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JUDICIAL CORRUPTION FUELS IMPUNITY, CORRODES RULE OF LAW, SAYS NEW TRANSPARENCY INTERNATIONAL REPORT

Corruption is undermining judicial systems around the world, denying citizens access to justice and the basic human right to a fair and impartial trial, sometimes even to a trial at all, according to the *Global Corruption Report 2007: Corruption in Judicial Systems* issued today by Transparency International, the global coalition against corruption.

“Equal treatment before the law is a pillar of democratic societies. When courts are corrupted by greed or political expediency, the scales of justice are tipped, and ordinary people suffer,” said Huguette Labelle, Chair of Transparency International. “Judicial corruption means the voice of the innocent goes unheard, while the guilty act with impunity.”

The new *Global Corruption Report* concludes that a corrupt judiciary erodes the international community’s ability to prosecute transnational crime and inhibits access to justice and redress for human rights violations. It undermines economic growth by damaging the trust of the investment community, and impedes efforts to reduce poverty.

When courts are corrupt, ordinary people suffer

Judicial corruption usually falls into two categories: political interference in the judicial process by the legislative or executive branch, and bribery. The importance of an independent judiciary cannot be overemphasised. Everyone loses when justice is corrupted, in particular the poor, who are forced to pay bribes they cannot afford. TI’s latest global survey of attitudes towards corruption reveals that in more than twenty-five countries, at least one in ten households had to pay a bribe to get access to justice. In a further twenty countries, more than three in ten households reported that bribery was involved in securing access to justice or a “fair” outcome in court. In Albania, Greece, Indonesia, Mexico, Moldova, Morocco, Peru, Taiwan and Venezuela, the figure was even higher.

Petty bribery and political influence in the judiciary erode social cohesion: one system for the rich and another for the poor fractures communities. *“If money and influence are the basis of justice, the poor cannot compete,” said Akere Muna, TI’s Vice Chair and president of the Pan African Lawyers’ Union. “Bribery not only makes justice unaffordable; it ruins the capacity of the justice system to fight against corruption and to serve as a beacon of independence and accountability.”*

According to a 2002 survey, 96 percent of respondents in Pakistan who had contact with the lower courts had encountered corrupt practices, while in Russia, an estimated US \$210 million in bribes is thought to be spent on law courts annually.

Tipping the scales of justice

Corruption in the judiciary includes any inappropriate influence on the impartiality of judicial proceedings and judgements and can extend to the bribing of judges for favourable decisions, or no decision at all. Judicial corruption includes the misuse of judicial funds and power, such as when a judge hires family members to staff the court or manipulates contracts for court construction and equipment. It can also play out in biased case allocation and in other pre-trial procedures, such as when bribed court clerks "lose" files and evidence. It can influence any trial or court settlement, and the enforcement - or not - of court decisions and sentences.

The *Global Corruption Report 2007* finds that despite decades of reforms to protect judicial independence, the pressure to rule in favour of political interests remains intense. Though many judges around the world are indeed acting with integrity, problems remain. Erosion of international standards is evident in countries such as Argentina and Russia, where political powers have increased their influence over the judicial process in recent years.

And for judges who refuse to be compromised, political retaliation can be swift and harsh. Unfair or ineffective procedures to discipline and remove corrupt judges can end up being used instead for the removal of independent judges. In Algeria, judges considered too independent are transferred to remote locations. In Kenya, as part of an anti-corruption campaign that was widely perceived as politically expedient, judges were pressured to step down without being told of the allegations against them.

Failure to appoint judicial officials on merit can lead to the selection of a pliant, corruptible judiciary. "Problematic" judges can be reassigned or have sensitive cases transferred to more pliable judges, a tactic used by former Peruvian president Alberto Fujimori.

Interference from politicians or civil servants can also buy "legal" cover for embezzlement, nepotism, cronyism and illegal political decisions. Such interference can be as blatant as physical threats and intimidation, and as subtle as the manipulation of judicial appointments, salaries and conditions of service.

