



Ghana Integrity Initiative
Local Chapter of Transparency International

Report on **JUDICIAL CORRUPTION MONITORING EXERCISE** in Ghana

(ACCRA-TEMA AND KUMASI)

PRODUCED BY GHANA INTEGRITY INITIATIVE (GII)

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In Ghana, the phenomenon of corruption has always been and probably will remain a highly controversial issue. Most Ghanaians know it exists but are not certain about its dimensions. It is often argued that what we all think we know about corruption in our society, especially with regard to its prevalence within governmental institutions and agencies, is based on pure perception; and since perception is not reality, we cannot claim with any amount of certitude that perceived corruption is real corruption. It is, however, important to point out that sometimes what people perceive is not a figment of their imagination to be dismissed easily, but real life experiences with corruption, sometimes on a daily basis. In other words, it may often turn out that the gap between perception and reality is either narrow or non-existent.

As a civil society organization whose core business is monitoring, advocating and fighting against corruption, the Ghana Integrity Initiative deems it a duty to attempt to bridge the gap between the perception and the reality of corruption. That can only be done by engaging in thorough gathering of empirical evidence of corrupt practices. The Judiciary Watch Project was thus designed as a pilot program that seeks to answer the question whether, and to what extent, the perception of corruption is close to reality.

Why the judiciary? GII did not choose the judiciary because that institution is the most corrupt in the country. Rather the choice of the judiciary was based upon more constructive considerations. The judiciary is the most important institution in the fight against corruption. The judicial power of the state remains a key resource in the development and enforcement of anti-corruption policies. Corrupt public and political office holders can only be dealt with in accordance with the law as interpreted and applied by courts of competent jurisdiction. However, to be able to hold other public officials accountable the judiciary itself must possess the requisite moral and ethical integrity as well as the financial, technical and human resources to do so. A corrupt judiciary cannot preside over the prosecution of other corrupt public officials.

This report bears ample testimony to the fact that the gap between perception and reality is closer than is often acknowledged. After two months of painstaking daily monitoring of the courts in Accra, Tema and Kumasi, GII monitors observed and reported a significant level of corruption within the judiciary. As one lawyer puts it, "the matter speaks for itself." It is our fervent hope, therefore, that the findings and recommendations detailed in this report would trigger reforms within the judicial branch and reduce the level of corruption in Ghana's justice system.

Finally, it is clear that the fight against corruption within any institution is more difficult when that same institution is tasked with doing the fighting. Naturally, it is difficult to throw blows at oneself. The challenges that the Commission on Human Rights and Administrative Justice (CHRAJ) encountered in the year 2006 while discharging its anti-corruption mandate show that no one institution charged with fighting corruption can do it alone. Importantly, CHRAJ's difficulties demonstrate convincingly the necessity of revising and updating Ghana's legal provisions relating to corruption in its various forms, including the definition of corruption and the notion of conflict of interest.

There is also the need to review the jurisdiction of institutions granted constitutional and legal responsibility to investigate and punish corruption as well as the rules dealing with sentencing of persons convicted of, or found to have engaged in, corruption.

On behalf of GII, I would like to thank all the individuals who made the production of this report possible, especially our authors. GII wishes to acknowledge the support of its partner, the German Development Cooperation (GTZ) for its generous financial support to the Judiciary Watch Project. GII also wishes to express its gratitude to Dr. Audrey Gadzekpo, GII Board Chair, Daniel Batidam, former Executive Secretary of GII and Thaddeus Sory for their immense contributions. We are also grateful to the author of the Report, Dr. Dominic Ayine with support from Poku Adusei and the coordinating team, Ernest Owusu Dapaah, Gilbert Sam and the student monitors from the law faculties of the University of Ghana and the Kwame Nkrumah University of Science and Technology as well as the Ghana School of Law for their wonderful work.

Linda Ofori-Kwafo
Acting Executive Secretary, GII

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TABLE OF CONTENTS

FOREWORD	1
TABLE OF CONTENTS	3
EXECUTIVE SUMMARY	5
PART I: PROJECT OVERVIEW	6
a. Introduction	6
b. Understanding Judicial Corruption and its Contexts	6
c. Consequences of Judicial Corruption	9
d. Objectives of the Monitoring Exercise	12
e. Methodology	12
f. Personnel	12
g. Quality Control	13
h. Limitations	13
PART II: RESULTS AND ANALYSIS	14
a. Parameters of Judicial Corruption	14
b. Incidence of Judicial Corruption	15
c. Is the Judiciary Corrupt?	15
d. Degree of Perceived Corruption	18
1. Judges	18
2. Judicial Staff	22
3. Lawyers/Law Firms	25
4. Litigants	27
e. Anecdotal Evidence: Qualitative Narratives	28
i. Judges	28
ii. Judicial Staff	29
iii. Lawyers	30
iv. Litigants	31
v. Minimizing Judicial Corruption: Respondents' Suggestions	32
vi. Observation about the Commercial Court	33
PART III: CONCLUSION AND RECOMMENDATIONS	35
a. Conclusion	35
b. Recommendations	35
APPENDIX	37
ABOUT GHANA INTEGRITY INITIATIVE	40

Figures

1.	Judges' View on Judicial Corruption in Ghana	16
2.	Judicial Staff Views on Judiciary Corruption in Ghana	16
3.	Lawyers'/Law Firms' Views on Judicial Corruption in Ghana	17
4.	Litigants' Views on Judicial Corruption in Ghana	18
5.	Degree of Perceived Corruption by Judges: Influence and Interference	19
6.	Judges' Knowledge of Bribery of Other Judges	19
7.	Judges' Knowledge of Code of Ethics in the Judiciary	22
8.	Degree of Perceived Corruption by Judicial staff: Influence and Interference	23
9.	Attempted Instances of Influence and Interference of Judicial Staff By People	23
10.	Judicial Staff Views on Impropriety in Relation to Their Work	24
11.	Judicial Staff Admission to Having Been Used by Litigants to Influence/Interfere with the Course of Justice	25

“Without a “tip”, a file may be lost and will never make its way to a hearing. Without a bribe, a favourable decision may not be assured.”¹

Justice Michael Kirby

Judge Kirby's observation which is quoted above aptly summarises the problems associated with judicial corruption – cases go unprosecuted because files are deliberately lost and judgments are given to those who pay more money. This report investigates and documents the occurrence of judicial corruption within the courts in three Ghanaian cities: Accra, Tema and Kumasi. These three cities account for much of the litigation in the country. Based upon the fact that judicial corruption is widely perceived to exist everywhere in the country's courts, the report is the outcome of three months of monitoring courts in the three cities with a view to establishing the “validity” of this perception. The monitoring exercise was undertaken by a group of law students drawn from three institutions under the supervision of three law lecturers. The task involved courtroom observations and interviews of judges, magistrates, judicial service staff, litigants and lawyers.

Key actors viewed judicial corruption as occurring when judges and magistrates breach their code of ethics and/or accept money or gifts in order to influence the outcome of disputes. It emerged from the exercise that many factors were responsible for the occurrence of judicial corruption, including low remuneration and poor conditions of service, lack of clear guidelines for staff promotion, poor supervision of court staff and unethical conduct on the part of lawyers. The report also documents the various manifestations of judicial corruption including missing court files, undue delays in the prosecution and adjudication of cases, the payment of unofficial court fees, peddling of influence by court clerks and nepotism.

The report found that majority of those interviewed agreed that judicial corruption is real and not just a perception. Over 52 percent of judges and magistrates, 64.2 percent of lawyers, and 51.3 percent of litigants agreed to the suggestion that judicial corruption is very real in Ghana. Only 33.6 percent of judicial service staff agreed to that suggestion. From a policy perspective, a critical finding of the report is that computerization tends to reduce both the perception and the reality of corruption. This came out clearly from the monitoring reports from the highly computerised Commercial Court found only in Accra.

Finally, the report contains a number of recommendations aimed at curbing the incidence of judicial corruption, improving the image of the judiciary and enhancing its capacity to execute its constitutional mandate to dispense justice freely and fairly to all manner of persons without fear or favour. Among the recommendations emanating from the report is the need to institute internal measures within the judiciary to check the incidence of corruption. The report also recommends expedited action on the computerization of courts and enactment of an enforceable judicial code of ethics.

¹Justice Michael Kirby, “Tackling Judicial Corruption—Globally”, The St. James Ethics Centre, Australia

a. Introduction

The Judiciary Watch Project (JWP) was launched by the late Chief Justice of Ghana, His Lordship George Kingsley Acquah, under the auspices of the Ghana Integrity Initiative (GII), the local chapter of Transparency International and the German Technical Cooperation (GTZ). The Project was designed with the objective of monitoring the performance of the judicial branch of government, and to analyse the key problem of corruption that tends to hamper effective and efficient performance of the Judiciary.

The monitoring exercise constituted a crucial component of the activities that were required to be undertaken in the execution of the Project. As a consequence, law students from the Ghana School of Law, University of Ghana and the Kwame Nkrumah University of Science and Technology were recruited to embark on the monitoring exercise. The monitoring exercise involved courtroom observations and the administration of questionnaires to judges, magistrates, judicial staff, lawyers and litigants. The central objective of the monitoring exercise was to find out whether there is any justification for the perception that the judiciary in Ghana is corrupt, and if yes, to determine the extent to which corruption is pervasive in the Judiciary.

The report provides a detailed account of what the monitors observed in the course of the monitoring exercise. It is divided into three (3) parts. Part I, which includes this introduction, provides an overview of the Judiciary Watch Project. Part II contains the results and analyses while Part III concludes the report with recommendations.

It must be stated at the outset that the exercise was not designed solely to collect numerical data of persons intimately involved with the judicial process but also to interview these persons in order to capture in detail their viewpoints, fears and recommendations regarding the subject of judicial corruption. Consequently, the report includes qualitative narratives comprising direct statements by judges, magistrates, judicial staff, lawyers as well as reported speech by the monitors. For instance Part II(c) provides what has been termed “anecdotal evidence” which consists mostly of statements that some of the actors interviewed, including judges, lawyers and litigants, made regarding their experiences of corruption in the judiciary. From a methodological standpoint, such evidence complements the *quantitative* rigor of the report by giving it a nuance that would have been lost in the figures.

b. Understanding Judicial Corruption and its Contexts

Corruption arises from self-regarding behaviour of public officeholders (sometimes in collusion with private economic agents) that deviates from the formal duties of the public office aimed at securing private monetary or status gains. From the perspective of criminal law, the term is used generally to refer to the use by a public officer of his office to obtain financial or other advantages for himself, family or friends in a manner that is contrary to the duty and to the rights of others. Corruption occurs within what one writer

referred to as the “corruption complex” which includes nepotism, abuse of power, embezzlement and various forms of misappropriation, influence-peddling, prevarication, insider trading and abuse of the public purse².

According to Edgardo Buscaglia, judicial corruption entails the “use of public authority for the private benefit of court personnel when this use undermines the rules and procedures to be applied in the provision of court services.”³ He classifies judicial corruption into two principal forms—administrative and operational. Administrative corruption involves the violation of formal and informal rules and procedures by court personnel for their private benefit, such as the taking of a bribe in order to ensure that a case is delayed or accelerated. Operational corruption, however, involves “substantive irregularities affecting judicial decision making” with high political and/or economic interests at stake. A politically-motivated court ruling or judgment or one in which the judge stands to gain economically is the best example of operational corruption.⁴ Justice Michael Kirby, a former Judge of the High Court of Australia, aptly captures the pervasiveness of both administrative and operational corruption within the judiciary when he states that: “Without a “tip”, a file may be lost and will never make its way to a hearing. Without a bribe, a favourable decision may not be assured.”⁵

The general causes of corruption are legion and indeed well known. Some scholars have, however, identified two basic causes of corruption—need and greed. The former arises from the abysmally low remuneration that public officials in developing countries get; the difference in remuneration between the public and private sectors is often said to create a high propensity on the part of public wage earners to ‘make up for the difference’. Greed is, however, just simply inherent in human nature and is a consequence of the desire to have more material resources. Other general causes of corruption less “basic” than need and greed include the love of ostentatious lifestyles, the inability of those charged with prosecuting corrupt officials to bring their “political soul mates” to book, tempting offers from both domestic and foreign businesses and so on.

