

THE GHANAIAN SENSE OF JUSTICE: CORRUPT JUDGES REMOVED, CORRUPT ATTORNEYS REWARDED AND CORRUPT POLITICIANS PROTECTED: BY MARTIN A. B. K. AMIDU

Genesis of the corruption undercover investigations

Judicial corruption or corruption by judicial officers is no news to any honest and respectable member of the legal profession and the judiciary itself. It is a subject of on-going discussions within lawyers and judges; sometimes names are mentioned privately but reports are not made for disciplinary action because witnesses refuse to testify. The constitutional history of this nation shows collaborative efforts between the legal profession, some judges, and some governments, particularly military regimes, to cleanse the judiciary of people with low moral character and low integrity – the last time was when the PNDC dismissed over 12 judges for perceived corruption.<sup>1</sup> The years 2010 and 2011 were acrimonious ones in the relationship between the Government and the judiciary with accusations of corruption and partisanship made by Government and party supporters, and the judiciary calling for proof. When the Wereko Brobey and Mpiani acquittal and discharge and cleansing the judiciary (several ways of killing a cat) controversy sapped the energies of Government and Party on one side, and the Judiciary and its sympathizers on the other<sup>2</sup>, I was the Minister for the Interior with a part to play. In 2011 I was the Attorney General when statements at a National Commission for Civic Education (NCCE) symposium alleging that most judges take bribes, judicial corruption is not a perception and other allegations of bribery and corruption against the judiciary were made and met with demands from the judiciary for proof. All the four speakers at the occasion were banned by the judiciary from appearing in any court as lawyers and a complaint made to the lawyers' disciplinary committee for action.<sup>3</sup> I wondered alongside my Government what the judiciary would have done if the speakers were not also incidentally lawyers. The last grievance against the judiciary was the acquittal of all the suspects in the Ya Na Murder case in 2011 after a submission of no case to answer. But it was the judiciary unfortunately which always dared this

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<sup>1</sup> See Amissah, A. N. E., (1981) *Contribution of the Courts to Government*, Clarendon Press. Oxford.

<sup>2</sup> 'Is NDC's National Chairman "In His Right Senses...?" – Okudzeto, Ghana web, 18 August 2010; Chief Justice's NPP Politics Unmasked, Ghana web, 18 August 2010; Mills Supports Judges Cleansing, Ghana web, Feature Article, 22 August 2010 and Betty Mould Out – Martin Amidu To Replace Her? Ghana web, 14 August 201 and telephone conversations with President Mills on 15 August 2010 then in the USA, and Vice President Mahama on 16 August 2010 on Ministerial reshuffle; Contra: Mills: Judiciary Is Independent ...I've No Intention Of Any Clean Up, Ghana web, 23 August 2010 – but could the President have said otherwise?

<sup>3</sup> See e.g., Judges To Boycott Top Lawyer, Ghana web, 17 May 2011; So All Are Against NDC, peacefonline.com News, 18 August 2011; 4 lawyers to be queried over claims of judicial corruption, Ghana Web, 18 May 2011; Judge boycotts Atuguba's case after corruption claim, Ghana web, 19 May 2011; Judges "will resist unconstitutional removal of CJ", Ghana web, 30 June 2011; and Judges, JUSAC condemn threat against Chief Justice, Ghana web, 30 June 2011.

Government and its predecessor for proof. Now they have it. It is big news! This is so because catching judges or judicial officers in flagrante delicto, fili fili, discussing and taking bribes is evidence which the judiciary and its protagonist thought the Government was incapable of producing. There are many ways of killing a cat indeed!

