

Draft Report

Survey Report

Survey Report: Barriers towards combating corruption in Africa



The Anti-Corruption Trust of Southern Africa
18 Liliencron Street
P. O. Box 1148
Windhoek, Namibia

ACKNOWLEDGEMENTS

© July 2011. Anti-Corruption Trust of Southern Africa (ACT-Southern Africa)

The Anti-Corruption Trust of Southern Africa
18 Liliencron Street
P. O. Box 1148
Windhoek
Namibia

Tel: +26461 308841
Mobile: +264 811 22 33 56
Fax: +264 88613678
E-Mail: actsouthernafrica@gmail.com

All rights reserved.

A publication of the Anti-Corruption Trust of Southern Africa (ACT-Southern Africa).

This report was compiled by two volunteers: Mr. Obert Chinhamo¹ and Mr. Gabriel Shumba² on behalf of ACT-Southern Africa. We hereby express our appreciation to the two researchers for their support. The findings, interpretations and conclusions expressed herein do not necessarily reflect the views of ACT-Southern Africa.

We would also like to specifically thank all those who completed the online survey. These were drawn from countries that include: Bangladesh, Botswana, Cameroon, Ghana, India, Namibia, Netherlands, Malawi, South Africa, Sweden, Uganda, United Kingdom, Zambia and Zimbabwe.

Rights and Permissions

ACT-Southern Africa encourages the dissemination of its work and will be pleased to grant permission to all those willing to reproduce this report. For permission to re-print any part of this work, please send a request with complete information to actsouthernafrica@gmail.com

All other queries on rights and licenses, including subsidiary rights, should be addressed to the President of ACT-Southern Africa.

¹ obert.chinhamo@gmail.com

² gabmrech@gmail.com

TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
1. INTRODUCTION	5
2. STATEMENT OF RESULTS, DISCUSSION AND INTERPRETATION	5
2.1 Level of governments' commitment in combating corruption	5
2.2 Difficulties or barriers in fighting corruption.....	6
2.3 Implementation of anti-corruption treaties/conventions.....	7
2.4 Satisfaction with anti-corruption bodies.....	8
2.4.1 Anti-Corruption Commissions (ACC)	8
2.4.2 The Police	9
2.4.3 Judiciary	10
3 RECOMMENDATIONS.....	11
REFERENCES.....	12

EXECUTIVE SUMMARY

The purpose of the survey was to elicit perceptions of individuals and institutions on the extent to which African governments were committed to combating corruption. Further, the study sought perceptions on the effectiveness of institutions dealing with combating corruption such as Anti-Corruption Commissions, the Police and the Judiciary. Data used for the analysis was obtained through an online survey that was disseminated using e-mail, facebook and websites. Participant countries included: Bangladesh, Botswana, Cameroon, Ghana, India, Namibia, Netherlands, Malawi, South Africa, Sweden, Uganda, United Kingdom, Zambia and Zimbabwe. Further, a number of anti-corruption bodies completed the online survey questionnaire.

The following findings were made:

- a) 71% of the survey participants indicated that that some African governments were not genuinely committed to combating corruption. Participants felt that there was no convincing evidence of the commitment since corruption was still widespread. 11% indicated that some governments were committed though their efforts still had some holes, which casts into doubt the commitment thereto;
- b) Significant barriers to efforts towards anti-corruption included: corrupt leadership (25%), inadequate anti-corruption legal frameworks (10.7%), culture of corruption (7.1%) and compromised anti-corruption bodies (3.6%). However, 53.6% confirmed all the four barriers are significant barriers in the fight against corruption;
- c) The majority (79%) of the survey participants indicated that many African States were not sincerely signing and ratifying anti-corruption instruments. This was done to appear committed and cheat donors into giving resources, rather than a true reflection of commitment;
- d) The performance of anti-corruption commissions, the police and the judiciary in Africa was largely unsatisfactory. The survey confirmed that 50%, 22.2% and 14.3% were 'very dissatisfied' with the police, anti-corruption commissions and the judiciary respectively. Further, 39.3%, 48.1% and 57.1% were 'dissatisfied' with the performance of the police, anti-corruption commissions and the judiciary respectively. Further, 39.3%, 48.1% and 57.1% were 'dissatisfied' with the performance of the

