

Overcoming the Corruption Conundrum in Africa

Overcoming the Corruption Conundrum in Africa:

A Socio-legal Perspective

By

Anzanilufuno Munyai

Cambridge
Scholars
Publishing



Overcoming the Corruption Conundrum in Africa:
A Socio-legal Perspective

By Anzanilufuno Munyai

This book first published 2020

Cambridge Scholars Publishing

Lady Stephenson Library, Newcastle upon Tyne, NE6 2PA, UK

British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

Copyright © 2020 by Anzanilufuno Munyai

All rights for this book reserved. No part of this book may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the copyright owner.

ISBN (10): 1-5275-4335-8
ISBN (13): 978-1-5275-4335-5

*To the stronghold of my life, the Guardian of my heart. To my Protector,
the One greater in me than he that is in the world. To my Almighty Father.
My God. Who created me for greatness on this Earth.*

TABLE OF CONTENTS

| | |
|--|-----|
| List of Cases | xi |
| List of Instruments..... | xii |
| Preface | xvi |
| Acknowledgements | xix |
| List of Abbreviations | xx |
| Chapter One..... | 1 |
| Introduction | |
| Chapter Two | 13 |
| Understanding Corruption: A Synopsis | |
| Chapter Three | 26 |
| Navigating the Typology and Nomenclature of Corruption within Africa's Legislative and Sociological Landscape | |
| Forms of corruption | 27 |
| Grand corruption | 28 |
| Petty, bureaucratic corruption or survival corruption..... | 28 |
| Legislative corruption | 29 |
| Other forms of corruption | 33 |
| Bribery | 33 |
| Misappropriation or embezzlement of public funds or property | 36 |
| Fraud | 38 |
| Money laundering | 39 |
| Extortion..... | 39 |
| Theft..... | 40 |
| Nepotism and favouritism | 41 |
| Collusion | 43 |
| Abuse of discretion..... | 44 |
| Clientelism | 45 |
| Patronage..... | 45 |

| | |
|---|-----|
| Political corruption..... | 45 |
| Corruption in Africa: A snapshot of the sociological landscape..... | 50 |
| Challenges in defining corruption..... | 53 |
| Summary..... | 60 |
| Chapter Four..... | 62 |
| The Impact of Corruption on Africa | |
| Gauging the impact of corruption on Africa..... | 64 |
| The fundamental impact of corruption on African societies..... | 68 |
| Democracy..... | 69 |
| Human rights..... | 73 |
| The rule of law..... | 77 |
| The judiciary..... | 79 |
| Separation of powers..... | 81 |
| Corruption and state official criminal liability..... | 83 |
| Summary..... | 84 |
| Chapter Five..... | 87 |
| International Instruments on Curbing Corruption | |
| International instruments against corruption..... | 88 |
| The United Nations System..... | 88 |
| African Union Instruments against Corruption..... | 95 |
| Sub-regional instruments against corruption..... | 97 |
| Summary..... | 100 |
| Chapter Six..... | 102 |
| The Need for Political Will in Combating Corruption in Africa | |
| Defining political will..... | 103 |
| Indicators of political will..... | 112 |
| A synoptic analysis of the different kinds of political will..... | 121 |
| Active political will..... | 122 |
| Partial political will..... | 123 |
| Lack of political will..... | 124 |
| Transnational political will..... | 126 |
| The shifting political will..... | 128 |
| Understanding political will through different anti-corruption efforts..... | 130 |
| Prevention..... | 131 |
| Promotion..... | 135 |
| Culture and religion..... | 139 |
| Education..... | 143 |

| | |
|--|-----|
| Protection of protected disclosures or whistle-blowers | 144 |
| Summary | 148 |
| Chapter Seven..... | 152 |
| The Role of Foreign Governments in the Fight against Corruption in Africa | |
| Foreign government involvement in the fight against corruption in Africa..... | 154 |
| The perpetration of corruption and its ramifications for different segments of the society..... | 156 |
| The undermining of financial institutions and policies | 158 |
| The obligation/duty to render assistance to victim states..... | 159 |
| The United Nations Convention against Corruption | 160 |
| The OECD Anti-Bribery Convention..... | 163 |
| The African Union Convention on Preventing and Combating Corruption0 | 165 |
| The ECOWAS Protocol on the Fight against Corruption | 165 |
| ECOWAS Convention on Mutual Assistance in Criminal Matters..... | 165 |
| SADC Protocol on MLA in Criminal Matters..... | 166 |
| Assistance strategies | 166 |
| Recovery of stolen assets or public funds | 166 |
| Stolen Asset Recovery Initiative | 167 |
| Selected cases of foreign government assistance | |
| with African countries | 168 |
| Nigeria and the United Kingdom: the case of <i>James Ibori</i> | 168 |
| France and Equatorial Guinea: the case of <i>Teodoro Nguema Obiang Mangué</i> | 169 |
| Switzerland and Nigeria: the case of <i>Sani Abacha</i> | 170 |
| Egypt: the case of <i>Hosni Mubarak</i> | 171 |
| Nigeria: the case of Diepreye Solomon Peter Alamiyeseigha | 172 |
| The United Kingdom and Uganda..... | 173 |
| The United Kingdom and Nigeria: the case of <i>Joshua Chibi Dariye</i> | 174 |
| The United Kingdom and Zambia | 176 |
| Different ways of rendering foreign assistance | |
| to African countries | 177 |
| Conclusion of bilateral and multilateral agreements on foreign assistance regarding combating corruption..... | 177 |
| Enactment of national laws regulating the transfer of funds | 179 |

