

# The Marginalisation of the Right to Justice: The Case of Bribery Scandal in Ghana's Judicial Service

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## Abstract

This article argues that corruption in judicial service denies majority of the people, particularly the poor, effective 'right to justice' in breach and in pursuit of their human rights; because they cannot afford to bribe the corrupt officials. Also, it states that the 'right to justice' is anchored in international law and affirmed by the Universal Declaration of Human Rights (UDHR) as a pre-requisite towards the realisation of human rights. In that regard, Ghana's failure to protect this fundamental right of her citizens equally undermines the social trust, which induces the people to collaborate with the government in planning to deliver efficient and sustainable social, economic and political programmes for the welfare of the country and people.

**Keywords:** corruption, bribery, justice, human, right, marginalises, development

## 1. Introduction

Realising the menacing and damaging impact of corruption on the 'right to justice' in developed and developing countries, the United Nations (UN), organised an Ad Hoc Committee under chairmanship of the late Hector Charry Samper, to negotiate the Convention against corruption. This Convention aims to promote the dignity of humanity, in the realms of judicial protection, social, economic and cultural developments.

This article comprised seven sections. Section 1 dealt with the introduction and background to the UNCAC. Section 2 explored the ratification of the UNCAC. Also, section 2 has three sub-headings: 2.1 examined the 'right to justice' as a pre-requisite to the realisation and protection of human rights; section 2.2 discussed specific provisions of the UNCAC in an attempt to rid corruption at the International level; and section 2.3 considered the African Union's Anti-Corruption Convention against the practices of corruption at the regional level. Section 3 explored Ghana's constitutional measures to stem corruption whereas section 4 examined how corruption undermined the human rights of Ghanaians and access justice in the country. Section 5 discussed the impact of corruption on social trust and economic development in Ghana. Section 6 provided a conclusion while section 7 proposed recommendations with a view to stem corruption so as to protect the human rights and socioeconomic wellbeing of Ghanaians.

The next section explores the historical background and ratification of the UNCAC, the 'right to justice', specific provisions relating bribery and corrupt activities of public officials as enshrined in the UNCAC and AU Conventions.

## 2. The background to the UN Conventions against Corruption

From 9<sup>th</sup> -11<sup>th</sup> December 2003, High Level-Political signing conference was held in Merida, Mexico, in 'accordance with Resolution 57/169', to adopt the United Nations Convention against Corruption (UNCAC); which subsequently entered into force with Resolution 58/4 in December 2005.

As at 4<sup>th</sup> May 2017, 181 States Parties have signed and ratified the UNCAC which gives the impression that the convention enjoys unique acceptance internationally, and states parties are committed to implementing the convention provisions to prosecute public officials and private individuals, who engage in deliberate bribery activities to undermine their peoples' human rights (Hechler 2016).

Ghana signed and ratified the UNCAC on 9<sup>th</sup> December 2004 and 27<sup>th</sup> July 2007 respectively. By ratification of the UNCAC, Ghana is expected to be bound by the purpose, provisions and obligations of the UNCAC in unison with the international community; to eliminate corruption and bribery activities which derail developmental programmes in her country. By extension, Ghana's ratification of the UNCAC suggests that Ghanaians have unfettered right to challenge both public officials and private individuals; who may be implicated in bribery or allegations of corruption, at judicial fora in the country, as a way of asserting their 'right to justice'.

### 2.1 the 'right to justice'

The 'right-to-justice' is recognised universally, anchored and protected in international law; and implemented across national jurisdictions as the cornerstone of adjudicating and pursuing justice; and has received the international community's affirmation in the 'Universal Declaration of Human Rights' (UDHR) (1948). In accordance of with her International obligations under the UDHR, Ghana has a legal duty to ensure that her citizens gain equal, free and fair access to judicial fora in pursuit of their social, economic and cultural rights without discrimination on grounds of race, colour, age, religion, status or sex. With respect to the UDHR (1948),

Articles 7, 8 and 10 specifically enjoins States Parties to implement a judicial system that promotes access to justice in manner reflecting the ideals of a free democratic state in which the judiciary exhibits a higher professional integrity and impartiality to advance the cause of human wellbeing (Klabbers 2009). Thus, any governmental or judicial activity which is undertaken at the national level, with a deliberate intent to infringe the individual's 'right to justice' is contrary to the UDHR's objective of safeguarding human dignity.

