

A SURVEY OF CORRUPTION AND ANTI-CORRUPTION INITIATIVES IN AFRICA

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ABSTRACT

Corruption has blighted national economies in Africa. Although most African states have subscribed to and ratified international and regional anti-corruption conventions, corruption continues unabated. Failure to incorporate treaty provisions into national law is one of the barriers to combating corruption effectively. The devastating impact of this economic crime on the lives of vulnerable groups has prompted the emergence of self-help groups intent on tackling corruption frontally. These initiatives hold much promise. However, corruption emanating from the private sector and multinational companies poses a veritable challenge that needs to be overcome.

1 INTRODUCTION

Prior to the 1990s, the mainstream legal literature devoted scant attention to corruption. It was hardly a topic on which to write a book, let alone a subject worth teaching in a law school.¹ It was not until the mid-1990s that corruption became a major concern at both the national and international level. For the first time waves

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1 Wolf S & Schmidt-Pfister D (2010) “Between Corruption, Integration and Culture: The Politics of International Anti-Corruption” in Wolf S & Schmidt-Pfister D (eds) *International Anti-Corruption Regimes in Europe: Between Corruption, Integration and Culture* Baden-Baden: Nomos at 13. See also Rothstein B & Torsello D (2013) *Is Corruption Understood Differently in Different Cultures? Anthropology Meets Political Science* Working Paper Series 5, Quality of Government Institute: University of Gothenburg 2-27 at 3.

of empirical studies were conducted to establish the causes and consequences of corruption. But the findings of these studies were hardly consistent. Some even found corruption to be simultaneously a causal variable and a consequence of other variables.² Notwithstanding the outcomes of these empirical investigations, it is an undeniable fact that corruption has taken its greatest toll in Africa. The 2005 African Governance Report by the Economic Commission for Africa showed that in household surveys conducted across 18 African countries, corruption was perceived to be the most serious national problem next to poverty and unemployment, more serious than HIV/AIDS, crime, inefficient government services, insecurity, instability and human rights violations.³ A document titled *Combating Corruption, Improving Governance in Africa*, prepared by the UN Economic Commission for Africa in collaboration with the African Advisory Board on Corruption, observes that: “In many corruption perception surveys and indices, Africa is perceived as the most corrupt region in the world, and concomitantly also the most underdeveloped and backward region”.⁴

Given the general nature of its theme, this article is structured roughly as follows. It starts with a brief exposition of the concept of illicit financial flows and then goes on to focus on corruption as one of the causes of the Arab Spring, and the impact which the North African social protest movements have had on Sub-Saharan Africa. Next in line for consideration are the causes of corruption in Africa. This section includes a rather longish discussion of colonial rule as an originator of corruption. This historical reflection is continued with a brief examination of corruption in the post-colonial period and the emergence of public protest against corrupt leadership. What follows is a survey of the anti-corruption efforts underway, starting with a brief, general look at the African Union Convention on Preventing and Combating Corruption (AU Convention). The final part of the article is devoted to the role of foreign companies in promoting corruption in Africa.

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- 2 See generally Lambsdorff JG (1999) “Corruption in Empirical Research – A Review” Paper delivered at the 9th International Anti-Corruption Conference, Durban, South Africa, 10-15 December 1999, available at http://www1.worldbank.org/publicsector/anticorrupt/d2ws1_jglambsdorff.pdf (visited 10 November 2017).
- 3 Economic Commission for Africa (2005) *African Governance Report* Addis Ababa: ECA at 155.
- 4 See Governance and Public Administration Division (GPAD) of the Economic Commission for Africa (ECA) in Collaboration with the African Union Advisory Board on Corruption *Combating Corruption Improving Governance in Africa – Regional Anti-Corruption Programme for Africa (2011-2016)* at 1.

It should be noted that in this article the use of the term “corruption” is informed by the Transparency International definition of corruption, which is “the abuse of entrusted power for private gain”.

2 CORRUPTION AND ILLICIT FINANCIAL FLOWS

Corruption goes hand in hand with the concept of illicit financial flows (IFFs) — a relatively new concept which has yet to be defined in the international anti-corruption and anti-money laundering legal framework, but which the *United Nations Coherent Policies for Combating Illicit Financial Flows* describes broadly as constituting all “cross-border financial transfers, which contravene national or international laws”. This omnibus description:

encompasses several different types of financial transfers, made for different reasons, including: funds with criminal origin, such as the proceeds of tax evasion, money laundering, fraud and corruption; funds with a criminal destination, such as bribery, terrorist financing or conflict financing; transfers to, by, or for, entities subject to financial sanctions under UN Security Council Resolutions.⁵

The term “Illicit financial flows” gained currency in the African context with the publication in 2015 of the *Report of the High Level Panel on Illicit Financial Flows from Africa*, known as the Mbeki Report, after its chairman, Thabo Mbeki, former president of South Africa. The most alarming statistic emanating from the Mbeki Report is that Africa is estimated to be losing more than \$50 billion annually in IFFs. This is a conservative estimate, for many countries do not keep accurate statistics, if at all, and it excludes the criminal proceeds of clandestine transactions such as bribery and trafficking in drugs, people and firearms.⁶

3 CORRUPTION AND THE ARAB SPRING

In past decades, the devastating impact of corruption on the lives of the citizenry was of little concern to most of the corrupt African heads of state. They generally were of the view that Africans inherently are too disorganised, docile and passive to express publicly their resentment of institutionalised corruption and lack of public services. However, the tumultuous social events that have come to be known as the Arab Spring, culminating in the leaders of Tunisia, Libya and Egypt

5 United Nations Office on Drugs and Crime (UNODC) & Organisation for Economic Co-operation and Development (OECD) (2016) *Coherent Policies for Combating Illicit Financial Flows* at 3 fn1, available at <http://www.oecd.org/development/pcd/> (visited 21 August 2018).

6 *Report of the High Level Panel on Illicit Financial Flows from Africa* (2015) at 13.

being ousted, resounded across Sub-Saharan Africa, sending shivers down the spines of corrupt autocrats. Regardless of the socio-political and cultural differences between Northern and Sub-Saharan Africa, the underlying causes of the northern revolts, namely, political exclusion, lack of the rule of law, corruption and patronage, were similar to those in the south. Consequently, civil protests erupted in more than a dozen Sub-Saharan countries,⁷ causing some leaders such as agony that, in Zimbabwe, for example, a former Member of Parliament and a few other people were charged with subversion after watching the North African protests on video. In Ethiopia, a journalist was threatened by police for commenting on the Arab Spring, and in Malawi a university lecturer was questioned for referring to the Egyptian uprising.⁸

However, the anti-corruption forces that impelled the Arab Spring did not succeed in subduing corruption. On the contrary, recent studies conducted in the Arab Spring countries show that corruption has not abated, with 60% of a total of 10 000 people polled across the region saying that there was still corruption within the government.⁹ Peleg & Mendilow ascribe the Arab Spring's failure to halt corruption to a combination of opposing factors ingrained in the Arab national polities. These are the continuing existence of: (a) tribal groups that benefit from the ruler's largesse in exchange for loyal support; (b) factional groups linked to autocratic regimes "despite or maybe even because of their proven corruption"; (c) the military, which has traditionally enjoyed a favoured rank in the national economy and is still capable of crushing any force opposed to the regime; (d) traditional Arab monarchies that routinely have propped up corrupt regimes in the region and repulsed demands for democratisation and corruption-free polities; and (e) radical Islamic groups opposed to the separation of state and religion and of the public and the private spheres of life. Thus, they postulate that:

7 Africa Centre for Strategic Studies (2011) *Africa and the Arab Spring: A New Era of Democratic Expectations* Special Report No 1 at 4.