To these general causes, one can identify factors that contribute to corruption within the judiciary. These corruption-enhancing factors include the absence of a transparent and predictable system for the allocation of internal organizational roles to court employees; the complexity of procedural steps coupled with wide procedural discretion (e.g. relating to time limits for filing of claims or the rendering of judgments); lack of judicial knowledge of the substantive and procedural rules leading to attempts by lawyers and litigants to bend the rules; and finally, insufficient alternative sources of dispute resolution mechanisms. Of course, variables such as culture and the ethical attitudes of key actors - judges, lawyers, litigants and court employees—matter significantly as sources of corrupt behaviour. Cultural and ethical attitudes determine to a large extent the moral baseline of these key actors and whether or not they would be willing and able to engage in corrupt behaviour.

²The term was employed by J. P. Olivier de Sardan in his article “A Moral Economy of Corruption in Africa?” published in Volume 37, No. 1 (1999), pp. 25-52.

³Edgardo Buscaglia, “An Analysis of judicial corruption and its causes: An objective governing-based approach”, *International Review of Law and Economics*, Volume 21, Issue 2, June 2001, pp. 233-249.

⁴*Id.*, at p. 3

⁵Justice Michael Kirby, “Tackling Judicial Corruption—Globally”, The St. James Ethics Centre, Australia

So far, there have been no studies that directly measure the prevalence of judicial corruption in Ghana. However, general surveys of the phenomenon of corruption have often included questions relating to perceptions of judicial corruption. The most current of such general corruption surveys is the 2005 Afro Barometer study by the Ghana Centre for Democratic Development (CDD-Ghana).⁶ According to the study: “Ghanaians perceive varying levels of corruption in public agencies and among public officials. The police and judges as well as tax officials top the list. Over 8 in 10 respondents perceive some corruption among the police; *over 7 in 10 hold the same view of judges and tax officials.*”. Another survey by the GII in July 2005 on the other hand ranked the Judiciary fourth (4th) among ten institutions highly affected by corruption in Ghana.⁷

It is, however, pertinent to point out that the Afro Barometer relied on the views of the general public, some of whom may never have had any contact with the judicial system, to come to its conclusions. That said, the study still remains a useful indicator of judicial corruption. It shows that to the general populace, judges are perceived to be corrupt, though it is not clear from its findings how corrupt they are. To determine the actual prevalence of corruption within the judiciary, an empirical study based upon the views of key actors must be conducted. However, anecdotal evidence from lawyers and litigants, as well as persons who have been intimately involved with the judicial process, points to a high prevalence of corruption within the judiciary. Within the legal community, certain judges and courts are known or alleged to have a high proclivity for “speed money” payments. Indeed it is not uncommon to hear stories of judges taking such speed money from both parties in the hope that parties in adversarial litigation would not talk to each other and therefore that the bribes would not be discovered.

There are no special legal and regulatory provisions to deal with the issue of judicial corruption⁸; judges, judicial officers and court staff are subject to the general laws of the land dealing with corruption. These are contained in the Criminal Code. In terms of Section 240 of the Code, a public officer commits the crime of corruption “if he directly or indirectly agrees or offers to permit his conduct as such officer...to be influenced by the gift, promise, or prospect of any valuable consideration to be received by him, or by any other person, from any person whomsoever.” Other forms of corrupt behaviour such as bribery⁹, extortion¹⁰ and embezzlement have also been criminalized by the Code when engaged in by public officials.

The Criminal Code contains the provisions dealing with the substantive offences that go under the name of corruption but it lacks a framework for investigating corruption. Until recently, the statute that arguably contained a comprehensive procedure for investigating and punishing corruption was the Corrupt Practices (Prevention) Act, 1964 (Act 230). Apaloo J. A. (as he then was) aptly captured the purport and intent of Act 230 when he stated in *Akainyah v. The Republic* that: “The Act was passed to meet a social need and as its object shows, to provide a better and obviously a more expeditious method of investigating and dealing with corrupt practices— one of the greatest social

⁶ CDD-Ghana, The Ghana Afrobarometer Round 3 Survey (July, 2005)

⁷ GII Quarterly Newsletter Issue No. 7 (September, 2005) p.5.

⁸ The Judicial Service is in the process of developing a code of conduct. At the time of going to press the code was not available to the authors of this report.

⁹ Sections 244 and 245 of the Criminal Code, 1960 (Act 29)

¹⁰ See Section 247 of the Criminal Code, 1960 (Act 29)

evils with which this country was beset.”¹¹ Why would a legislative enactment with such a laudable objective be repealed? It is not immediately clear from reading the repealing statute¹² what political and legislative reasons accounted for the repeal of Act 230. However one could speculate that the political authorities decided to repeal it because it had been rendered redundant with the coming into force of the Constitution and the creation of the Commission on Human Rights and Administrative Justice. The latter has been vested with constitutional jurisdiction to, among others, investigate complaints of corruption and abuse of office by public officials in the exercise of official duties.¹³ This constitutional development probably rendered Act 230 superfluous since its main remit was to enable the use of commissions of inquiry as a mechanism or technique for dealing with financial corruption. Other legal and institutional developments, such as the establishment of the Serious Fraud Office may also form part of the explanatory factors accounting for the repeal of Act 230.

Judges and judicial officers can thus be investigated for engaging in conduct that meets the definition of the various forms of corrupt practices criminalized under the Criminal Code. Also where the said conduct amounts to serious fraud as defined under the SFO Act, the SFO can investigate and prosecute the offending judge or judicial officer.

Furthermore, the Judicial Service Act, 1960 (C. A. 10) as amended and the Judicial Service Regulations, 1963 (as amended) contain a rather elaborate set of provisions on disciplinary measures to be taken where a judicial officer has been found to have misconduct himself or herself or to have performed unsatisfactorily. The Judicial Service Regulations in particular bar persons convicted of criminal offences involving fraud or dishonesty from being employed in pensionable positions within the Service. In other words, persons convicted for corruption cannot gain employment as pensionable judicial staff.

From the foregoing, it is clear that there is no shortage of laws to deal with corruption generally. It is, however, also clear that there are no comprehensive provisions dealing specifically with corruption within the judiciary. This should however not pose a problem if the general laws on corruption are applied effectively to cases of corruption occurring within the judicial branch. The problem is that so far, very few judges and judicial officers have been prosecuted for committing or attempting to commit any of the acts falling within the socio-legal concept of corruption.

c. Consequences of Judicial Corruption

The prevalence of corruption has serious socio-legal consequences. First, court-related corruption is a significant source of institutional malfunction; it can thus undermine the integrity and credibility of the entire legal system. When litigants, lawyers and the general populace lose faith in the judicial system it cannot wholly recover its credibility no matter how efficiently, fairly and effectively it functions thereafter. Second, for litigants seeking relief for breach of business or investment contracts or for judicial clarification of uncertain title to land, high transaction costs could be raised as a result of judicial corruption. Third, a corrupt judiciary is also prone to political manipulation and so could

¹¹ [1968] GLR 548, at 558

¹² See the Statute Law Revision Act, 1996 (Act 516)

¹³ Article 218 Clause (a) of the Constitution

be weak in terms of the protection of the fundamental human rights of ordinary citizens, especially the protection of rights that are of a civil and political character. This is because the enforcement of these rights is often directed against the state, particularly the political branches of government.

That corruption retards economic growth and development is now a widely accepted fact. Various studies of corruption in developing countries have concluded that it discourages both domestic and foreign investment. According to some of these studies, foreign investors invest less in countries prone to corruption than in less corrupt countries.¹⁴ Moreover, corruption affects the size and composition of public expenditure, with heavy spending skewed toward sectors such as defence which are subject to little or no public scrutiny because of security concerns. As Susan Rose-Ackerman puts it: "The available evidence suggests that corruption retards economic growth, leads to inefficient resource allocation, and undermines the legitimacy and fairness of public policies."¹⁵

The direct consequences of corruption on economic growth occur often within the context of government procurement, the allocation of concessions or licenses for natural resource extraction (e.g. mining or oil and gas exploration), privatization deals, and governmental service delivery such as tax collection. In the context of public procurement, corrupt deals generally deprive the state of value for its money. This occurs in situations where goods and services procured are under-supplied because the supplier had to use a portion of the contract sum to pay officials of the entity that awarded the contract. Very often contractors do not pay kickbacks from their profits but from the sum of money allocated to providing the goods or service. This implies that the contractor would either have to inflate the price or cut down on quality of the delivered product or service in order to be able to afford the kickback.

Similarly, privatization deals riddled with corruption deprive the state of the true (market) value for its assets. Under-pricing of public assets is a common occurrence with privatization transactions and is often done by public officials charged with selling the assets with a view to gaining from the deal. Privatized assets are often times sold in circumstances in which the deals cannot objectively be described as arms-length transactions. Sales to political cronies, close family members and business associates are examples of this type of transactions.

Another context in which corruption directly affects economic growth is that of governmental service delivery. Corruption in this case undermines the efficiency of the services that public institutions and agencies are mandated to provide. In the case of services targeted at the business community, such as filing of tax returns, registration of business entities, enforcement of business contracts, trademarks and other intellectual property rights, the costs to the economy of corruption-induced inefficiencies can be enormous. This is because corruption in governmental service delivery often raises the transaction costs of businesses and these in turn translate into lower growth rates for the

¹⁴ However see Michael T. Rock and Heidi Bonnett, "The Comparative Politics of Corruption: Accounting for the East Asian Paradox in empirical Studies of Corruption, Growth and Investment", *World Development*, Vol. 32, No. 6, pp. 999-1017, where the authors found that in the East Asian case, high level corruption co-existed with high level economic growth and investment.

¹⁵ See Susan Rose-Ackerman, "The World Bank's Role in Fighting Corruption", *Law and Policy in International Business* (Fall 1997).

affected business enterprises, lower tax revenues for government because businesses are not expanding and so on.

Corruption not only has the above-mentioned direct consequences on economic growth and development; it can also indirectly undermine economic growth by destroying the potential effectiveness of governmental policies and programs.¹⁶ Corruption raises the cost of implementing government policies by encouraging public officials to create regulatory barriers so as to increase costs and generate more bribes. Beneficiaries of government policies and programs often pay the price of such restrictions in the form of wealth transfers to the officials involved in implementing them.

Corruption causes underdevelopment but is often also the effect of underdevelopment. In its 2005 Urban Corruption Perception Survey, the GII found that an overwhelming percentage of those surveyed cited poverty-related factors as the causes of corruption. As much as 76% of 900 respondents surveyed cited low income as a leading cause of corruption, while almost 57% of them attributed corruption to the high costs of living. Poverty (45.6%) and 'making ends meet' (survival) (38.2%) were also cited as some of the causes of corruption. Thus the results of the survey, though limited in terms of their empirical generalizability, point to an intimate connection between economic development or the lack thereof and corruption.

So what has judicial corruption got to do with economic development? Because judicial corruption is not radically different from corruption within other state institutions and agencies, the simple answer is that its consequences for economic development do not differ from the effects already noted. The difference, however, is that because the judiciary plays a watchdog role, a corrupt judiciary undermines the potential efficacy of anti-corruption policies designed to hold public officials, including judges, accountable. Justice J. N. K. Taylor has noted that "...public accountability is attained in the utilization of the judicial process by employing the services of judges and magistrates sitting in courts to discipline the entire population and other organizations as well as state institutions."¹⁷ The judiciary pronounces on the legality of public conduct and is thus a central institutional mechanism for the realization of the ideals and goals of public accountability.¹⁸ Judicial corruption inevitably exacerbates the problem of corruption within the larger society with the attendant consequences for the economy as a whole.

Finally, it should be noted that no market economy can function efficiently without the existence of a clear and predictable system of property rights. Given that the enforcement of most property rights depends on the judicial system, a corrupt judiciary that undermines the system of property rights also weakens the economy. Efficiency in resource allocation can be hampered irreparably by judicial corruption.

¹⁶ See World Bank, Development Law Newsletter, Volume 2, Issue 1-3, (Winter 1996)

¹⁷ See J. N. K. Taylor, "The Concept and Problems of Public Accountability under Ghana Law", (1989-90) RGL 70-94, at 71.

