

THE CORRUPTION IN THE JUDICIARY SYSTEM OF SOMALIA; CAUSES AND SOLUTIONS

INTROUCTION

According to Huguette Labelle, Chair of Transparency International (TI), judicial corruption is when the voice of the innocent goes unheard while the guilty act with impunity. This means that the judiciary will lead to corruption in the executive legislature and in every other sector. A famous saying in Kenya quite: ‘Why hire a lawyer when you can buy a judge.’ This shows how judicial corruption is not an unknown ally all over the world.

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

TI Global Corruption Barometer of 2006 surveyed 59.661 persons in 62 states and 8 percent of respondents who had been in contact with the judiciary affirmed that they had paid a bribe in order to get positive decisions in a judicial case. In Africa and Latin America, the percentages were as high as 21 and 18 percent respectively.

Since the collapse of the state in 1991, Somalis have relied primarily on customary and Sharia legal systems to adjudicate disputes (US Department of State 2016). A legal system with both civilian and military courts nominally operates under the federal government, but existing laws are difficult to enforce, given the weak capacity of judicial and law enforcement institutions and general instability (US Department of State 2016). For instance, there have been zero prosecutions or convictions related to money laundering¹² (US Department of State 2016)

Businesses face a high corruption risk when dealing with the courts. The institution is subject to political interference and suffers from high levels of corruption, rendering it ineffective (HRR 2015; FitW 2015). Civil courts in Somalia are practically nonfunctional; a combination of traditional and customary, sharia and formal law guide the institution and in some local courts

depend on dominant local clans for establishing authority (BTI 2016). Court orders are not respected by Somalia authorities (HRR 2015).

Having defined corruption, it is very imperative to state some factors that precipitated corruption in the Judiciary and the inimical effect of judicial corruption to the development of the country; before finalizing with solutions on how corruption can be eradicated totally in the judicial arm of government which is regarded as the last hope of the common man.

The Judiciary as a branch of government established under Chapter 9 of the 2012 Constitution of the Federal Republic of Somalia. The judiciary is saddled with the responsibility of ensuring that the rights of the citizens are protected, interpret the law, uphold the rule of law and it is the body responsible to make sure that justice is done and the verdict is given without fear or favor. Corruption has been a great hindrance to the democratic system of government all over the world and inequality before the law and the court exposes the judiciary to corruption, greedy and powerful individuals would pervert justice to the detriment of the powerless citizens.

Judicial corruption has a lot of negative impacts on Somali society and is one of the most severe threats to human rights implementation in the country. The effects of judicial corruption in the society are numerous which includes but not limited to the following: separating the communities, violation of human right, reduces trade, economic and investment, human development, and most importantly, reject persons from fair dispute settlements. These deteriorating effects are harmful to the democratic society and action needs to be taken to control the condition of judicial corruption in Somalia.

Judges must also be impartial, honest, and competent. It is hard to exaggerate the negative consequences of judicial corruption, both nationally and internationally. Contesting transnational crime and terrorism becomes unfeasible; it diminishes economic and human development; and it denies citizens their long-recognized right to impartial dispute settlements.

CAUSES OF JUDICIARY CORRUPTION:

- lack of independence of the judiciary; This is as a result of the appointment of the judicial officers by the executive of government and confirmation of the appointment by the clan based system (4.5), while the article 106 of the Somali Federal constitution states that the judiciary is independent of the legislative and executive branches of government whilst fulfilling its judicial functions. Members of the judiciary shall be subject only to the law. In accordance with law and regulation, the Judicial Service Commission shall appoint, discipline and transfer any member of the judiciary at the Federal level.
- Low or insufficient salaries for judicial personnel have made some of them use the office for their respective personal gains. The salary of some of these judicial officers is disregarded; therefore, low salaries have tempted some judicial personnel which comprised judges, law clerks, and administrative personnel to engage in this corruption practices.
- Lack of transparency in the appointment of judicial officers has made it difficult to eradicate corruption. In Somalia today, judges are not appointed based on merit but, the appointment is based on political affiliation and connection of the clan based system (4.5) formula.
- Absence of technological equipment to keep a record of judgment has made it easy for corrupt behavior to be carried out ignored. The insufficient required technology can make the court personnel manipulate the judgments of the court and ensure that the right person is punished and the guilty person will go unpunished through bribery.
- Lack of transparency in the court administration and court procedures, complex procedural rules is also one of the ways the Judicial Personnel used to hide the Judicial decision, the courtrooms are closed for the press to avoid the spread of the news to the public and this has become the machinery for judicial officers to carry out their evil act.
- Weak monitoring systems and very low capacity of the country press are some of the major factors that are causing judicial corruption in Somalia. The country press have nor enough capacity and freedom to investigate cases in the court and there is no effective body or agent responsible to monitor the activities of the Judicial Personnel.