Based on the findings, the following recommendations were made:

- a) Leadership at all levels including prospective Heads of States should be formally vetted before taking office;
- b) African governments should adequately fund the police, judiciary and anti-corruption bodies in order to make them more effective;
- c) Governments should refrain from signing and ratifying anti-corruption instruments in order to appear interested in fighting corruption, yet they are not.
- d) Regional and international bodies such as the SADC, AU and UN should make the implementation of anti-corruption instruments by all signatories mandatory. These bodies should specify time frames within which the implementation should be done and sanctions for failing to do so. Such sanctions can include but not limited to automatic cancellation of the signature and ratification thereof.
- e) African governments should strengthen institutional ties and synergy between institutions dealing with combating corruption (e.g. Anti-Corruption Commissions, The Judiciary, The Police, Assets Recovery Agents and other relevant government departments).

- f) Educational programmes aimed at behavioural change should be rolled targeting people at all levels including children should be rolled out.
- g) Anti-corruption laws and policies should be reformed in line with anti-corruption good practices and implemented without fear or favour.
- h) Banks that are accepting corrupt money from dictators and others should be named, shamed and blacklisted.
- i) Empower and capacitate civil society to play a more effective monitoring and intervention role in order to enhance the fight against corruption on the continent.

1. Introduction

The purpose of the survey was to elicit perceptions of individuals and institutions on the extent to which governments are committed to combating corruption and the effectiveness of institutions dealing with combating corruption such as Anti-Corruption Commissions, the Police and the Judiciary. Data used for the analysis was obtained through an online survey that was disseminated using e-mail, facebook and websites. Participant countries included: Bangladesh, Botswana, Cameroon, Ghana, India, Namibia, Netherlands, Malawi, South Africa, Sweden, Uganda, United Kingdom, Zambia and Zimbabwe. Further, a number of anti-corruption bodies completed the online survey in question.

2. Statement of Results, Discussion and Interpretation

The following findings were made:

2.1 Level of governments' commitment in combating corruption

The survey asked the question: "Are African governments truly committed in fighting corruption?" The question had three options: 'Yes', "No" and 'Other'. The purpose was to get people's perceptions on governments' genuine interest and commitment in fighting corruption.

