outlook**

Franziska Rinke

Unfortunately, corruption in the judiciary is not an isolated phenomenon. Rather, these flamboyant examples suggest that this is but the tip of the iceberg. The legal, historical and cultural backgrounds in the various regions examined may be very different, but it is still possible to draw some clear parallels.

*Firstly:* the uncovering of corruption among judges usually takes place, if at all, in camera. There is very little media coverage, indeed they deliberately act behind closed doors. Greater transparency is needed – both as a deterrent and in order to regain public confidence. It remains to be seen whether it is necessary to go as far as some Latin American countries have done by broadcasting court proceedings live on TV.

*Secondly:* Cronyism and clientelism are toxic for judicial independence. These kinds of networks have to be destroyed. An example of best practice could be the vetting process adopted in South East Europe, which reveals whether judges have disproportionately high assets – a sign of corruption. The UN Special Rapporteur on the Independence of Judges and Lawyers, Diego García-Sayán, goes even further when he calls not only for strict checks on the income and assets of judges themselves, but also on those of their families.<sup>37</sup> This cleansing needs to come



from both within and without. However, it is not advisable to instigate general background checks which go beyond potential past criminal activity or financial circumstances, or at least these should be linked to clear procedures.<sup>38</sup> The justice system needs judges who are immune to third party influence. This presupposes a self-image that is aware of the dignity of their office. This awareness-raising process should begin during their law studies and continue throughout their career. On-the-job-training would seem to be a sensible option. This could be carried out through mentoring programmes for young judges, i.e. by establishing trusted mentors among their peers in the court itself. This encourages the sharing of confidences and individual judges feel less alone when confronted with a case of corruption. It can also be helpful to

draw up codes of conduct for judges, but guidelines on paper are not enough. Judges have to put them into practice, and to do this they require ongoing training.

This leads us seamlessly to the *third point*: the need for democratisation from within. The procedures for selecting and nominating judges play a key role here. They must be transparent and based strictly on the principle of merit. It is vital to shield them from political influence. Seventy per cent of countries around the globe rely on establishing judicial councils.<sup>39</sup> These are self-governing bodies of the judiciary. However, they cannot be a panacea. Other methods are also possible, as there is no one-size-fits-all solution. Every system has historical roots and must be embedded in the country's legal culture.



Mistrust: The most important aspect to fight corruption is restoring and strengthening public confidence in the judiciary. Source: © Darrin Zammit Lupi, Reuters.

However, these contributions show that it is still valuable to look beyond national or even continental borders in the search for effective measures to combat corruption. Global initiatives such as the aforementioned Global Judicial Integrity Network can provide a useful platform in this respect. But the most important aspect is restoring and strengthening public confidence in the judiciary. This can only be achieved by taking the actions mentioned above. Judges speak through their verdicts. Trust can only be generated if their decisions are beyond reproach. And this is the only way that they can be truly worthy of their office and its intrinsic position within the rule of law.

*-translated from German-*

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