¹⁸ Id

d. Objectives of the Monitoring Exercise

The central purpose of the monitoring exercise and therefore of this report is to establish the “validity” or accuracy of the widely-held perception that the judiciary is corrupt. Previous research on public perception of corruption in Ghana found that the public widely regarded the judiciary as a highly corrupt institution. Further, there have been allegations of corruption levelled against judges, lawyers and administrative staff of the judiciary in the print media in particular. Most of these allegations have remained largely unsubstantiated. The report seeks to establish whether and the extent to which there is any justification for the public perception of judicial corruption and will also provide a basis for evaluating whether media reports of allegations of corruption within the judiciary are tenable.

e. Methodology

In terms of methodology, the report relied on both quantitative and qualitative data. Student monitors drawn from University of Ghana Faculty of Law, the Ghana School of Law and Kwame Nkrumah University of Science and Technology (KNUST) Law Faculty were provided with questionnaires to administer to the key actors in the judicial process. The information gathered from the questionnaires was supplemented by qualitative data in the form of in-depth interviews with judges, judicial service staff, lawyers and litigants. Students attended and sat through court proceedings in order to compile daily reports of their observations or in the course of conversation with some of the key actors. In all, the students surveyed four hundred and twenty nine (429) actors of the legal community who either answered questionnaires or were interviewed by the students or both. In Accra and Tema the breakdown of the actors who were interviewed comprised: 15 judges, 50 lawyers, 55 judicial staff and 85 litigants; whereas in the Kumasi metropolis, 8 judges, 84 lawyers, 67 judicial staff and 65 litigants were interviewed. In addition the students filed weekly reports with the Project Coordinator in which they described what they had done in the course of the week. These reports served to give direction to the exercise and the JWP as a whole as they indicated what appeared to the students to be feasible and useful and what did not.

f. Personnel

The Project Coordinator had overall responsibility for the monitoring exercise and was assisted by the Assistant Project Coordinator. The actual monitoring exercise was conducted by twenty (20) law monitors from the Faculty of Law, University of Ghana, the Ghana School of Law and the Kwame Nkrumah University of Science and Technology (KNUST) Law Faculty. The students monitored some courts in Accra, Tema and Kumasi. The exercise lasted for a period of two months between August and October, 2006. Before commencing the monitoring exercise, the student monitors were taken through extensive training on judicial corruption and court procedures in order to equip them with the necessary skills to engage in effective monitoring. The training thus concentrated attention on how to observe the actions and omissions of the key actors within the Judiciary and on how to conduct effective research and investigation and most of all to keep proper documentation of their observations.

g. Quality Control

To ensure that quality was not compromised, the coordinators constantly monitored the students through unannounced visits to the courts and speaking to law firms that students had indicated that they visited. Further, the weekly activity reports provided the opportunity for the coordinating team to ask follow-up questions and to provide direction where needed to the students. The coordinating team also held regular review meetings with the students to address concerns relating to the exercise.

h. Limitations

A major shortfall as far as the monitoring exercise was concerned was the fact that from its inception the JWP was designed to investigate corruption in the context of land and commercial litigation. The reason for this focus was that the linkage between judicial corruption, and for that matter corruption generally, and economic development would be more clearly portrayed in land and commercial litigation than in, say, a criminal prosecution or a divorce hearing. However, at the expert meeting to deliberate on the concept note of the Project, suggestions were made to the effect that such a narrow focus was not beneficial in terms of data availability on all or most of the indicators of judicial corruption that were being used for the Project. Therefore, during the training of the student monitors, they were advised to cast their nets wide open and gather as much data as could be obtained from all kinds of cases being heard in the courts including even criminal cases. Part of the reason why this widening of the focus became necessary was that there is only one commercial court in the country and this is situated in Accra whereas the monitoring covered Accra and Tema as well as Kumasi. Also, it was identified that since there is no land court, restricting the project to land cases could affect the execution of the Judicial Watch Project.

Secondly, it must be noted that there was initial resistance from judges, lawyers and judicial service staff when the exercise began. Certain judges and administrative staff—registrars and clerks in particular—feared that they would lose their employment if they answered questionnaires on judicial corruption. Some observed that the exercise was “too intrusive” and that the Judiciary should not be singled out for an exercise of this kind since other public institutions were equally guilty of corruption. For the lawyers, the initial resistance was based on lack of evidence that the Judiciary itself supported the exercise. If that were not the case, they pointed out, they could be “blacklisted” by judges who knew that they had cooperated in the exercise. This initial resistance to the monitoring exercise was overcome (though not entirely) when, at the request of GII the Judicial Secretary wrote a letter to all judges and judicial staff to cooperate in the exercise.

Finally, a major limitation was that a greater number of the key actors that the student monitors encountered preferred to speak and be recorded than to answer and return questionnaires. Indeed, most of those who initially collected questionnaires later refused to return them and requested to talk with the monitors about judicial corruption.

a. Parameters of Judicial Corruption

In order to be able to properly monitor and report on judicial corruption, the JWP was designed to foster an understanding of the phenomenon in terms of what it is and what are its causes. Consequently, in the process of monitoring, the students were tasked to try and tease out a kind of working definition of corruption from judges, lawyers, judicial service staff and litigants and also to find out from them what they thought constituted the commonest causes of judicial corruption. Three basic definitions were reported. To some, judicial corruption involves breaches of the code of ethics of the judiciary in any manner that compromises standards in the application and enforcement of the law. A second group viewed the acceptance of gifts to *influence the outcome of court cases* as the epicentre of judicial corruption. This group obviously saw judicial corruption as something limited to those in a position to determine the outcome of cases. Closely related to this conception of judicial corruption was the view that it is the act of taking gifts of whatever kind, including financial compensation, as a condition precedent to the performance of official judicial functions. The difference is that this may or may not necessarily influence the outcome of a case. Finally, a third group perceives judicial corruption to comprise any external influence that affects independent judgment in the administration of justice. The external influence could be political, social or material; its defining character is that it emanates from outside the judicial branch itself. That is, the key actors within the judiciary are the objects of the influence by external actors—politicians, litigants and their lawyers, social relations and so on.

From random interviews with judges, lawyers, judicial staff and litigants, a sample of factors were identified as the commonest causes of judicial corruption in Ghana. The sample includes the following:

- Low remuneration and poor conditions of service, especially among inferior court officials. For example, a number of court clerks indicated that they take as low as GH ₵45.00 per month, an amount they considered insufficient relative to their costs of living. These clerks saw nothing wrong with receiving “tips” from litigants or their lawyers or even demanding that such “tips” be paid before services are rendered;
- Some Judicial Service staff pointed to the lack of clear guidelines for promotion and therefore for career advancement as partly responsible for bribery and corruption. According to one court clerk: “If you must bribe the people at the top to get promoted then you must find the money from somewhere to do so.”¹⁹
- Family ties often make actors in the judicial system compromise legal and ethical standards in the course of the administration of justice;
- Laziness and incompetence on the part of lawyers and judges can be source of judicial corruption;
- Undue delays and technicalities often cause litigants to want to take shortcuts, including bribing either judges or administrative staff of the Judiciary to speed up their cases;

¹⁹ From student monitor’s notes, October 2006.

- The absence of guidelines on posting of judges and administrative staff has become a source of corruption. It was found for instance that some registrars and court clerks had been at their current post for more than ten (10) years while others were being frequently transferred within short intervals of time. According to some clerks and registrars, those who stayed longer at their posts were being favoured sometimes because they served as intermediaries between judges and litigants and/or lawyers in situations where bribes needed to be taken in order to facilitate the hearing of a case;
- Unethical behaviour on the part of members of the bar and bench was also mentioned as a source of corruption within the Judiciary. According to some court staff, some judges are too close and friendly to some of the lawyers and so they grant every request that the latter make. Such behaviour smacks of favouritism and leads litigants to try to curry favour from the judge once they think he or she is being too friendly to the other side;
- Political influence was identified as a common cause of judicial corruption. Even though neither the judges nor the administrative staff interviewed could give concrete instances of political influence, they all agreed to the suggestion that it exists and that it fosters corruption. Politicians were said to go to the extent of calling judges to favour their relatives or friends whose cases were pending in court;
- Finally, poor supervision of court staff was identified as a common cause of judicial corruption. For example some court clerks sometimes took decisions with lawyers about dates and assignment of time for hearing without consulting the registrars of their courts. This is because the clerks had developed relationships with such lawyers in which the lawyers tipped them regularly to fix dates for their cases. The clerks thus tended to flout administrative procedures in order to continue to benefit from such lawyers.

It must be pointed out that the foregoing is not an exhaustive list of the commonest causes of judicial corruption in Ghana identified in the course of the monitoring exercise. Acute logistical problems such as the lack of modern sophisticated recording equipment leading to poor processing of court documents, high costs of filing court processes, delays in processing of court rulings and even the incompetence of the Bar were also identified as sources of judicial corruption. For instance judicial staff and even some litigants interviewed thought that incompetent lawyers were more likely to indulge in bribery to obtain a good verdict than competent ones.

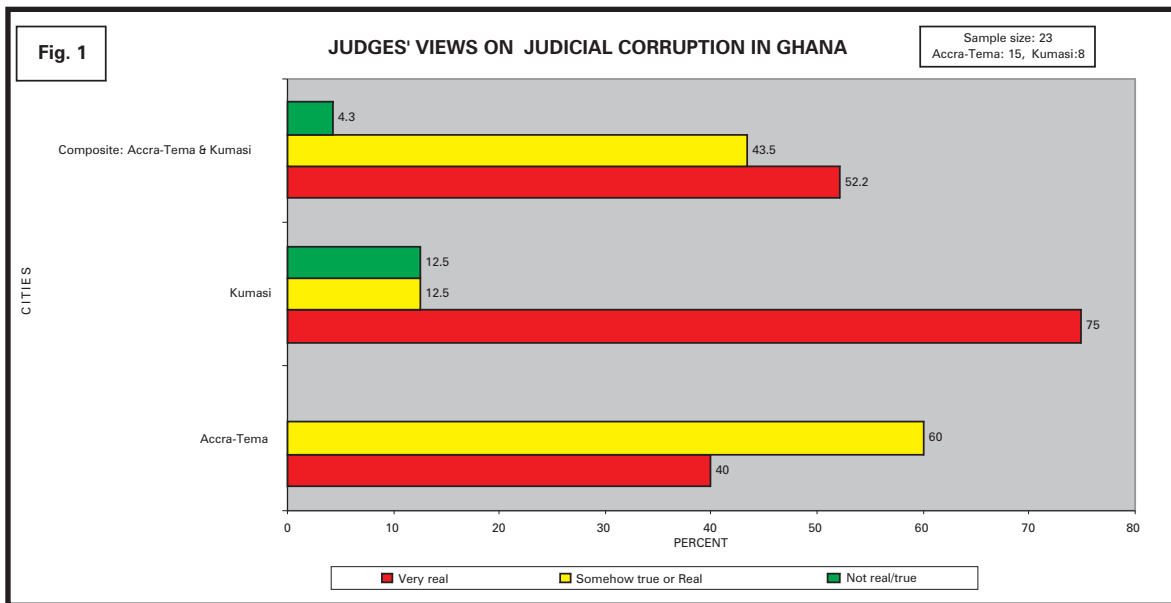
b. Incidence of Judicial Corruption

To determine the incidence of judicial corruption, questions were designed to elicit answers from judges, judicial staff, lawyers or law firms and litigants along two broad lines of inquiry. The first was to obtain their answers or views on the question whether corruption within the Judiciary is *real* or whether it is simply a matter of *perception*. The question was straightforward: Is the Judiciary corrupt? The second broad line of questioning focused on the degree and manner of judicial corruption. This section summarises the findings on each line of enquiry.

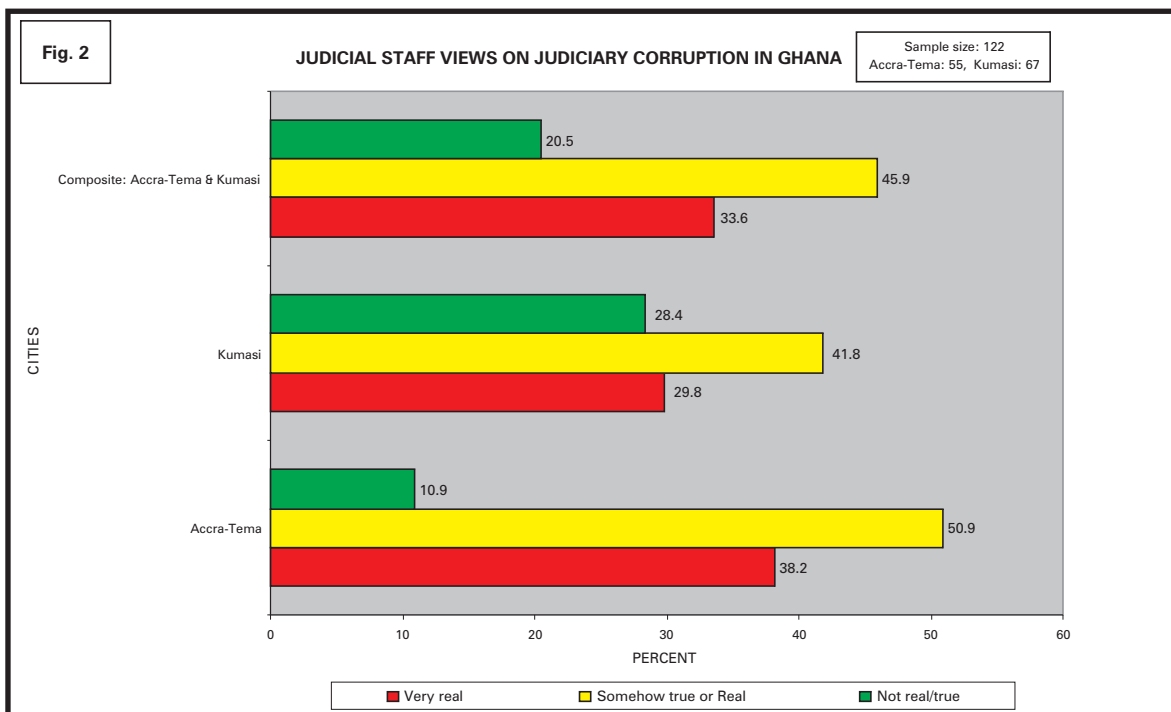
c. Is the Judiciary Corrupt?

