**Unintended consequences of well-meaning measures to curb corruption in Ghana: Regulating judicial conduct**

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# Abstract

In countries with high levels of corruption, there is often the possibility that court users will seek access to judges to influence their decisions on cases. As a result, some countries seek to limit or reduce access to judges and opportunities for corruption through the regulation of judicial conduct. But countries that regulate judicial conduct still experience high perceptions of judicial corruption, which suggests the regulation of judicial conduct may generate unintended consequences. Using an innovative approach of interviewing multiple criminal justice and anti-corruption officials in Ghana (n = 65), this paper presents findings from judges’ observation of rules around judicial conduct and the impact on opportunities for corruption. Results suggest that judges apply rules of judicial conduct across various spheres of life based on a strong belief that isolating themselves from the public removes them from possibilities of corrupt exchanges, thereby reducing corruption. However, it turns out that instead of reducing opportunities for corruption, regulation of judicial conduct and judges’ attempts to adhere to the rules produce unintended consequences. These are increasing opportunities for corruption, shifting corruption opportunities to lower-level court officials, decreasing transparency and guardianship over actions of lower-level officials, and motivating judges to engage in corruption. The article concludes by discussing the implications of the results for preventing corruption in judicial systems and criminal justice systems more generally.

**Keywords**: *judicial conduct, judicial corruption, judge, guardianship, opportunities, Ghana*

# Declarations

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# Introduction

Corruption, defined by [TI (2020)](#_ENREF_76) as an “abuse of entrusted power for private gain”, can be committed by any public official, including judges and auxiliary court officials that are collectively referred to as judicial officials. Corrupt exchanges in judicial systems often require and involve at least two interested parties: judicial officials and court users, who can be either targets or motivated offenders ([see Kutnjak Ivković 2003](#_ENREF_56)). For example, judicial officials are motivated offenders when they request for bribes from court users and targets when court users offer bribes to them. Alternatively, court users are motivated offenders when they offer bribes to judicial officials and targets when judicial officials ask them to pay bribes. Thus, corruption in judicial systems is an interactive process in which both judicial officials and court users can be motivated offenders and targets, depending on the initiator of corrupt exchanges. Some countries, therefore, try to reduce the interactive processes and opportunities for corruption in judicial systems by regulating the conduct of judicial officials, especially judges through rules and codes of conduct.

Such regulation of judicial conduct usually seeks to reduce interactions between judicial officials and court users or limit economic engagements of judicial officials. This is typically not mandated by legislation but achieved through codes of conduct or informal practices that require judges to restrict interactions that can create the perception or reality of impartiality and impropriety (see [Courts and Tribunals Judiciary 2019](#_ENREF_30); [Judicial Service of Ghana 2005a](#_ENREF_51)). For instance, in African countries such as Ghana, and Western countries such as Australia and the UK, judges themselves normatively reinforce regulation of judicial conduct through guidelines and codes of conduct as well as self-restriction of contacts and interactions with people (see [Allsop 2013](#_ENREF_5); [Courts and Tribunals Judiciary 2019](#_ENREF_30); [Judicial Service of Ghana 2005a](#_ENREF_51)). The assumption usually is that regulating judicial conduct can reduce judicial officials’ relationships with (un)known future users of the courts, thereby decreasing opportunities for corruption, removing corruption temptations, and preventing judicial bias and conflict of interest (see [Cipperly 2016](#_ENREF_21); [Global Judicial Integrity Network 2020](#_ENREF_43)).

Regulating judicial conduct outside of their regular judicial duties to reduce opportunities for corruption is often justified by the sensitive nature of judicial work and the potential impact of compromised judicial decisions. But how do judges perceive and observe rules that seek to regulate their conduct and engagement in commercial activities? Are there unintended consequences associated with judges’ observation of such rules? This paper addresses these questions by presenting results on how Ghanaian judges’ observe rules that regulate their conduct and the resultant consequences from their observations using an innovative research strategy and rich data. The paper is drawn from a larger study that explored multiple key criminal justice and anti-corruption officials’ perceptions of corruption in Ghana’s criminal justice system through the lens of rational choice, routine activity, crime pattern, and situational crime prevention frameworks. It involves in-depth interviews with judges, prosecution lawyers, high-level police officers, defence lawyers, and anti-corruption officials from the Commission on Human Rights and Administrative Justice (CHRAJ).[[1]](#footnote-1)

This paper focuses on judicial corruption, which is defined as occurring when judicial officials (mis)use their positions and resources for private gain ([Amagnya 2020](#_ENREF_8), [2018](#_ENREF_6); [Hammergren 2000](#_ENREF_48)). This can involve bribery, under- and over-enforcement of laws because of extra-legal considerations, suppression of criminal evidence, and nepotistic exchanges (see [Amagnya 2020](#_ENREF_8); [Kutnjak Ivković 2003](#_ENREF_56); [Tankebe et al. 2019a](#_ENREF_73)). Judicial corruption is an essential topic to study because judicial officials are perceived to be highly corrupt, with judicial systems often among public institutions perceived as most corrupt (see [Pring 2015](#_ENREF_64), [2016](#_ENREF_65); [Pring and Vrushi 2019](#_ENREF_66); [TI 2009](#_ENREF_75)). For example, an Africa Global Corruption Barometer found that judges were the fourth most perceived corrupt public officials, with 34 per cent of the over 47,000 respondents perceiving them as corrupt ([Pring and Vrushi 2019, p.12](#_ENREF_66)). Equally, a 2015 Global Corruption Barometer Survey in Africa found that 28 per cent of people who came into contact with the courts paid a bribe compared to five other government services – the police (27%), utility services provided by governments (19%), asking for official documents (18%), public schools (13%), and public healthcare (12%) ([Pring 2015](#_ENREF_64)).