#### Disclosure of the Judicial Corruption Scandal

I was elated when news broke out that 34 judges and about 180 other judicial officers were caught red handed on video tape discussing with third parties and taking bribes to sell justice. I became, like many Ghanaians, a staunch supporter of the Petitioner or Petitioners and their results. I had complete empathy with the undercover investigators because of my own previous experiences as a lawyer, a Deputy Attorney General, and as Attorney General. As Attorney General I had suspected three of the judicial officers of having been compromised or about to be compromised in decisions they made or about to make against the Republic. I had gone to the Supreme Court to nullify two such decisions and also to take the sting out of a possible acquittal in one of the two cases should the suspect be acquitted at the end of the on-going trial against the preponderance of the evidence or on grounds of an alleged weakness of the prosecution's case.<sup>4</sup> In the third case, I could only refer the Attorney to the disciplinary committee and to the police for further investigations. My animal nature reaffirmed by belief that those particular judges had never been fit to be on the bench, even though my suspicions still remain a conjuncture since I can offer no concrete proof of corruption in spite of the fact that the Supreme Court vindicated my position in the Woyome and Isofoton cases.

#### Support for the Chief Justice's disciplinary actions

When contentions begun to surface first that the culprits could not be disciplined unless they were first convicted of a criminal offence and secondly that they could not be liable for disciplinary proceedings because the petitioners entrapped them into the misconduct I disagreed vehemently. I am on the side of the Chief Justice on this. I contended that the argument that the judicial officers from circuit judges and below could only be removed after a conviction was based on an erroneous appreciation of Sections 16(d), 17(a), 18 and 19 of the Judicial Service Act, 1960 (CA 10) dealing with summary and formal disciplinary proceedings. In summary proceedings a conviction was enough to remove summarily from office. In all other cases a major penalty of removal from office could not be imposed unless after formal proceedings. The Chief Justice is proceeding formally and not summarily: she did not have to wait for a criminal conviction to remove a judge or judicial officer from office. In any case the governing

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<sup>4</sup> See, *Amidu (No 1) v Attorney-General, Waterville Holdings (BVI) Ltd & Woyome (No 1)* [2013-2014] SCGLR 112; *Amidu (No 2) v Attorney-General, Isofoton S A & Forson (No 1)* [2013-2014] SCGLR 167; *Amidu (No 3) v Attorney-General, Waterville Holdings (BVI) Ltd & Woyome (No 2)* [2013-2014] SCGLR 606; and *Amidu (No 4) v Attorney-General, Isofoton S A & Forson [No 2]* [2013-2014] SCGLR 662

disciplinary provision for junior judicial officers was not CA 10 but Article 151 of the Constitution. It does not tie the hands of the Chief Justice to any conviction and does not state that proceedings be formal or summary but entitles the judicial officer to be heard in his defence by himself or lawyer or other expert of his choice which supposes a formal hearing. CA 10/60 cannot derogate from Article 151 which requires a 2/3 vote of the Judicial Council for removal. How the Judicial Council proceeds to reach the resolution by not less than 2/3 votes is not stated. The removal procedure for superior court justices is covered by Article 146 and not CA 10.

On the entrapment charge I contended that since the coming into force of the Evidence Act, 1975 (NRC 323) the evidential rule in relation to improperly obtained evidence is that relevant evidence was admissible notwithstanding that it was even obtained illegally subject only to any exclusionary rule of law or discretion. I took the view that the Evidence Act followed the exclusionary rules in Miranda v Arizona, 384 US 436 and its derivative on custodial interrogation and confessions, and Mapp v Ohio 367 US 643 and its derivatives on unreasonable searches and seizures. But my position has been that the rule in Burdeau v McDowell 256 US 465 (1921) and its derivatives support the proposition that the exclusionary rules do not apply to the conduct and activities of private individuals in improperly obtaining evidence even though they might have obtained the evidence through the commission of crime. The rule in Burdeau v McDowell has, however been subjected to the qualification that the exclusionary rule applies when the private individual is acting as an agent of Government or other sovereign authority. On a third argument that the constitutional right to privacy might have been violated by the petitioners, I took the view that privacy cannot be invaded upon an invitation or permission to a private person by the complainant as he can be said to have voluntarily invited the person into his privacy.<sup>5</sup> Secondly, consent by deception has been held to constitute valid consent for purposes of the invasion of privacy in the prosecution of crime.<sup>6</sup>

In my considered opinion it was urgent for the Chief Justice to complete the disciplinary process first to restore the image of the system before releasing the judges and judicial officers to the police for investigation. The disciplinary standards are lower than prosecutions and the administrative removal will restore the image of the service even if no prosecution eventually succeeds. Some of the issues are now before the courts for a decision within the context of the respective facts of those cases and we have to abide those decisions.