| | |
|--|-----|
| Monitoring of banking activities conducted by intra-state banks | 180 |
| Establishing intergovernmental networks aimed at sharing information | 181 |
| Monitoring and regulating international credit transfers | 181 |
| Encouraging inter-bank collaboration and cooperation within and beyond African countries | 183 |
| Initiation process for the recovery of assets and funds | 184 |
| Development and enactment of national laws on the freezing, seizure and confiscation of stolen funds and assets | 184 |
| Observation and implementation of the recommendations of the Financial Action Task Force | 185 |
| Suppression of bank secrecy laws | 190 |
| Exercise of soft co-optive power by foreign governments | 192 |
| Summary | 194 |
| Chapter Eight | 196 |
| Conclusion | |
| Bibliography | 203 |
| Index | 233 |

LIST OF CASES

Ministère Public et Etat du Cameroun C/ Atangana Mebara Jean-Marie, Inoni Ephraim, Otele.

Ministère Public et Etat du Cameroun (Ministère des Finances – Partie Civile) C/ Yen Eyoum Lydienne épouse Loyse, Abah Polycarpe, Engoulou Henri, Baleng Maah Célestin, Ngwem Honoré Tribunal Criminel Spécial, Yaoundé, Arrêt No 021/CRIM/TCS/14 du 26 Septembre 2014.

Schabir Shaik and Others v The State 2007 (1) SA 240 (SCA).

Schabir Shaik and Others v The State 2008 (2) SA 208 (CC).

South African Association of Personal Injury Lawyers v Willem Hendrik Heath, The Special Investigating Unit, President of the Republic of South Africa and The Minister of Justice 2001 (1) SA 883 (CC).

LIST OF INSTRUMENTS

(a) International instruments

- African Charter on Democracy, Elections and Governance (2007).
- African Charter on Human and Peoples' Rights, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).
- Constitutive Act of the African Union, OAU Doc. CAB/LEG/23.15 (2001).
- Convention on Mutual Assistance in Criminal Matters A/P.1/7/92 (29 July 1992).
- Convention on Preventing and Combating Corruption, 43 I.L.M.5 (2004).
- Declaration and Decision Resolution AHG/Dec.126 (XXXIV) 1998.
- Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government, AHG/Decl.5 (XXXVI), Thirty-Six Ordinary Session/Fourth Ordinary Session of the African Economic Community, 10-12 July 2000.
- Declaration on the Right to Development, United Nations General Assembly Resolution 41/128, U.N. GAOR, 41st Session, 97th meeting, U.N. Doc. A/RES/41/128 (1986).
- Harare Commonwealth Declaration (1991).
- Inter-American Convention against Corruption 29 March 1996, S. Treaty Doc. No.105-39, 35 I.L.M 724.
- Model Code of Conduct for Public Officials, Appendix to Council of Ministers Recommendation No. R (2000) 10. 2000.
- Organisation for Economic Cooperation and Development: Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 17 December 1997, S. Treaty Doc. No.105-43.
- Protocol on the Fight against Corruption, 21 December 2001.
- Protocol on the Fight against Corruption to the Treaty on the Economic Community of West African States.
- Southern African Development Community, Protocol against Corruption (2001).
- Southern African Development Community, Protocol on Mutual Legal Assistance in Criminal Matters (2002).
- United Nations Commission on International Trade Law Model Law on International Credit Transfers, A/47/17 (1992).