8 Harsch E (August 2011) "'Arab Spring' Stirs African Hopes and Anxieties" *Africa Renewal Online* at 12, available at <https://www.un.org/africarenewal/magazine/august-2011/%E2%80%98arab-spring%E2%80%99-stirs-african-hopes-and-anxieties> (visited 10 November 2017).

9 *The Conversation* (13 June 2017) "Public Disgust over Corruption Threatens Stability in Middle East and North Africa", available at <https://theconversation.com/public-disgust-over-corruption-threatens-stability-in-middle-east-and-north-africa-79308> (visited 10 November 2017).

an interventionist policy in the life of the citizens by a state that cannot be challenged by those individuals or the public at large, creates abundant room for corruption. It blurs the boundaries between the private and the public and between the political and the socioeconomic.¹⁰

Very little has been done by the new political leadership to curb corruption. A Transparency International survey, conducted in 2016, showed that five years after the Arab Spring, one in three people in the region still pay bribes to gain access to public services.¹¹ Transparency International found that courts of law have the worst bribery rates of all public services, with half or more of the bribers admitting to paying bribes multiple times, depending on how often they have to resort to the police or the justice authorities.¹²

However, it would be taking the short view of things to believe that the Arab youth, which comprises 30% of the population, will succumb to the countervailing forces. They have started, after all, to chisel away at encrusted Arab traditions. They continue to be exasperated by the scarcity of employment opportunities, stagnating economies, unabated corruption and continuing political marginalisation. Observers of the Middle East and North Africa are warning even of a looming second Arab Spring.¹³ The head of the International Monetary Fund, Christine Lagarde, has cautioned that “public dissatisfaction is bubbling” up in the region, and has emphasised the need to “respond faster to the expectations and sometimes to the frustration of the people”.¹⁴

At a broad political level, the Arab Spring was a huge source of inspiration for anti-authoritarian forces in Sub-Saharan Africa, and a bane for the “big men” of Africa, amongst whom are some of the most enduring dictators in the world. In the months following the Arab Spring, protesters took to the streets in more than a dozen African cities, calling for transparency and the rule of law. The fact of the matter is that the economic growth that the continent has registered over the past decade has not translated into an alleviation of poverty or a reduction in youth unemployment and economic inequality. As a report by the Africa Centre for Strategic studies has noted:

10 Peleg I & Mendilow J (2014) “Corruption and the Arab Spring: Comparing the Pre-and Post-Spring Situation” in Mendilow J & Peleg I (eds) *Corruption in the Contemporary World: Theory, Practice and Hotspots* Lanham MD: Lexington Books at 101-102.

11 Transparency International (2016) *People and Corruption: Middle East and North Africa 2016* at 14.

12 Transparency International (2016) at 16.

13 See *Financial Times* (9 March 2018), available at <https://www.ft.com/content/83c7ce38-7e8f-4ff2-a87a-0ba1709d4123> (visited 20 June 2018).

14 *Daily News* (31 January 2018), available at <http://www.hurriyetdailynews.com/imf-head-warns-of-public-frustration-in-middle-east-north-africa-126574> (visited 20 June 2018).

Africans are going to be less willing to accept stolen elections, presidential term extensions, police impunity, and high-level corruption in the future. Rather, they will be more inclined to turn out on the streets, protest, and engage in civil disobedience to fight for and protect their rights.¹⁵

Whereas the end of the Cold War resulted in the deposing of several African despots, the introduction of multi-party elections and democratic institutions have not meant necessarily the emergence of clean and transparent governance. An example worth mentioning is South Africa, universally acclaimed for its model constitution and statutory bodies created to protect and promote human rights and to ensure transparent working of state institutions. Under the leadership of ex-president Jacob Zuma who, at the time of writing, is facing 18 charges of corruption, the country very nearly became a predator state but for Zuma being forced to resign. In a survey conducted by Transparency International and Afrobarometer between March 2014 and September 2015, four in five (83%) South African citizens interviewed said that corruption had increased over this period.¹⁶ Under Zuma, corruption manifested itself in all its guises, from grand corruption and state capture to rent-seeking and petty corruption. It was only after a sustained and huge show of people's power in the streets that the ruling African National Congress was compelled to recall Zuma from office. In November 2017, Robert Mugabe, the corrupt dictator of Zimbabwe, was replaced in a "soft coup" after massive demonstrations in the streets of the capital, Harare. Over the past two years thousands of people have taken to the streets in other African capitals, such as Addis Ababa, Khartoum, Accra and Nairobi, to voice their anger over unemployment and corruption.

4 CAUSES OF CORRUPTION IN AFRICA

Writers on corruption in Africa have sought to locate the sources of this vice in a variety of phenomena. The corrupting factors identified traverse cultural determinants, weak public institutions and procedures, poorly qualified personnel, dictatorial rule, politically fettered media, abundant natural resources, state involvement in the private economy, and under-paid civil servants. These factors

15 Africa Centre for Strategic Studies (2011) *Africa and the Arab Spring: A New Era of Democratic Expectations* (2011) ACSS Special Report No 1 at 9.

16 Transparency International & Afrobarometer (2015) *Global Corruption Barometer on Africa* at 2, available at <http://www.corruptionwatch.org.za/wp-content/uploads/2015/12/Africa-survey-2015-Global-Corruption-Barometer.pdf> (visited 13 November 2017).

have been cited either singly or in combination. Significantly, many writers have blamed the colonial era as one of the overriding causes of corruption in Africa.¹⁷

According to the Afrocentric point of view, there was no corruption in pre-colonial Africa. In other words, Africa represented the “near perfect community”.¹⁸ This school blames corruption squarely on colonialism. By contrast, the Decolonisation point of view holds that, since corruption is a universal concept, it pre-dates the colonial era.¹⁹ Igboin cites several emblematic usages in pre-colonial communities that were aimed at combating corruption. These include a surfeit of linguistic examples in African languages that illustrate the existence of acts of corruption outside the colonial experience. He points out, too, that there are numerous African proverbs and stories that are narrated for their moralising value and to inculcate an alternative way of living.²⁰ This point of view is corroborated by the findings of an anthropological study which analysed ethnographic data drawn from 258 indigenous cultures across the world. The study looked specifically at forms of economic behaviour of subsistence cultures against cultures which produce for commercial purposes. The researchers found that, independent of time and space, corruption is understood across different cultures as harmful to society.²¹ Variation in how corruption is perceived, the researchers conclude, is based not on disparities in the moral understanding of the problem, but on “how different societies come to understand and value the difference between public and private goods and also what most people expect that most other people in their society will do when faced with opportunities for bribery”.²²

To contend, as does the Afrocentric school, that Africa was a near perfect society before the onset of colonialism, would be an exaggeration. Locating the provenance of corruption in the coloniser is tantamount to saying that, absent colonial rule, African countries would not be plagued by corruption. In other words, colonisation is a *sine qua non* of corruption. If this were the case, how does

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- 17 See, for example, Mulinge MM & Lesetedi GN (2002) “Corruption in Sub-Saharan Africa: Towards a More Holistic Approach” 7 *African Journal of Political Science* 51-77 at 54-57; Tignor R (1971) “Colonial Chiefs in Chiefless Societies” 9 *Journal of Modern African Studies* 339-359 at 351; Blundo G *et al* (2006) *Everyday Corruption and the State: Citizens and Public Officials in Africa* London: Zed Books at 32; Yeh SS (2011) “Corruption and the Rule of Law in Sub-Saharan Africa” 4 *African Journal of Legal Studies* 187-208 at 192.
- 18 Igboin BO (2016) “Traditional Leadership and Corruption in Pre-Colonial Africa: How the Past Affects the Present” 42 *Studia Historiae Ecclesisticae* 142-160 at 148.
- 19 Igboin (2016) at 151-52.
- 20 Igboin (2016) at 152.
- 21 Rohstein & Torsello (2013) at 22.
- 22 Rohstein & Torsello (2013) at 22.

one then explain the high levels of corruption in Ethiopia and Liberia, which were never colonised?