The responses from each of the four categories of actors in the judicial process differed in terms of percentages of those who thought judicial corruption was real and those who

thought it was not. More lawyers and litigants agreed that judicial corruption is real than was the case with judges and judicial staff.

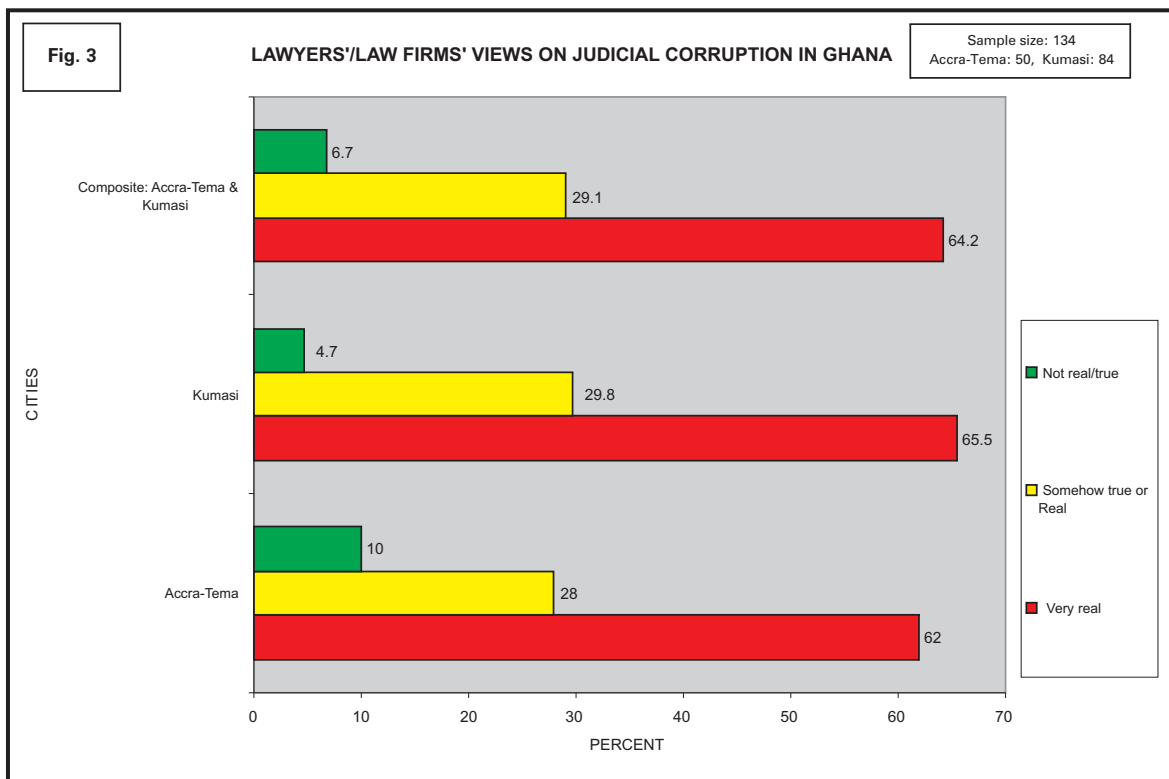


In Accra-Tema, among the judges interviewed, 40% agreed that judicial corruption is very real in the sense that its existence was not in doubt. In addition, 9 out of 15 judges (constituting about 60%) interviewed said judicial corruption is somehow true or real. In other words, even though they had reason to believe that it exists, they were not too sure. It is important to note that in Accra-Tema, none of the respondent felt Judicial Corruption was "Not real or true"

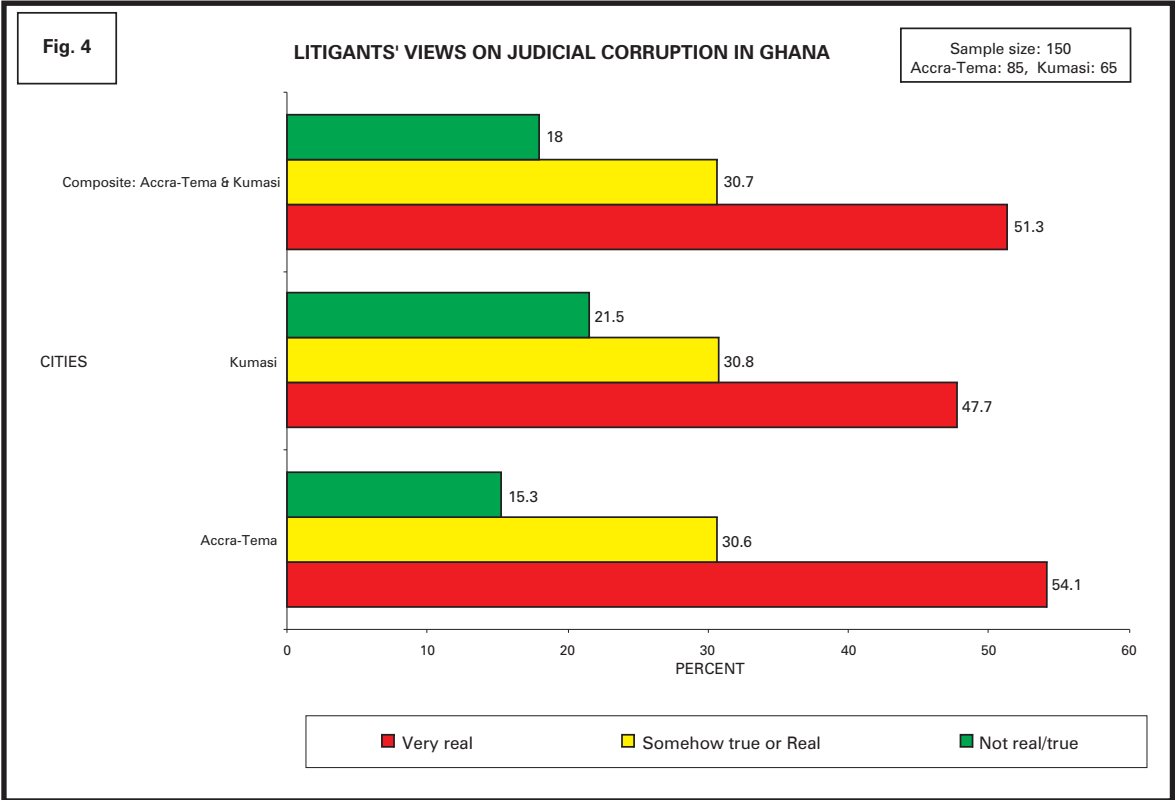


In the case of 55 judicial staff interviewed in Accra-Tema, 38.2% responded that judicial corruption is very real, 50.9% said it is somehow true and only 10.9% said it is not true.

Among the 50 lawyers and law firms who were interviewed and/or who filled and returned their questionnaires in Accra-Tema, 31 (62%) said corruption in the judiciary is very real. 28% said it is somehow true and 10% said it is not true.



In the case of litigants in Accra-Tema, a total of about 85 were interviewed. In sum, 46 (54.1%) of those litigants admitted that the judiciary is corrupt, 25 (30.6%) said corruption in the judiciary is somehow true and 13 (15.3%) said it is not true. In answering this question, litigants were often quick to point out that they had paid money as a result of demands by typists and court clerks in pursuit of their cases, and some indicated that that they have spent more money than that which was owed them by the other parties to the litigation.

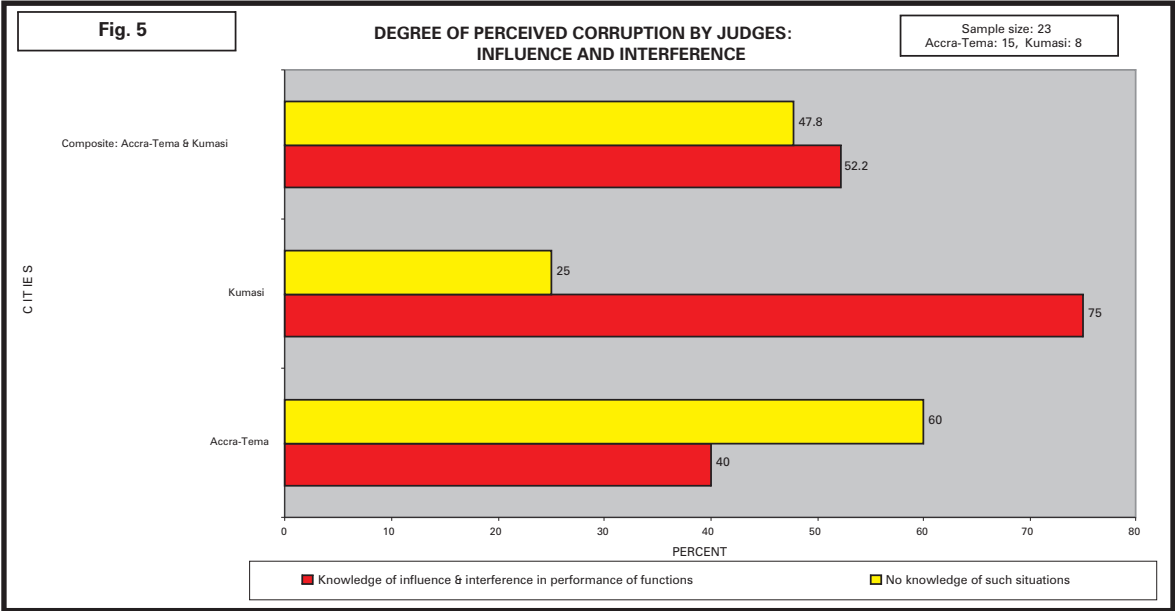


d. Degree of Perceived Corruption

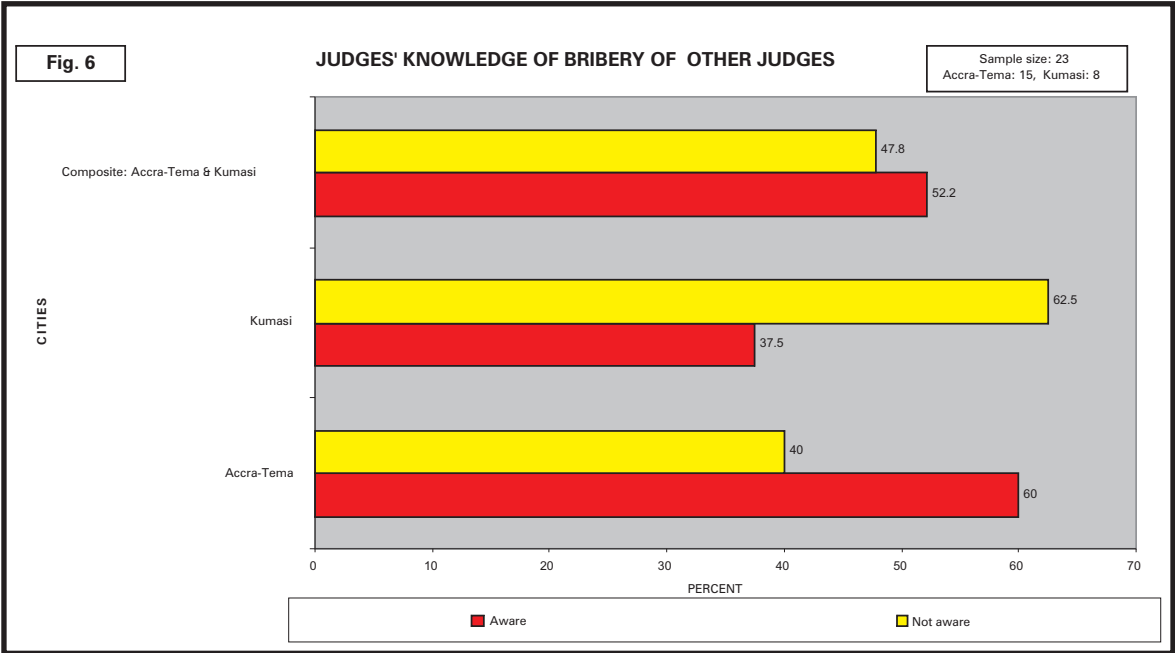
When it came to the degree and manner of judicial corruption, it was much more difficult to get judges and judicial staff in particular to come up with straightforward answers. Lawyers and litigants were however different in terms of being open to discussing how and the extent to which they have encountered corruption in the course of litigating or prosecuting their cases.