I still think that the law in criminal trials is that relevant evidence, however, obtained is admissible to prove an event except when there is a rule of law or practice excluding it. The exclusionary rules seldom apply to disciplinary proceedings and in most civil cases. How the

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<sup>5</sup> I based this conclusion on analogical reasoning from Schneckloth v Bustamonte (1973) 412 U. S. 218 and its derivatives on consent searches.

<sup>6</sup> See, On Lee v United States 343 U. S. 747; Hoffa v United States and Lewis v United States 385 U.S. 206 and their derivatives on consent by deception for searches and seizures by agents of sovereign authority.

evidence was obtained is of no moment as long as it is available, it can be used. In spite of the fact that these undercover investigations were the results of challenges by the Judiciary to the Government to prove that there is corruption in the judiciary Her Ladyship the Chief Justice, Mrs. Georgina Wood, has since she received the petitions and complaints conducted herself with exemplary dignity, respect, and due process in her efforts to restore the integrity and dignity of the judiciary and public confidence in it. The fact that challenges to the disciplinary proceedings are being adjudicated by the courts resulting in postponement of some impeachment hearings and disciplinary proceedings in accordance with due process vindicates a commitment to the rule of law in these trying times. I am of course under no illusions that the problem of corruption in the judiciary will be uprooted through this documentary proof that the judiciary is corrupt. Some lawyers and other writers and commentators have already said that this is simply the tip of the ice berg.<sup>7</sup> I agree with those observations in toto.

#### Other undisclosed culprits of the undercover Judicial Corruption investigations

Even as I write there is evidence that some judges who were also offered and accepted bribes by the commissioned undercover investigators are still working as judicial officers because the investigators have not yet submitted any petition to the President due to hitches with the video recordings but have notified the Chief Justice and the Judicial Council of these facts. It is my expectation that the petitioners will act accountably and transparently by making these facts public and pursue complaints against the affected persons to avoid the appearance of picking and choosing who to expose. I also think the undercover investigators have to be held accountable by being compelled to submit for public scrutiny all the unedited video recordings<sup>8</sup> including those for the so called judges who allegedly refused to accept bribes and threatened to report the investigators to the police. Making ex parte contacts with and discussing pending cases with the undercover investigators without reporting it to the Judicial Secretary, the Chief Justice, the Police or informing the real parties to the trial until the investigators made it public years after the event is suspected misconduct under Rules 2, 3(7), and 4(A) of the Code of Conduct of Judges and Magistrate of Ghana (CCJMG). Now that they have disclosed to the public the names and pictures of the judges and judicial officers who allegedly refused to be bribed it is no longer within their province to be judge, jury, and prosecutor in determining that the failure of the judicial officers to report the ex parte discussions constitutes praise worthy conduct or misconduct for purposes of impeachment. How sure are we that through the investigator's selective method of reporting their edited findings some of the officers implicated are not being

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<sup>7</sup> See e.g., Anas has only scratched surface of judicial corruption – Fmr. Dir, Ghana Sch of Law, tv3network.com.

<sup>8</sup> See, e.g, Scandal: Anas releases list of ‘incorruptible judges, Ghana web, 12 September 2015; Contra - Anas video was concocted – Lawyer of accused judges, Ghana web, 12 September 2015; Anas new video pops up, Ghana web, 26 October 2015 which is a clear example of the danger of edited videos being designed by the Government and its agent to manipulate and control public perception and judgment contrary to the real facts on tape.

dishonestly protected from exposure by the anti-corruptionpreneurs? Come to think of it, Ghanaians and the culprits are as a matter of right entitled to view the whole unedited video tapes and not edited copies that gives the Government and its covert agents the power to control our perceptions and judgment in the government's unconstitutional Orwellian Big Brother enterprise.<sup>9</sup>

