



IS CORRUPTION IN THE JUDICIAL SYSTEM THE BUSINESS OF LAWYERS?

by Rocio Paniagua Oliver

“Judicial corruption can trigger social and political conflict and can fracture and divide communities by keeping alive a sense of injury created by unjust treatment”¹.

The separation of powers theory was developed by Montesquieu in the 18th century. In the book “The Spirit of the Laws” of 1748, he argues that the power of major institutions of the state (legislature, executive, and judiciary) should be separated, but with a great deal of cooperation across the institutions. There should also be a system of checks and balances to prevent one branch from attaining too much power. The role of the legislature is to enact the law, the executive to implement it and administer public policy, and the judiciary to interpret the law. This separation of powers is considered necessary for good governance to this day.

The International Covenant on Civil and Political Rights states in Article 14(1) that everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law. For the courts to play their respective part in safeguarding human rights, this specific right must be guaranteed². Corruption in the judicial system not only jeopardises this essential right, but also endangers the rule of law and erodes public trust in the country where it occurs.

Corruption in the judicial system can be especially damaging to society. If a country’s judicial system is affected by corruption, anti-corruption initiatives in the executive and legislature are bound to fail. The judiciary is, by nature of its function, the legal and institutional mechanism through which corruption can be curbed³. A fair, efficient, and transparent



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judiciary is critical for the successful implementation of any anti-corruption plan and its respective policies. It is clear that fighting corruption in the judicial system is of utmost importance - but why should this be the business of lawyers?

Lawyers are agents of the administration of justice and constitute the judiciary together with judges, litigants, and court personnel⁴. In considerations of corruption in a judicial system, however, special attention is typically placed on judges because the interpretation of the law relies on them. New research highlights how corruption in the judicial system is found in the malpractice of other actors within the system, showing the extent that lawyers can enable, contribute to, or even cause corruption in the judiciary⁵. In response, lawyers associations such as the International Bar Association (IBA) have been working to counter corruption within the legal profession and the broader community.

In 2015, David W. Rivkin, the President of the IBA, launched the Judicial Integrity Initiative (JII), with the IBA's Legal Policy & Research Unit (LPRU) responsible for its implementation. The JII has conducted its business in two stages. First among them was a project conducted with the Basel Institute of Governance consisting of the following research activities:

- A global survey totalling 1,577 responses from 120 countries.
- Case studies of Mexico and the Philippines.
- A detailed literature review of corruption in judiciaries.

The purpose of these research activities was to better understand the types of corruption affecting judicial systems and the respective roles of judicial professionals.

The outcome of this work was published in May 2016, titled "The International Bar Association Judicial Integrity Initiative: Judicial Systems and Corruption".

Among the most relevant findings are the following⁶:

- Bribery and undue political influence were reported as the two most frequent forms of corrupt behaviour observed in judicial systems. While bribery is considered to be most prevalent in countries where the rule of law is weak, undue political influence is believed to occur more broadly in countries across the globe. Neither bribery nor undue political influence appear in a uniform way within judicial and governmental structures.
- The impact of public perceptions of corruption in the judiciary is an important and highly-contested topic. The research shows that in countries where political corruption is widespread, the judicial system is likewise perceived to be very corrupt. However, various survey results indicate that overall perceptions of the levels of corruption in the judiciary are low, compared with other branches of public administration.
- Those judicial professionals who are reportedly most involved in corrupt practices tend to be part of the system itself, that is, judges, lawyers, and court personnel. These survey results suggest that those judges who purportedly engage in corrupt conduct do so most frequently in their interactions with lawyers

and other judges. This suggests that such behaviour is predominantly focused on internal interactions within a judicial system as opposed to interactions with the third parties.

- Lawyers interact more frequently with third parties, and thus were reported to frequently serve as intermediaries to influence cases. While the survey data suggests that most corrupt behaviour allegedly involving prosecutors is linked to interactions with other judicial professionals, the risk of third-party influence on prosecutors is comparatively high.
- Lastly, court personnel were more frequently reported to have been approached by external actors rather than actively seeking bribes themselves.

The IBA is currently developing the second part of the JII, which will consist of a range of measures to address the kind of practices identified in the report as undermining the effectiveness and legitimacy of the judicial process. Countering corruption in judicial systems needs to be at the top of any national anti-corruption agenda. Lawyers are key parties in judicial systems, and must, therefore, take responsibility and join forces with other stakeholders in the fight against corruption. In the IBA we are well aware that this battle cannot be won in isolation. Consequently, we have partnered with the International Association of Judges (IAJ) and will partner with the International Association of Prosecutors (IAP) to overcome this challenge.



ENDNOTES

- ¹ Transparency International (2007). Global Corruption Report 2007: Corruption in Judicial Systems. Accessed 25 July 2016 from http://www.transparency.org/whatwedo/publication/global_corruption_report_2007_corruption_and_judicial_systems
- ² Office of the High Commissioner for Human Rights (2003). Independence and Impartiality of Judges, Prosecutors and Lawyers (Ch. 4 of Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers). Accessed 25 July 2016 from <http://www.ohchr.org/Documents/Publications/training9chapter4en.pdf>
- ³ Langseth, P., & Stolpe, O. (2000). Strengthening Judicial Integrity against Corruption. United Nations Global Programme Against Corruption, CICP-10. Accessed 25 July 2016 from https://www.unodc.org/documents/nigeria/publications/Otherpublications/Strengthening_Judicial_Integrity_Against_Corruption_2001.pdf
- ⁴ Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba (1990). Basic Principles on the Role of Lawyers.
- ⁵ Langseth, P., & Buscaglia, E. (2002). Judicial Integrity and its Capacity to Enhance the Public Interest. United Nations Office for Drug Control and Crime Prevention, Centre for International Crime Prevention.
- ⁶ International Bar Association (2016). IBA Releases New Study Identifying Types of Corruption Affecting Judicial Systems Globally. Accessed 25 July 2016 from <http://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=34ec225a-ee67-4d6a-a2e8-b3718c12d347>