1. Judges

Judges were asked whether there has been any instance where someone has attempted to influence or interfere with their judicial functions and what form such influence or interference took. Forty percent of them admitted that they have encountered situations of influence and interference in the performance of their functions. According to the judges interviewed such influence took the form of material and monetary gifts, and pressure from friendships and family ties.

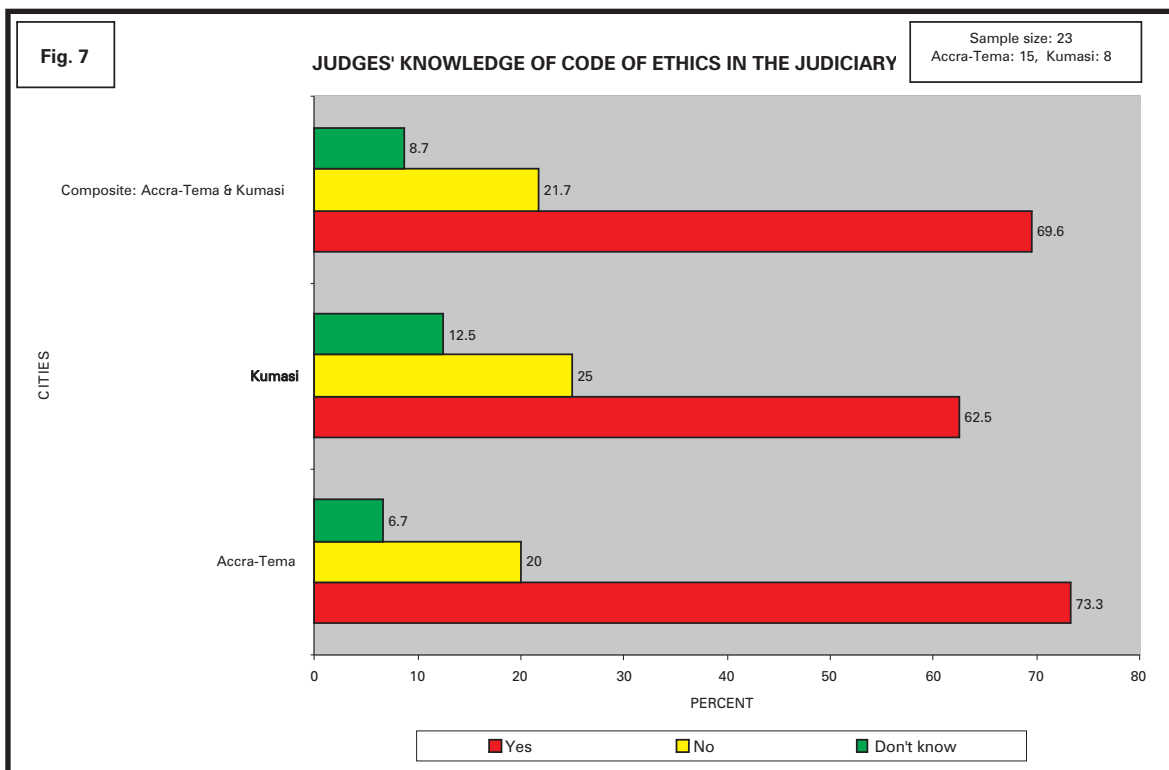


They also indicated that they were aware of instances in which attempts have been made to influence the judicial independence of fellow judges.



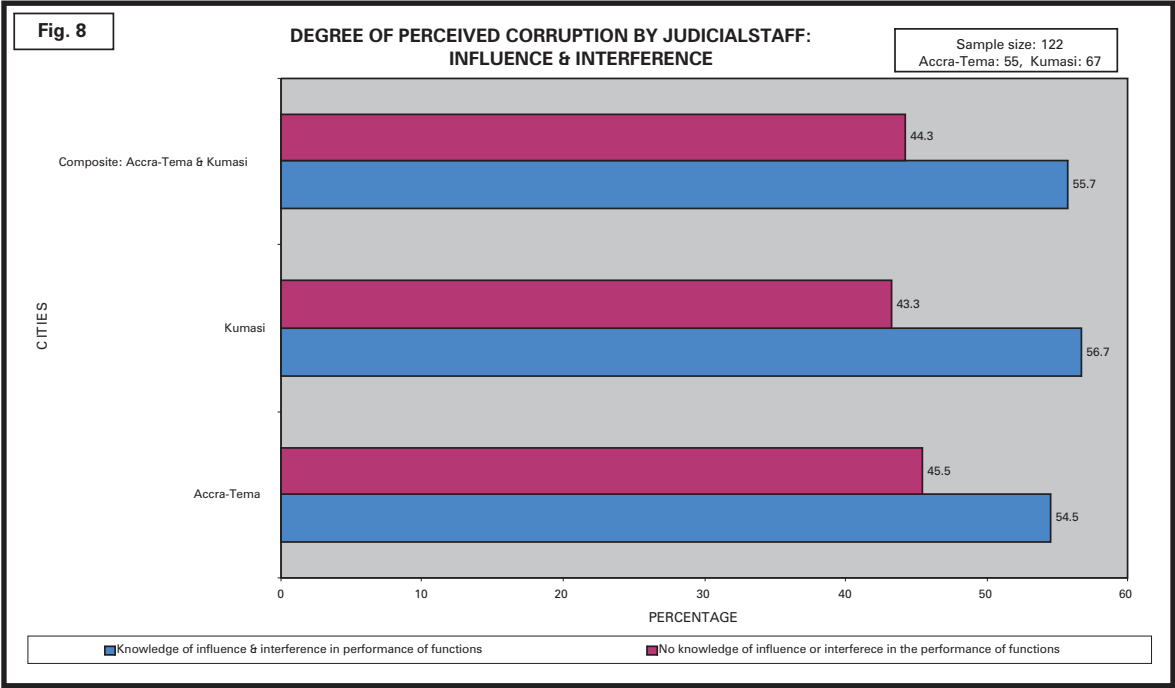
Half of those interviewed also admitted there are instances where judicial officers have been used by a party to a suit in an attempt to interfere with the administration of justice. The other half of judges interviewed denied knowledge of such situations, claiming that even if such influence or interference happened, they were not aware. Another 60% of judges interviewed in Accra-Tema, also intimated that they were aware of instances where judicial officers have received gifts and other favours in an attempt to influence the cause of justice.

This, some of the judges indicated, came to their knowledge when they were informed by litigants. Among the judges interviewed in Accra-Tema and Kumasi 69.6% showed knowledge of the Code of Ethics of the Judiciary, while 21.7% indicated that they were not too familiar with it. One judge representing 8.7% said all that he knew about judicial ethics was what he studied in his Law School Advocacy Course.

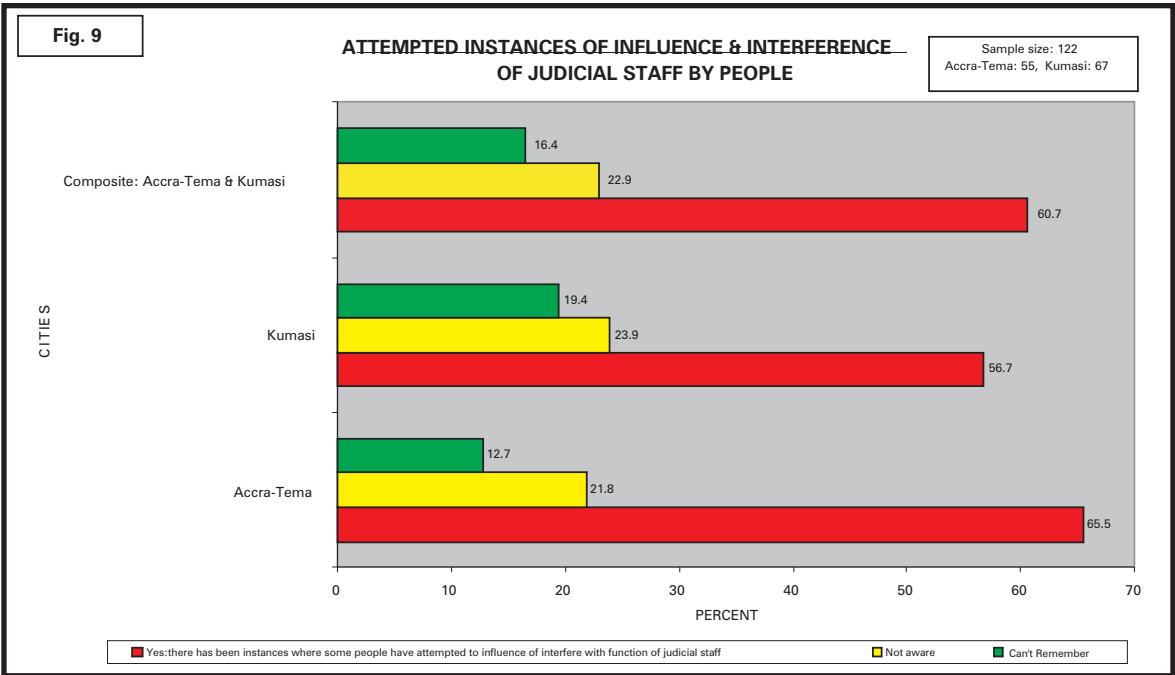


2. Judicial Staff

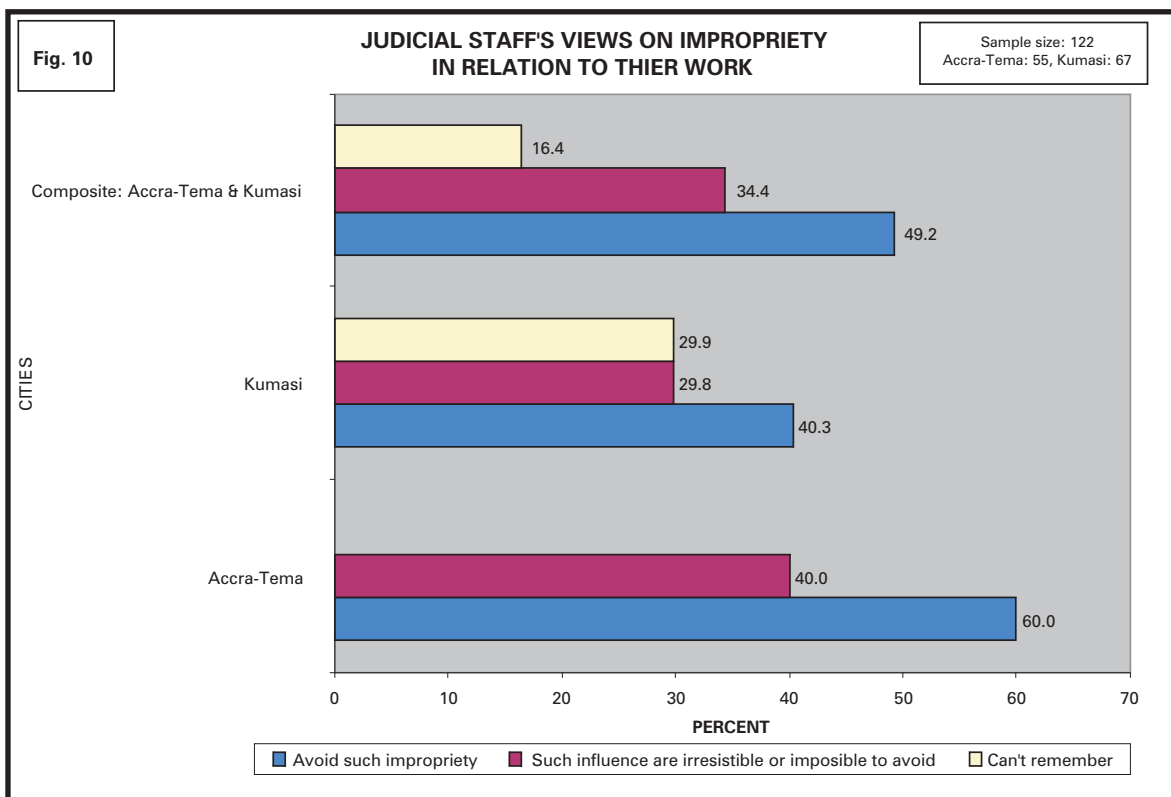
Among 55 clerks and registrars interviewed in Accra and Tema, 54.5% said there have been instances where persons have attempted to influence or interfere with their exercise of their official functions. 45.5% of that same number said they could not remember ever having been influenced or interfered and/or denied ever having to be influenced in the discharge of their official duties. In the Kumasi Metropolis, out of 67 members of the judicial service interviewed, 56.7% stated that there have been instances where persons have attempted to influence or interfere with the exercise of their judicial function with 43.3% responding in the negative and could not recollect.