Nauseating Government diversion of public attention from GARGANTUAN political corruption

What nauseates me in the whole judicial corruption scandal as a not-for profit anticorruption crusader is the posture of the Government through the President and the Attorney General in using the results of its commissioned undercover investigations to detract attention from the Gargantuan political corruption that has engulfed not only the Government but the Legislature as well since 2009.<sup>10</sup> First, the Attorney General, an ex-officio member of the Judicial Council, hypocritically and opportunistically calls upon the Chief Justice to restore the integrity of the Judiciary and declares that the culprits will be investigated and prosecuted by her office.<sup>11</sup> The President plays holier than thou and chips in later to tell the whole world that his Government will ensure that those found culpable are dealt with.<sup>12</sup> In the euphoria of emotions and public reaction to the judicial scandal expose the President and the Attorney General might have forgotten the saying that one must remove the moth in one's eyes before removing the spec in another's. The President and his Attorney General may be controlling the prosecutorial process of this nation for the time being but that does not make the saying that "justice is might" or "might is justice" right in purposefully using judicial corruption to hide political corruption in any form. This so called social democratic government has failed to retrieve the over

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<sup>9</sup> Ibid note 8; and also see, Orwell's 'Big Brother' Prediction on a Fast Track to Reality, <http://www.hffingtonpost.com/diane-diamond/orwell-big-brother-predictio...>; the ultimate Government and its agents' agenda includes controlling the judiciary as an independent organ of state through the appointment process in order to deal with political opponents – see Chief Justice's NPP Politics Unmasked, Ghana web, 18 August 2010; Judges "will resist unconstitutional removal of CJ", Ghana web, 30 June 2011; and Judges, JUSAC condemn threat against Chief Justice, Ghana web, 30 June 2011, and recently, Too early to demand CJ's resignation- Prof. Asare, Ghana web, 10 September 2015; and Chief Justice asked to resign amidst judicial scandal, Ghana web, 15 September 2015 as harbingers of the uncompleted government agenda.

<sup>10</sup> Personal experiences as a Government Official; conversations and briefings with late President Mills; experiences at two budget hearings and shepherding legislation for enactment into law as a Minister of the Interior and the Attorney-General; and also see MPs take bribes – Alban Bagbin, Ghana web 10 March 2014; Bribery Scandal: Stop behaving like Ostriches – Bagbin tells MPs, Ghana web, 10 March 2014; I am ready to defend MPs' bribery claim – Bagbin, Ghana web, 13 March 2014; Ex-MP: Bagbin was too charitable; all MPs take money, Ghana web, 13 March 2014; Lobbying MPs is legalized bribery – Kofi Jumah backs Bagbin, Ghana web, 14 March 2014, and MPs Bribery Saga: Ken Agyapong backs Bagbin, Ghana web, 14 March 2014 to mention a few.

<sup>11</sup> Restore Judicial Integrity – Ayine, Modern Ghana, 16 September 2015.

<sup>12</sup> Judicial Scandal: I'd Provide Assistance That Would Expose Subsequent Scandals – Prez Mahama, peacefmonline.com, 8 October 2015, which also tries shamelessly and hypocritically to provide the normal deniability of governments of their involvement in covert operations.

GHC51million and €47million corruptly paid to an NDC financier and other surrogate ordered by the Supreme Court to be refunded to the Republic but has shamelessly and unlawfully commissioned agents to divert attention from Gargantuan political corruption.

Removing corrupt Judges, rewarding corrupt Attorneys, and mutually protecting corrupt politicians