Similarly, the International Covenant on Civil and Political Rights (ICCPR) (1966) supports the 'right to justice'. Accordingly, article 14 (1) of the ICCPR states that all persons shall be equal before the courts and tribunals, and are to be treated fairly by an impartial judiciary in a public hearing devoid of any discrimination or arbitrariness. The Human Rights Commission (HRC) (2013) explains that all human rights are universal, indivisible, interdependent and interrelated. Impliedly, the HRC (2013) is suggesting that all human rights bear the same legal status, force and responsibility; thus, an infringement of any provision of the above covenants constitutes an obligation/liability on states parties.

Nickel (1987) argues that the 'right to justice' is a principal hinge upon which individuals rely to pursue their human rights in respect of international covenants through the media of judicial avenues. Thus, it can be inferred, that the bribery and corruption scandal which engulfed Ghana's judiciary system in recent times, is a clear manifestation of marginalising Ghanaians' 'right to justice' that in turn undermine their human dignity.

## **2.2 Specific provisions against corruption under the UNCAC**

First, article 15 (a) and (b) require states parties to the UNCAC, to adopt a legislative framework within their respective jurisdictions, to criminalise public officials who may receive bribes as well as prosecute individuals who dare offer bribes in an attempt to corrupt public officials in the pursuit of their public duties. Gathii (2009) deplores corruption within official circles as inimical to protecting human rights, in saying, that the protection of human rights is inversely affected by the presence of corruption in a society. This suggests that high level corruption within the judicial service of Ghana distorts and stifles majority of the people's 'right to justice'.

Second, while Article 13 (1) of UNCAC enjoins states parties to promote effective participation of their citizens, institutions including Non-Governmental Organisations (NGOs) to fight the menace of corruption; Article 13(1) (d) of UNCAC specifically states that citizens with information on public officials who engage in corrupt practices, should be published or disseminated with a view to hold such officials accountable through prosecution. Criticising the practice of corruption within judicial services as an impediment towards achieving social and economic development, Gathii (2009) argues, that the economically and politically disadvantaged suffer disproportionately from the consequences of corruption, because they are particularly dependent on public goods. Gathii's argument reflects the recent judicial corruption scandal in Ghana; because the poor majority of Ghanaians' 'right to justice' is being marginalised through the reception of bribes by judges, police and judicial service personnel in exchange for favourable judgment. Thus, Anas Aremeyaw Anas' (2016) reportage which exposed and led to the removal of several high and magistrate's courts' judges from office nation-wide ought to be commended.

Also, article 15 (a) and (b) of UNCAC aim to deter public officials from either receiving or soliciting for bribes; as well as, criminalising members of the public who may offer bribes to any person holding a position of trust in order to gain unfair advantage in society; as perpetrating corruption, which in turn restricts the right to justice. Chryssikos (2014) further proposes that negotiators of UNCAC added the 'optional criminalisation provisions' to the convention, to afford those states parties who lack competent criminal justice systems; an opportunity, to penalise officials and individuals who may engage in bribery and corrupt activities. This view points to one objective – a concerted effort among the international community- to eliminate corruption from society especially in the realm of judicial services (e.g. Ghana) so as to promote the people's the right to justice.