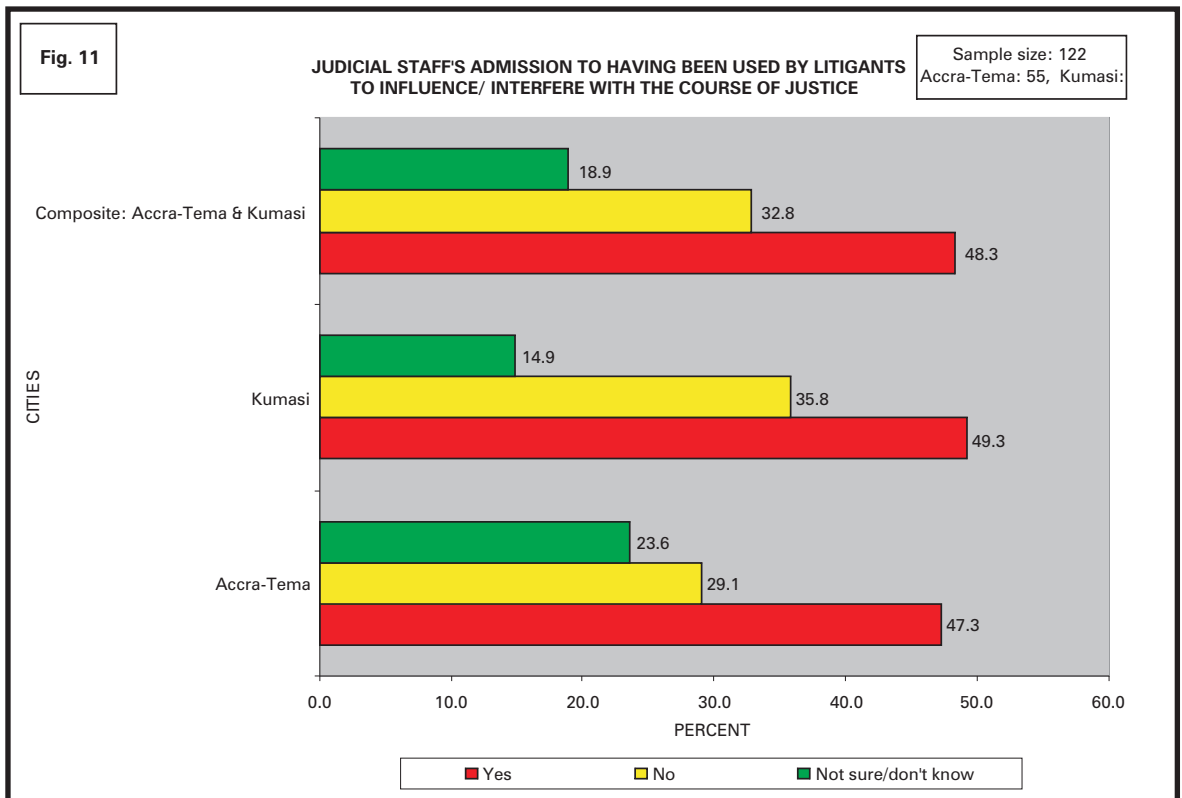
However, over 60% of 122 Judicial Staff interviewed in Accra and Tema indicated that they were aware of instances in the life of a fellow judicial officer where attempts had been made to influence him/her to compromise the exercise of judicial functions.



About 50% added that they often avoid such impropriety with the other 50% indicating that such influence was irresistible or even impossible to avoid. Almost half (49%) of the staff interviewed admitted that they have been used by litigants to influence or interfere with the exercise of judicial functions and that they were aware of other colleagues who had been used by a party to a suit to influence the decision of judges.



A significant majority (60%) in Accra and Tema also said they were aware of instances where litigants had complained that judicial officials had taken money and/or gifts to assist in a case pending before a judge while 40% denied knowledge of such instances.



Strikingly, 48.3% of the judicial staff interviewed admitted that they were aware of colleagues who worked with lawyers in handling cases for clients/litigants having been used to influence/interfere with the course of justice, 32.8% said they did not know such persons in the judiciary and 18.9% said they were not sure.

The staff also admitted the occurrence of over-assessment of filing fees paid by litigants. Among the staff interviewed in Kumasi, 49.3% admitted that they have seen instances of over-assessment of filing fees paid by litigants, with 35.8% answering in the negative and 23.6% indicating they were not sure. The staff interviewed in Accra, however, added that that practice has reduced since the fees are now paid directly to the HFC Bank and not to the workers in the registry.

When asked whether they have received any training in judicial ethics and administration, 62% answered in the negative and 35% answered in the affirmative with a few judicial staff indicating that they were not sure. In Kumasi for instance, 64% answered that they have not received any training in judicial ethics and administration, with 29% answering in the affirmative and 7% indicating that they are not sure of having received any such training. As a natural consequence, majority of the staff indicated that they were not familiar with the judicial service code of ethics.

3. Lawyers/Law Firms

A total of 50 lawyers/law firms were interviewed in Accra and Tema. Of that number, 51% admitted that their clients had ever asked them to contact judges or court officials to influence or interfere with the judicial process.

44% of the lawyers interviewed said their clients had never requested them to attempt to influence or interfere with the judicial process in an unethical manner while 5% could not remember. In Kumasi, a total number of 84 lawyers were interviewed and asked whether a client has ever asked them to contact a judge to influence or interfere with the judicial process. Out of this number 48 representing 57% answered in the affirmative. 34 representing 40% answered in the negative and 3% indicated that they could not remember. When the question turned on whether those same lawyers were aware of instances where fellow lawyers had been asked by clients to contact a judge to influence or to interfere with the judicial process, the affirmative responses shot up to 78%, with just 14% in the negative, 2% unsure and 6% failed to respond.

Critical to this research work was the issue of missing court dockets and files. A large majority of the lawyers (72%) stated that they were aware of instances where dockets got missing as a result of the action or inaction of judicial officials and other lawyers. Only 22% denied knowledge of the disappearance of court dockets and 6% said they were not certain. The lawyers however expressed their views regarding the issue of missing court dockets or files as follows:

- It is very common for court clerks or other judicial staff to hide a docket or file at instance of a party to the litigation or criminal prosecution and be paid for it; in most cases, dockets or files have disappeared from the Registry without reasons being offered why that is so. According to one lawyer interviewed: "A docket in a case I was handling got 'missing' until a particular court clerk was transferred before it resurfaced."
- One lawyer said that he witnessed a colleague lawyer giving money and instructing the recipient court official to hide the docket whenever the case he was handling was scheduled for trial;
- Some lawyers pointed out that their clients sometimes went ahead to bribe clerks to hide dockets without consulting them and that they only got to know when they were in court at the adjourned date that the docket or file could not be traced within the court registry;
- Some lawyers expressed the view that the recurrence of missing dockets or files was prevalent at the stage of execution of judgments: "Dockets or files are often hidden at the instance of the judgment-debtor to frustrate the judgment-creditor from execution." In one case, a plaintiff was about to go into execution when the entire record of proceedings disappeared.
- According to one lawyer, a defendant in his case arranged with a court clerk to hide the docket in order to get an unreasonably long adjournment. Another also indicated that he experienced several instances where dockets got missing only to resurface after he had diligently made copies of all the documents in the case and given them to the Registrar of the Court.
- "I am currently working on a land case in the circuit court and the docket is perpetually missing. I suspect complicity between the registry and the opposing counsel", said one lawyer.
- Another lawyer said "the title deed in a docket concerning a land case that I am handling has disappeared and the case has been adjourned sine die."

Lawyers were asked whether they had ever been approached personally by staff of the Judicial Service for gifts or money in order to assist them in the conduct of their cases. Most lawyers were unwilling to answer this question and some described it as "too

personal". However, when the same lawyers were asked whether they were aware of instances where their colleagues had been approached by a court official to part with money or a gift to influence the decision of a judge or court process, they were willing to provide answers. To that question, 42% answered in the affirmative, while 50% said they knew of no such instances. The remaining 8% of those interviewed did not respond.

On the issue of whether some judges were giving undue advantage to some lawyers, 80% of lawyers interviewed agreed that some judges give undue advantage to some lawyers over others, with only 6% of the number in denial [in denial not a good term to describe those who respond in the affirmative] while the remaining 14% were uncertain. This is obviously as a result of over-familiarity between some lawyers and judges, and junior lawyers and their clients are the natural victims. Two-thirds majority also said they knew of cases in which judges had failed to deliver rulings on time or at all after hearing had completed. On the question as to whether lawyers keep separate accounts for their clients, majority answered in the negative.

An overwhelming majority of lawyers also admitted that they knew of instances in which lawyers charged excessive fees in violation of laid down guidelines for charging legal fees. In Kumasi, 48% of interviewees said some lawyers charge excessive fees in violation of laid down guidelines with 39% answering in the negative and 13% uncertain. Sixty-five per cent (65%) of the lawyers interviewed said they did not keep proper books of accounts for all money received on behalf of clients. Twenty-one per cent (21%) (mostly from the well organized and reputable law firms) said they did keep such records while 14% were uncertain. Fifty percent also stated that they know of instances whereby fellow lawyers, having acted for clients, turned around to act against that same client in the same matter or in any other related matter. All the lawyers interviewed agreed that such situations constituted clear instances of conflict of interest and gross ethical misconduct and that the Disciplinary Committee of the General Legal Council (GLC) must be prepared to enforce the rules of the legal profession whilst lawyers must also accept the challenge to report such bad nuts to the GLC. For example, an overwhelming majority of 90% of lawyers interviewed in Kumasi indicated that lawyers should report their colleagues who influence or attempt to interfere with the judicial process to the GLC.

4. Litigants

Some of the litigants whose cases were pending, especially those whose cases had been in court for more than three years, admitted suggesting to their lawyers to contact the judge or court officials to influence the outcome of the case. Even though majority denied asking their lawyers to contact the judge for a favourable decision, over 70 per cent of the litigants interviewed said they were aware of fellow litigants who had informed their lawyers to take such steps. Twenty-seven per cent (27%) out of the total number of litigants interviewed also admitted knowledge of instances where court officials or lawyers had asked litigants to part with money to influence the outcome of the suit. In some instances, they stated that they received promises from the court officials of the positive chances of success of their case. Over 55 per cent of the litigants interviewed also stated that they were aware of instances where other litigants connived with court officials to hide case dockets. In one instance, a litigant reported that the docket got missing after the judgment was delivered, thereby frustrating efforts to go into execution. An equal number of those interviewed said they were aware of instances whereby a gift

was given or money was paid for court processes to be backdated or post-dated to serve the interest of one party.

About 50% of litigants interviewed bemoaned delays in delivering judgments upon completion of hearing. In Kumasi, out of 65 litigants interviewed, 57% said they were not satisfied with the delays in the delivery of judgment after the completion of hearing, while 23% showed their satisfaction. Another 20% were uncertain. Another crucial matter upon which litigants expressed their view was in respect of the overall satisfaction or dissatisfaction with the progress of their suit. In response to this question over 80% of litigants stated that they were dissatisfied with the progress of their suit, and for that matter, would not want to use the court system to settle any future dispute. The remaining persons indicated that they were somehow or fully satisfied with the progress of their suit.