Firstly, is it right and just for the President and the Attorney General to reward and transfer a Chief State Attorney suspected of corruption involving the payment of a whopping amount of GHC400,000.00 by cheque into his wife's account at the Agricultural Development Bank at the time he was the responsible officer in the Alfred Agbesi Woyome scandal in which an unconstitutional payment of over GHC51million was made by the Government to Woyome?<sup>13</sup> The culprit has been rewarded with a transfer to head the Upper West office while a judge who takes less than GHC1000.00 is removed, debarred and prosecuted. Paradoxically Mr. Samuel Nerquaye-Tetteh, the Chief State Attorney, was on the list for consideration to the High Court bench at the time. Secondly, the Government has and is presiding over further rot in the critical office of the Attorney General which is the lead executive authority for the prosecution of all crimes including corruption. I refer to my press statement to the media on 15<sup>th</sup> September 2014 entitled: "President John Mahama's Government Cannot Lead The Fight Against Narcotic Drugs in the ECOWAS" in which I called attention to Nerquaye-Tetteh and his wife's GHC400,000.00 golden handshake, and the rewards by transfer to head a region; the involvement of Chief State Attorney William Kpobi and his staff in the Attorney General's office in Kumasi colluding to free a convicted drug trafficker imprisoned by a Regional Tribunal in Accra at a coordinate High Court in Kumasi in the case of Joe Owuahene Achaempong v The Republic eventually disposed of by the Supreme Court on 4<sup>th</sup> June 2011; and the case of the Republic v Mohmmoud Mohammed & 5 Others (Suit No. ST52/2009) in which a Principal State Attorney, George Kwadwo Ofori, without approval from the Attorney General entered a nolle prosequi for the fourth and fifth accused who were accordingly discharged for drug offences by Mr. Justice Charles Quist now on the list of possibly corrupt High Court Judges.

There are also three Ghana Fire Service dockets one of which involved a now deceased Chief State Attorney demanding a bribe of 1% of various contract sums before awarding government contract to the contractors. My deputy at the time (currently the Honourable 1<sup>st</sup> Deputy Speaker of Parliament)<sup>14</sup> took possession of the three dockets from the Director of Public Prosecution to

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<sup>13</sup> Report: EOCO's interim report on Woyome saga, Modern Ghana, 2 February 2012; EOCO Report on Judgment Debts, Modern Ghana, 2 February 2012; and Chief State Attorney's wife received GHS 400, 000 from Woyome – EOCO, Modern Ghana, 3 February 2012; and Woyome, Two Others Before Court for Defrauding Ghana, Modern Ghana, 6 February 2012 – the two others were Nerquayee-tetteh and his wife Gifty: the total amount involved in the whole judicial corruption scandal is less than a quarter of the Nerquaye-Tetteh corruption scandal.

<sup>14</sup> See Why Martin Amidu was sacked; the Inside Story, Myjoyonline/Daily Guide, 17 October 2012; also see note 4 supra – the pleadings in those cases demonstrate clearly by sworn documentary evidence his role in approving the

prevent me from dealing with them upon instructions from the President because the Chief Fire Officer was an alleged relation of late President Mills from Cape Coast. The Chief State Attorney and the other fire officers were allowed to retire (most of them last year) without the dockets having been disposed of or closed under President Mahama's tenure as President. The truth from the foregoing is that no Government can effectively fight bribery and corruption and restore integrity in the administration of justice when the Attorney General's office with its massive powers under Article 88 is controlled by a President who appoints spineless persons who cannot be independent and impartial as quasi-judicial officers and is also riddled with corrupt officials or perceptions of it.

Commission by the Government of an anti-corruptionpreneur and abuse of the results

I have said that the undercover investigation that led to the judicial corruption expose was commissioned by the Government of Ghana and has its genesis in the acrimonious relationship between the Government and the Judiciary on the assumption of power in 2009 by the Government and the constant demand by the Judiciary for proof of judicial corruption from Government and its associates. I was Presidential Advisor on Legal Affairs in the second half of 2009, I was Minister for the Interior in 2010, and the Attorney General in 2011 before I left office in 2012. I therefore know what I am talking about.<sup>15</sup> What I did not know was that the method of exposing corruption in the judiciary and parliament was going to be through commissioning covert anti-corruptionpreneurs as government agents (to secretly collaborate with established security agencies) to allow for possible deniability.<sup>16</sup> But I do not think that the late President Mills intended to suppress the results of the Parliamentary corruption investigation by compromising it and using only the results of the judicial corruption investigations to damnify the judiciary knowing quite well that whatever results to be obtained will only be the tip of the ice berg. Unfortunately, Prof. Mills died before his commission could be fulfilled and his successor, John Dramani Mahama, has chosen to use the results selectively and to suppress other

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payments in the Woyome and Isofoton cases and attempting to justify them in the teeth of my contrary views as the Attorney-General. The 3 police dockets affecting the Acting Chief Fire Officer hailing from Cape Coast were collected by him and never returned to the DPP (Ms. G. Aikins) upon our return from the Commonwealth Ministers Conference in Sydney, Australia on 22 July 2011.