- United Nations General Assembly Resolution 2106 (XXA), U.N. GAOR, 21st Session, 1406th meeting, U.N. Doc. A/RES/ 2106 (XXA) (1965).
- United Nations General Assembly Resolution 2200 (XXI), U.N. GAOR, 21st Session, 1496th meeting, U.N. Doc. A/RES/2200A (XXI) (1966).
- United Nations General Assembly Resolution 3514 (XXX), U.N. GAOR, 30th Session, 2441st meeting, U.N. Doc. A/RES/3514 (XXX) (1975).
- United Nations General Assembly Resolution 34/180, U.N. GAOR, 34th Session, 107th meeting, U.N. Doc. A/RES/34/180 (1979).
- United Nations General Assembly Resolution 39/46, U.N. GAOR, 39th Session, 93rd meeting, U.N. Doc. A/RES/39/46 (1984).
- United Nations General Assembly Resolution 44/25, U.N. GAOR, 44th Session, 61st meeting, U.N. Doc. A/RES/44/25 (1989).
- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances U.N. Doc. E/CONF.82/15, reprinted in 28 ILM 493 (1989).
- United Nations General Assembly Resolution 44/128, U.N. GAOR, 44th Session, 82nd meeting, U.N. Doc A/RES/44/128 (1989).
- United Nations General Assembly Resolution 2200 (XXI), U.N. GAOR, 21st Session, 1496th meeting, U.N. Doc. A/RES/2200 (XXI) A (1966).
- United Nations General Assembly Resolution 45/158, U.N. GAOR, 45th Session, 69th meeting, U.N. Doc. A/RES/45/158 (1990).
- United Nations General Assembly Resolution 49/159, U.N. GAOR, 49th Session, 94th meeting, U.N. Doc. A/RES/49/159 (1994).
- United Nations General Assembly Resolution 51/59, U.N. GAOR, 51st Session, 86th meeting, U.N. Doc. A/RES/51/191 (1996).
- United Nations General Assembly Resolution 51/59, U.N. GAOR, 51st Session, 82nd meeting, U.N. Doc. A/RES/51/59 (1997).
- United Nations General Assembly Resolution 52/87, U.N. GAOR, 52nd Session, 70th meeting, U.N. Doc. A/RES/52/87 (1998).
- United Nations General Assembly Resolution 53/111, U.N. GAOR, 53rd Session, 85th meeting, U.N. Doc. A/RES/53/111 (1999).
- United Nations General Assembly Resolution 54/4, U.N. GAOR, 45th Session, 28th meeting, U.N. Doc. A/RES/54/4 (1999).
- United Nations General Assembly, U.N. GAOR, 54th Session, U.N. Doc. A/RES/54/109 (2000).
- United Nations General Assembly Resolution 54/263, U.N. GAOR, 54th Session, 97th meeting, U.N. Doc. A/RES/54/263 (2000).
- United Nations General Assembly Resolution 55/25, U.N. GAOR, 55th Session, 62nd meeting, U.N. Doc. A/RES/55/25 (2000).
- United Nations General Assembly Resolution 55/61, U.N. GAOR, 55th Session, 81st meeting, U.N. Doc. A/res/55/61 (2001).

- United Nations General Assembly Resolution 56/83, U.N. GAOR, 56th Session, 85th meeting, U.N. Doc. A/RES/56/83 (2001).
- United Nations General Assembly Resolution 56/260, U.N. GAOR, 56th Session, 93rd meeting, U.N. Doc. A/RES/56/260 (2002).
- United Nations General Assembly Resolution 57/199, U.N. GAOR, 57th Session, 77th meeting, U.N. Doc. A/RES/57/199 (2002).
- United Nations Convention against Corruption, United Nations General Assembly Resolution 58/4, U.N. GAOR, 58th Session, 51 meeting, U.N. Doc. A/RES/58/4 (2003).
- United Nations General Assembly Resolution 61/106, U.N. GAOR, 61st Session, 76th meeting, U.N. Doc. A/RES/61/106 (2006).
- United Nations General Assembly Resolution 61/177, U.N. GAOR, 61st Session, 82nd meeting, U.N. Doc. A/RES/61/177 (2006).
- United Nations General Assembly Resolution 217 (III)A, 3rd Session, Supp. No. 13, U.N. Doc. A/810 (1948).
- Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 8 I.L.M. 679.

(b) National Statutes

Algeria

Constitution of the People's Democratic Republic of Algeria 1989 (amended by the constitutional revision of 1996).

Law No.06-01 on the Prevention and the Fight against Corruption.

Angola

Law No.3/ 96 on High Authority against Corruption.

Botswana

Corruption and Economic Crime Act 13 of 1994 (as amended).

Penal Code No.2 of 1964 (Cap 08: 01).

Proceeds of Serious Crime Act (Cap 08:03) (as amended).

Cameroon

Law No.2006/001 of 25 April 2006 Relating to the Declaration of Assets and Property.

Ghana

Anti-Money Laundering Act 749 of 2008.

Public Property Protection Act 1977 (SMCD 140).

Kenya

Anti-Corruption and Economic Crimes Act 3 of 2003.

Electoral Offences Act.

Ethics and Anti-Corruption Commission Act 22 of 2011.

Penal Code (Cap 63) 1970.

Proceeds of Crime and Anti-Money Laundering Act 9 of 2009.

Malawi

Public Audit Act 6 of 2003.

Mauritius

Prevention of Corruption Act 5 of 2002.

Namibia

Anti-Corruption Act 8 of 2003.

Electoral Act.

Nigeria

Constitution of the Federal Republic of Nigeria Act 24 of 1999.

Corrupt Practices and other Related Offences Act 5 of 2000.

Rwanda

Constitution of the Republic of Rwanda and its Amendments of 2 December 2003 and of 8 December 2005.

South Africa

Constitution of the Republic of South Africa Act 108 of 1996.

Electoral Act.

Switzerland

Federal Act on the Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons (Foreign Illicit Assets (FIAA) Act of 18 December 2015).

Tunisia

Constitution of Tunisia 2014.

Uganda

Code of Conduct and Ethics for Uganda Public Service 2005.