4.1 The Colonial Origins of Corruption

There is no gainsaying the fact that the onset of colonial rule had far-reaching consequences in respect of the nature and extent of corruption. Although the methods or doctrines applied to subjugate the African indigenous peoples differed in terminology, the distinction between direct and indirect rule was immaterial for the colonised population.²³ Of paramount importance to the colonial rulers was that the indigenous population caused them no trouble. They therefore pressed strategic indigenous elites, who constituted the upper crust of African societies, into assisting with placating colonial subjects and collecting taxes from them. What mattered to the local indigenous chiefs was that they enjoyed absolute discretion in the way they went about their duties, as long as they retained the support and confidence of the local colonial government.²⁴ This system opened the door to massive abuses and corruption, as local chiefs were allowed to pocket some of the taxes as a way of securing their active co-operation. Without corruption the entire colonial project would have collapsed for want of finances to maintain the vast colonial administrative infrastructure and the colonial army. In the words of Yeh, these “colonial practices institutionalised favouritism, aggrandisement and despotic rule, essentially training African elites in the methods of favouritism, the exercise of unbridled power, and personal enrichment”.²⁵

Taxes were not invented by the colonial powers. For example, long before the arrival of the Europeans in Mozambique, to the south of the Save River subjects used to pay a series of taxes to their chiefs. A tax was paid to the local chief at the harvest (*chihundjo*), for a portion of the quarry hunted or the fish caught, and for leavened home-brewed alcoholic drinks.²⁶ Subjects were required also to plough the chief’s fields (*lavra da machambas*) and to maintain his huts. The chief was paid these taxes for his position as intermediary between the living and the dead, and for his role in maintaining the communal social equilibrium. In addition, the taxes were his recompense for presiding over the rain propitiating ceremonies, for mediating disputes between his subjects, for being the symbolic owner of the forests and the animals living in them, and for being the guardian of

23 Davidson B (1966) *Africa: History of a Continent* London: Weidenfeld & Nicholson at 283.

24 See Mamdani M (1996) *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* Princeton, NJ: Princeton University Press at 54.

25 Yeh (2011) at 192.

26 Zamparoni V (2012) *De Escravo a Cozinheiro: Colonialismo e Racismo em Moçambique* (2ed) EDUFBA/CEAO: Salvador at 65.

the land and of everything that existed on it.²⁷ Towards the end of the 19th century, when already surrounded by a money economy, the chiefs started to demand that their subjects pay taxes to them in cash under the most diverse pretexts.²⁸

Similar circumstances characterised pre-colonial Zimbabwe, where the advent of colonial rule eroded the social standing of chiefs and diminished their material wealth. Chiefs, therefore, “sought to maintain their positions within the colonial administrative framework in order to exploit any emerging opportunities of accumulating wealth”.²⁹ To court their support and loyalty, the colonial government paid the chiefs allowances for recruiting labour and collecting taxes. What is more, chiefs were plied with a variety of perquisites, which incorporated excursions to the Kariba Dam, tours of the then University of Rhodesia and Nyasaland, and world tours, including visits to South Africa’s Homelands.³⁰ Curiously, some 20 years after independence the then President Mugabe bought off many traditional leaders by offering them modern-day lures, such as attractive wages, farms, modern agricultural machinery, pick-up vans, electrified houses, and mobile phones to ensure their political support. Some chiefs, though, plainly refused to succumb as political stooges.³¹

In one study, writers have correlated the degree of corruption in post-colonial Africa with the erstwhile proportionate size of the colonising European population to the indigenous population. The study found that the degree of European settlement is often more significant than the identity of the colonial power.³² It concluded that higher levels of European settlement resulted in more powerful elites and more corruption only as long as the Europeans represented a minority of the population. The study rationalised this finding on the grounds that corruption is at its peak in societies where powerful elites who control the natural resources are not concerned with the well-being of others — a pattern that has

27 Zamparoni (2012) at 66.

28 Zamparoni (2012) at 66.

29 Duri FPT (2017) “Interfacing the Past and Present: Traditional Leaders, Politics and Materialism in Zimbabwe since the Pre-colonial Period” in Nhemachena A & Mawere M (eds) *Africa at the Crossroads: Theorising Fundamentalisms in the 21st Century* Langaa Research & Publishing Common Initiative Group: Mankon, Bamenda at 254 & 256-257.

30 Duri (2017) at 261.

31 Duri (2017) at 265 & 280.

32 See Angeles L & Neanidis KC (2013) *Colonialism, Elite Formation and Corruption* Centre for Growth and Business Cycle Research Discussion Paper Series 144: Economics, University of Manchester 1-22 at 18, available at <http://hummedia.manchester.ac.uk/schools/soss/cgbcr/discussionpapers/dpcgbc144.pdf> (visited 20 May 2018).

“perpetuated itself up to the present through institutional persistence given that change was not in the interest of those in power”.³³

In contrast to the findings of the above-mentioned study, a 2015 survey by researchers from Lisbon University showed that the identity of the colonial power strongly correlated to levels of corruption prevalent in Sub-Saharan Africa. The authors found that, of the 15 former Francophone, Anglophone and Lusophone colonies in Africa, the latter experienced considerably less corruption than the former two and that levels of poverty had no significant correlative value.³⁴ The authors attribute the reduced levels of corruption in Lusophone countries to the fact that, in the case of the Anglophone colonies, the administration was left to a relatively autonomous governor who presided over an elaborate network of indigenous collaborators such as chiefs, administrators, interpreters and police. These collaborators were offered an opening into the colonial administration and, in the course of time, were represented in local and executive organs, thus enjoying vast powers in relation to their own, internal political affairs.³⁵ The Francophone colonies, by contrast, functioned as an authentic department of the French state, with African elites enjoying political representation at the metropolitan level. This form of representation, though narrow, was important and explains how leaders, such as Houphouët Boigny of the Ivory Coast, had a crucial say during the French colonial era.³⁶ In the Lusophone colonies, Portugal never bothered about giving the indigenous population representation at the local level, as it did not regard Africans as citizens. Assimilation into the colonial state was so restricted that *assimilados* constituted only a tiny fraction of the indigenous population.³⁷

In this context, the authors of the 2015 study contend that the absence of a tradition of representation and accommodation of African elites in the Portuguese imperial framework may have contributed to the lower levels of corruption in the Portuguese-speaking countries of Sub-Saharan Africa:

33 Angeles & Neanidis (2013) at 7.

34 Dias AL, Lúcio J & Coelho TD (2015) “Corrupção e Pobreza em África: Os Legados Coloniais em Perspectiva Comparada” 66 *Revista do Serviço Público Brasília* 395-424.