Studying judicial corruption is essential because corruption in judicial institutions can affect the ability of judicial systems to uphold the law, offer citizens avenues to address grievances and seek justice, and support sustainable governance and development (Amagnya 2020; Karstedt 2015; The World Bank 2019). It can create ineffectiveness, distort the process and outcomes of justice, put individual rights in jeopardy, weaken institutions’ legitimacy, undermine the rule of law, and adversely affect citizens’ perceptions of and attitudes towards criminal justice systems, institutions and officials (see Tankebe et al. 2019b; TI 2020a). Studies have found that judicial corruption creates public discontent towards criminal justice institutions, and adversely affects people’s confidence, trust and cooperation with institutions, and feelings of obligation to obey the law (see Afrobarometer 2014; Hu and Dai 2014; Jackson et al. 2014; Nivette and Akoensi 2019; Tankebe 2010).

# Context of the Study

Ghana has one of the most robust democracies in Africa, with a fast-growing economy (see [Abdulai and Crawford 2010](#_ENREF_1); [Freedom House 2018](#_ENREF_39)). However, there are widespread perceptions of criminal justice and judicial corruption, which may affect the rule of law and economic development. For example, in 2015, Aremeyaw Anas, an undercover journalist, secretly filmed 34 judges and hundreds of other criminal justice officials in Ghana accepting bribes to manipulate judicial decisions ([Baneseh 2015](#_ENREF_12)). This investigative work brought the issue of judicial corruption to light and made people aware of the extent of corruption in Ghana’s judicial system. Also, several studies have cited Ghana’s judiciary as highly corrupt and among public institutions perceived as the most corrupt (e.g., [CDD-Ghana 2000](#_ENREF_19); [GII 2007](#_ENREF_42); [Pring 2015](#_ENREF_64); [Pring and Vrushi 2019](#_ENREF_66); [TI 2009](#_ENREF_75)). Recent surveys by the Afrobarometer reported that over 85% of Ghanaians perceived judges as corrupt, which was second highest only to the police ([Afrobarometer 2017](#_ENREF_3); [Osse and Norviewu 2019](#_ENREF_62)). Apart from Nigeria (90%) and Cote D’Ivore (88%), Ghana’s corruption figure of over 85% is higher than South Africa (79%), Botswana (62%), and Kenya (81%), which are similar in terms of democracy and economic growth ([Afrobarometer 2020](#_ENREF_4)).

Scholars partly attribute the high perceptions of corruption in Ghana’s judiciary to social relationships as well as tribal and kinship networks that are integral parts of Ghanaian society and a significant source of esteem and status ([Tankebe et al. 2019b](#_ENREF_74)). Most people in Ghana are bound to traditional society through kinship networks, which can influence grafting, structuring and governance of public institutions ([Dankwa 2004](#_ENREF_33); [Kaplan et al. 1971](#_ENREF_54)). Commitment to kinship networks and social relations sometimes drive public officials to engage in corruption for the benefit of their families and friends rather than for the public good ([Mbaku 2010](#_ENREF_57); [Tankebe et al. 2019b](#_ENREF_74); [Szeftel 2000](#_ENREF_72)). Also, people try to use kinship networks and social relations to influence the decisions of public officials like judges, especially when they are likely to be convicted and sanctioned. One measure in Ghana to deal with those threats and thereby reduce the opportunities for corruption is the regulation of judicial conduct through legal rules and codes of conduct.

# Rules and Code of Ethics for Regulating Judicial Conduct in Ghana

Legal rules are laws passed by Ghana’s Parliament or established by executive instruments to govern the work and conduct of judges. Examples are the [Constitution (1992)](#_ENREF_27), [Courts Act (1993)](#_ENREF_29), [Criminal and Other Offences (Procedure) Act (1960)](#_ENREF_32), [Judicial Service Act (1960)](#_ENREF_50), and [Judicial Service Regulations (1963)](#_ENREF_53). There are also legal rules made by the Supreme, Appeal, High, Circuit, and District Courts. On regulation of judicial conduct, Section 16 of the [Judicial Service Act (1960)](#_ENREF_50) for example, provides: “Any act done without reasonable excuse by a judicial officer or executive officer (…) which is otherwise prejudicial to the efficient conduct of the Judicial Service or tends to bring the Judicial Service into disrepute shall constitute misconduct.” This provision does not prohibit judges from interacting with people, but ‘bring the Judicial Service into disrepute’ is sufficiently broad to impose a duty to act with integrity.

The Code of Ethics for Employees of the Judicial Service and Code of Conduct for Judges and Magistrates also guide the conduct of judges in Ghana (see [Judicial Service of Ghana 2005a](#_ENREF_51), [2005b](#_ENREF_52)). Rule 2(a) of the Code of Conduct for Judges and Magistrates provides: “a judge (…) should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary” ([Judicial Service of Ghana 2005a](#_ENREF_51)). The code in explaining Rule 2(a) indicates that because of constant public scrutiny, judges must accept restrictions on their conduct that would create in reasonable minds perceptions that their abilities to carry out judicial responsibilities with integrity, impartiality and competence are impaired. However, specific examples are not provided. Rule 2(b) requires “a judge to be careful to avoid developing excessively close relationships with litigants, lawyers, police prosecutors, etc. in any court where the judge often sits if such relationships could reasonably tend to create an appearance of partiality” ([Judicial Service of Ghana 2005a](#_ENREF_51)). There are similar provisions in Rules 4 and 5 in the Code of Ethics for Employees of the Judicial Service ([Judicial Service of Ghana 2005b](#_ENREF_52)).