Among all the litigants interviewed, 48% said they trusted only judges, 5% said they trusted court clerks, with 11 % of that same number saying they trusted lawyers and 36% saying they did not trust any of the players of the judiciary because they were all corrupt. In Kumasi, the percentage of litigants who stated that they do not trust any of the key players rose to 48%. Some indicated that in attempting to access justice they had spent more money than the amount owed them by the opposing party.

For most of the litigants interviewed, a number of challenges confronted them in the course of their interactions with the judicial process. These included inordinate delays due to frequent adjournments, the reliance by lawyers on complex rules of procedure, lateness of some judges in commencing sittings, the failure of some judges to sit, monetary demands by court officials before sometimes bringing dockets to court and failure to serve court processes in time. Some bemoaned the practice of typists and clerks demanding money before discharging their duties. The litigants interviewed indicated that their cases had been pending in court for as recent as two months and for as long as three to five years, and in some cases 10 to 12 years. According to some of them, their cases had been adjourned between 15 and 40 times. In extreme cases, some litigants indicated that the number of adjournments ranged between 50 and a 100 times.

e. Anecdotal Evidence: Qualitative Narratives

As noted above, in the course of monitoring the students conducted in-depth interviews with judges, lawyers, litigants and judicial staff who gave detailed information regarding their experiences of judicial corruption, that is, they narrated their experiences and viewpoints regarding the subject. Some of this information was recorded by the students but was never independently verified and therefore remains anecdotal. In this section, the report details some of that information as given by these key actors in the judicial process.

i. Judges

A Circuit Court judge was one of the first to open up about the issue of judicial corruption. He said that corruption in the judiciary is very high but the public does not know of the extent of corruption because most people are not ready to talk about it. He indicated that when he took over as a judge in some parts of the country, lawyers, litigants and

policemen were always coming with gifts meant for his predecessor and he had to redirect them to the former judge's new residence. He said gifts in kind and cash were brought to him but he refused to take them. He stated that in one of the towns where he took over as the judge, his predecessor was in the habit of collecting gifts from litigants and lawyers and "his house was like a mini market".

A High Court judge also indicated that even though corruption in the Judiciary is real, it is always difficult, if not impossible to gauge its extent. She castigated the behaviour of lawyers who, in her view, condoned corrupt practices in order to favour their clients. She gave the example of a lawyer who was always very abrasive and she was compelled to make an order to the effect that the lawyer could only appear before her after 12:30pm. This, she said, was to avoid irritation and exhaustion which may affect other cases before her. She was of the view that this abrasive lawyer was involved in unethical professional conduct.

Another female High Court Judge said some judges may be corrupt, but she took the view that corruption in the judiciary mostly involves clerks, clients, lawyers and prosecutors. She narrated her experience where court clerks purportedly received gifts on her behalf, but such gifts never got to her and she only heard that those who sent the gifts were complaining. According to her: "Usually when it comes to my notice, I report to the Complaints Unit, but it usually gets nowhere and the clerk is transferred to another place." While the student monitor was with the Judge, a lawyer came into her chambers under the pretext of saying hello. Her Lordship asked the monitor to observe. The lawyer had a matrimonial case and wanted the case to come before her. She told the lawyer she had no control over which cases should come before her and advised that if the divorce petition was one grounded in law, there was no need to fear which judge hears the case. When the lawyer left, she complained that the poor working conditions of judges made them vulnerable to lawyers such as the one who just left her office. She said judges were poorly remunerated, were given very little book and research allowances, had little room for promotion, lacked library facilities and even had deplorable washroom facilities. She pointed out that another female judge had to keep a container in her office to urinate into because her court had no washroom. This other judge had to take the urine home at the end of the day for disposal. The judges' chambers are in deplorable state with bare floors, uncomfortable seats and dirty walls, etc.

ii. Judicial Staff

At the Commercial Court officials informed the student monitor that they had signed an undertaking not to accept gifts or favours from lawyers and parties before they were employed to work in the commercial court. She said even though she was promised better salaries, allowances and other conditions of service, these had not been fulfilled after one and half years. Graduates employed at the Commercial Court are paid less than one million a month. Applications for promotion experience considerable delay.

A court clerk blamed the issue of corruption on greedy lawyers, whose interest was only in making money. She also said there was connivance between the court registrar and some lawyers in determining which particular judge sat on which case. She also testified to having witnessed a lawyer directing the registrar to place a case in a particular judge's court and wondered what effect that would have on the case since the registrar did not

know the relationship between the judge and the lawyer. She believed there is corruption in the judicial service involving lawyers, court clerks, registrars and some judges. She also indicated that some lawyers pay staff of the judicial service to follow up on their paper work. She said some lawyers have approached her to influence the judge, but she had said there was nothing she could do. They, however, sometimes offer her money to buy drinks, which she had accepted.

Some of the staff defended the position that merely accepting a tip from someone is not tantamount to corruption. According to them, persons whose salaries are inadequate should not be blamed for accepting such tips. They rather cited police men and lawyers as the persons who influence the court system.

The Registry of the Kaneshie District Court is like a mini market where customers troop to see the registrar and other court officials. A clerk at the Kaneshie Court was overheard saying "as you know you do not go before a king empty handed, pointing to the registrar's office."

iii. Lawyers

The lawyers and law firms interviewed recounted a number of anecdotes regarding the central issue of judicial corruption, its causes and the forms it takes within the context of litigation. On the question whether judicial corruption is real, here is a sample of responses:

- A female lawyer was of the view that the whole judicial system is abysmally corrupt, from judges to the lowest ranked judicial staff. However, in her opinion the rot is more pervasive among the court clerks and the registry staff because they have been taking money from unsuspecting litigants under the guise of attempting to influence the judge without the judge ever receiving it;
- A lawyer interviewed stated that corruption is very real and that the judge before whom he appeared that day was under investigation. He added that "I sometimes give money to clerks to facilitate the process and ensure expeditious trial. This is usually done especially if you are a young lawyer."
- In another case, a lawyer indicated that corruption within the judiciary could be real in that he had heard some of his colleagues discussing it. He added "I have to give money before a registrar would put my case before a favourite judge".
- A female lawyer cited an instance whereby a litigant, who was at the time a pastor, bought a saloon Vectra car for a judge in a case involving his church;
- Some lawyers also complained that even though they paid filing fees, they still had to pay typists at the registries of the courts before the documents are typed speedily, otherwise it would take a long time to obtain such documents;
- One lawyer narrated an incident in Ho High Court where a bailiff was not cooperating in serving a party who worked some 10 yards away from the court. He complained to the Registrar and the latter's response was: "But Sir, he needs taxi fare."
- A lawyer indicated that corruption in the judiciary is very real and he cited an instance where he even took money from his client to be given to a judge but pocketed it because what the client wanted was something he did not have to pay for.

The lawyers interviewed also had diverse experiences and views relating to the causes and the manner of occurrence of judicial corruption. Some examples are as follows:

- When cases are adjourned because of the failure of one party to file court processes or the failure to serve these processes, frustration can set in and one must speed up the system by paying someone to do so;
- Some lawyers deliberately manipulate the system to delay cases that they perceive are going against them;
- A strong perception that the lawyer on the other side has seen the judge behind one's back can prompt one to also do something;
- When some lawyers have “favourite” judges before whom they appear one would be a fool not to look for one;
- Court docket overload can lead to a lot of frustration and prompt lawyers and their clients to try and do something so as to jump the queue.

iv. Litigants

Just like judges, lawyers and judicial staff, litigants had anecdotes of their own relating to the issue of judicial corruption. The litigants interviewed recounted their experiences and frustrations with court processes, as follows:

- Lawyers seek frequent adjournments so as to make more money from their clients and sometimes it is better as a litigant to pay the clerks to fix dates that would force the lawyers to speed up the case;
- Judicial corruption is more prominent at the stage of execution of judgment. Clerks demand money before assisting in the preparation of documents for execution of the court order, while one has to also pay money to bailiffs and court clerks to serve process;
- Those whose cases have been pending for a long time admitted attempting to influence judges, clerks and other officials for favourable decision;
- One litigant also indicated you need to chase court processes and part with money otherwise no one will mind you.
- Some of the clerks sometimes mislead litigants to part with money by giving them misleading information.
- Disposal of cases in the commercial court was faster than in other courts and some litigants expressed satisfaction;
- There is also the troubling practice of litigants going to see the district court registrars before their cases could be brought to the court for mention. One litigant remarked that “here if you see the registrar/or court clerk your case would be called.” It was also observed that even though the judge adjourned one case to a later date, the court clerk took money from litigants and brought the date forward;
- Sometimes when court session is ongoing you notice court officials (especially interpreters) meeting outside the court room with litigants whose cases are yet to be called or heard, and money changing hands.
- The practice of court officials drafting legal documents for the public is fast becoming an established practice.

The foregoing anecdotal evidence is not conclusive of the existence of judicial corruption. However, it does supplement the evidence gathered from the responses to specific questions by all the key actors in the judicial process. Further, it gives a rich and nuanced account of what these actors experience and what they think about the phenomenon of judicial corruption. The next section concludes the report and also provides a snapshot of recommendations proposed by those who were interviewed.

v. Minimizing Judicial Corruption: Respondents' Suggestions

The ultimate goal of a project such as the JWP should be to provide some sort of solutions or proposed solutions to the problem under investigation otherwise it loses its focus as an advocacy project. Consequently, the student monitors were tasked to prompt those they interviewed to express an opinion about possible solutions to the problem of judicial corruption. This section provides sample answers to the question: "What do you think can be done to solve the problem of corruption within the Judiciary?":

- Salaries of judicial staff and those of judges and magistrates must be increased. "When you pay a magistrate five million Cedis a month and he or she handles 50 cases a day, how can you expect him not to be corrupt."
- Improved conditions of service must go in tandem with improved facilities. For instance the processing of cases should be automated for all courts and not only Fast Track Courts and the Commercial Court;
- There should be a system for the appointment of competent judges through broader collaboration between the bar and the General Legal Council;
- The costs of filing court processes are too high and must be reduced;
- All actors in the judicial process, including judges, magistrates and lawyers, found in breach of the law or ethical standards must be severely sanctioned. The Code of Ethics of the Judicial Service must be made legally enforceable;
- Increased training for supporting staff, especially on how to deal with users of the services of the courts;
- Public education should be intensified to enlighten the general public about bad practices and that they must report to the Judicial Service;
- The Complaints Unit must be extended to all the other regions. In this way, cases misconducted by judges in particular should be dealt with internally by the Judicial Service, rather than being tried by the media which ultimately tarnishes the image of the judiciary;
- The judiciary should be given financial autonomy.

Observations about the Commercial Court

As a research assistant to the Judiciary Watch Project, I was stationed at the Commercial Division of the High Court in Accra. This memo contains my observations for the month of August 2006, which included observation of court proceedings, interviews with staff of the Court, lawyers, judges and litigants and distribution of questionnaires to some of these people.

The Commercial Court, as the name implies, deals with commercial cases. Though courts were on legal vacation, two courts of the Commercial Division held sittings. Commercial Court B held sittings for the first week of August, that is, on the 9th and 10th of August. Sittings continued in Court F from the 15th to the end of August. The courts sat three (3) days a week on Tuesdays, Wednesdays and Thursdays. Almost all the cases that came before the judges concerned motions (i.e. interlocutory applications). I observed that because of the vacation the proceedings were less rigid than usual. Lawyers were allowed to get away with lateness to court and non-appearance.

Also, most of the parties were absent. The cases were dealt with in an expeditious manner. I had the opportunity to talk to some lawyers about their impressions of the operations of the Court and their perception of judicial corruption. They were of the view that the Commercial Court is the best thing that ever happened to the judicial system in Ghana. According to them the pre-trial conference that has been incorporated into the adjudication process serves as an alternative dispute resolution mechanism and helps to decongest the court. Also judgments are given promptly in contrast to the 'traditional' courts where delivery of judgments can take a long time.

On the issue of judicial corruption, there was not a single lawyer who did not have something to say. But the consensus was that if we want to know more about judicial corruption, then we should investigate the staff at the registries and other departments of the court. These are the real players who take money from litigants and lawyers in order to bribe judges to influence the outcome of cases. However, judges were not left out. One lawyer told me he knows of a judge who always moved with a particular court clerk wherever he was transferred. The lawyer was of the view that there were court clerks whose lifestyles did not match their meagre incomes.