35 Dias, Lúcio & Coelho (2015) at 412.

36 Dias, Lúcio & Coelho (2015) at 412.

37 For a general account of the lowly position of the *assimilados* in Mozambique, see Sumich JM (2005) *Elites and Modernity in Mozambique* (unpublished PhD thesis, London School of Economics) at 63-66, available at http://etheses.lse.ac.uk/831/1/Sumich_Elites_and_modernity_in_Mozambique.pdf (visited 28 June 2018).

In other words, it is possible that the specificities of the Portuguese-speaking colonial state may have originated in the disunited elites, who do not feel the need to distribute the benefits of state to accommodate other (competing) elites, since they are excluded from the political scene, thus reducing corruption in these countries also may have contributed to the disunity of the elites in the post-colonial period.³⁸

To sum up, the literature points to an undeniable link between colonialism and corruption. But the correlation, at least for Africa, is not as linear as is assumed generally, for there are other complexities that come into play, which affect the robustness and vary the outcomes of empirical studies on this topic. Lambsdorff, therefore, rightly points to the need for more rigorous analysis of the various other specific characteristics that typified colonial rule and that extend beyond the use of dummy variables.³⁹ One question that would need to be answered is whether colonisation was a *sine qua non* of the existence corruption in Africa. As noted above, Ethiopia and Liberia never were colonised formally, yet both countries display high levels of corruption. At this point, however, the discussion must turn to considering how corruption was perpetuated in post-colonial Africa, and what impact it has had on African nations.

4.2 The Impact of Corruption on the Post-Independence African State

The practice of employing traditional and strategic elites to help integrate the colonised population into the colonial structure encouraged the perception amongst local communities that, in fact, power does not proceed from the people, but is “bestowed on someone anointed from above”.⁴⁰ The perceived illegitimacy of the colonial government diluted the restraints on stealing and the misappropriation of state property.⁴¹ Small wonder, then, that in Africa the privileged groups are found in politics and bureaucracies rather than in business.⁴² Access to the apparatus of state proved to be a powerful tool to leverage state resources for personal gain. The post-independence African heads of state were, therefore, quick to combine economic and political power to influence economic policy in such a way as to enrich themselves. Political supporters were given government positions which permitted them to introduce bureaucratic hurdles

38 Dias, Lúcio & Coelho (2015) at 413 (Author’s translation from Portuguese text).

39 Lambsdorff (1999).

40 See United Nations Economic Commission for Africa (2016) *Measuring Corruption in Africa: The International Dimension Matters — African Governance Report IV* Addis Ababa: UNECA at 62.

41 UNECA (2016) at 62.

42 Bryde B-U (1976) *The Politics and Sociology of African Legal Development (Veröffentlichungen aus dem Institut für Internationale Angelegenheiten der Universität Hamburg - Band 2)* Hamburg: Alfred Metzner Verlag GmbH at 58.

which they used to levy artificial fees to expedite requests through the administrative process, thereby effectively throttling economic activity.⁴³

Corruption made possible lavish lifestyles, known in Abidjan as “platinum life” and in East Africa as the *Wabenzi*, an Anglicisation of *waBenzi*. The latter is a pejorative colloquial African word used first in post-colonial Kenya to characterise the corrupt ruling classes which superseded the colonial regime and whose members were to be seen driving luxury imported cars, such as Mercedes-Benzes, hence *waBenzi*. In Ghana, the first country in Sub-Saharan Africa to gain independence, the president himself, Kwame Nkrumah, drew on government funds for personal use when necessary and he even set up the National Development Corporation “to facilitate the handling of bribes from foreign businessmen, and others seeking government contracts”.⁴⁴

It is a trite fact that corruption has devastated African economies, wreaking havoc with the lives of ordinary people. The political and social costs of corruption are clear. Corruption depletes trust in government, undermines a country’s ability to maintain economic growth and destroys the social cohesion necessary to build solid institutions of governance, to create opportunities for the young and to confront pressing social and environmental challenges. To their credit, the truth commissions that were established in Chad, Ghana, Sierra Leone, Liberia and Kenya over the last two decades had pioneering mandates to uncover how corruption, land grabbing and war have violated socio-economic rights. This shift in focus to what is called “economic violence” broke with the dominant focus of traditional truth commissions on gross violations of civil and political rights.⁴⁵

A 2018 study published by Transparency International which analysed the links between land, corruption and women’s well-being across eight Sub-Saharan countries shows that corruption impairs women disproportionately to men as regards the possession, use and ownership of land. In addition, deep-rooted cultural norms and traditional systems of land tenure in many African countries constitute an almost insurmountable barrier for women desirous of living on, owning or cultivating a piece of land. In all the countries surveyed, women admitted having to pay bribes to resolve a land issue, to speed up a land transaction, to secure a land title or to avoid eviction. In most cases the bribes are

43 Yeh (2011) at 192-193.

44 Meredith M (2006) *The State of Africa: A History of Fifty Years of Independence* London: Free Press at 173.

45 See Sharp DN (2014) “Economic Violence in the Practice of African Truth Commissions and Beyond” in Sharp DN (ed) *Justice and Economic Violence in Transition* New York: Springer at 93-103.

paid to public officials, community leaders, farmers' associations or private investors. These corrupt practices occur despite the existence of national laws and instruments across the continent aimed at addressing women's land rights. What is missing is a lack of political will to implement and enforce the laws and conventions. However, civil society groups have begun to respond strongly and imaginatively to this form of corruption. Some of the approaches adopted, which shall be described later on, include a holistic, feminist approach to women's rights — one which tackles the present asymmetrical power distribution between men and women and which ignores the voice of women in decision-making processes.⁴⁶

5 ANTI-CORRUPTION MEASURES

On the broad civic front, Africa has begun to witness the emergence of a new generation of activists, entrepreneurs and NGOs wearied by oppressive state debt, prolonged economic inertia, and chronic corruption. Calls for democratic institutions, transparent government, and wise economic policies are starting to echo across the continent. The section below looks at some of the anti-corruption measures which have been implemented in Africa in the last two decades or so.

5.1 The African Union Convention on Preventing and Combating Corruption

The AU Convention, which was adopted by African heads of state in 2003, and came into force in August 2006, represents Africa's most concerted transnational attempt to combat corruption. It was opened for state signature in Maputo in 2003, two years after the Southern African Development Community Protocol against Corruption and five months before UNCAC. The AU Convention is Africa's main anti-corruption policy and political framework. Its adoption was a momentous accomplishment, in the sense that it symbolised to the peoples of Africa and to the world in general that Africa was determined to rid itself of the menace of corruption which so has blighted its image. The adoption of the AU Convention stemmed from concern for the "negative effects of corruption and impunity on the political, economic, social and cultural stability of the African States and its devastating effects on the economic and social development of the African peoples".⁴⁷ The AU Convention is supplemented by several other AU treaties, including: the African Charter on Democracy, Elections and Governance, adopted in 2007; the African Charter on the Values and Principles of Public Service and Administration, adopted in 2011; and the African Charter on the Values and

46 Transparency International (2018a) *Women, Land and Corruption: Resources for Practitioners and Policy-Makers* at 50.

47 Preamble to the AU Convention.

Principles of Decentralisation, Local Governance and Local Development, adopted in 2014. At the sub-regional level, the collective commitment by Africans to fight corruption is enshrined in anti-corruption protocols of the Southern African Development Community (SADC), the Economic Community of West African States (ECOWAS) and the East African Community. However, there is room to deal only with the AU Convention in this article.