However, Wolf (2013) proposes, that the UNCAC has failed to eliminate corruption at the international stage as well as from member states; because developed states (Germany, US and UK), with the major political parties in them, have opposed prosecution and stiffer criminal sentences of their politicians who engage in bribery and corrupt activities. Also, criticising the implementation of the UNCAC as failure, Wui (2009) suggests that campaign programmes designed to educate and sensitise the peoples on the menace of corruption; have been confined to few elites in the cities and regional capitals of member states, thereby restricting the knowledge needed by the majority to report corrupt practices in their society. These criticisms, undoubtedly, undermine the international community's effort to reduce corruption through the provisions of UNCAC.

Having examined the UNCAC provisions against corruption and bribery above, the next section focuses on African Union (AU)'s Convention to combat corruption at the regional level.

## **2.3 Provisions of the AU Anti-Corruption Convention**

In July 2003, the African Union (AU) collaborated with the international community through the UNCAC, and initiated a legal regime to penalise bribery and corrupt activities among public officials and private individuals, regionally. Thus, the AU member states including Ghana, signed and ratified the African Anti-Corruption

Convention; with a view to eliminate the scourge of bribery and corrupt practices, so as to promote the rule of law, social and economic development for the welfare of the peoples.

One cardinal objective of Article 2 (1) of the AU's Anti-Corruption Convention is to 'strengthen' developments in the fields of economics, social and cultural in each member state; as a way of promoting good governance and human dignity which are the primary tenets of sustainable development. Also, Article 2 (3) of the Anti-Corruption Convention urges collaboration and 'harmonisation' among states parties to share policies and legal resources in an attempt to eliminate bribery and corruption from public and private spheres on the continent of Africa. According to Article 3 (4) of the AU Anti-Corruption Convention, access to social justice and socio-economic development can be only be achieved to advance the welfare of the peoples by eliminating totally bribery and corruption from public and Private institutions, which operate in strategic positions of States economies. A commentator argues that the 'right to justice' is the foundation upon which social justice, economic and cultural development rest (Gavrielides 2013). In this vein, it can be suggested that corruption as perpetrated by government officials in collusion with private individuals restricts the realisation of human rights among the poor as well as sabotages the implementation of government's policy to enhance the common good of society.

By way of criticisms, a commentator deplores that weaknesses in the institutional structures of the AU coupled with strong and powerful political and economic elites who engage in corrupt practices, in respective member states, are able to buy their way out or command inaction (Kimeu 2014). Thus, efforts to combat corruption among public sectors of Ghana especially in the judiciary remain elusive. Aiyede (2014) also contends that the AU anti-corruption Convention has achieved little success because the provisions of the Convention have been applied selectively in developing states to punish political opponents. This has undermined the credibility and legitimacy of the Convention and governments in the fight against corruption in the African region. The impression is that the AU Anti-Corruption Convention enjoys a 'white elephant' status for failing to rid corruption at the regional and in domestic states.

The next section explores Ghana's efforts to combat corruption so as to promote the human rights of her citizens with respect to socioeconomic initiatives.

### **3. The Position of Ghana's 1992 Constitution and Corruption Charges**

Ghana signed and ratified the African Union Convention on Combating and Preventing Corruption on 31<sup>st</sup> October 2003 respectively. Legally, Ghana's signing of the above corruption convention requires of her to adopt domestic legislative provisions to stem incidences of bribery and corruption which rob the citizens of their human rights especially the right to justice. Ghana's effort to combat corruption falls under two headings: pre-UNCAC and post-UNCAC.

#### **3.1 Pre-UNCAC measures adopted by Ghana to stem corruption**

Prior to signing the UNCAC and AU Anti-Corruption Convention, Ghana had embarked upon the measures below in an attempt to eradicate corruption from the public and private spheres in order to promote good governance which yields social and economic prosperity for Ghanaians.