Bribery, the other dark thread of judicial corruption, can occur throughout the fabric of the judicial process. As 32 country reports in the *Global Corruption Report* demonstrate, judges may accept bribes to delay or accelerate cases, accept or deny appeals, influence other judges or simply to decide a case in a certain way. Court officials may seek bribes for services that should be free; lawyers may charge additional "fees" to expedite or delay cases, or to direct clients to judges known to take bribes. Factors affecting a judge's susceptibility include but are not limited to poor salaries. Insecure working conditions, including unfair promotion and transfer processes and a lack of continuous training, make judges and other court personnel vulnerable to bribery.

Opaque court processes that foster bribery can also prevent the media and civil society from monitoring court activity and exposing judicial corruption.

Solutions: independence, openness, adequate resources, accountability

No single solution will effectively tackle these problems. But a menu of solutions offers a holistic approach.

The *Global Corruption Report 2007* offers detailed recommendations to promote judicial independence and accountability, encourage individual integrity, more effective enforcement of the law and to safeguard the judiciary against political influence. Judicial and prosecutorial appointments and removals must be transparent, independent of the executive and legislative branches, and based on experience and performance. Journalists must be free to

monitor and comment on legal proceedings, reporting reliable information on laws, proposed changes in legislation, court procedures and judgements to the public.

Civil society's oversight role is imperative. By monitoring and commenting on the selection of judges, judicial codes of conduct and the discipline of judges, how courts handle cases and how judges make decisions, civil society can call attention to systemic weaknesses that facilitate corruption, and put governments on notice that they will be called to account for making good on their anti-corruption commitments.

Transparency International offers detailed recommendations to strengthen judicial independence and fight judicial corruption, including:

Judicial appointments

1. An independent **judicial appointments body** should be at the heart of the judicial selection process.
2. **Judicial appointments** should be merit-based, with clear and well publicised election criteria; candidates should be required to demonstrate a record of competence and integrity.
3. **Civil society**, including professional associations linked to judicial activities, should be consulted on the merits of candidates.

Terms and conditions

4. **Judicial salaries** should reflect experience, performance and professional development; fair pensions should be provided on retirement.
5. **Protections** to safeguard salaries and working conditions against interference by the executive and legislature branches should be established.
6. **Judicial transfers** should be based on objective criteria to protect independent and impartial judges.

Accountability and discipline

7. Judges should receive **limited immunity** for actions relating to judicial duties.
8. **Allegations against judges** should be rigorously investigated, including by an independent body.
9. The **removal process** should be transparent and fair, with strict and exacting standards; if there is a finding of corruption, a judge should be liable to prosecution.

Transparency

10. The judiciary should provide the public with **reliable information** about activities and spending.
11. **Access to information** on laws, proposed changes in legislation, court procedures, judgments, judicial vacancies and appointments is needed.
12. The prosecution must conduct **judicial proceedings** in public and publish reasons for decisions.

Additional recommendations can be found in the *Global Corruption Report 2007*.

TI's work in fighting judicial corruption

The *Global Corruption Report 2007* also highlights the national level efforts of Transparency International's chapters to curb judicial corruption.

"Corruption in the judiciary is a central focus of the global anti-corruption effort because of the powerful and corrosive influence a corrupt judiciary can exert on the rule of law and on society as a whole. Success in attacking judicial corruption will boost citizens' trust and national efforts to achieve transparency and accountability," said Cobus de Swardt, TI's Acting Managing Director.

Transparency International's work in combating corruption in judicial systems is diverse:

- monitoring judges' court attendance and the quality of their judgements
- helping to screen candidates for judgeships, making appointments transparent and merit-based
- offering free legal advice to corruption's victims through 16 Advocacy and Legal Advice Centres in 12 countries.

In its work against political interference and bribery in the judiciary, TI draws on many allies within judicial systems who are committed to the common goals of transparency and equal justice under law.

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Transparency International is the global civil society organisation leading the fight against corruption.

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