While UNCAC is regarded as the most comprehensive anti-corruption treaty to date, the AU Convention contains the most comprehensive set of mandatory provisions of all international anti-corruption instruments. Although the two treaties differ in a number of respects, especially as to geographical coverage, scope, mandatory/hortatory nature of their provisions and the usefulness of their review mechanisms, they share a common aim and purpose.⁴⁸ Like UNCAC, the AU Convention does not define corruption, but lists a range of practices criminalised in the laws of several countries.

Regrettably, the AU Convention does not make it mandatory for states parties to adopt some of the measures which are necessary to curb corruption. It merely requires them, for example, “to commit themselves” to having all public officials declare their assets when they assume their term of office, during their term of office and after their term of office in the public service,⁴⁹ or “to undertake” to adopt witness protection measures⁵⁰ and set up, maintain and strengthen independent anti-corruption bodies.⁵¹ Curiously, whereas UNCAC consistently requires that all crimes of corruption be committed with intent, the AU Convention does not identify the element of *mens rea* in any of its criminalising provisions. This means that states parties have to decide for themselves how to define the crime, which likely can result in an uneven implementation of the AU Convention across the continent.⁵² Laudably, though, the AU Convention obligates states parties to give effect to the right of access to any information required to

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- 48 For a comprehensive cataloguing of the differences between the two conventions, see Transparency International (2014) *Comparative Analysis of the UNCAC and AU Convention*, available at https://www.transparency.org/files/content/corruptionqas/Comparative_analysis_of_the_UNCAC_and_the_AU_Convention_2014.pdf (visited 7 July 2018).
- 49 Article 7(1) of the AU Convention.
- 50 Article 5(5) of the AU Convention.
- 51 Article 5(3) of the AU Convention.
- 52 Snider TR & Kidane W (2007) “Combating Corruption through International Law in Africa: A Comparative Analysis” 40 *Cornell International Law Journal* 692-748 at 722.

assist in combating corruption.⁵³ Also, it makes it mandatory for states parties to criminalise the use of illegally obtained funds to finance political parties.⁵⁴

Unlike any other anti-corruption instrument, the AU Convention contains a set of principles in Article 3 which are grounded in an appreciation of the fact that a successful crusade against corruption entails more than just a rigorous application of the law; it embraces a concomitant regard for notions of good governance, such as respect for the rule of law and human rights, and a commitment to transparency, accountability and social justice. In theory, implementing these principles effectively would prevent incoming heads of state from having their predecessors thrown into prison on false corruption charges — a phenomenon not uncommon in Africa. Equally, the principles could be interpreted as measures to counter the abuse of civil assets forfeiture laws, which have been harnessed in the past by some dictators to bankrupt their political opponents.

The principles enunciated above are undergirded by a collective commitment in Article 14 of the AU Convention to guarantee the implementation of fair trial rights in the prosecution of corruption cases. But this provision is prefaced with the phrase “Subject to domestic law”, which has the unfortunate effect of diluting the analogous clause in the African Charter on Human and People’s Rights, which states straightforwardly and without qualification in Article 7 that everyone has “the right to be presumed innocent until proved guilty by a competent court or tribunal”. The proviso appended to Article 14 of the AU Convention thus flies in the face of its exhortation that states parties “undertake” to ensure that the rule of law is upheld, as expressed in its Article 3(1). In fact, given the severity of the punishment that the crime of corruption could attract, the proviso needs to be dispensed with and replaced with the phrase “notwithstanding any other provision of law” or something similar.

It is regrettable, given the scandals that have tainted the administration of criminal justice in some African countries, that the AU Convention, in contrast to UNCAC, is silent on the need for states parties to adopt measures to strengthen the independence of judges and the integrity of the criminal justice process.

The AU Convention’s extension of the crime of trading in influence to cover the private sector is a welcome and forward-looking innovation. It represents a departure from the neo-liberal assumption that corruption originated in the public sector and from there slowly spread to the virtuous and hard-working private sector which generates wealth, creates jobs and keeps the economy buoyant. This

53 Article 9 of the AU Convention.
 54 Article 10 of the AU Convention.

presupposition ignores the fact that, like the public sector which comprises an array of public spheres and functions, the private sector, too, is not confined to business enterprises, but includes other private sectors such as sports, the media, politics, science and the health sector.⁵⁵ What is more, the public and private sectors are at times so interwoven that the one is not distinguishable from the other. This is especially the case with state-owned enterprises and public-private partnerships.

The privatisation of state entities, too, is a process prone to corruption. The World Bank, which vigorously promotes privatisation on the ground that it reduces corruption, is aware of the corruption that could accompany privatisation, and a discussion paper goes so far as to give examples of how this can happen.⁵⁶ Paradoxically, in the past the World Bank itself has entered into partnerships with companies which have been convicted of corruption.⁵⁷ In one case, a Swiss auditing company chosen by the World Bank to conduct an audit was itself found guilty of paying a bribe to a lawyer to secure the contract to conduct an investigation in Pakistan, one of the countries that was earmarked for auditing by the World Bank.⁵⁸

The discounting of private-to-private corruption by the mainstream literature on corruption could be attributable to the fact that it usually is assumed that the owners and managers of businesses, who have the interests of the company at heart, will take corrective steps against any action that likely will harm the company or organisation. Another unjustified assumption is that within the private sector there are few incentives for corrupt conduct in a competitive market that does not tolerate inefficient behaviour. The reality, however, is that private organisations are not inclined to publicise corruption within their ranks and are

55 Walther F (2011) "Bestechlichkeit und Bestechung im geschäftlichen Verkehr: Internationale Vögenaben und deutsches Strafrecht" in Tiedemann K & Schünemann B (eds) *Studien zum Wirtschaftsstrafrecht* Centaurus Verlag & Media at 9, available at <http://dnb.d-nb.de> (visited 19 July 2018).

56 See Rose-Ackerman S (1996) "The Political Economy of Corruption: Causes and Consequences" *Viewpoint* World Bank Note 74, available at https://openknowledge.worldbank.org/bitstream/handle/10986/11629/multi_page.pdf?sequence=1&isAllowed=y (visited 19 July 2018).

57 Hall D (1999) *Privatisation, Multinationals and Corruption* London: Public Services International Research Unit (PSRIU) University of Greenwich at 12, available at file:///C:/Users/admin/Documents/Hall_Multinationals.PDF (visited 18 July 2018).

58 Hall (1996) at 13.

more likely to deal with the matter through internal disciplinary procedures or by agreements on the amount of compensation to be paid to the injured party.⁵⁹

The drafters of the AU Convention perhaps were carried away when formulating Article 13. This provision confers jurisdiction on a state party over an offence committed outside its territory if the state considers the offence to affect its “vital interests” or to have “deleterious or harmful” effects on it. Although jurisdiction based on the principle of self-protection is well-established under customary international law, a state is not obligated to surrender an individual whose conduct threatens or harms the vital interests of another state. It seems, therefore, that the provision can apply only to nationals of the state party or to a person who ordinarily is resident in the state, but even then a real and substantial nexus would need to be shown between the offence and the state party and also that international comity is not offended.⁶⁰ Apart from this, given that the crime of corruption is still not articulated and established sufficiently under international law, it is doubtful whether it constitutes a threat to a state’s vital interests.