I was able to talk to some judicial staff in and around the Commercial Court and also gave them questionnaires. My observation was that most of them were reluctant to talk and some were altogether uncooperative. According to those who talked, there is a lot of intimidation and victimization in the Judicial Service and they did not want to fall victim. They were basically afraid of being transferred from Accra to places they would not like to go should they be found cooperating with me. However, there were a few who were so fed up with the system that they were willing to talk. They said judicial corruption is real and there are a lot of factors accounting for it. Salary levels are so low, according to them; a university graduate in the Judicial Service is paid less than One Million Cedis monthly. Due to this, they have to do what they can to make ends meet.

They would not hesitate to take money and other gifts from lawyers and litigants. This situation is not however common at the Commercial Court. Here everything is automated and makes it impossible for staff to infiltrate the system. According to the lawyers, they do not face corrupt practices at the Commercial Court as compared to the traditional courts.

Although most of the judges were on vacation, I had the opportunity to administer questionnaires to two judges. According to them, just like in any other institution, corruption within the judiciary is real. The consensus between the two was that judicial corruption arises from greed on the part of some of their colleagues. They argued that even though their conditions of service are poor, judges should be guided by the ethics of the profession if they wish to render good service to the nation.

Source: Student Monitor's Report for August, 2006.

a. Conclusion

The monitoring exercise in the Accra-Tema metropolis and Kumasi has confirmed that the phenomenon of judicial corruption is real. The data and information gathered for this report demonstrates convincingly that the issue of corruption is not merely one of perception but of reality and that it occurs with frightening regularity within the Judiciary. Almost invariably, the key actors interviewed were keenly aware of the existence of the problem of corruption and had, in some cases, themselves experienced it one way or the other. What has not been determined, but has been marginally touched upon, is the extent to which the incidence of corruption affects judicial performance and ultimately the economic development of the country. Many social scientists would agree that measuring the effects of social phenomena such as corruption is not an easy task. It is however hoped that the report would serve as the primary document for further advocacy-related research on the question of corruption and its consequences on Ghanaian society as a whole.

b. Recommendations

It was stated at the beginning of this report that corruption within the judicial branch of government has far-reaching socio-legal consequences. One particular consequence is that corruption represents a source of institutional malfunction and can undermine the credibility and integrity of the judicial branch. In view of the centrality of the judiciary in the enforcement of the law generally and especially laws dealing with corruption, such institutional malfunction can irreparably damage the legal system as a whole. This report therefore recommends that urgent steps be taken to institute internal measures within the judiciary to check the incidence of corruption.

The establishment of the Complaints Desk at the Supreme Court as part of the Office of the Chief Justice is in this respect a step in the right direction but it is submitted that that step is still tottering and needs to be made firmer by extending the “complaints desk” concept to all regions of the country. Every High Court in the country should have a complaints unit where key stakeholders can lodge complaints about the behaviour of judges, magistrates and judicial staff.

Beyond that, other internal measures such as the computerization of courts should be expedited in order to reduce the incidence of corruption. Indeed it would be highly naïve and premature to conclude that computerisation eliminates corruption; but as this report makes clear from monitoring the computerized Commercial Court in Accra, it certainly reduces the occurrence of those things that give rise to corruption. For instance, it minimizes the frequency of contact between litigants and or their lawyers and Judicial Service staff.

It is also recommended that the much touted judicial code of ethics be enacted and made enforceable. With wide public education, an enforceable code of ethics for judges,

magistrates and judicial staff would certainly make a difference in terms of reducing the occurrence of corruption and its various manifestations.

Finally, it is recommended that the Ghana Bar Association should begin to play a proactive role in regulating the conduct of lawyers. As seen from the sections of the report dealing with lawyers and law firms, lawyers are key players of the judicial process and are part and parcel of the problem of judicial corruption. However, the Bar Association does not appear to be effective in checking and punishing unethical conduct at the Bar. This has fuelled the perception that lawyers can misbehave, including paying bribes to judges, magistrates and judicial staff, and not be punished professionally.

APPENDIX

ANONYMOUS REVIEWER'S COMMENTS

I must say right from the outset that in my view the report is reasonably thorough. However, I desire to make few observations especially with regard to the methodology.

The methodology adopted, which included administering questionnaires and talking to the key actors in the judicial process is proper. My view however is that so far as this exercise is concerned it has some limitations. The methodology ought to have been more specific and focused. Administering questionnaires and talking to the main actors of the legal community without investigating specific instances of perceived judicial corruption will only yield general results. I will demonstrate this by using this example. In courts, particularly in Accra, there are certain litigants I would call for want of a better expression "professional litigants." You will find that these litigants have more than one case pending before two or more courts and in which courts they are litigating substantially the same issue(s). These kinds of litigants, institute such proceedings because of their desire to take advantage of the system by way of pursuing their case in the forum that best suits them. So you'll find that in the court where things appear to be going against them, they will devise a strategy to delay or frustrate proceedings in that court.

For this reason, although talking to litigants and lawyers and taking their views on the subject is a step in the right direction, it would have been useful to investigate the facts that gave rise to their perception by reference on their case(s). This would have given the researchers a better view of the matter. The researchers would then have appreciated whether the perception is legitimate or imagined or results from ignorance of how the judicial process works. In some cases the person complaining about the missing docket is responsible for it. For this reason the researchers after talking to the lawyer and the litigant clients could have taken the suit number and the titles of the cases in respect of which the litigant or his lawyer is complaining. After taking the title and suit number of the litigant's case, the researcher could have verified from the registry as to the whereabouts of the file. The researcher would, subject to co-operation from the registrar, be able to find out whether the file is actually missing and whether any efforts were made to trace it and by which party. If the file is found, the researcher can tell the number of times the case has been to court and what steps were taken or otherwise. This would give the researcher a fair idea as to which party and for what reason such a party would want to hide the docket.

Further, it would also have been a useful idea to ask lawyers what options are open to them in such instances. After attending court three (3) or four (4) occasions without finding a particular docket, the truthfulness or otherwise of which would have been confirmed by registry, what did the lawyer do? Is there any evidence that such a lawyer made any complaint by way of a simple letter to the registry about this missing docket? In some circumstances the registry permits the opening of a new docket to enable the case proceed using copies of the processes in the possession of the party or of his lawyer. This information would assist the researcher to make up his mind as to which category of the

actors in the judicial process contribute more to this perception.

In doing this, the researcher would be adequately informed as to the types of cases which the incidents of missing dockets are prevalent; and I believe it is in land cases in Accra and why it is so? The reason is that the examples of judicial corruption provided, represent the general indicia or instances, the reason for which judicial corruption is perceived to exist and this does not require much effort to discover after interacting with the actors for a day or two. I suggest therefore that if there will be a follow up, this should be done by investigating the specific complaints or instances of judicial corruption stated by lawyers and litigants. The investigations should be done without the involvement of the litigant or lawyer involved. In this regard it is surprising that the report failed to capture the numerous complaints (by way of petition) made by litigants and lawyers against judges and the manner in which such matters were dealt with. It would also have informed the researchers as to the specific forms of judicial corruption talked about and in relation to specific cases and how they are being dealt with.

The other point I would want to make, relates to the research in the courts. My view is that it is necessary to have distinguished between the various categories of courts in the terms of hierarchy and the level or degree of perception of judicial corruption in each of these courts. This would enable us determine whether it is the prevalence of corruption in one area of the judiciary which gives the general impression that there is judicial corruption or otherwise.

In this regard, I venture to suggest that the perception of judicial perception differs depending on the hierarchy of the court. The perception of judicial corruption in the lower courts, in my view, is higher than in the Superior Courts. Take, for example, the district court which, in the hierarchy of courts is the lowest. The perception of judicial corruption in the district courts is very high among litigants because in many of these courts parties do not appear by counsel and the informality with which the proceedings are conducted descend into the arena of conflict. They are seen openly hostile to one party not because such judges may have been corrupt but because in the absence of counsel to assist in the proceedings, the magistrate is constrained in some instances to lead the witness (es) in evidence and cross-examine them at the same time. In doing this, they inadvertently appear to (and as human beings indeed do) take positions in favour of one party or the other depending on the level of involvement.

As we go higher to the circuit court through the High Court to the Appeal and Supreme Court, the perception is lower owing largely to the level of interaction between the bench, bar and litigants. In the Court of Appeal and Supreme Court, for instance, the level of interaction between the bench, bar and litigants is very low. At this level the interaction is mainly in written form and there is/are very little exchange(s) between the bench, bar and litigants. Judgments are given on the basis of papers filed and not much on verbal interaction. Since the level of interaction is low, the bias or otherwise of the judges (at this level) for or against one party is not apparent.

The incidents of missing documents, records and evidence is prevalent mainly in trial courts which are lower in the judicial ladder. In the court of Appeal and the Supreme Court these incidents are not regular happenings. In the trial courts i.e. the district, circuit and High Courts, there are many instances in which evidence given by witness (which in the witness's view is crucial to his case) is not traceable in the records. It is also very

regular for submissions made by counsel to either not have been recorded or grossly been misrecorded and for that matter misrepresented. So it is with exhibits and relevant documents. These matters could arise from genuine inadvertence to laziness, oversight and the heavy case loads that the trial courts are tasked with. Having said that their occurrence contribute to the perception on judicial corruption. This however does not happen often in the appellate courts. It would therefore have been a good idea to conduct the research in relation to each of these courts to see how each fits into the question.

To conclude this matter, I will say that the report made useful recommendations in terms of dealing with the perception. I would also suggest that "judicial monitoring" especially of judges, be implemented as a way of checking judicial corruption. Funds should be made available for this purpose. Consultants should be hired yearly to review, at the end of every legal, at least ten (10) cases conducted by each judge in the year. The cases should be selected by interviewing a few litigants and lawyers conducting cases before the particular court. Their complaint about their cases noted and their files studied during the period to determine whether the perception is real or imagined. The files should be referred to the consultants by the registrar of the court. The name of such consultants should not be disclosed and the files should be requested by the registry for the transmission to the consultants. The consultant(s) report should be confidential and reviewed by the judicial council. Action then should be taken as appropriate. This could be done for the trial courts alone.

This will enable the consultant draw conclusions from the kinds of orders made, adjournments taken etc as to whether or not the complaints made by the litigants or their lawyers are legitimate. Whilst it is conceded that, judges can err in the performance of their duties, there are certain errors that are inexcusable. For example, where in land litigation, a judge makes a restraining order against one party alone leaving the other party free to deal with the land and affected party's application for review of the restraining order to affect the two parties is refused on no justifiable legal ground, then it raises eyebrows.

Another example is where, in land litigation, the person in possession of the land are vendors, mechanics etc and are actually doing nothing to alter the character of the land but the judge makes an order to remove them pending the final determination of the suit without a corresponding order restraining the opponent from entering the land. If the opponent takes advantage of the order and enters the land and commences development but the judge refuses a restraining order against the opponent without any justifiable cause there is a problem.

Ghana Integrity Initiative (GII) is Ghana's local chapter of Transparency International (TI), the global civil society organization leading the fight against corruption. GII, launched in December 1999, is a non-partisan, non-profit civil empowerment organization focused on the delivery of essential themes necessary for the creation of a National Integrity System.

GII's three main strategic objectives to achieving a corruption-free Ghana in all spheres of human endeavour where people and institutions act with integrity, accountability and transparency are:

- To continuously create awareness about the negative effects of corruption
- To empower citizens to demand responsiveness, accountability and transparency from people and institutions in Ghana
- To build a culture of integrity, where corruption is unprofitable for people working in government, politics, business and civil society organizations by working with people and institutions.

GII's anti-corruption programme is organized around the following broad headings:

- **Research** - Conduct local/international surveys on corruption related issues;
- **Public Education** – Educate the public about civic rights and duties, especially the basis of constitutionalism by organizing workshops, seminars etc on the causes, effects and solutions to the problem of corruption;
- **Publication** - GII through its quarterly newsletter (GII Alert), highlights significant happenings in anti-corruption in Ghana and around the world;
- **Networking** - GII liaises with individuals and local/international anti-corruption institutions to promote the fight against corruption;
- **Lobbying/Advocacy** - Sensitizing political and other concerned parties and entering into dialogue on corruption to advocate for legislative and institutional reforms.



Ghana Integrity Initiative

Local Chapter of Transparency International

Ghana Integrity Initiative
House No. F848B, Adzoatse St.,
Osu
P.M.B CT 317
Cantonments, Accra, Ghana

Tel : 233 21 782364/5
Fax : 233 21 782365
E-mail : tighana@4u.com.gh
Website: www.tighana.org.

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