Figure: 2.1: Government commitment to the fight against corruption

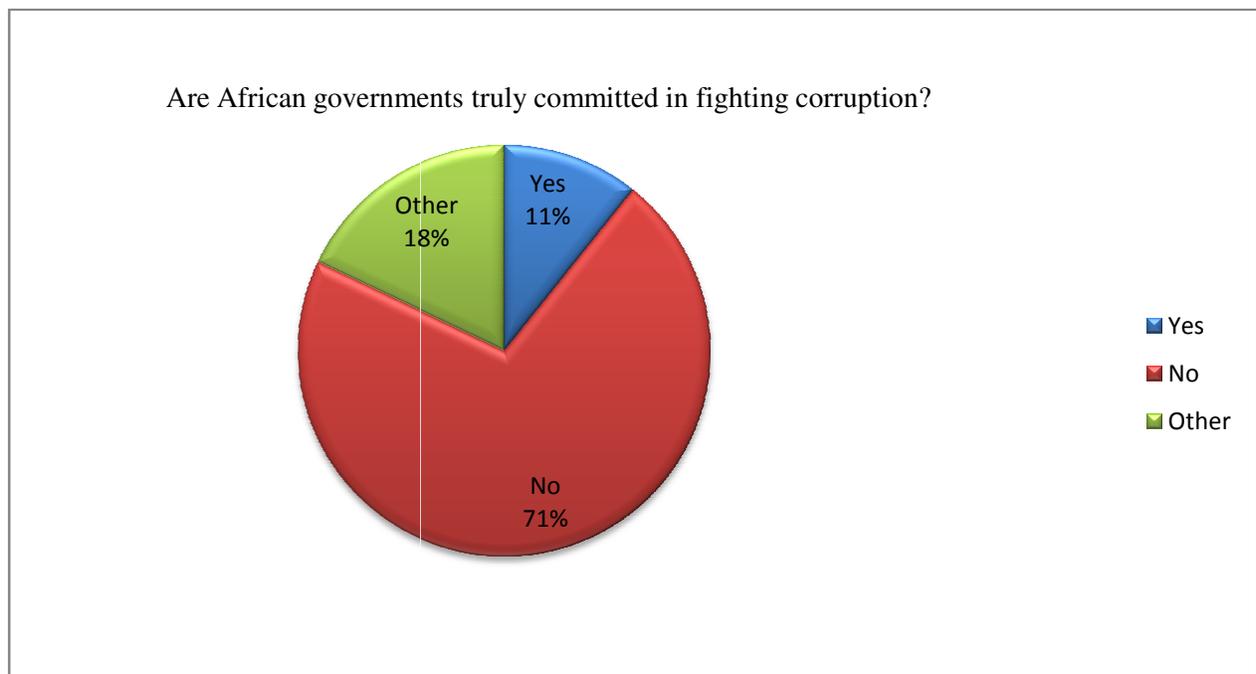


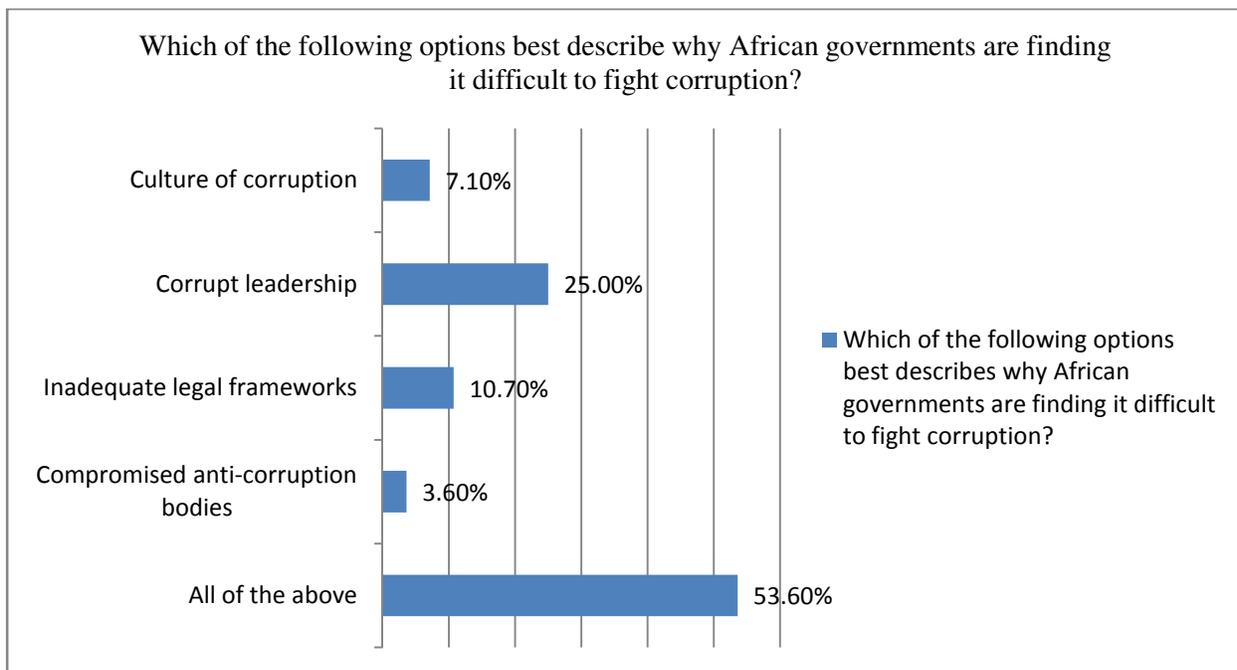
Figure 2.1 above shows that 71% indicated that African governments are not committed to combating corruption whilst 11% perceive some governments as being committed. The remaining 17% under the 'Other' category indicated that some governments are committed but there is no convincing evidence of the commitment since corruption was still widespread. Also pointed out was that the net of those who are committed still has some holes, which casts into doubt the commitment thereto. In line with the above revelations, the people remain unconvinced that African governments are committed to the fight against corruption. As an example, a number of governments have put in place anti-corruption

commissions but they interfere with their duties and responsibilities and in many cases budgetary allocations to these bodies make the ineffective.