PREFACE

*“Third World is a state of the mind and until we change our attitude as Africans, if there is a fourth, fifth and even sixth world, we will be in it.”
[sic.]*

– Patrick Loch Otieno Lumumba

Dear Africa. Like cancer, corruption is a disease, spreading rapidly in government systems, eating away principles of governance and finding its way into the social fabric. The unceasing torment of corruption in post-colonial Africa is concerning, and for a long time, your children have labelled themselves as victims of corruption. The time is now to take a stand against this faceless enemy. The fight against corruption is not founded on the laws and policies enacted, nor the mechanisms or institutions created. The fight rests with the change of mindset. To win this war, we have to know and understand the enemy. What is certain is that, for many years, corruption has systematically embedded itself in the social order, making it difficult to define. Additionally, the enemy assaults our democracies, human rights, rule of law, socio-economic development, and good governance; it destroys economies, and continues to widen the gap between rich and poor, eroding people’s confidence in state leadership.

In an attempt to combat corruption, African countries have ratified and domesticated various international instruments. However, it is evident that nation-states can have numerous anti-corruption mechanisms in place, and unless good state leadership prevails, corruption will continue to flourish. The prevalence of corruption is attributed to two main reasons: lack of a political will and its entrenchment in the structures of society becoming an element of negotiation as well as a *modus operandi* for anything to be done.

For several years African leaders have promised to fight this insidious crime, yet Africa continues to experience an unequal distribution of wealth among its people. It is my duty as an African to pursue different paths to liberate my continent from the enemy. With this book, I explore workable solutions to the art of winning the war against corruption. Firstly, I explore the plethora of definitions and identify the common elements of corruption. By taking a socio-legal perspective, by exploring the trends and commonalities of corrupt practices and how they are entrenched in

society, and by examining the different sociological landscapes and legal platforms across African countries, I argue that corruption is practised in almost every African country, for which different names in their local languages are used.

Secondly, I study anti-corruption instruments. Later, I argue that the existence and the domestication of international instruments are not enough to combat corruption. In reality, a strong political will is required to complement existing efforts. Thirdly, to combat corruption, its effects must be known. In doing this, I take a snapshot of the perpetration of corruption, particularly grand corruption on the African continent. I reveal that numerous scandals have been documented where senior public officials acquire expensive properties for their private gains, together with how billions of liquid cash have been banked in the West by senior state officials. It is no secret that corruption has inspired its perpetrators to misappropriate public funds, depriving Africa of resources needed to pursue socio-economic development. The depletion of resources marked for any developmental project means that such a project goes unexecuted or poorly implemented. In this regard, the fight against corruption in Africa cannot be waged by Africa alone. I argue in this book that there is a need for foreign governments to cooperate with African countries. The cooperation may take different forms, and will ultimately require a strong political will from the governments involved.

In conclusion, I make specific findings: first, that no African society is immune to corruption. Second, corruption has adverse effects that are more devastating on the African continent due to its level of development and scarcity of resources. Third, stolen resources or public funds from African countries are usually channelled secretly to non-African countries where they are kept. It becomes a challenge for African law enforcement to detect, investigate and prosecute corrupt perpetrators. The outcome of my reconnaissance of the enemy has led me to make the following proposal: corruption has been a representation of the failure of Africans to uphold ethical values. To triumph against corruption, Africa requires a strong political will to complement the existing legislative frameworks and institutional mechanisms. Political will is the *sine qua non* of a corruption-free Africa; without it, national efforts will be in vain. Considering corruption is a borderless crime, Africa needs to consider international cooperation seriously. As set out in international and continental instruments, cooperation between states is important in the fight against corruption. In this regard, states to which funds have been illicitly transferred have an obligation to return them where they belong. Their role requires the following: strict laws regulating financial institutions that

receive assets from non-residents without interrogating their sources; the provision of mutual legal assistance by assisting law enforcement through the provision of information that will help in investigating such illicit transfer of funds, assisting in repatriating stolen assets; and also prosecuting legal and natural persons who are involved in the commission of corruption (directly or indirectly). This fight against corruption requires commitment, resilience and bravery from the people of Africa. With this, I hope Africa will rise like a phoenix and achieve remarkable success.

ACKNOWLEDGEMENTS

In my parents, I have everything a daughter will ever need. When God created me, he had both of you in mind, and I could not have asked for better parents. Musiwa Collen Mufamadi and Thinavhuyo Esther Munyai Mufamadi, you are truly the best. Your unfailing love for me is without measure. I am grateful that you dedicated your lives to ensure that I get the best education and guidance. You are truly amazing parents and in you I see perfection. I would also like to thank my younger brother, Lifa Andani Mufamdai for his support and understanding throughout this journey.

This work would not have been possible without the support and guidance of Professor Avitus A. Agbor. A true mentor is one who holds and guides his student to become like him. You were the best and continue to be the best teacher. You have continuously guided, believed and supported me in my work. May the Almighty God continue to bless you abundantly, favour and protect you.

I express my sincere gratitude to the faculty of law at the University of Johannesburg.

I am indebted to Adam Rummens, of Cambridge Scholars Publishing, and Eleanor Moore, for helping me to make this book a success.