As is the case with UNCAC, the AU Convention has its drawbacks, but these are remediable and not cast in stone. The linguistic infelicities, for one, could be corrected as this would assist, too, in aligning and authenticating the Arabic, English, French and Portuguese versions of the text, which presently do not match one another in all respects.⁶¹ These pitfalls aside, the AU Convention is a testament to Africa’s collective will to deal with corruption in the African context and in line with the continent’s shared traditions and values. What is more, the AU Convention constitutes a solid bedrock upon which a host of anti-corruption initiatives can be and have been founded. Disappointingly, there still are 17 African countries, of a total of 55, that yet have to ratify the AU Convention. But ratification alone does not suffice; what is needed is the practical implementation of the Convention, a point that has been repeated countless times by writers and commentators.

Furthermore, UNCAC defines “public official” expressly to cover officials of public enterprises or parastatals. Snider & Kidane correctly point to the fact that the:

59 Argandoña A (2003) “Private-to-Private Corruption” 47 *Journal of Business Ethics* 253-267 at 253-254.

60 Currie RJ (2010) *International Law and Transnational Criminal Law* Toronto: Irwin Law at 63-65.

61 For criticism of the linguistic flaws in the text, see Schroth PW (2005) “The African Union Convention on Preventing and Combating Corruption” 49 *Journal of African Law* 24-38 at 25-27.

omission of officials of public enterprises in the AU Corruption Convention's definition of "public official" may have a significant impact on the coverage of the convention because in most African economies, which are in the process of liberalising, public enterprises or parastatals with some governmental control conduct various international commercial transactions.⁶²

South Africa is a case in point: at least two of the country's parastatals, namely, the Electricity Supply Commission (ESCOM) and the South African Broadcasting Corporation (SABC) have been implicated heavily in huge corruption scandals involving billions of rands.

While the AU Convention deserves plaudits for covering corruption in the private sector, it is striking that it requires states parties to adopt measures to ensure that "internal accounting and auditing" takes place in the public sector, but says nothing about this matter in relation to the private sector. Tessema & Koen justifiably express surprise that the AU Convention does not criminalise embezzlement in the private sector.⁶³ However, they correctly state that, since the AU Convention lays down only the minimum threshold for criminalisation, states parties are not precluded "from exercising their sovereign authority to decree embezzlement in the private sector a corruption offence".⁶⁴

5.2 Anti-Corruption Agencies

Article 5(3) of the AU Convention obligates states parties to "establish, maintain and strengthen national anti-corruption authorities or agencies". Many African states have done this, but have little to show by way of achievement. This unimpressive track record of African anti-corruption bodies is attributable to various factors, including the political environment in which they operate, their physical location, the degree of integrity of the criminal justice process, and how the public perceive them. The fact of the matter is that anti-corruption agencies in Africa are hamstrung significantly by poor funding from the state, meagre infrastructure, inadequately trained personnel and, most importantly, political interference.⁶⁵ The latter constitutes a serious handicap, for:

62 Snider & Kidane (2007) at 733.

63 Tessema MT & Koen R (2017) "The Problem of Private-to-Private Corruption" 1 *Journal of Anti-Corruption Law* 151-174 at 167.

64 Tessema & Koen (2017) at 167.

65 See generally AfriMAP (2015) *Effectiveness of Anti-Corruption Agencies in East Africa* New York: African Minds on behalf of Open Society Foundations. See also Open Society Foundation for Southern Africa (2017) *Effectiveness of Anti-Corruption Agencies in Southern Africa* Johannesburg: Open Society Initiative for Southern Africa and African Minds OSISA.

there seem to be deliberate efforts by the executives and parliaments in the respective countries to limit or defeat the abilities of anti-corruption agencies to do their job. This manifests itself through changes in some laws and a failure to act according to others, as well as in intimidation and the constraining of budgets.⁶⁶

In Kenya, for example:

previous anti-corruption commissioners have blatantly been removed or dismissed from office at the height of investigations of high profile cases involving politicians. It is well documented that politicians interfered with operations of the disbanded Kenya Anti-Corruption Commission (KACC) while their officers were intimidated when some politicians were named in corruption cases.⁶⁷

However, according to the Africa Freedom of Information Centre, these challenges can be assumed to exist throughout Africa. Encouragingly, when President of Buhari of Nigeria launched the theme of the year 2018 on fighting corruption at the 30th AU Summit in January 2018 in Addis Ababa, he correctly stated that “we must adequately empower our national anti-corruption agencies and insulate them from political influence”. In reality, though, urging governments to equip the anti-corruption agencies with more resources and to stop meddling in their work is unlikely to change the picture in the short term, for similar resolutions on other socio-economic topics have been adopted by African heads of state in numerous previous meetings, with no tangible results.

A fundamental error made in setting up anti-corruption agencies in Africa was that this was done without taking into account the role that civil society could play in increasing the impact of these bodies. It is vital that citizens are aware of and have insight into how government institutions work. They need to know, for example, how budgets are allocated, how they are spent, what happens to development aid monies coming from overseas, who is awarded government contracts and on what basis, what are the assets of politicians and how are they audited. The right to know is part and parcel of the democratic process. With access to information, citizens can demand that action be taken against the corrupt and that diverted development aid be recovered. Unfortunately, as at May 2018,

66 AfriMAP (2015) at 6.

67 Africa Freedom of Information Centre (2015) *Enhancing Good Governance through Citizen Access to Information in Kenya, Malawi and Uganda: A Study on Anti-Corruption Agencies* (2015) at 11.

only 24 of 54 African countries had enacted access to information laws.⁶⁸ However, given the fact that policies to implement the right of access to information have emerged only recently in Africa, the growth in the number of countries with such laws has gained pace over the past decade. In practice, access to information laws are no guarantee that citizens will receive information readily and freely, for it often is the case that the right to information is undermined by a raft of prohibitive qualifications which make access virtually impossible. It is necessary, therefore, to ensure that such laws are not enacted merely for their symbolic value, but that they in fact do enable citizens to obtain public information easily and speedily.

The corollary of the right to know is the state's obligation to consult with the public before policies are implemented. Public consultation with the people who will be affected by a law, or for whose benefit it is meant, increases the body of information on which the state can base policy decisions. The traditional view that government "knows best" no longer can prevail in a changing society. As a policy document of the Organisation for Economic Co-operation and Development (OECD) states:

Changes in the nature of civil society and the relationships between government and population have been pushing governments toward more extensive use of consultation. Better educated and informed citizens are demanding more information from governments, and thus, creating pressure for more open consultative mechanisms, with better information and more effective opportunities for participation and dialogue.⁶⁹

Public consultation regarding the creation of anti-corruption bodies should be extended also to the illiterate, the poor, and the marginalised groups, those who are hit hardest by corruption, and without whose co-operation well-meant policies are bound to backfire. Marais, Quayle & Burns are rightly of the view that, in order to avoid public consultation being reduced to a mere discussion behind closed doors, and in order to follow the trail between policy consultation and policy promulgation, the public consultation should be part of the public record and the public should have access to it.⁷⁰

68 African Freedom of Expression Exchange, available at <http://www.africafex.org/access-to-information/22-african-countries-that-have-passed-access-to-information-laws> (visited 15 July 2018).

69 OECD *Background Document on Public Consultation* at 7 para 23, available at <https://www.oecd.org/mena/governance/36785341.pdf> (visited 11 July 2018).

70 Marais DL, Quayle M & Burns JK (2017) "The Role of Access to Information in Enabling Transparency in Governance: A Case Study of Access to Policy Consultation Records in South Africa" 9 *African Journal of Public Affairs* 36-49 at 46.