- a. The Commission on Human Rights and Administrative Justice (CHRAJ) (1993) was set up and given powers to investigate allegations of bribery and corruption committed by public or private individuals and institutions, and make recommendations to the Attorney-General for prosecution;
- b. The Serious Fraud Office (1993) was established to investigate and prosecute any Ghanaian who may be engaged in a fraud activity with the aim to sabotage the economic, social and developmental programmes of the country;
- c. An Internal Audit Agency Act (2003) was also passed to streamline standards, procedures governing government departments with a view to eliminate fraud, bribery and corruption in government sectors;
- d. Office of Accountability was established in 2003 as a Watch-dog Agency under the supervision of the President to ensure that government agents conduct their activities without corruption or bribery; and specially to monitor:
  - Government ministers, executives and parliamentarians
  - Good governance
  - Zero tolerance of corruption and bribery
  - Accountability and honesty in public office
  - Formulate policies and practices aimed at reducing corruption.

Specifically, a public officer or juror who commits corruption, or wilful oppression or extortion, in respect of the duties of office, commits a misdemeanour. Similarly, a person who corrupts any person in respect of a duty as a public officer or juror commits a misdemeanour. The impression of the above measures is, that Ghana's Criminal Offences Act (1960) anticipated the UNCAC and AU Convention by according corruption and bribery activities a criminal status. Also, the Criminal Offences Act (1960), states that any person acting in the

capacity of public office shall be liable to prosecution for corruption if she/he secretly accepts any consideration from members of the public.<sup>1</sup> The existence of Ghana's legislative provisions of the 1960s, 1993s, and early 2003s imply that Ghana had in place, some measures to punish public officials and private individuals; who may engage in corrupt activities prior to the signing of the international and regional anti-corruption treaties.

### **3.2 Ghana's post-UNCAC measures to prevent corruption in the country**

With the determination to eliminate corruption from public spheres especially among the judiciary, Ghana passed three further pieces of legislations in order to consolidate her previous efforts, as outlined above, to stem corruption in government sectors.

First, the Whistle-blower Act (2006) was passed by Parliament to promote the disclosure of information relating unlawful conduct or corrupt practices among public servants without the informants suffering any form of abuse or victimisation. Also, the Whistle-blowers Act (2006) protects any citizen against abuse, discrimination or intimidation by either an employer or institution for disclosing information relating corruption or bribery activities in the country. Second, the Fair Wages and Salaries Commission Act (2007) was enacted by Parliament with a view to ensure that a decent and appropriate salaries are paid to public service workers and allied contractors to improve their standards of living so as to dissuade them from corrupt and bribery engagements.

Third, the Anti-Money Laundering Act (2008) was passed in Parliament with the objective to reduce corrupt practices and solicitation of bribery in government institutions and the judicial services; because money launders are recognised as the prime inducers and influencers of public officials through the payment of bribes. Although the above measures demonstrate Ghana's attempt to rid corruption from her society, the following criticisms suggest that those initiatives are inadequate to prevent the menace.

Haruna (2008) contends that there are still high incidences of corruption in public and private sectors of Ghana, because there are limited professional or trained personnel to operate in anti-corruption institutions established by the government, to promote ethical and moral values among public servants. Also, Quaye and Coombs (2011) argue that most of the institutions assigned with the responsibility to promote and implement anti-corruption measures in the country lacked the requisite resources with which to educate the public on corruption-related activities so as to produce reports on the crime. Thus, the persistent and endemic corrupt culture which engulfs the country, particularly the judicial sector, makes a mockery of Ghana's signatures to the UNCAC and AU Conventions. This is because there has been inconsistency in successive governments' posturing towards the implementation and enforcement of UNCAC and AU provisions in the country (Agbibao 2010). For example, the Ghanaian government hesitated in suspending those judges who were implicated in the bribery scandal by citing human rights reasons (Anas –Arameyaw 2016).

Therefore, it is argued that the chronic nature of corruption in the entire Ghanaian society, especially among the judiciary, cannot be fixed by laws alone; but rather by an active revolutionary change in all institutions of the country (Rothstein 2011). This may require a multi-faceted strategy which draws on the cooperation of public-private initiatives backed by the good-will of the government.