LIST OF ABBREVIATIONS

| | |
|--------|---|
| ACA | Anti-Corruption Act |
| ACC | Anti-Corruption Commission |
| APRM | African Peer Review Mechanism |
| AU | African Union |
| AUCPCC | African Union Convention on Preventing and Combating Corruption |
| CECA | Corruption and Economic Crime Act |
| CPI | Corruption Perception Index |
| DCEC | Directorate on Corruption and Economic Crime |
| EACC | Ethics and Anti-Corruption Commission |
| ECOSOC | United Nations Economic and Social Council |
| ECOWAS | Economic Community of West African States |
| EFCC | Economic and Financial Crimes Commission |
| EU | European Union |
| FIAA | Foreign Illicit Assets Act |
| FIU | Financial Intelligence Unit |
| FATF | Financial Action Task Force |
| ICAC | Independent Commission against Corruption |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ILC | International Law Commission |
| KCC | Kampala City Council |
| MLA | Mutual Legal Assistance |
| MoU | Memorandum of Understanding |
| NEPAD | New Partnership for Africa's Development |
| NYS | National Youth Service |
| OECD | Organisation for Economic Cooperation and Development |
| PCA | Prevention of Corruption Act |
| PPRA | Public Procurement Regulatory Authority |
| PSC | Public Service Commission |
| SADC | Southern African Development Community |
| SCC | Special Criminal Court |
| SIC | Special Investigation Commission |
| SIP | Special Investigation Panel |

| | |
|----------|--|
| StAR | Stolen Asset Recovery Initiative |
| UN | United Nations |
| UNCAC | United Nations Convention against Corruption |
| UDHR | Universal Declaration of Human Rights |
| UNCITRAL | United Nations Commission on International Trade Law |
| UNGA | United Nations General Assembly |

CHAPTER ONE

INTRODUCTION

Corruption can be described as an invisible enemy among human beings. The question that comes to mind is: whose enemy is it exactly? There is no shadow of a doubt that corruption is not the enemy of its beneficiaries, but the exclusive and ultimate enemy of anyone deprived of its benefits. Corruption is endemic: it exists everywhere.¹ Furthermore, in societies where it has been entrenched in the social fabric, it has been elevated to a culture, a daily practice, a way of life and a means to an end. In such instances, corruption often benefits both the perpetrator (the person who offers a promise, reward or gift in order to achieve something) and the beneficiary (the person who receives the gift or reward, or the person to whom a promise is made). For example, when a bribe for the issuance of a licence or permit is given to a state official, the transaction benefits the perpetrator as s/he gets what s/he wants (not deserves at that specific moment) and the receiver of a gift is enriched by the bribe s/he receives. Unfortunately, those who do not have the means to make such a promise (offer a reward or give a bribe) are adversely impacted by such corrupt practices, as the perpetrators and beneficiaries (or recipients) regard giving a bribe, reward or promise as the conventional way of doing business or achieving something.

The term “corruption” is usually used in society when people feel they are being deprived of what rightfully belongs to them, or when they do not get proper services that should be rendered to them simply because they have not engaged in any conduct aimed at facilitating the delivery of such a service. Within communities, there are both public and private spheres. The state, on the one hand, has an obligation to render services to both natural and legal persons over which it has jurisdiction. Some of these services include the provision of water, educational facilities, medical institutions,

¹ Gerald E. Caiden, “Accounting For Success in Combating Corruption” in *Different Paths to Curbing Corruption: Lessons from Denmark, Finland, Hong Kong, New Zealand and Singapore*, ed. Jon S. T. Quah, (Bradford: Emerald Group Publishing, 2013), 196.

driving licences, business permits, construction sites, building authorisations, among others. Individuals and groups operate within the private sphere. However, to a greater extent, the existence and survival of the private sphere, especially with regard to social and economic activities, depends on the regulations in place that are implemented by the state (as clearly, it is a prerogative that it enjoys based on sovereignty). Therefore, interaction between the private and public spheres will occur on a regular basis. For instance, permits for business activities have to be applied for and obtained prior to the commencement of business; driving licences have to be issued to applicants in order to enable them to drive; associations have to be registered in conformity with laws and policies in place before they can operate. Such scenarios highlight the frequent interaction and intersection between public and private spheres in every community.

However, how these interactions are done, what processes are followed, the speed at which these processes are run and their outcomes remain matters to be determined by every public official in charge. Despite the fact that laws and policies regulate these, the power to implement them is often discretionary. In areas where administrative accountability is weak or lacking, the exercise of such discretionary powers may be unreasonable, discriminatory, biased and unfair. Even in cases where there are sufficient guards against such mal-administrative practices, individuals still show a tendency to influence the outcomes of applications, especially when they know they do not qualify. This paves the way for the giving of gifts (referred to as “bribes” in criminal law). Similar situations occur when businesses influence individuals in positions of authority to obtain contracts by making promises to them. In the public sphere, a state official may appoint a relative who lacks the requisite qualification for a position. Additionally, assets entrusted in the hands of a public official may be misappropriated or embezzled, for instance, making use of a state-funded car for a private trip or siphoning funds allocated for a project to other personal projects. In politics, the outcome of elections may be influenced through voter fraud and dubious counting mechanisms put in place to gain access to or to retain political power. Examples of such illicit, dishonest and fraudulent practices abound. Seen from both a layperson’s and a legal perspective, these are all acts of corruption. The question that comes to mind is: what then is corruption? The different ways in which corrupt acts are committed help to explain the elusiveness of finding a universally acceptable definition of what corruption is. As explained later in this book, the difficulty in defining corruption partly explains why overcoming it has been challenging to numerous legal systems, especially in Africa.