2.2 Difficulties or barriers in fighting corruption

The research asked the question "Which of the following options best describe why Africa governments are finding it difficult to fight corruption?" Options given included: 'culture of corruption', 'corrupt leadership', 'inadequate legal frameworks', 'compromised anti-corruption bodies', and 'all of the above'. Figure 2.2 below shows that 53.6% indicated that all the options constituted barriers to the fight against corruption. However, corrupt leadership scored 25%, followed by inadequate anti-corruption legal frameworks (10.7%), culture of corruption (7.1%) and compromised anti-corruption bodies (3.6%). While acknowledging that all factors act as barriers, corrupt leadership is an issue of great concern in Africa. Table 1 shows a list of prominent leaders who were by then the most corrupt in the world. However, the amounts involved are less than what Hosni Mubarak is believed to have amassed.³

Figure: 2.2: Obstacles in the fight against corruption



In line with the above, it is important for prospective office holders' moral fibre and level of wealth to be scrutinized before they take office. It is precisely illogical to vote for someone who has outstanding corruption cases. As witnessed in some countries, when that happens the first step for such leaders is to weaken anti-corruption bodies. Also highlighted in the survey was that some governments use the spoils of corruption to remain in office and to reward their supporters. It is expected that the people have learned and the only way forward is to ensure that anyone aspiring to take a leadership position should be scrutinized before doing so.

³ <http://www.hindustantimes.com/Mubarak-s-net-worth-estimated-at-40-70-bn/Article1-658401.aspx>
[Accessed 29 April 2011]

Table 1: The most corrupt late former Presidents in the world

<ol style="list-style-type: none">1. Ferdinand Marcos: President of the Philippines (1972–1986) US\$5–10 billion; The late President Marcos and his supporters are believed to have pocketed over US\$5 to US\$10 billion. Only US\$658 million was recovered from the Swiss banks and the rest remains outstanding.2. Mobutu Sese Seko: President of Zaire (1965–1997) US\$5 billion;3. Sani Abacha: President of Nigeria (1993–1998) US\$2–5 billion;4. Slobodan Milošević: President of Serbia/Yugoslavia (1989–2000) US\$1 billion;5. Jean-Claude Duvalier: President of Haiti (1971–1986) US\$300–800 million;6. Alberto Fujimori : President of Peru (1990–2000) US\$600 million;7. Pavlo Lazarenko: Prime Minister of Ukraine (1996–1997) US\$114–200 million;8. Arnoldo Alemán: President of Nicaragua (1997–2002) US\$100 million;9. Joseph Estrada: President of the Philippines (1998–2001) US\$78–80 million

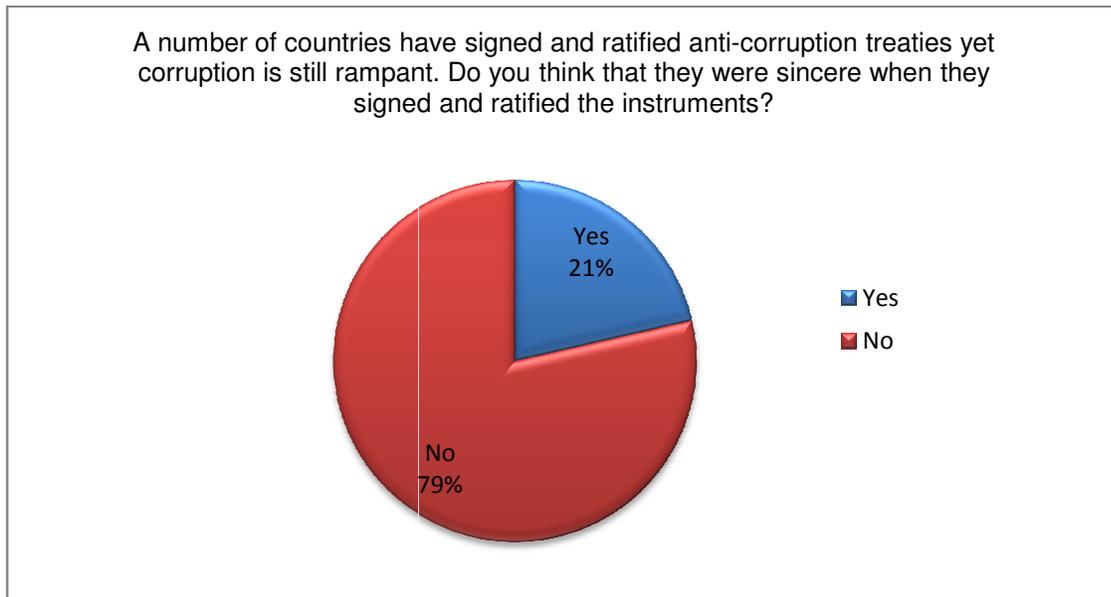
Source: (Poploid / Daily Political Commentary 2010) ⁴

