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Commission

# CORRUPTION IN KENYAN JUDICIARY

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# Outline of the presentation

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- Aftermath of the report



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## Background

Based on a report that is a culmination of investigations carried out by the Integrity and Anti-Corruption Committee of the Judiciary formed after the 2002 General Elections to:

- Investigate and report on the magnitude of corruption in the judiciary
- Identify the nature, forms and causes of corruption
- Find out the level of bribery in monetary terms
- Report the impact of corruption on the performance of the judiciary
- Identify corrupt members of the Judiciary and recommend disciplinary or other measures against them
- Recommend strategies for the detection and prevention of corruption in the judiciary; and
- Address other related matters

The Committee held in-camera hearings all over Kenya, received hundreds of written memoranda and representations and submissions from of 952 persons.



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## Findings

- **Types of Corrupt practices**
  - mainly bribery, given either in cash or in kind
  - level of cash depended on the seriousness of the matter or rank of judicial officer
  - corruption in kind took the form of gifts of land, livestock, the supply of building materials, supply of fuel; harambee contributions; personal entertainment and hospitality; and sexual favours

The most prevalent type of bribery was cash and least prevalent the grant of sexual favours



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# Causes of corruption in the Judiciary

- Poor terms and conditions of service
- Bad deployment and transfer policies and practices
- Delays in the hearing and/or determination of cases
- Non-merit based recruitment and promotion
- Greed
- Ignorance by the public on their legal rights, procedures and processes of the courts and the law generally
- Existence of wide discretion on the part of the judicial officers in both civil and criminal matters
- Entrenched culture of corruption in the society as a whole
- Excessive workload due to insufficient personnel and inadequate and/or antiquated equipment



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- Inaction or ineffective action against identified corrupt judicial officers and paralegal staff
- Inadequate or non-existent supervision of judicial officers and staff
- Protection of corrupt officers by their godfathers and superiors
- Loss or misplacement of court files
- Interference by the Executive
- Retention in service of judicial officers after attaining the compulsory retirement age
- Conflict of interest on the part of judicial officers
- Inherent delays in the legal system
- Existence of procedural rules and regulations which are conducive to corruption
- Lack of sensitisation of magistrates on corruption issues and anti-corruption legislation
- Poor accessibility of judicial services
- Widespread phobia for court and the legal process
- Poor conditions in prisons and remand homes, fuelling corruption to avoid them



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## Levels of corruption

- Out of 3,234 officers as at 30th August 2003, consisting of 11 Judges of Appeal, 44 Judges of the High Court, 254 Magistrates, 15 Kadhis (Judges of the Islamic Courts) and 2,910 paralegals, **152** judicial officers were implicated in corruption.
- Out of the 152 judicial officers implicated, 5 Court of Appeal Judges (56%), 18 High Court Judges (50%), 82 Magistrates (32%) and 43 paralegals (1.5%) were implicated in judicial corruption, misbehaviour or want of ethics



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# Impact of corruption on the Judiciary

- Rule of law undermined
- Capacity of the judiciary to be an independent and impartial arbiter compromised
- Judiciary could not champion and safeguard human rights and the rule of law
- Esteem of the judiciary as an institution lowered
- Contribution of the judiciary to the national development reduced





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## Recommended action

- Impugned judicial officers
  - Judicial officers implicated in corruption, misbehaviour and want of ethics to be prosecuted in the criminal courts and/or appropriate administrative disciplinary action be taken unless they resign
  - Judicial officers implicated in misconduct in their extra-judicial capacities to be counselled by CJ to live up to their personal obligations



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## On general judicial reform

- Judges to continue criminal trials instead of declaring such trials to be mistrials thereby occasioning great prejudice to the accused persons and witness in starting *de novo*
- *Nolle Prosequi* to be signed personally by the AG
- Establishment of a Supreme Court with appellate jurisdiction over the Court of Appeal
- Fast-track procedure for dispensing with constitutional references
- Magistrates courts to be manned at least by an SRM with jurisdiction to deal with all criminal cases in the remote and geographically expansive areas of Northern Kenya and Coast Province



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## Cont..

- All judicial units to have financial and operational autonomy delinked from the district treasuries i.e own finances and physical infrastructure and motor vehicles to avoid executive interference
- Duties of the Registrar of the High Court and the Chief Court Administrator to be clearly defined
- Formulation and implementation of a transparent transfer policy
- Automation of Court Proceedings and registries, expansion of court houses and increasing number of judicial officers
- Improved remuneration and better terms of service for all officers
- System of wealth declaration by judicial officers
- Better personnel recruitment, deployment and disciplinary systems and practices
- Public education on citizen's rights in the courts



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## Outcome of the report

- 15 Judges of the High Court and Court of Appeal opted out of the process of challenging the charges against them and resigned
- Of those who opted to challenge their accusers, 1 Judge Court of Appeal and 1 Judge of the High Court were exonerated after going through tribunals appointed to probe allegations against them. 1 Judge of the High Court had the inquiry into her conduct dropped by the executive
- Chief Justice promulgated Rules Governing the Conduct and Disposal of constitutional Applications to speed up the process
- Kenya passed a new constitution which:
  - Created the Supreme Court
  - Set the retirement age of judicial officers
  - Created a rigorous process in the recruitment of judicial officers
  - Vetting of sitting judicial officers



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