<sup>15</sup> Communications with late President Mills as Presidential Advisor on Legal Affairs, Minister of the Interior, Attorney-General and Minister of Justice, and other communications.

<sup>16</sup> Ibid note 2 with late President Mill's 2010 denial of interference in the independence of the judiciary; Government says it is committed to fight corruption, Ghana web, 7 February 2011; State Institution funded Anas' investigation, Ghana web, 7 February 2011: Contra – Did Gov't support Anas? – Kwetey says "no", Ablakwa says "yes", Ghana web, 8 February 2011; Has Gov't lost confidence in security agencies? – Pratt asks, Ghana web, 8 February 2011; I was not paid for "Enemies of the State"-Anas, Ghana web, 7 February 2011; and No State Agency Supported Anas financially – Kweku Baako Insists, Ghana web, 8 February 2011: Contra -Prof. Mills Personally Assigned Me To Unearth Corrupt Deals – Anas Aremeyaw Anas, peacefmonline.com News, 1 August 2012; Anas reveals collaboration with Mahama, Ghana web, 24 September 2015, and President Mahama's latest pretense at denial at note 12 supra.

results, particularly the parliamentary one whose video is ready, available to the Government<sup>17</sup> and has with its permission been viewed secretly by the leadership of one branch of Government which is pleased to participate in the criminal conspiracy and unconstitutional conduct of suppressing it from the public to protect its image. I refuse to condone such conduct and write in exercise of my right to freedom of speech and to defend the Constitution under Article 3 thereof.

The Government ought to be congratulated for its ingenuity in being able to suppress part of the truth and to turn the displeasure of public anger away from political corruption to only judicial corruption and to take all the credit. The ingenuity, however, becomes farcical when the Attorney General grants immunity and protection to entrepreneurial Government Commissioned undercover agents who collaborate with established security agencies as independent whistleblowers under the Whistleblowers Act, 2006 (Act 720) and contrary to the prohibition of the Police Service (Private Security Organizations) Regulations, 1992 (L.I. 1571). Truth will always stand no matter how long it takes for it to come to light. Already tongues are wagging like mine because a secret ceases to be a secret when it is between more than two persons let alone when you announced it to a multitude at a closed door meeting. It is therefore in the interest of the integrity of the petitioners to ensure that the wishes of the late Prof. Mills are carried out to the full before providence reveals them as a for-profit anti-corruptionpreneurs (collaborating with established security agencies) without any integrity themselves. “Caesar’s wife must be above suspicion”. An anticorruption activist or journalist must be a man of the highest integrity himself! He cannot be a government agent under any excuse!

I have been silent all this while because of what I know and have learnt from intelligence both closed and open sources but I cannot continue to be mute in spite of the propaganda intended to deceive Ghanaians and render nugatory our fight against all forms of corruption particularly political corruption which as the Woyome and Isofoton cases show runs into millions of dollars and cedis. Let the judiciary be exposed but it is unjust to hide the other evidence of corruption obtained by the same anti-corruptionpreneurs. He who comes to equity must come with clean hands.

Now, I have had my say and I am as usual ready for the intimidations, covert burglaries, and threatened assassinations or assassination. Truth stands!

Martin A. B. K. Amidu

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<sup>17</sup> Parliament is our next stop – Anas reveals, Ghana web, 9 September 2015; and Anas expose on corruption in Parliament is worse – Kwesi Pratt, Vibe Ghana, 10 September 2015 confirm beyond doubt that a Parliamentary corruption video is already available to Government, and my subsequent intelligence sources are unassailable.