Other regulations restrict judges’ participation in commercial activities or employment outside their judicial duties. For example, Rule 2(b) of the Code of Ethics for Employees of the Judicial Service categorically provides, “An employee [of the judiciary] shall not engage in outside employment which may conflict or appear to conflict with the performance of official responsibilities” ([see Judicial Service of Ghana 2005b](#_ENREF_52)). Rule 5(a) of the Code of Conduct for Judges and Magistrates states that “a judge shall conduct all of the judge’s extra-judicial activities so that they do not (1) cast reasonable doubt on the judge’s capacity to act impartially as a judge; (2) demean the judicial office; or (3) interfere with the proper performance of judicial duties.” The code’s commentary on Rule 5(a) cautions judges against engaging in extra-judicial activities that will cast reasonable doubt on their impartiality. However, extra-judicial activities and outside employment have not been defined in the codes. Also, the codes state that judges should not become isolated from the community in which they live because completely separating judges from extra-judicial activities is neither possible nor wise ([see Judicial Service of Ghana 2005a, Rule 5b-i and Rule 6](#_ENREF_51)).

A judicial official that is accused of breaching any law or rule regarding judicial conduct can face a formal or summary inquiry with criminal prosecution, dismissal, removal, interdiction, reduction in rank and salary, non-payment of salary, suspension and stoppage of salary increment as likely sanctions (see [Judicial Service Act 1960](#_ENREF_50); [Judicial Service Regulations 1963](#_ENREF_53)). Other sanctions captured in the Code of Conduct for Employees of the Judicial Service are removal as a head of unit or registry, warning or reprimand, suspension from duty with loss of salary, and surcharge ([Judicial Service of Ghana 2005b, Rule 7c](#_ENREF_52)). Judges who breach any rule in the codes of conduct will be sanctioned according to the Judicial Service Act and Regulations, with specific sanctions based on the gravity of the act or omission constituting the breach (see [Judicial Service of Ghana 2005a, Rule 7b](#_ENREF_51); [2005b, Rule 7a](#_ENREF_52)).

The rules have explicit provisions on disciplinary bodies and procedures, penalties, and reporting requirements (see [Judicial Service Act 1960](#_ENREF_50); [Judicial Service of Ghana 2005a](#_ENREF_51), [2005b](#_ENREF_52); [Judicial Service Regulations 1963](#_ENREF_53)). However, only judicial officials are mentioned in terms of reporting requirements, with no reporting requirement assigned to the public or court users, who may not even know the rules. Also, procedures for judicial officials to report breaches of the rules are not clearly outlined in them (see [Judicial Service Act 1960](#_ENREF_50); [Judicial Service of Ghana 2005a](#_ENREF_51), [2005b](#_ENREF_52); [Judicial Service Regulations 1963](#_ENREF_53)). Although the laws and codes aim to reduce conflict of interest and bias, prevent impropriety and impartiality, and ensure integrity and fairness, they appear to be general rules with no adequate specificity and clarity of what exact activities judges should or should not undertake, especially outside of their judicial duties. It is therefore essential to explore how Ghanaian judges observe the laws and codes that seek to regulate their conduct and any consequences on opportunities for corruption in the judiciary.

# Curbing corruption: A situational crime prevention and routine activity approach

This study explores the regulation of judicial conduct and judicial corruption in Ghana from the perspectives of situational crime prevention (SCP) and routine activity theory (RAT). SCP, developed by [Clarke (1983)](#_ENREF_22), focuses on reducing opportunities for crime through prevention techniques that address specific immediate situational factors that directly cause crimes or define crime opportunities ([Clarke 2017](#_ENREF_24); [Clarke and Bowers 2017](#_ENREF_25); [Graycar and Sidebottom 2012](#_ENREF_46)).[[2]](#footnote-2) Linked to the SCP is the crime triangle and Cohen and Felson’s RAT, which states that there must be a convergence in time and space of three elements for crimes to occur: motivated offenders, suitable targets, and the absence of capable guardians ([Cohen and Felson 1979](#_ENREF_26)). This paper adopts the approach by [Graycar and Sidebottom (2012)](#_ENREF_46), where SCP and RAT were applied to study corruption by focusing on opportunities in the immediate environment that play a causal role in generating corruption. This approach is appropriate as both judicial officials and court users as motivated offenders engage in corruption through exploiting opportunities in judicial systems created by the availability of targets and lack of guardianship.

The practice of regulating judicial conduct in Ghana seeks to promote SCP strategies as a way to reduce opportunities for corruption by removing one element in the RAT’s crime chemistry. It aims to remove judicial officials and court users as targets and motivated offenders in the judicial system to disrupt the interactive process that allows corruption to occur. Regulation of judicial conduct by limiting judges’ access to, and interactions with, members of the public and commercial activities aims to *increase the efforts* needed by court users to bribe judicial officials but also*remove or reduce rewards* from engaging in corruption. It does this by hardening judges as corruption targets by removing them from possibilities of corrupt exchanges or controlling court users’ access to judges. It also conceals judges as targets for corruption, which can disrupt markets for corruption and deny benefits from corruption.

Moreover, due to challenges or perhaps impossibility of court users to have direct access to judges as targets who are hardened, removed, concealed, or controlled through regulation of judicial conduct, court users may try accessing or influencing judges through third parties. However, the involvement of third parties can *increase the risks* of detection and apprehension, as the third parties can act as guardians ([Tunley et al. 2018](#_ENREF_77)). Regulation of judicial conduct can prevent corruption offers from court users, which may reduce emotional arousals from corruption temptations that can serve as *enticements and provocation* for judicial officials to engage in corruption. It can equally *reduce or remove excuses* for engaging in corruption as rules are set out, which can alert the consciousness of judicial officials to the consequential costs of engaging in corruption (see [Clarke 1995](#_ENREF_23); [Tunley et al. 2018](#_ENREF_77)). In sum, limiting judges’ access to, and interactions with, the public and commercial engagement through regulation of judicial conduct is an anti-corruption measure that addresses the SCP strategies of changing *efforts,* increasing *risks***,** reducing *rewards*, and removing *provocations* and *excuses*.[[3]](#footnote-3)

Regulating judicial conduct to remove judges as targets from possible corrupt exchanges and limit opportunities for them to be offered bribes also aligns with the crime triangle and RAT’s crime chemistry. According to this chemistry, crime will not occur with the removal of any of the elements that must be present for a crime to take place or occur, which are motivation, targets, lack of guardianship, and opportunities ([Cohen and Felson 1979](#_ENREF_26)). Targets, motivations, and opportunities for corruption abound in judicial systems, which are often hard, challenging, or perhaps impossible to address or remove ([Amagnya 2020](#_ENREF_8); [Graycar 2016](#_ENREF_44)). For example, judicial officials (i.e. judges and court officials) and court users can be targets and motivated offenders in judicial corruption, and their motivations can arise from personal, financial, or work-related pressures. Also, the availability of many targets and inadequate guardianship over targets – lack of supervision and monitoring of judicial officials – can create vast opportunities for corruption in judicial systems ([Graycar 2019](#_ENREF_45)). Regulating judicial conduct as a measure seeks to remove judges as targets from access by court users.