Studies by legal and social scientists (who have written on the subject) have attempted to deconstruct the term “corruption”. Prior to examining these studies, the definition of corruption as suggested by two dictionaries of English is provided. The Oxford English Dictionary defines corruption as a “dishonest or fraudulent conduct by those in power, typically involving bribery”.² This is quite a restrictive definition as it defines corruption within the context of those in power. The Merriam Webster Dictionary provides a much broader definition of corruption. The term is seen or understood as “dishonest or illegal behaviour, especially by powerful people (such as government or police officials)”.³ This definition is situated within the broader term but with great emphasis on those in power.

These two definitions provide a starting point for the delineation of what corruption is (at least, from the perspectives of these definitions). As defined, corruption involves an act. The act could take different forms: promises, gestures, gifts, rewards, prizes, misappropriation, influence, or fraud. However, the act itself does not suffice to make it corruption (when seen from a legal perspective). It is the intent underlying the act that would qualify it as corruption. In this regard, such an act must be dishonest, fraudulent, illegal or even unethical for it to meet the requirements of a corrupt act. This analysis assumes that corruption, as defined above, is not limited to the public sphere; it may take place within the private sphere, even though prosecution of such cases depends on a variety of factors.

Beyond these definitions, scholars and practitioners have propounded numerous definitions on what they perceive to be corruption. Some scholars argue that there is no universal definition of corruption; some even say that a universal definition is probably impossible.⁴ Other scholars, however, provide a much more general and broader definition of what corruption is by pointing out that it is a deeply rooted phenomenon that consists of a wide variety of actions and/or behaviours that refer to a dynamic process and its outcome.⁵ On the contrary, other scholars define corruption as the sale of government sources by government officials for private gains.⁶ However,

² Sharon Hayes, *Criminal Justice Ethics: Cultivating the Moral Imagination* (UK, Oxon: Routledge, 2015), 136.

³ <http://www.merriam-webster.com/dictionary/corruption> accessed May 12, 2019.

⁴ Mark Jorgensen Farrales, “What is Corruption? A History of Corruption Studies and the Great Definitions Debate” (2005) *UCSD*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962.

⁵ Divyanshi Chugh, “Psychology of Corruption: The Motivation behind and Conditioning of Corruption in India” *The Learning Curve*, (2012) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2117247.

⁶ Abhijit Banerjee, Rema Hanna, and Sendhil Mullinathan “Corruption” in *The Handbook of Organisational Economics*, ed. Robert Gibbons and John Roberts,

this definition is quite restrictive, as it focuses only on corruption in the public sphere: that is, corruption perpetrated by individuals linked to government.

By inserting the involvement of government officials into the definition of corruption, there is a likelihood of corruption becoming associated with the culture and practice of politics. Therefore, corruption becomes traditionally accepted and perceived as a practice by government officials who occupy public offices. This approach is not only limited but also complicated, as it eliminates other instances of corruption occurring in the private sphere. For this reason, perhaps corruption should be seen from different perspectives: from both the Moralism and Revisionist Schools. Philosophers in the Moralism School condemn corruption, arguing that any and every kind of corruption is toxic to society, politics and development. Moreover, moralists believe that corruption is one of the unpalatable consequences of a lack of moral behaviour, which in turn, holds back society from further development. On the other hand, philosophers in the Revisionist School are hesitant to quickly condemn corruption. These philosophers believe that corruption emanated from the “disequilibria between different systems”, and that corruption is a result of modernisation and development. Put simply and categorically, Revisionists do not see corruption as being “inherently harmful”.⁷

Corruption is generally categorised into three groups: political corruption, economic corruption, and public administration corruption. The involvement of state officials, some of whom are political actors, in the definition of corruption, partly helps to explain political corruption. Political corruption exists when a person has gained political power, which subsequently leads to the deviation of the individual’s behaviour from the guidebook of state politics and policies. Such deviation from the guide affects decisions made by government officials: they abuse their political power by serving their private interests and replace public and common

(New Jersey: Princeton University Press, 2012), 1112; Andrei Shleifer and Robert W. Vishny, *The Grabbing Hand: Government Pathologies and their Cures* (Cambridge: Harvard University Press, 2002), 91; Omer Gokcekus and Kevin Bengyak, *Peculiar Dynamics of Corruption: Religion, Gender, EU Membership, and Others* (Singapore: World Scientific, 2014), 11; Geoffrey M. Hodgson, *From Pleasure Machines to Moral Communities: An Evolutionary Economics without Homo economics* (Chicago: University of Chicago Press, 2012), 154; Alberto Ades and Rafael Di Tella, “The New Economics of Corruption: A Survey and Some New Results” in *Combating Corruption in Latin America*, ed. Joseph S. Tulchin and Ralph H. Espach, (Washington: Woodrow Wilson Centre Press, 2000), 38.