5.3 Civic Activism in Fighting Corruption

Notwithstanding their having ratified UNCAC and domesticated its provisions, and despite solemn undertakings to eradicate corruption within their jurisdictions, some African leaders continue to intimidate, harass and arbitrarily detain anti-corruption activists. Corrupt leaders often resort to restricting or diverting foreign funds meant for anti-corruption work, or they simply refuse to have anti-corruption organisations officially registered, thus making their operations illegal.⁷¹ But civil society groups across the continent refuse to be cowed. Instead, some have enlisted the assistance of influential international NGOs and anti-corruption activists in establishing self-help groups to organise themselves into effective anti-corruption entities. Three prominent examples are the Women, Land and Corruption Projects, the *Plateforme de Protection des Lanceurs d'Alerte* (Platform to Protect Whistleblowers) and BudgIT.

5.3.1 Women, Land and Corruption Projects

Civil society groups in several Sub-Saharan countries are developing strong remedies against corrupt land deals that victimise women. These responses centre mainly on: (a) educating women about their land rights and enabling them to wield their influence in securing land tenure; and (b) helping women to gain access to justice and legal redress. In Ghana, Uganda and Kenya, community-based volunteers are trained to work as paralegals, advising women on land rights, how to approach the courts or to activate and engage with community-based dispute resolution mechanisms.⁷²

An NGO called TIMBY, meaning “This is My Backyard”, was created in 2012 to address, *inter alia*, land tenure issues and land corruption. TIMBY is a collaboration of activists and experts in various fields, including gender matters. TIMBY has created encrypted digital mobile applications to enable women to communicate sensitive information to human rights advisers and groups reporting on land corruption cases in different contexts.⁷³ The project already has yielded positive results in Liberia and Kenya, and the idea is to expand it to other Sub-Saharan countries.

The legally unregulated administration of customary and informal land tenure renders women easily vulnerable to corrupt practices through arbitrary

71 See Gumede W (2017) “Policy Brief: African Civil Society under Fire” in *Democracy Works*, available at <https://democracyworks.org.za/policy-brief-16-african-civil-society-under-fire/> (visited 15 July 2018).

72 Transparency International (2018a) at 10.

73 Transparency International (2018a) at 78.

boundary manipulation or “through disinheritance, land grabbing or displacement by their husbands, neighbours or traditional leaders”.⁷⁴ In such situations, where customary law and statutory law are hard to reconcile, women invariably are victimised. To afford women greater protection, the Huairou Commission, an international network that promotes advocacy, enables grassroots women to enhance their abilities to “claim, gain, and maintain land and housing”. In countries in which both statutory and customary law are applied, the Huairou Commission has implemented the Social Tenure Domain Model, according to which customary entitlement to land can be recorded and cross-referenced. This is done by identifying people with rights to use, rent or occupy land, and making a detailed inventory, including a video recording, of all distinguishing features of the land. All this information is fed into a statutory land register. The Model enables women to acquire formal recognition of land acquired under customary law, thus making it difficult for chiefs to overlook or corruptly deprive them of their land during land acquisition processes.

5.3.2 *Plateforme de Protection des Lanceurs d’Alerte*

In Africa, as elsewhere, journalists and ordinary members of the public have become more courageous in exposing the secretive and corrupt ways in which political and business elites promote their personal interests at the expense of the public well-being. Such daring conduct draws its sustenance in part from ordinary citizens who increasingly and collectively are beginning to assert themselves publicly to voice their utter disgust for corrupt leaders. However, in Africa, where only seven states have enacted whistleblower laws, shedding light on the surreptitious machinations of the corrupt privileged few is a hazardous enterprise, one which can lead to prolonged periods of detention without trial, imprisonment, forced exile or even death. According to the Committee to Protect Journalists, in 2016 six journalists were killed and 41 languished in prisons across Sub-Saharan Africa.⁷⁵

In order to support whistleblowers through legal strategies, research and technology, the *Plateforme de Protection des Lanceurs d’Alerte* (PPLAAF), a Senegalese NGO, was founded in 2017. PPLAAF works with whistleblowers in Algeria, the Democratic Republic of Congo (DRC), Nigeria and South Africa, and has trained activists and published research on whistleblower protection in several other countries. PPLAAF is linked to an international network of lawyers who provide legal advice, free of charge to the needy, and protection against potential

74 Transparency International (2018a) at 80.

75 Committee to Protect Journalists, available at <https://cpj.org/> (visited 23 July 2018).

reprisals and threats. It enables whistleblowers also to communicate information via hotlines and through a secure web portal. It can boast several high profile success stories, one of which is the publication of the Lumumba Papers disclosing a network of companies and business associates of the DRC president, Joseph Kabila, and the illicit financial flows emanating from their joint ventures.⁷⁶ Other PPLAAF achievements include assisting one of its protected whistleblowers to enter French territory and eventually to be granted asylum; and providing legal advice that helped a Nigerian whistleblower to be re-instated to his job after being fired for disclosing fraudulent conduct by the chairperson of the Police Services Commission. More recently, PPLAAF, together with two media houses, served as a platform for the publication of a sample of the e-mails from the Gupta Leaks, which revealed how members of one politically well-connected family, through a series of allegedly corrupt acts, had South Africa's laws changed to serve their own interests, thereby enabling them to hijack the state and to pillage national companies and institutions. PPLAAF provided legal advice to one of the whistleblowers in this matter.

5.3.3 *BudgIT and Tracka*

BudgIT is a Nigerian civic organisation founded in 2014 to enable citizens to keep a watchful eye on budgetary capital expenditure and constituency projects in their communities. Its aim is “to enhance service delivery by all tiers of the Nigerian government”.⁷⁷ In essence, BudgIT seeks to ensure that budgetary allocations for community projects are spent properly. Accordingly, it stimulates local Nigerian communities to demand access to Open Data in order to monitor how the budget allocated for a particular purpose is spent.

BudgIT's emblematic tracking tool, Tracka, is now active in 20 Nigerian states and has reached 4 850 000 Nigerians both digitally and physically. It uses various tools to render the data in a user-friendly form. BudgIT also assists communities offline to communicate with their elected representatives and to demand that projects in their neighbourhood be completed.⁷⁸ Offline BudgIT collaborates with private individuals and organisations and with the responsible

76 For a detailed description of Kabila's corrupt network, see Kavanagh M, Wilson T & Wild F (2016) “With His Family's Fortune at Stake, President Kabila Digs in” *Bloomberg*, available at <https://www.bloomberg.com/news/features/2016-12-15/with-his-family-fortune-at-stake-congo-president-kabila-digs-in> (visited 25 July 2018).

77 Budgittracka (2017) *Federal Constituency Projects: Lessons and Findings from Focus States*, available at <http://yourbudgit.com/wp-content/uploads/2017/09/Tracka-2016-Constituency-Projects-Report.pdf> (visited 30 July 2018).

78 BudgIT (2018) “About Us”, available at <http://yourbudgit.com/about-us/> (visited 30 July 2018).

parliamentary bodies in charge of budgetary matters. It receives copious requests for information, and has published policy papers that cover various areas in which a high premium is placed on accountability. Given the effectiveness of its work, BudgIT now has additional offices in Sierra Leone and in Ghana.