While regulating judicial conduct can remove judges as targets from possible corrupt exchanges, it is hypothesised that it may offer fewer opportunities for observation and intervention through guardianship. Guardianship is the ability of a person or an object to act in a supervisory capacity to discourage or prevent crime from occurring or protect a target against crime ([Cohen and Felson 1979](#_ENREF_26); [Reynald 2018](#_ENREF_69)). One potential means of controlling corruption in judicial systems is for court users and judicial officials themselves to provide guardianship and make operations of the courts transparent. Transparency is a major obstacle to corruption by creating the capacity for observation of activities and the possibility of intervention, which can reduce opportunities for corruption (see [Bauhr and Grimes 2017](#_ENREF_13); [UNODC 2020](#_ENREF_78)). However, regulating judicial conduct can detach activities of court officials and interactions between court officials and users from judges, resulting in less transparency and decreased guardianship. Less transparency and decreased guardianship results in less supervision of operations of judicial systems and activities of court officials and users. So, instead of reducing opportunities for corruption, regulating judicial conduct can create or increase opportunities for corruption or judicial officials’ corruption vulnerabilities.

There is very little to no literature on the consequences of regulating judicial conduct on opportunities for corruption in the judiciary. However, cognate evidence in policing and elsewhere about the impact of isolating officials from society or institutions exist. Evidence shows that isolating police officers from mainstream society creates a “blue brotherhood”, subcultures, and conformity to group demands that in-turn support corruption (see [Bahn 1975](#_ENREF_11); [Bleakley 2020](#_ENREF_16)). Studies that are predominantly from Western contexts showed that isolating police officers from society pushes them to foster solidarity with their profession, support their colleagues and work to advance shared interests, maintain secrecy or a ‘code of silence’, and turn a blind eye to colleagues’ corrupt activities (see [den Nieuwenboer and Kaptein 2008](#_ENREF_35); [Fitzgerald Commission 1989](#_ENREF_37); [Knapp Commission 1972](#_ENREF_55); [Reiner 2010](#_ENREF_67); [Sherman 1985](#_ENREF_71)). Other evidence shows that when public officials are isolated from colleagues, working environments and societies, it results in less transparency and guardianship that increases the likelihood of them engaging in corruption (see [Bianconi 2019](#_ENREF_15); [Monteduro et al. 2016](#_ENREF_59); [Vannucci 2019](#_ENREF_79)). The discussions show that there is reduced transparency and guardianship with rising vulnerabilities and opportunities for corruption when police officers and other public officials become isolated from the public. In that case, it is at least arguable that if judicial officials such as judges too are told to regulate their interactions with the public, the same thing could happen.

# Methods

The data for this study was collected from judges, prosecution lawyers, high-level police officers, defence lawyers, and officials of CHRAJ between July 2017 and February 2018. The study covered Greater Accra, Ashanti and Upper East regions of Ghana, which represent rural-urban dynamics with different numbers of criminal justice offices and officials (see [Amagnya 2020](#_ENREF_8); [Ghana Police Service 2017](#_ENREF_40); [Ghana Statistical Service 2016](#_ENREF_41)). Whereas the Greater Accra and Ashanti are urban regions, the Upper East is a rural region. Police officers, defence lawyers, and directors of CHRAJ were contacted directly, while judges, prosecution lawyers, and CHRAJ officials were contacted through court registrars, regional heads of prosecution, and CHRAJ’s regional directors, respectively ([using a snowball sampling method, Atkinson and Flint 2001](#_ENREF_9)). Officials selected had worked in regions for at least three months to ensure familiarity with issues in the regions.

Being the first to have ever collected data from such a wide range of criminal justice officials in an African context to examine corruption as a critical issue, the study employed a qualitative design with in-depth expert semi-structured interviews ([see Bogner et al. 2009](#_ENREF_17)). The small number of participants and the ability to gather data that help to understand the topic in a broader and in-depth manner as a ‘localised problem’ made interviewing an appropriate data collection tool ([see Merriam 2009](#_ENREF_58)). One-on-one interviews were conducted at the offices of officials, which gave them freedom and confidence to share their perspectives unencumbered (see [Creswell and Poth 2016](#_ENREF_31); [Merriam 2009](#_ENREF_58)). Interviews focused on criminal justice corruption as well as anti-corruption roles of CHRAJ, Ghana Bar Association, and General Legal Council and were either audio-recorded or notes taken with participants’ permission. All officials signed consent forms before interviews.

Sixty-five interviews were conducted with 15 judges, 22 police officers, 15 CHRAJ officials, ten prosecution lawyers, and three defence lawyers. The 65 interviews represent a response rate of 70%. The 22 police interviews (8 in Greater Accra, 8 in Ashanti, 6 in Upper East) were conducted in ten police divisions and 14 districts.[[4]](#footnote-4) Participants were regional, divisional, and district commanders as well as crime officers, with ranks from Assistant Superintendent of Police to Assistant Commissioner of Police. The judges' interviews were collected from six, five, and four district, circuit, and high courts, respectively across Greater Accra, Ashanti, and Upper East regions. The prosecution lawyers comprised five, three, and two in Greater Accra, Ashanti, Upper East regions, respectively, with ranks from assistant state attorney to chief state attorney. The three defence lawyers were all from the Ashanti Region. The CHRAJ officials comprised six, five and four in Greater Accra, Ashanti, Upper East regions, respectively, with positions from investigator to director.