- Absence of the National Judicial Service Commission established by the constitution which guided the judiciary personnel, applied disciplinary regulation, appointed the judges based on merit, decide on the remuneration and pensions of members of the judiciary and decide on other work matters of the judiciary.
- Absence of human rights commission mandatory to promote respect of human rights, and the culture of human rights, Promote the protection, development, and attainment of human rights` and Monitor and assess the observance of the conduct of human rights in the Federal Republic of Somalia.

SOLUTION OF THE JUDICIARY CORRUPTION:

The independence of the Judiciary which involved the issue of the selection of judges, the security of tenure, promotion, financial and administrative autonomy, and safeguards against interference through manipulation of budgets meant for the judicial organ of government.

Corruption in Judiciary can be eradicated totally by ensuring all the basic mechanism to eradicate the spreading corruption in justice system general and particularly the judiciary personnel. The following is a basic but not limited.

1. The appointment of the Judicial Personnel by the executive and nomination of the president should be stopped and the followed the mentioned procedure to the constitution of the Federal Republic of Somalia; if the Judicial branch of government is not independent, there's no way can combat judicial corruption in Somalia.
2. Judges, court personnel, and lawyers should be subject to disciplinary action under the code of conduct which will have binding force and strict implementation and should be punished like anyone else under the law.
3. Judicial officers should refrain from membership of political parties to avoid being pressurized to favor politicians for private or group gains. Judges should be apolitical and there should be an effective monitoring body to ensure the effectiveness of this body. The criminal justice system and security body such as the office of the Attorney General, and

The Independent Anti-corruption Commission. Police should be devoted to investigating and monitoring the lifestyles, finances, and excesses of judicial officers to make sure that they do not live above their source of income.

4. The National Judicial Service Commission should be established and more effective by adhering to the fundamentals of in-depth analysis of proposed candidates for nomination and appointment, in addition, to stand firmly to investigate and discipline the corrupt judicial officers. There is a need to review time to time the tenure of the members of the National Judicial Service Commission and should be headed by a retired judge for the purpose of guaranteeing firmness in the performance of their duties.
5. The Code of Conduct Department should ensure total compliance by judicial officers with the requirement of compulsory declaration of assets to enable security agencies to take a bearing and be properly guided if and when there is a need to investigate these judicial officers. Anti-corruption strategies should be effectively implemented and should be careful from being used as machinery to indict judicial officers in order to carry out their evil acts.
6. The Federal government of Somalia should ensure that all judicial officers including their administrative staff are adequately remunerated via an enhanced pay structure to reduce the craving for money, increase the salary and other forms of gratification which has become the bane of the judiciary.
7. The Executive and Legislative body of government should comply veraciously to the requirements of checks and balances in the polity as an integral requirement of a democratic government that is practicing true federalism to reduce the prevalence of corruption within the Somali judicial system.

8. The Federal Government should increase salaries, allowances and budgets for the judiciary as a whole, in order to have self-reliant institutions that can carry out their work independently and effective justice institutions that citizens can trust them.

CONCLUSION

Corruption has become a part and portion of the Somali Judicial system and is common not only between the judges but also widespread among court administrators who will use the opportunity to extract money from lawyers and litigants/plaintiffs to perform their regular functions. Corruption in Somali judicial system, therefore, conceptions as well as exposes not just the administration of justice, but by extension of absolutely national development. The activities of corrupt judicial personnel equally have not only destroyed the existing moral values of society but also have demolished the very foundation of the rule of law and justice. 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. Thus, changing the positive trend of national planning while defeating integrity and discipline which are rudimentary fundamentals of the judicial organ of Federal government.

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