5.4 The Rise of Mass Movements

Annoyed at how corruption is robbing them of opportunities to become employed, the young people of Africa are beginning to take their future into their own hands. They feel short-changed, even by opposition party leaders who promise them flourishing economies and job opportunities if elected, only to renege on such assurances once they have been voted into power. Western aid agencies, national NGOs and civil rights groups are perceived by the educated, unemployed youth to have lost their credibility and appear to remain fixated with old-school ways of mobilising social protest. In response to this perceived apathy, several spontaneous mass protest movements have erupted across the continent, driven by an impatient youth prepared to confront the authorities unflinchingly. Inspired by the feats of the Arab Spring, young people are using digital mass communication platforms, which cannot be controlled by the state, to share information and to mobilise themselves into powerful protest movements that have shaken the establishment to its foundations.

The contemporary mass movements are deliberately leaderless, non-hierarchical in structure and highly resilient in the way they function. Their message is as clear as the names by which they go. Thus, movements have taken on names such as *Y'en A Marre* (Enough is Enough) in Senegal and *Le Balai Citoyen* (Civic Broom) in Burkino Faso. The latter successfully opposed President Blaise Compaoré's attempt to extend his term of office, and foiled an attempted coup as well. At the heart of Civic Broom's accomplishments is its ability to associate corruption with the lives of ordinary people. It uses social media, as well as posters showing the opulent lifestyles of top officials and their "notorious mothers-in-law" next to scenes of poverty experienced by most voters.⁷⁹

Civic Broom's persistent campaign against corruption has resulted in substantive reforms in Burkino Faso, to wit, the enactment of a law establishing an independent anti-corruption investigation and oversight authority, and the prohibition of specific corrupt conduct, including the solicitation of bribes by public officials. Laws also have been passed obligating public officials to declare their and

79 Chayes S (2018) *Fighting the Hydra: Lessons from Worldwide Protests against Corruption* Washington, DC: Carnegie Endowment for International Peace at 9.

their family members' assets, limiting the value of goods public servants may accept lawfully, and criminalising sudden unexplained rises in wealth. Very importantly, a law has been enacted to increase the transparency and competitiveness of public tenders, especially in mining.⁸⁰

6 THE FOREIGN DIMENSION OF CORRUPTION

The mainstream literature has devoted scant attention to the role played by foreign companies in fuelling corruption in Africa. According to the 2016 *African Governance Report* of the UN Economic Commission for Africa, of the 1 080 cross-border cases of corruption in Africa between 1995 and 2014, 99% involved non-African firms. Western financial institutions also have been associated with laundering the criminal proceeds of corruption and so, too, have western shell companies and trusts.⁸¹ Ndikumana contends that Africa most likely loses more from corruption by multinational companies than from corruption by the numerous small and medium enterprises at which governments direct most of their anti-corruption efforts. He submits that corrupt practices by multinational companies result in Africa being robbed twice: firstly, by their paying little or no tax; and secondly, by their bribing officials to negotiate “deals that short-change African countries through unfair sharing of rents and generous tax holidays and pervasive tax exemptions”.⁸²

Given the gaps in national laws, hardly any foreign companies are prosecuted in Africa for corruption. In Europe prosecutions are few and far between. Most of the prosecutions have taken place in the United States where, between 2010 and 2015, the Securities and Exchange Commission (SEC), jointly with the Department of Justice, has used the Foreign Corrupt Practices Act to charge eight non-African companies with bribery-related crimes committed in Africa. In most cases the companies agreed to pay a fine to settle the charges.⁸³

Where African state officials hide the proceeds of their corrupt acts in Europe, victim states encounter steep hurdles in their attempts to have the assets repatriated. In practice, the barriers that need to be overcome span such matters as costly fees of legal counsel engaged to handle substantive and procedural law

80 Chayes (2018) at 25.

81 See *The Other Side of the Coin: The UK and Corruption in Africa* (2006) London: House of Commons All Party Africa Parliamentary Group at 44-51.

82 Ndikumana L (2013) “The Private Sector as Culprit and Victim of Corruption in Africa” Amherst: Department of Economics and Political Economy Research Institute (PERI), University of Massachusetts Amherst Working Paper Series No 330 at 3.

83 See UNECA (2016) at 66.

problems and a discernible lack of political will on the part of the requested state to facilitate the repatriation of the stolen assets.⁸⁴

Securing repatriation of the assets is but one part of the problem. The other part consists in protecting the repatriated assets from being embezzled before they reach their rightful owners, namely, the people from whom they have been stolen. Several suggestions have been made on how to enable a smoother repatriation of secreted criminal assets and a quicker and transparent distribution to the victims. But these still are at an abstract level and yet have to be comprehensively debated before they can be implemented.⁸⁵ A useful starting point would be to ensure that the provisions of UNCAC and the AU Convention are implemented and enforced by all African countries at the domestic level and that local accountability and oversight institutions are strengthened. Rigorous enforcement would deter foreign companies from exploiting loopholes in African laws and regulations. As UNECA points out:

The bargaining relationship between African Governments and multinational corporations is significantly affected by country-specific legal loopholes and institutional weaknesses. For example, if compliance mechanisms are enforced rigorously, Governments will feel obligated to negotiate deals, which are in favour of the country's development objectives.⁸⁶

6 CONCLUSION

Africa has been the continent worst affected by corruption, which has played havoc with the economies and the lives of people in the various countries. While the scourge of corruption was manifest as early as the colonial period, it has grown in dimension ever since, and its ramifications have become more severe. As part of the international effort to combat corruption, most African countries have signed or ratified international, regional and sub-regional anti-corruption legal instruments. However, the implementation of these instruments at the domestic level has been slow, sporadic and uneven. Encouragingly, several citizen-driven anti-corruption initiatives have sprouted in recent years. These are designed to

84 See Mugarura N (2018) "The War against Corruption is a 'Lost Cause' without Robust Measures to Repatriate Stolen Assets to the Country of Origin" 1 *Journal of Anti-Corruption Law* 53-69 at 58-67.

85 See Transparency International (2018b) "Returning Nigeria's Stolen Millions", available at https://www.transparency.org/news/feature/returning_nigerians_stolen_millions?utm_medium=email&utm_campaign=Global%20Newsletter%203%20August%202018&utm_content=Global%20Newsletter%203%20August%202018+CID_c98a367d5d7f741e879f4ed28b4461de&utm_source=Email%20marketing%20software&utm_term=Returning%20Nigerians%20stolen%20millions (visited 30 July 2018).

86 UNECA (2016) at 80.

protect and empower the people who are most vulnerable to corruption, as well as those who expose corruption. Although Africa's political leaders have thrived on the proceeds of corruption, a fair share of corruption has its provenance in the criminal conduct of foreign companies carrying on business or attempting to dominate markets in Africa. Chief enabling factors in this regard are gaps in the law or the sheer lack of anti-corruption regulatory frameworks.

The view espoused by some neo-liberal writers that the private sector is so salubrious and righteous as to regard corruption with utter antipathy is, plainly said, utterly preposterous. Not only do private sector actors offer bribes to officials, but they bribe one another as well.

Perhaps a point bearing consideration is whether the array of anti-corruption measures that were conceptualised mainly over the past two decades still are credible in the eyes of the public. Political elites and their patronage networks continue to flout the law with impunity but rarely are called to account, this despite the existence of democratic institutions guaranteeing equal treatment before the law. Are the spontaneous mass movements, such as Civic Broom, that have brought down governments not symptomatic of a trend, especially among the youth, that democracy does not work in a post-democratic state where the elected government has lost control over the corrupt elite? This is a question worth pursuing but, more importantly, worth answering.