Audio-recorded interviews were transcribed and subjected to coding focusing on lines, sentences, paragraphs, and levels of meaning (see [DeCuir-Gunby et al. 2011](#_ENREF_34); [Easton et al. 2000](#_ENREF_36)). Using the Nvivo software, participants’ responses were grouped, combined, collapsed or clustered into primary themes and subthemes based on commonalities and differences ([see Creswell and Poth 2016](#_ENREF_31)). Although a wide range of criminal justice and anti-corruption officials were sourced across multiple levels, there was nonetheless convincing agreement between them on the emergent issues or themes. The next sections discuss the major themes that emerged from the data analyses, such as judges’ interpretation and handling of rules regulating judicial conduct and unintended consequences resulting from judges’ interpretations and handling of the rules.

# Judges’ observations of regulations on judicial conduct

This section considers how Ghanaian judges observe rules that seek to regulate their conduct. Results show that judges attempt to give the rules, which are quite vague or not prescriptive, a wider application across various aspects of social and financial lives. Equally, they try to interpret the rules in many ways across many fields of endeavours or a broad range of types of behaviour and contacts in a restrictive way. Applications of the rules are extended to restricting social relationships and interactions with members of the public andsometimeseven their colleagues. For example, one judge in Greater Accra stated, “*You are expected to live a secluded life as a judge by not mixing up with people unnecessarily*.” Another judge in Greater Accra said, “*Judges are not allowed to entertain anybody privately because we are supposed to do the work like a catholic priest*.” ‘Supposed to’ or ‘expected to’ are phrases that depict explanations that judges give to the rules because the laws and codes of conduct do not contain those phrases or denote such connotations. These results show that while the vagueness of the rules allows judges the freedom to provide their own interpretation, there appears to be a certainty of belief by judges that rules about judicial conduct should be complied with strictly.

Judges outlined various steps that they take to apply the rules by limiting their contacts and interactions with court users or members of the public and even court officials, but three of them were prominent. The first is limiting private access to and contact with judges. This is where judges do not allow court users and officials to know their houses or contact numbers. For example, one judge in Ashanti explained the steps he takes to limit contacts: “*As a general rule for me, nobody, not even my personal court clerk, knows my house. This is because I try to reduce contacts with litigants and colleagues outside of the courtroom*.” Closely linked to court officials and users not knowing judges’ houses, some judges talked about prohibiting court officials from giving their house addresses and phone numbers to ‘strangers’ (i.e. court users). Some judges, whose residential addresses are perhaps known to court officials, stated that they had proscribed court officials from leading people to their houses.

The second measure raised was going home immediately after finishing court sittings. This refers to where judges said that since they do not spend the whole day working on cases in the courtrooms, they leave for home immediately upon finishing hearing for a day. One judge in Ashanti perfectly captured this practice of going home immediately after completing sitting for a day. “*To prevent people from requesting or coming to see me in my chamber, immediately I finish sitting in court for a day, I pack my books and everything into my car and go home to continue my work*.” These two measures by judges to limit the public access to them seem voluntary, as none of the rules that regulate judicial conduct has provided for such restrictions. The judges’ accounts suggest that they have interpreted the regulation of judicial conduct more broadly to include restricting their social contacts and relationships with people.

Judges also frequently mentioned not entertaining court users in chambers alone as a step taken to limit access and contacts with court users. It refers to where judges stated that they do not allow court users to come into judges’ chambers alone to have any discussion. Almost all judges interviewed stated ‘not entertaining court users alone in chambers’ as a measure to control corruption. Explaining the steps he takes to prevent corruption, one judge in Greater Accra said, “*I do not entertain anybody [in my chamber] alone. Even if lawyers have cases in chamber, I do not meet them unless other parties to the cases are present*.” Further analysis reveals that judges in Ghana are legally obliged not to have ex parte meetings with parties in criminal cases. However, judges started observing it more prominently after the exposure of corruption in Ghana’s judiciary by Anas, an investigative journalist. Therefore, this measure by judges to limit the public from privately accessing them can be said to be legally provided in the laws and guidelines that govern judicial conduct.

As rules around judicial conduct in Ghana are not very prescriptive and do not precisely mention social relationships, judges’ limiting the public access to and interactions with them can be said to be an informal code that they follow. The informal nature of the code suggests a tacit expectation and belief among judges that limiting interactions with members of the public and access to judges is a good thing that may reduce opportunities for corruption and corruption temptations. Such expectation and belief align with existing arguments that regulation of judicial conduct remove opportunities for access to judges to influence them, eliminate judicial bias, and reduce conflict of interest from judges’ commercial activities (see [Cipperly 2016](#_ENREF_21); [Global Judicial Integrity Network 2020](#_ENREF_43); [Jennett et al. 2016](#_ENREF_49)). However, further analysis shows that judges’ broad application and attempted strict adherence to the rules of judicial conduct is a double-edged sword. It also produces unintended consequences of increasing opportunities for corruption, shifting corruption to lower levels of the courts, reducing guardianship and transparency, and motivating judges to take bribes, which are discussed subsequently.