⁷ See Farrales, *What is corruption*.

interests with private gains.⁸ Actors of political corruption act with “a certain amount of deliberate, coordinated action in order to share the benefits and subsequently hide the activity from regulators, the press, or the parties being disenfranchised”.⁹ Economic corruption occurs when the principal’s interests are sacrificed for the agent’s interests resulting in the making of profits.¹⁰ Lastly, public administration corruption exists when state officials abandon the principles of public service responsibility and accountability, such as efficiency, truthfulness and openness. This often results in the transfer of public benefits to private benefits.¹¹

Some scholars argue that, depending on the power an individual has to make decisions, corruption can be either active or passive.¹² Active corruption may be described as a deliberate act by anyone who promises or gives, directly or through a third party, an advantage of any kind to an official for either himself or any other person, to enable the official to act or refrain from acting in accordance with his/her duties or functions,¹³ whereas passive corruption occurs when an official accepts or receives payment.¹⁴

Apart from the above-mentioned categories of corruption, the latter may also be categorised as either grand or petty. Grand corruption involves a lot of money and is frequently defined as the considerable spending of funds, which has a major impact on a government budget and the development of a country.¹⁵ The general concern with grand corruption is that it affects the

⁸ José G. Vargas-Hernández, “The Multiple Faces of Corruption: Typology, Forms and Levels” in *Organization Immunity to Corruption: Building Theoretical and Research Foundation*, ed. Agata Stachowicz-Stanusch, (Charlotte: Information Age Publishing, 2009), 132.

⁹ Peter DeLeon, *Thinking about Political Corruption* (UK, London: Routledge, 2015), 25.

¹⁰ Vargas-Hernández, “The Multiple Faces of Corruption: Typology, Forms and Levels”, 132.

¹¹ Vargas-Hernández, “The Multiple Faces of Corruption: Typology, Forms and Levels”, 133.

¹² Vargas-Hernández, “The Multiple Faces of Corruption: Typology, Forms and Levels”, 132.

¹³ Stuart H. Deming, *The Foreign Corrupt Practices Act and the New International Norms* (Chicago: American Bar Association, 2010), 423.

¹⁴ Sharon Eicher, “What Corruption is and Why it Matters” in *Corruption in International Business: The Challenge of Cultural and Legal Diversity*, ed. Sharon Eicher, (Farnham: Gower Publishing Ltd, 2012), 5.

¹⁵ Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences, and Reform* (Cambridge: Cambridge University Press, 1999), 27; Vinay Kumar Bhargava and Emil P. Bolongaita, *Challenging Corruption in Asia: Case Studies and a Framework for Action* (Washington: World Bank Publication, 2004), 90;

level of trust society has in its leaders and, most importantly, widens different levels of inequality.¹⁶

Petty corruption may be understood as “bribes and other direct and illegal perks offered to street-level bureaucrats”.¹⁷ Petty corruption may also be described as a street-level form of corruption involving an individual interacting with the state. Technically speaking, petty corruption involves middle- or low-level public officials who are often grossly underpaid and interact directly with the public.¹⁸ The obvious effect of this form of corruption is that it generally harms poor members of society when they interact with public officials to request public services.¹⁹

There are two distinct scholarly positions regarding the impact of corruption. On the one hand, some scholars condemn corruption, arguing that it has negative effects on governments, economies and service delivery, while on the other hand, other scholars contend that corruption has positive effects. Those belonging to the latter school of thought argue that corruption may aid both foreign and domestic entrepreneurs and investors, and could be helpful in gaining some sort of control over policy progress and government activities in the economy which, in turn, would significantly reduce the negative effects of existing political uncertainties on investments and productive activities.²⁰ China, with its unparalleled growth, is used as an example. Combining China’s growth with its high levels of corruption, it could be argued that “China’s corruption may be more developmental than destructive”.²¹ Disciples of this school of thought consider corruption as a lubricant to the wheels of development, an ideology debunked in this book.

Other schools of thought hold a different view. These scholars believe that corruption has a negative impact on both direct domestic and foreign

Dante B. Canlas, Muhammad Ehsan Khan, and Juzhong Zhuang, ed. *Diagnosing the Philippine Economy: Toward Inclusive Growth* (London: Anthem Press, 2011), 314.

¹⁶ Paul Heywood, *Routledge Handbook of Political Corruption* (UK, London: Routledge, 2014), 200.

¹⁷ Heywood, *Routledge Handbook of Political Corruption*, 111.

¹⁸ Thomas Theisohn and Carlos Lopes, *Ownership Leadership and Transformation: Can We Do Better for Capacity Development* (UK, London: Routledge, 2003), 115.

¹⁹ Amitava Mukherjee, *Food Security in Asia* (New Delhi: SAGE Publications India, 2012), 79.