### **4. Ghana's judicial system and the corruption scandal**

The Judiciary is one example of corruption in Ghana. First, corruption is integrated in all organs of the state including government officials. Second, corruption in the country cannot be fixed with law and policies only because there are non-law factors such as poverty, resources allocation as well as political nepotism which also play a role.

Judicial corruption is a serious problem which undermines the protection of human dignity in many parts of the world especially in developing states such as Ghana. Soreide and Williams (2014) state that judicial corruption includes all forms of inappropriate influence that may damage the impartiality of Justices, and may involve any sector within the justice system including lawyers and any person who is implicated, such as judges, magistrates and judicial service personnel, as in the case of Ghana. Some commentators have expressed concern about the adverse impact of corruption on the dispensation of justice. Gyimah-Boadi (2002) argues that corruption is an 'equal opportunity victimiser' which affects both elites and non-elites in all facets of social, economic and political endeavours. The fact that corruption denies people of all status equal access of opportunity in the political and social environments has damning consequences for many Ghanaians whose human rights are breached. Without equal treatment of people, the 'right to justice' which is the fundamental principle that allows people to access judicial forum in pursuit of their human rights violations is curtailed. Miklian and Carney (2013) also point out that judicial corruption not only disarms the smooth implementation of government policies but also constrains the right of citizens to pursue their civil liberties as enshrined in constitutional frameworks. Thus, the prevalence of corrupt activities in the judicial services of Ghana is an

<sup>1</sup> Ghana: Criminal Offences Act (Act 29) section 244, Acceptance of bribe by Public Officer

affront to the democratic values of the country as well as stifling the poor peoples' right to justice. This suggests that those Ghanaians with limited income to bribe their way through judicial forum would have their human rights breached in many cases. Bantekas termed judicial corruption as a crime against humanity in arguing, that where government or its agents act in a way to cause an intended harm or misery to their citizens, such acts may qualify as crime against humanity (Bentakas 2006:474). By implication and extension, the collusion among the Ghanaian judges, magistrates and judicial service personnel to receive bribes to decide cases, partially against innocent civilians constitutes a crime against humanity. Transparency International (2018), rates Ghana at 81<sup>st</sup> and 40<sup>th</sup> of the bribery and corruption league tables on the global and at regional levels, respectively. Ghana's position on the corruption table reflects her image negatively among the international community; thereby, creating unfavourable perception and distrust among international organisations as well as states who might want to engage with her to pursue economic or social ventures for the benefit for the country. This article therefore argues that not only is corruption a breach of the human rights of Ghanaians, but also an impediment which thwarts the social and economic wellbeing of the people and country.

The next section examines the impact of corruption on the dispensation of justice, social trust and economic development.

### **5. The Impact of corruption on the dispensation of Justice, social trust and economic development in Ghana**

Judicial corruption affects the 'right to justice' which is the premise upon which the realisation of human rights rests.

First, Oko (2010) proposes that judges who sell their integrity, impartiality and honesty in exchange for money; are hurting the institution of justice as well as sacrificing the people's dignity for their selfish gains. Corruption as pervades in the Ghanaian judiciary is inimical to human rights; because most people in Ghana live on barely two dollars per day (World Bank 2016), therefore, they are unable to pursue claims affecting their human rights since they cannot afford to pay bribes. Affirming the adverse impact of corruption on dispensation of justice, Wang (2013) argues that judicial corruption hampers access to justice by eroding the rights of the poor majority in society; who have limited resources to pursue claims relating to social and economic rights. Undoubtedly, there is no denying the fact that corruption among the judiciary marginalises the human rights of the poor in society; as they cannot afford to pay bribes to further their cases at judicial avenues. This is a serious indictment on the reputation of the Ghanaian judiciary and a restriction of the 'right to justice' of the ordinary Ghanaian.