# Unintended consequence 1: Increasing corruption opportunities

First, limiting judges’ interactions can have an unintended consequence of making court users vulnerable targets for corruption and increasing the opportunities for corruption. The lack of private access to judges by the public can push court users to try accessing judges through other criminal justice officials who are perceived to have unlimited access to judges. As court users attempt to access judges through other officials, the court users become vulnerable targets for extracting bribes while the lower court officials become targets for offering bribes. The interactive nature of corruption comes to place here as opportunities are created for lower-level officials to solicit and extract bribes and for court users to offer and pay bribes. Several comments highlight court users’ vulnerabilities to corruption and opportunities created for other criminal justice officials’ who have unlimited access to judges and court users to engage in corruption. For example, one judge in the Ashanti region explained:

*Because litigants always see court officials having unlimited access to judges, the litigants usually try to access and influence judges through the court officials. In fact, most litigants believe anything court officials say to them about judges, including demanding for bribes on behalf of judges when in fact judges are unaware of such demands*.

Other evidence suggests that judges’ limiting their interactions with members of the public enhances corruption opportunities and/or pushes corrupt exchanges from the upper hierarchies of the courts where judges operate to the lower hierarchies. Limiting access to judges allows lower court officials to take bribes from court users on the pretext that they will give the bribes to judges or facilitate access to judges. A judge in Ashanti explained this phenomenon: “*Because litigants cannot access judges, court officials (…) sometimes collect ‘things’ (i.e. bribes) from them on the pretext to be given to you the judge*.” One judge in Greater Accra also claimed, “*People think that judges are corrupt because court clerks, lawyers, and even police officers take money from litigants on the ploy that they will give the money to judges. This is often caused by litigants not being able to access judges*.” Equally, one police officer in Greater Accra noted,

*Because it is difficult for litigants to access judges privately to ascertain certain things, when police officers and prosecutors know that cases have no evidence to yield convictions, they sometimes take money from litigants on the pretext of going to give it to judges for favourable decisions*.

Some participants cited actual incidents where court officials took bribes from court users purportedly on behalf of judges. One judge in Ashanti recounted a case where he got a complaint from a prosecutor after granting bail to an accused person. According to the prosecutor, the complainant said she paid GH¢1,000 for the judge to deny granting bail to the accused person. An investigation of the issue revealed that a court clerk asked the complainant to pay GH¢1,000 so that she will give the money to the judge. Although the complainant paid the money to the court clerk, the judge was not given any money and was not even aware of the transaction. Another judge in Upper East recalled an incident where bribes were unknowingly extracted in his name:

*I sentenced an accused person to jail in one case (…), and the accused person’s father came to my chamber and asked why I collected GH¢20 phone credit and two guinea fowls and still sentenced his son to jail. Investigations of the allegation revealed that one security officer collected those items from the man allegedly, to be given to me so that I will acquit the man’s son. So, you see that until the man came to complain to me, I was not aware that somebody had taken bribes in my name*.

Rather than reducing opportunities for corruption, limiting interactions of judges’ increases opportunities at the lower hierarchies of the courts, where court clerks, registrars, typists and bailiffs’ influence-peddle and receive bribes. Indeed, results indicate that much corruption in the judiciary happens at the preliminary stages, including court officials’ taking bribes before registering cases, to allocate cases to specific judges or courts, to act as intermediaries between court users and judges, to facilitate access to judges, or on the pretext to give bribes to judges. Illustrating that court officials engage in corruption at the registration stage, one magistrate in Greater Accra, for example, said, “*I will tell you that corruption starts right from the point where the cases are filed or registered, and judges do not play any role in the registration of cases, which is an administrative matter*.” Regarding bribes taken at the lower hierarchies of the courts to allocate cases, one judge in Greater Accra explained that court officials had found ways to take money from litigants and manipulate computers to allocate cases to particular judges or courts they think would favour litigants.

# Unintended consequence 2: Reducing guardianship

Aside from creating opportunities for corruption and pushing corruption exchanges to the lower hierarchies of the courts, judges’ limited interactions with members of the public and colleagues inadvertently reduce guardianship. This refers to where judges’ distance themselves from the public and court officials to the extent that they are not privy to interactions between court officials and users to perform proper guardianship. For example, one judge in Upper East said, “*most of the court officials (…) do many things that never come to the attention of judges, as judges mostly work in their chambers that are isolated from offices and activities of court officials*.” Further, another judge in Greater Accra explained, “*Because judges are cut-off from society, so many things happen in the courts at judges’ blindsides that are taken advantage of by court officials to engage in corruption*.” Contrary to the above remarks, the laws and guidelines in Ghana do not require judges to restrict contact with their court staff. Judges may be doing so due to the broad interpretations they give to the rules or because the Judicial Service administrative structure assigns supervision and appraisal of court staff’s performances to registrar instead of judges. Meanwhile, judges’ restricting their interactions with court staff provides and increases opportunities and incentives for court officials to secretly illicit and extract bribes from court users, which judges cannot provide appropriate supervision and/or guardianship over.

Other results show that court users not being able to access and interact with judges due to restrictions prevent them from reporting corrupt acts perpetrated by court officials to judges. One judge in Greater Accra explained this when he said, “*The seclusion of judges from society allows court officials to engage in corruption as litigants cannot access judges to report corrupt acts*.” Another judge in Upper East captured a typical view expressed by judges:

*Many corrupt undertakings between court officials and litigants do not come to the attention of judges unless somebody reports a case. However, litigants often do not get opportunities to report actual or attempted corrupt acts to judges, even when judges’ names have been used to extract bribes due to the isolation of judges from the public*.

Court users having appropriate access to judges to report corrupt acts that occur in the court systems can provide guardianship by making court officials careful when dealing with users of the courts. Being able to report corrupt acts to judges can also improve guardianship by allowing judges to become aware of corrupt behaviours of criminal justice officials and take appropriate actions to hold them accountable.

The results suggest that court users may not have easy access to judges privately to report court officials’ corrupt acts or demands for bribes in judges’ names. It is important to note that other avenues exist where court users can report actual or attempted corrupt acts that occur in the courts, such as anti-corruption agencies, including CHRAJ. The problem is that studies have found that Ghanaians generally do not report corrupt acts to anti-corruption agencies due to cumbersome procedures, not knowing anti-corruption agencies to report cases to, and difficulties associated with proving corruption allegations (see [Amagnya 2020](#_ENREF_8); [CDD-Ghana 2000](#_ENREF_19)). Criminal justice officials as perpetrators or beneficiaries of corrupt acts exacerbate non-reporting of corruption cases to anti-corruption agencies in Ghana. To illustrate, [Amagnya (2020)](#_ENREF_8) found that among corruption cases reported to CHRAJ, Ghana’s leading anti-corruption institution, cases with criminal justice officials as perpetrators or beneficiaries were the least.