2.3 Implementation of anti-corruption treaties/conventions

Literature review had shown that important anti-corruption instruments such as the UN Convention against Corruption, AU Convention on preventing and combating and the SADC Protocol against corruption have been signed and ratified by many States yet there is little or no evidence on progress towards the implementation thereof. To this end, the survey sought to gauge people's perceptions on governments' sincerity in signing or ratifying these instruments. Figure 2.3 shows that a whopping 79% doubts governments' sincerity. This suggests that the signature and ratification of anti-corruption instruments is used for other reasons such as cheating donors into giving resources, rather than a reflection of true commitment. It also emerged from the mini-survey that some governments sign or ratify before realizing the full implications of their actions. Further, doubts were raised on the sincerity behind the enactment of some anti-corruption laws and policies as these are used to punish political opponents. The survey found out that the idea is not for leaders themselves to be accountable and transparent but they exclude themselves as if the laws and policies are only meant for others. Unfortunately, anti-corruption bodies, whose leadership is appointed by those in power, tend to ignore punishing some culprits preferring all those perceived to be government opponents.

⁴ The Masks of Dead Presidents: 10 Most Corrupt Politicians in the World. [online]. Available from: http://www.poploid.com/Political-figures/article_36086_The-Masks-of-Dead-Presidents-10-Most-Corrupt-Politicians-in-the-World-.html [Accessed:9 April 2011]

Figure: 2.3: Signature and ratification of anti-corruption treaties



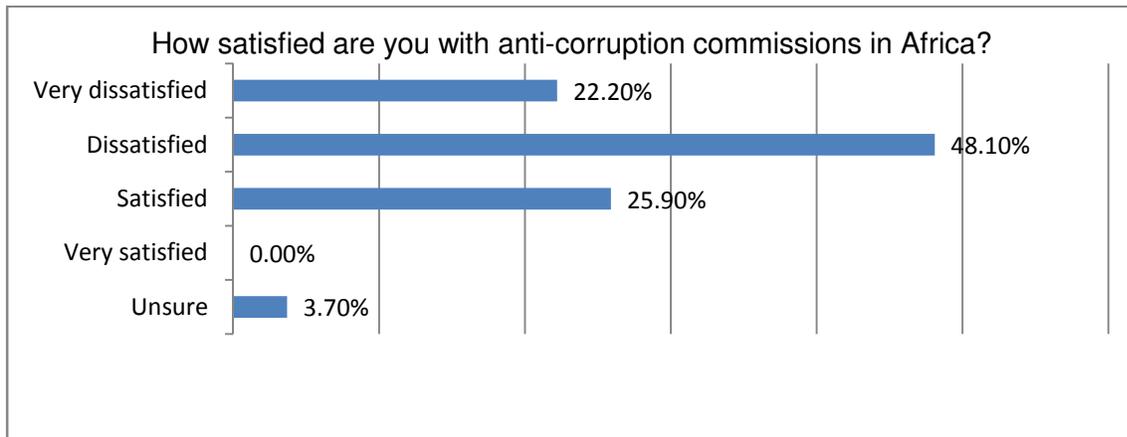
2.4 Satisfaction with anti-corruption bodies

Authorities in combating corruption include the police, anti-corruption commissions (ACCs) and the judiciary. The police and the ACCs are responsible for investigations and taking the matters to court for prosecution. However, ineffective investigations make prosecution impossible. The survey also sought to gauge the extent to which people were satisfied with their services. The following findings were made:

