

WORKSHOP ON JUDICIAL CORRUPTION AND THE INDEPENDENCE OF THE JUDICIARY IN AFRICA

6 - 9 NOVEMBER 2019 - DURBAN, SOUTH AFRICA



Delegates from Kenya, Uganda, Tanzania, Malawi, Zambia, Namibia, Botswana, Zimbabwe and South Africa met in Durban, South Africa between 6 and 9 November 2019 to discuss the gravity of judicial corruption, its impact on the independence of the judiciary in general and the right to access to justice in particular. The group comprised representatives of the Judicial Service Commissions, Judges, Lawyers, Activists and Scholars.

The discussion centred around their respective experiences, wherefrom they endeavoured to identify some of the common challenges and share some of the best practices in combating judicial corruption.

The workshop was graced by the Hon. Justice (Rtd) Ernest Sakala, the former Chief Justice of the Republic of Zambia who gave the keynote address.

In his speech, he pointed out some of the avenues or the conduit pipes through which corruption enters the corridors of justice. He observed that corruption in the judiciary manifests itself in different shapes and forms but is always facilitated by individual judicial officers either in person and/or agents



known or unknown to the judicial officers. He also pointed out that the setup of a given judicial system coupled with the prevailing cultural norms, play a critical role in how judicial corruption is perpetuated, perceived and/or fought.

He underscored that the principle of the independence of the judiciary is about the right of the people to access justice and not necessarily an insulator for the judges.

He observed that one way of fighting judicial corruption is to establish effective investigative structures or mechanisms within the judiciary

itself which becomes the first point of action for investigations of complaints or allegations of corruption.

Country reports on the role of the JSC in combating judicial corruption, manifestation of corruption in the judiciary, nature of complaints received, successes and challenges that the judiciary face in the fight against corruption were presented by the various representatives of the Judicial Service Commissions (JSC). Legal practitioners gave their input on the role of lawyers in the assistance and facilitation of judicial corruption as well as lawyers' interaction with third parties who serve as intermediaries to influence the outcome of cases. In addition, there were presentations by representatives of Transparency International and the African Union Advisory Board on Corruption (AUABC).

From the discourse some of the most common challenges identified included;

- State capture: In many countries, institutions mandated to fight corruption (including the judiciary) are captured and frustrated to function effectively and independently. Further, presidential and executive intransigence are also common in some countries. For instance, the President may ignore the recommendations of Judicial Service Commission to appoint and/or set up a tribunal to investigate misconduct of a judge.
- Executive mindedness on the part of judges: Some judges are beholden to the executive and those in power thereby undermining the independence and impartiality of the judiciary.
- Overconcentration of powers in the office of the Chief Justice that often undermines internal transparency and accountability. For instance, in some countries the Chief Justice controls the Judicial Service Commission and has the mandate of appointing judges.
- Ambiguous and opaque disciplinary processes which hinders citizens from following up on the progress of complaints that have been filed.
- Weak or lack of mechanisms to receive and investigate corruption hence making it difficult to sustain the cases filed for misconduct.
- Economic inequalities which disadvantage certain parties from seeking redress and accessing justice on corruption-related cases in general and judicial corruption in particular.

Some of the best practices that were shared to address some of the aforementioned challenges include;

- Assessment of candidates who aspire to become judges by administering an examination (in Namibia) as well as holding public interviews (in Kenya). These processes if properly administered helps in getting suitable and competent judicial officers.
- In Namibia and South Africa, complaints received against judicial officers must be sworn statements. This ensures that only serious and genuine complaints are received and curbs against frivolous and malicious accusations against judges.
- In Kenya, the Registrar of the JSC receives the complaints and forwards to the Chief Justice. If the complaint is against the Chief Justice, it is tabled before the entire Commission. Having a designated person or office to receive complaints helps mitigate the reputational risk against a judges and the institution until they have been given an opportunity to respond to allegations against him/her.
- In Kenya, disciplinary proceedings against judicial officers (especially magistrates) must be completed within 6 months. In essence, there is need for prompt resolution of complaints against judicial officers in order to safeguard the integrity and credibility of the judiciary as an institution.
- In Botswana and Namibia digitisation of the judicial processes such as electronic allocation of cases and e-filing system minimises chances of manipulation of cases and enhances transparency while ensuring the safety of the case files and exhibits.

Moving forward, the participants recommended the following as some of the viable solutions in the fight against judicial corruption;

- Protection of whistle blowers to enable citizens to have confidence to report judicial corruption.
- Strengthen the judiciaries' own investigation capacities to attain meaningful redress while maintaining the integrity and credibility of the institution.
- Uphold the principle of separation of powers especially as relates to the relationship between the executive and judiciary.
- Create ethic committees within the judiciary. This will help in investigation of judicial corruption processes on one hand, but more importantly, will help as a peer-accountability mechanism among judicial officers.
- Judicial heads across the regions to establish Judicial peer review missions to address highly political judges' removal cases.
- Establishment of an Ombudsman office that will receive complaints against judges and sieve them before deciding on the suitable cause of action.
- Improve the condition of service for all judicial officers at all levels.
- Continuous judicial training to help promote high standards of professionalism and ethics.
- Digitisation of court processes in order to minimise human interaction, enhance transparency and improve on efficiency.
- Reward system should be put in place to acknowledge high performers.
- Ensure the judiciaries are well-equipped and facilitated by *inter alia* adequate budgetary allocation, adequate staffing including researchers among others.
- Embrace, inculcate and uphold the principle of good governance, integrity, respect for the rule of law across all sectors of the society for conducive environment to fight against corruption as a collective responsibility by the citizenry.