# Unintended consequence 3: Motivating judges to take bribes

Regulating judges’ conduct can produce an unintended consequence of motivating judges to take bribes. As discussed earlier, one of the measures to regulate judges’ conduct in Ghana is prohibiting them from undertaking some legitimate economic activities outside of their judicial work. Confirming the prohibition of judges from engaging in extra commercial activities, one visibly angry judge in the Ashanti remarked, “*Even if you have a PhD as a judge now, you are not allowed to teach at any university*.” Illustrating his claim further, he said, “*Some judges with PhDs were offered part-time teaching positions at universities, but when they applied to the Judicial Council for permission to take up the positions, the council did not permit them*.” Another judge in the same region complained about a decision by the Judicial Council to ban judges from teaching:

*Quite recently, the Judicial Council issued a circular banning all high or lower court judges from teaching at universities, claiming that it prevents judges from concentrating on their jobs. I did not expect that reactionary and ‘insane’ circular from the Judicial Council because some judges were making legitimate extra money or allowances to supplement their income through teaching*.

The intended goal of regulating judges’ commercial engagement is not just to ensure efficiency but also is to reduce opportunities for corruption by preventing bias towards business associates and conflict of interest from judges’ commercial arrangements. One judge in Greater Accra captured this when she explained, “*In doing business, you will meet people who can show up in your court, but you are not supposed to engage in anything that will compromise you as a judge*.” While regulating judges’ engagement in extra commercial enterprise is a practice that may reduce corruption opportunities, further remarks show that it can adversely affect the financial resources of judges and motivate them to take bribes, – thereby increasing corruption vulnerabilities. Indeed, restricting judges’ engagement in extra commercial activities can prevent them from generating legitimate extra earnings to support their incomes. Demonstrating this point, one judge in the Ashanti stated, “*Apart from writing books, farming, and our main court work, judges cannot do any other work to raise extra income to support themselves financially*.” Another judge in Greater Accra said, “*Judgeship is the only profession that you cannot do extra work like being a board member of institutions and receiving compensation*.” Other remarks even show that it is not only judges who are barred from engaging in extra-economic activities in Ghana but also other criminal justice officials. For example, one prosecution lawyer in Greater Accra said, “*A cause of corruption is that besides handling cases for the state, prosecution lawyers are not allowed to do any work which can generate extra income to support their poor salaries*.”

Undertaking extra legitimate economic activities can provide a safe means for judges and other criminal justice officials to generate extra incomes to supplement their resources. Judges are among the most well paid public servants in Ghana, with average monthly salaries ranging between GH¢4000 and GH¢12000 compared to GH¢1000 and GH¢5000 for the general population ([Myjoyonline 2016](#_ENREF_60); [Paylab 2020](#_ENREF_63)). However, Ghanaian judges always complain of adverse financial conditions, such as poor compensation, low incomes, and inabilities to meet their financial obligations (see [AfriMAP et al. 2007](#_ENREF_2); [Amagnya 2020](#_ENREF_8)). The perception or reality of adverse financial conditions can motivate or increase public officials’ corruption vulnerabilities or create corruption opportunities ([Amagnya 2019](#_ENREF_7); [Ayee 2016](#_ENREF_10); [Oduntan 2017](#_ENREF_61)). Therefore, it is rational to suggest that limiting Ghanaian judges’ engagement in legitimate extra-economic activities or employment to reduce opportunities for corruption can rather reduce judges’ incomes and ability to fulfil financial obligations. This might increase judges’ vulnerabilities, motivations and inclination to increase their incomes through corruption.

# Discussion

A key finding of this study is that judges broadly apply rules regulating judicial conduct across several social and financial circumstances. This includes distancing themselves from the public and even their staff and colleagues to limit networks that can reduce opportunities for corruption and corruption temptations from court users. Although the broad application of, and strict compliance with, rules appear to be driven by judges’ inherent strong beliefs and good intentions, broadly applying and strictly adhering to rules that are quite vague and not prescriptive can lead to isolation that results in unintended consequences. This is because public officials, including judges, lose guardianship over their own actions or stop taking notice of the consequences of their actions on others in society when they isolate themselves from the public or institutions (see [den Nieuwenboer and Kaptein 2008](#_ENREF_35); [Wood 1997](#_ENREF_81)). Public officials become receptive to corruption when they stop taking notice of the effects of their actions on others (see [Amagnya 2020](#_ENREF_8); [Beaver et al. 2009](#_ENREF_14); [Reisig et al. 2011](#_ENREF_68)).

While regulating judges’ conduct and commercial activities try to address elements of the crime triangle and improve corruption prevention, results from this article suggest that they rather produce unintended consequences. It emerged that regulating judges’ conduct pushes corrupt exchanges down to the lower hierarchies of the courts and increases corruption opportunities at the lower levels. This is because restriction of contact and access to judges reduce the ability of judges to provide an appropriate level of guardianship over activities of court officials and interactions between court officials and users at the lower levels, thereby creating a lack of transparency. This lack of guardianship and transparency at those lower-levels allows court users to shift their attention and corruption offers to court officials who are easy to access and difficult to supervise, which ultimately produces and/or increases opportunities for corruption. Court officials at the lower levels can be confident that bribes taken will not get to the attention of judges or regulatory authorities as court users often do not report corrupt acts due to restrictions on access to judges, being unaware of reporting mechanisms, or simply lacking the confidence to report due to their own culpability ([Amagnya 2020](#_ENREF_8); [CDD-Ghana 2000](#_ENREF_19)).