Second, Richey (2010) makes the case that corruption damages social trust among the peoples by alienating those in positions of government from the public; thus, creating a distrust which does not auger well for the implementation of economic and social policies in a country. Lack of social trust is anathema to the functions of the judiciary in every country, especially in Ghana; because it reduces the confidence of the masses in the judgments or decisions made by it. Another view is that corruption creates disunity among citizens in that it engenders unresponsiveness among the people towards national programmes of development (Rothstein 2010). This implies, that corruption as revealed in Ghana's judicial services can foment a general sense of disregard towards most professional lawyers, judges, magistrates, police service personnel and prison service officers; and may dent the image and reputation of the profession at home and abroad. The consequence is that judicial corruption may have a lasting negative impact on Ghana; in the spheres, of establishing socio-economic relationships with foreign partners to promote the wellbeing of the people and country as a whole.

Third, Corruption has adverse effects on the economic development of a country. Economically, there is a view that corruption in public sectors undermines the smooth and effective implementation of economic projects "by diverting financial and states resources into the hands of few cronies of the executive" (Ginsburg 2013). This means that a symbiotic relationship exists between a corrupt political regime and an inefficient judiciary system; because the latter relies on the former for resources to administer an impartial judicial system that promotes unrestricted access to judicial remedy, which tends to promote a healthy economic development for the people and country. Ajie (2012) also explained that corruption is a cancer which affects a wider spectrum of society by undercutting not only the economic development but restricts the provisions of essential services such as health care, education and water supply. Thus, Corruption is a societal vice that derails a system of governance by impoverishing majority of citizens without providing sustainable job opportunities to help them gain effective means of livelihood. Lawal (2007) also opines that there is increasing evidence that the social and economic cost of corruption disproportionately affects the poor, who not only suffer from the lack of services and efficient government, but who are also powerless to resist the demands of corrupt officials. This statement resonates with the common belief that corruption, in whatever form, affects humanity; because it undermines economic, social, judicial and political initiatives which in turn marginalise the poor.

## 6. Conclusion

This article examined the marginalisation of the 'right to justice' through the prism of the UNCAC, AU Convention against corruption, international law as well as Ghana's international and national obligations to stem corruption from the public and private spheres; in order, to promote human dignity which flow from accountable and good governance. It is pointed out that while Ghana recognises her obligations to promote equal access to justice, the pervasiveness of corruption in the country especially within the judicial sphere, stifles the poor majority's access to justice in the country as they have no surplus income to bribe the corrupt officials. Consequently, the poor Ghanaian has no recourse to justice nor are they granted equal opportunity to participate in the social, economic or political developments of the country.

## 7. Recommendations

To protect 'the right to justice' as a human right of Ghanaians so as to preserve their dignity, integrity, political and socioeconomic wellbeing, the following recommendations should be implemented by the government.

First, the legislation needs to be amended. For example, the 'Access to information Bill' (2003) should be passed into a law in order to give substantive legal backing to the whistle-blowers Act. Hopwood (2016) suggests, that with the "right to information bill" passed into law, every Ghanaian can access and scrutinise information regarding corrupt activities of public officials and private individuals with a view to challenge them at a judicial forum. This legislative initiative may empower the public to join in the campaign to rid the country of corruption.

Second, civil society should be encouraged to participate in the campaign against corruption. In this regard, accessible channels of reporting corrupt activities and deeds among public and private members must be established. That is, specific bureaus with specialist personnel endowed with the knowledge and skills in fighting corrupt practices should be recruited in the regions, districts and towns; to undertake and disseminate comprehensive public education/awareness programmes in order to sensitise the masses on reporting corrupt deals for prosecution and sanctions.

Third, criminalising of corrupt officials in public sectors, politics and the judiciary should be prioritised. This means that tougher sanctions- confiscations of properties, forfeiture of social security benefits including longer prison sentences- should be imposed on public and private individuals who may engage in corrupt activities as deterrence as well as to discourage future corrupt initiatives.

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