2.4.1 Anti-Corruption Commissions (ACC)

According to the U4 Anti-Corruption Resource Centre (2011) anti-corruption commissions are institutions whose mandate is to combat corruption. Their core functions include the enforcement of criminal laws on corruption, raising public awareness of corruption and performing other non-legal functions. The ACCs are required to carry out their duties and responsibilities effectively, efficiently and independently. Figure 2.4 shows that 48.10% were 'dissatisfied' with the functions of ACCs in fighting corruption whilst 22.2.7% were 'very dissatisfied'. A number of complaints or issues targeted at ACCs include bias towards small cases or 'small fish' leaving out corruption offences committed by senior government officials. However, 25.9% were satisfied with the work of ACCs in Africa.

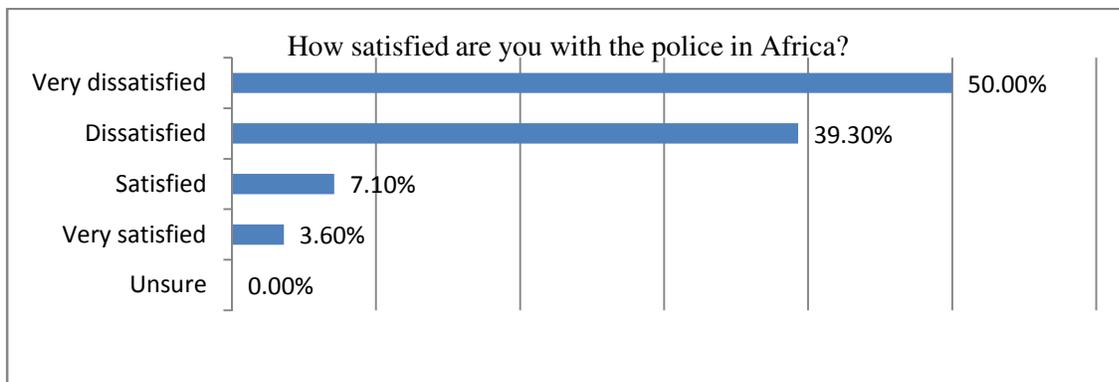
Figure: 2.4: Satisfaction with anti-corruption bodies



2.4.2 The Police

The police play an important role in the fight against corruption. They have the powers of arresting and detaining criminals who include all those who are implicated in corruption. As constitutional and legal guards against offenders, the police are required to carry out their duties and responsibilities with the high degree of probity and professionalism required by their line of duty. However, Table 2.5 below shows that 50% of the survey respondents were 'very dissatisfied' with the work of the police and 39.3% were 'dissatisfied'. Dissatisfaction stems from a number of factors that include the lack of integrity, inadequate capacity and corruption among others. According to ACT-Southern Africa (2010:6) in its report titled **"Mini-assessment report: Corruption by traffic police officers and vehicle drivers in Botswana, Namibia and Zimbabwe"** some police officers were found to be corrupt themselves which makes it difficult for them to arrest and detain corrupt people.

Figure: 2.5: Satisfaction with the police



In line with the above, it is evident that the police force needs to be capacitated and cleaned of 'bad apples' in order to restore people's confidence and make them effective. The professionalization of the police force is key to the eradication of corruption in Africa.

2.4.3 Judiciary

An effective judiciary and judicial system is based on the rule of law and nothing else. The judiciary as a public institution, the upholder of the constitution and resolver of disputes ensures equitable and expeditious resolution of all cases and controversies properly brought before the courts. However, Figure 2.6 shows that 57.10% of the survey participants were 'dissatisfied', 14.30% were 'very dissatisfied' whilst 25% were 'satisfied' with the performance of the judiciary. In many countries, the judiciary was criticized because of its slowness in finalizing corruption cases. Further there are also cases in which adjudicators were being implicated in corruption or siding with the corrupt. There are also cases in which the judiciary had been compromised because of interference by the executive arm of government.