Judges’ broad application of, and attempted strict adherence with, rules regulating judicial conduct through self-isolation being counterproductive is consistent with prior studies that been observed counterproductive effects of established corruption prevention measures. For example, [Foltz and Opoku-Agyemang (2015)](#_ENREF_38) found that an increase in salaries of police officers in Ghana to curb corruption instead made them ask for more bribes and more often. The result of the counterproductive effects of a corruption prevention measure being similar to those of prior studies suggests that more need to be taken into consideration when designing corruption prevention interventions. A unique feature of this study’s results is that the shift of attention and corrupt exchanges down to the lower levels of the courts can be interpreted as a form of crime displacement – where a crime prevention intervention pushes crime out of one place into other places ([Weisburd et al. 2006](#_ENREF_80)). Although little evidence of crime displacement exists in the literature (see [Braga et al. 2014](#_ENREF_18); [Guerette and Bowers 2009](#_ENREF_47); [Weisburd et al. 2006](#_ENREF_80)), this study shows that corruption is displaced to the lower levels of the courts due to the intervention at the higher levels (i.e. regulating judges’ conduct).

The results also suggest that at least, as far as it applies to judicial corruption, more than one component of the crime triangle can be moved simultaneously with opposite effects. For instance, attempts to remove targets and opportunities in the crime triangle by limiting judges’ contacts and interactions with people and commercial engagements can undermine the guardianship and/or motivations elements. Indeed, the results show that removing targets to reduce opportunities for corruption rather decreases guardianship and increases criminal justice officials’ motivation to engage in corruption. If initiatives to decrease components of the crime triangle, such as targets, motivation, opportunities, and guardianship to control corruption adversely affect another, leading to increased opportunities for corruption, what can be done to maintain equilibrium? Further studies are needed to determine possible responses to this question. These results suggest that scholars perhaps need to go back to the crime triangle in other spheres to find out whether there are situations in which changing one component of the triangle might negatively affect another and produce counterproductive consequences or results other than those intended.

The results of this study suggest that focusing on supervision and monitoring of lower-level officials through guardianship is a worthwhile start to tackling judicial corruption. Considering that targets and motivations for corruption abound in judicial systems and are often hard, challenging, or perhaps impossible to address or remove, focusing on guardianship can increase transparency and reduce opportunities for corruption ([Graycar 2019](#_ENREF_45); [Amagnya 2020](#_ENREF_8); [Graycar 2016](#_ENREF_44)). The Judicial Council and Service of Ghana can provide effective guardianship by working closely with judges in the areas of supervision, monitoring, and education of lower-level officials. Judges should be tasked to take over the responsibilities of supervising and evaluating court officials’ activities from the court registrars who do not work directly with court officials in courtrooms. This measure about guardianship can also be implemented in other countries in Africa and elsewhere as well as other sectors to control or prevent corruption.

This paper addresses the role and responsibility of officials at the higher echelon in judicial systems that allow corruption to occur at the lower levels. Contrary to arguments in the public sector corruption literature, results of this study show that corruption by lower-level officials in Ghana’s judicial system is not due to higher officials benefiting from allowing lower-level officials in their agencies to engage in corruption. Results show that opportunities for lower-level officials to engage in corruption are not due to what they see going on above them because upper-level officials’ engage in efforts to control corruption rather. This means that lower-level officials are not necessarily taking their leads from the ‘tone at the top’ that is depicted by upper echelon officials. While the results show that regulating judicial conduct may be a counterproductive anti-corruption measure, further studies are needed to explore the full extent to which regulating public officials conduct affects guardianship and opportunities for misconduct and corruption. This study also raises critical questions, perspectives, and new areas of potential research on crime prevention, how the crime triangle behaves and affects guardianship when a part of it is being addressed, and crime displacement outside geographical locations.

This study makes significant contributions to the broader discussion on corruption and corruption prevention globally from an African perspective. Indeed, it is the first study ever to examine the critical issue of judicial corruption by collecting data from such a wide range of criminal justice officials in an African context. Apart from that, the study uses innovative and unique ways to collect data throughout Ghana and from a wide range of criminal justice and anti-corruption officials, which allows for rigorous and comprehensive analysis and discussion of corruption. Analyses and discussions of corruption based on innovative, comprehensive and rich data sources can have important implications for understanding and addressing corruption in Ghana and other African and Western contexts. The study also makes greater contributions to theoretical discussions and practical implications beyond the Ghanaian context.

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1. The CHRAJ is an independent institution that was established in 1993 by an Act of Parliament, as directed by Article 216 of the 1992 Constitution of Ghana. It safeguard human rights of Ghanaians and is also Ghana’s primary anti-corruption institution with one of its mandate being to receive and investigate allegations of corruption against any public officials (see [CHRAJ Act 1993](#_ENREF_20); [Constitution 1992](#_ENREF_27)). [↑](#footnote-ref-1)
2. Opportunities refer to perceived risks, benefits and rewards associated with a criminal act that individuals consider when deciding to commit crimes. Opportunities exist when people think they can commit crime without being detected, caught and punished ([Cornish and Clarke 1986](#_ENREF_28); [Rose-Ackerman and Søreide 2011](#_ENREF_70)). [↑](#footnote-ref-2)
3. For discussions of the strategies and techniques of the SCP, see [Clarke (2017)](#_ENREF_24), [Clarke and Bowers (2017)](#_ENREF_25), and [Tunley et al. (2018)](#_ENREF_77). [↑](#footnote-ref-3)
4. The GPS is divided into regional, divisional and district commands, headed by regional, divisional and district commanders, respectively. While a regional command is made up of divisions, a divisional command is made up of districts, and a district command is made up of police stations and posts. Each divisional and district command has a crime officer who heads the criminal investigation department and supervises investigation and preparation of all cases for prosecution. [↑](#footnote-ref-4)