²⁰ John Mukum Mbaku, *Corruption in Africa: Causes, Consequences, and Cleanups* (US, Lanham: Lexington Books, 2010) 95.

²¹ Shawn Shieh, “Corruption, Economic Growth and Regime Stability in China’s Peaceful Rise”, in *China’s “Peaceful Rise” in the 21st Century*, ed. Sujian Guo, (England: Ashgate Publishing Ltd, 2006), 65.

investment.²² One of the significant effects of corruption is its ability to affect investment levels and income from taxes, which in due course reduce the income of the economy, thus raising the cost of transactions. The most important effect of corruption is “on the pattern of allocation of resources” and distribution of income within a society.²³ The reason why the allocation of resources within a society is distorted is “because contracts are given not based on rates but on corrupt income generation”. As to the distribution of income, this is so because corruption favours the rich.²⁴

The adverse impact of corruption is felt across every sector of public life: service delivery, conduct of political elections at all levels, good governance, the promotion, protection and respect for human rights, and infrastructural development.²⁵ It erodes the confidence the people have in their public institutions, and gradually replaces efficiency with mediocrity. An example of corruption in state institutions is typical of legal systems. For example, a party in a lawsuit or someone with interest therein corrupts the judge in order to win a case.²⁶ Corruption also widens the gap between rich and poor, destabilises legitimate governments and polarises communities between the haves (those in economically and politically viable and stronger positions) and the have-nots (victims of corrupt practices).²⁷ Corruption may also challenge the legitimacy of democratic institutions. Furthermore, corruption can cause “political instability in a country (through its effects on income polarisation) and the violence that can flow from it”.²⁸

No society is immune to corruption. In other words, corruption is endemic, practised in both developed and developing countries, urban and rural areas, and democratic and autocratic governments alike. However, the issue here is not about completely eradicating corruption. The challenge is to bring corruption to a level that is tolerable and manageable. As such,

²² Aminur Rahman, Gregory Kisunko, and Kapil Kapoor, *Estimating the effects of Corruption: Implications for Bangladesh* (Washington: World Bank Publication, 2000), 9.

²³ S. D. Chamola, *Kautilya Arthshastra and the Science of Management: Relevance for the Contemporary Society* (Delhi: Hope India Publications, 2007), 109.

²⁴ Chamola, *Kautilya Arthshastra and the Science of Management*, 109.

²⁵ Kim SOO-Am, Kook-Shin Kim, and Min Hong, *Relations between Corruption and Human Rights in North Korea* (South Korea: Korea Institute for National Unification, 2013), 14.

²⁶ Edgardo Buscaglia, *Judicial Corruption in Developing Countries: Its Causes and Economic Consequences* (California: Hoover Press, 1999), 3.

²⁷ Lorenzo Pellegrini, *Corruption, Development and the Environment* (New York: Springer Science and Business Media, 2011), 63.

²⁸ Pellegrini, *Corruption, Development and the Environment*, 63.

different countries have developed different legislative and institutional mechanisms aimed at managing the incidence of corruption and bringing it to a tolerable level.

According to the data revealed by the global anti-corruption watchdog, Transparency International (hereinafter TI), many African countries are plagued with corruption. This, however, does not mean that the levels of corruption in African countries are the same. As publicised by TI in its 2019 corruption index data, the least corrupt African countries are Botswana, Cape Verde, Rwanda, and Seychelles.²⁹ Strategies taken by these countries are commendable.

Corruption is a global crisis causing economic, political and social damage. There is a need for the international community and governments to take a stand to fight this pandemic. For this to happen, countries must acknowledge the presence of corruption within society and how it can easily infiltrate weak government administrations and cloak itself and thrive in frail legislation. In an attempt to bring corruption to a level that is both manageable and tolerable, countries, individually and collectively, have deliberated, established and implemented anti-corruption instruments. The core objectives of these instruments are not limited to ensuring that corruption is manageable and tolerable, instead, the instruments seek to ensure the detection, prevention and eradication of corruption in an attempt to create a corruption-free society. Unfortunately, over the decades, achieving these tasks has proved to be an extremely strenuous endeavour. Numerous reasons account for this, some of which include the clandestine nature of transactions, privacy concerns, the syndicated character of high-profile corruption in which numerous individuals play different roles, and the lack of political will in translating this vision into reality. Corrupt transactions often require a variety of persons offering social and structural support in their participation in corrupt activities. As such, when inequality increases, people tend to justify their corrupt activities.³⁰ Within the African context, these factors are not only present, they also elucidate the urgent necessity of a strong political will to allow national instruments and institutions to achieve these objectives.

²⁹ Elie Virgile Chrysostome and Rick Molz, ed. *Building Businesses in Emerging and Developing Countries: Challenges and Opportunities* (UK, London: Routledge, 2014), 53; and “Corruption Perception Index 2018”, *Transparency International*, accessed June 13, 2019, https://www.transparency.org/files/content/pages/2018_CPI_Executive_Summary.pdf.

³⁰ You Jong-sung and Sanjeev Khagram, “A Comparative Study of Inequality and Corruption” *American Sociological Review* 70, no. 1 (2005), 136, 139 and 140.