Figure: 2.6: Satisfaction with the judiciary

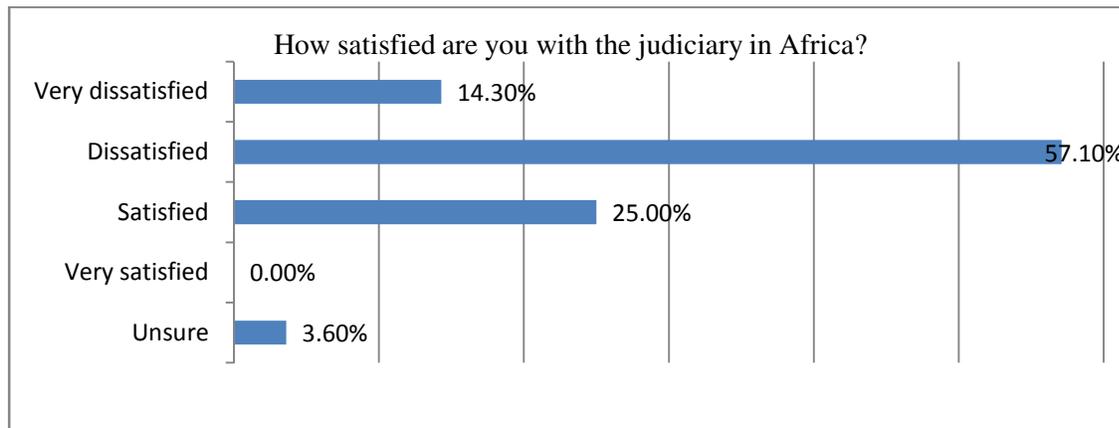


Table 2 below shows clearly that the judiciary faces a number of challenges in carrying out its duties and responsibilities. In a case that was submitted to the African Commission on Human and Peoples' Rights by former Justice Michael Majuru, political interference was cited.

Table 2: Interference of the executive on the judiciary

Extract from Michael Majuru's affidavit deposed under oath in a case between him and Zimbabwe Case No 308/2005 before the African Commission on Human and Peoples' Rights

6. The first incident is reported to have occurred on or about 24th September 2003. It is alleged that the Minister of Justice, Legal and Parliamentary Affairs, the Hon. Patrick Chinamasa invited the Complainant's workmate, who was also a judge at the Administrative Court (Justice Chipo Machaka) to his office to issue instructions that the matter relating to the ANZ case that was to be presided over by the Complainant should be conducted in a manner that the said Minister was going to dictate. Justice Machaka was instructed by the Minister to convey these instructions to the Complainant, with an order that Complainant should comply with such orders.

7. It is further alleged that the Minister also instructed that the Administrative Court should delay the court proceedings until February 2004, noting that the ANZ did not deserve impartial treatment by the Judiciary because it was a front of western nations and 'other imperialists'. Secondly, Justice Machaka is alleged to have been told that if the ANZ were granted its application for urgent appeal hearing and thereafter allowed publication at that stage this would jeopardise continuing negotiations between ZANU PF and the Movement for Democratic Change (MDC), (the biggest opposition party in Zimbabwe), which according to the Minister, had reached a delicate stage. As proof of this delicate relationship between ZANU PF and MDC, Justice Machaka was shown a draft constitution agreed upon between the two parties and some other supporting documents.

8. The Complainant submits that he disregarded the aforesaid instructions and upon considering the ANZ's application on its merits ruled in favour of the ANZ by granting the application for an urgent appeal hearing on or about 27th September 2003.

From 15th to 19th October 2003, the Complainant presided over the appeal hearing between the two parties. He adjourned the matter for judgement to 24th October 2003.

9. Subsequently, the Complainant states that he was summoned by Enoch Kamushinda, a suspected member of the CIO for a meeting at Kamushinda's office on 22nd October 2003. This information was conveyed through another CIO operative with instructions that the Complainant should dismiss the ANZ appeal. As a reward for dismissing the ANZ appeal, Kamushinda promised the Complainant a fully developed farm in Mashonaland West Province.

10. The Complainant further states that on 23rd October 2003 at around 21:00 hours, the Minister of Justice, Legal and Parliamentary Affairs Hon. Patrick Chinamasa, telephoned and enquired from the Complainant whether he had finalised the judgement in the ANZ matter and what decision he had reached. The Complainant advised him that he was in the process of finalising the judgement and that he was going to allow the appeal. The Complainant states that the Minister expressed his displeasure with the said decision and further attempted to unduly influence and/or threaten the Complainant.

Source (HURIDOC 2010)⁵

3 Recommendations

Based on the afore-cited findings, the following recommendations are made:

- a) Leadership at all levels including prospective Heads of States should be formally vetted before taking office;
- b) African governments should adequately fund the police, judiciary and anti-corruption bodies in order to make them more effective;
- c) Governments should refrain from signing and ratifying anti-corruption instruments in order to appear interested in fighting corruption, yet they are not.
- d) Regional and international bodies such as the SADC, AU and UN should make the implementation of anti-corruption instruments by all signatories mandatory. These bodies should specify time frames within which the implementation should be done and sanctions for failing to do so. Such sanctions can include but not limited to automatic cancellation of the signature and ratification thereof.
- e) African governments should strengthen institutional ties and synergy between institutions dealing with combating corruption (e.g. Anti-Corruption Commissions, The Judiciary, The Police, Assets Recovery Agents and other relevant government departments).
- f) Educational programmes aimed at behavioural change should be rolled targeting people at all levels including children should be rolled out.
- g) Anti-corruption laws and policies should be reformed in line with anti-corruption good practices and implemented without fear or favour.
- h) Banks that are accepting corrupt money from dictators and others should be named, shamed and blacklisted.
- i) Empower and capacitate civil society to play a more effective monitoring and intervention role in order to enhance the fight against corruption on the continent.

⁵ HURIDOC (2010). 308/05 : Michael Majuru / Zimbabwe. [online]. Available from: <http://caselaw.ihlda.org/doc/308.05/view/> [Accessed 29 April 2011]

References

1. Anti-Corruption Trust of Southern Africa (2010). Mini-assessment report: Corruption by traffic police officers and vehicle drivers in Botswana, Namibia and Zimbabwe [online]. Available from http://www.kubatana.net/docs/demgg/act-sa_traffic_police_corruption_101111.pdf [Accessed: 24 March 2011].
2. Doig, A., Watt, D. and Williams, R. (2005). Measuring 'success' in five African Anti-Corruption Commissions - the cases of Ghana, Malawi, Tanzania, Uganda & Zambia. [online]. Available from: <http://www.u4.no/pdf/?file=/themes/aacc/finalreport.pdf> [Accessed: 24 March 2011].
3. Global Witness (2011). Governments should name banks that took corrupt money from Gaddafi, Mubarak and Ben Ali. [online]. Available from: <http://www.globalwitness.org/library/governments-should-name-banks-took-corrupt-money-gaddafi-mubarak-and-ben-ali-o> [Accessed: 24 March 2011].
4. HURIDOCS (2010). 308/05 : Michael Majuru / Zimbabwe. [online]. Available from: <http://caselaw.ihrda.org/doc/308.05/view/> [Accessed 29 April 2011]
5. U4 Anti-Corruption Resource Centre (2011). What is an ACC? Definitional Issues. [online]. Available from: <http://www.u4.no/themes/aacc/accdefinition.cfm> [Accessed: 24 March 2011].
6. Poploid / Daily Political Commentary (2010). The Masks of Dead Presidents: 10 Most Corrupt Politicians in the World. [online]. Available from: http://www.poploid.com/Political-figures/article_36086_The-Masks-of-Dead-Presidents-10-Most-Corrupt-Politicians-in-the-World-.html [Accessed: 9 April 2011]
7. Srinivasan, N (2002). Focus Group Study of Factors That Could Help Improve the Investigation and Prevention of Corruption in Indonesia. [online]. Available from <http://www.oecd.org/dataoecd/52/26/35137436.pdf> [Accessed: 24 March 2011].
8. Sumida, G (2002). Conditions for Effective Reform. [online]. Available from <http://www.oecd.org/dataoecd/52/26/35137436.pdf> [Accessed: 24 March 2011].
9. Tachi, Y (2002). Role of Public Prosecutors in Japan. [online]. Available from <http://www.oecd.org/dataoecd/52/26/35137436.pdf> [Accessed: 24 March 2011].
10. Zeller, T. (2007). Is Nigeria's Anti-Corruption Commission Corrupt? [online]. Available from: <http://thelede.blogs.nytimes.com/2007/02/07/is-nigerias-ant-corruption-commission-corrupt/> [Accessed 29 April 2011]