

**A HUMAN RIGHTS APPROACH TO COMBATING CORRUPTION IN AFRICA:
APPRAISING THE AU CONVENTION USING NIGERIA AND SOUTH AFRICA**

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by

Opeoluwa Adetoro Ogundokun

Prepared under the supervision of

Dr. Angelo Matusse

at the

Faculdade de Direito, Universidade Eduardo Mondlane, Maputo, Moçambique

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DECLARATION

I, **Opeoluwa Adetoro Ogundokun**, hereby declare that this dissertation is an original work and has never been presented to any other institution. I also declare that all secondary information used has been duly acknowledged in this dissertation.

Signed.....

Date.....

Supervisor: Dr. Angelo Matusse

Signature.....

Date.....

DEDICATION

To God who has brought me this far;
and to humanity, in the hope of better things to come.

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And to Bunmi, thank you for the friendship, for the love, for the calls, for the years, for keeping me steady, for everything...

LIST OF ABBREVIATIONS

AfCHPR	African Charter on Human and Peoples' Rights
AI	Amnesty International
AU	African Union
BTI	Bertelsmann Transformation Index
CPI	Corruption Perceptions Index
DCT	Disciplinary Cases Task Team
DPSA	Department of Public Service and Administration
DSM	Democratic Socialist Movement
EFCC	Economic and Financial Crimes Commission
GCB	Global Corruption Barometer
ICPC	Independent Corrupt Practices and Other Related Offences Commission
JACTT	Joint Anti-Corruption Task Team
MOSOP	Movement for the Survival of the Ogoni People
NGO	Non-Governmental Organisation
OAU	Organisation of African Unity
SADC	Southern African Development Community
SAPS	South African Police Service
SIU	Special Investigations Unit

TI	Transparency International
UN	United Nations
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
VOA	Voice of America

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CHAPTER ONE

INTRODUCTION

1.1 Background to the study

In Africa, the struggle for human rights shares a great deal of common ground with the struggle against corruption. In fighting to improve the lot of a majority of the world's population, one must recognise that the fight for social and economic rights is often intimately linked to the fight against the monopolisation of resources by 'networks of patronage'.¹ Corruption perpetuates discrimination, prevents the full realisation of economic, social and cultural rights, and leads to the infringement of several civil and political rights.²

In a move that acknowledged the fact that corruption is a pervasive problem in Africa, the African Union (AU) adopted the African Union Convention on Preventing and Combating Corruption (AU Convention or Convention) in July 2003.³ This Convention is yet to enter into force.⁴ Likewise, in Nigeria and South Africa, the governments are on renewed campaigns against corruption using anti-corruption legislative and institutional frameworks. These anti-corruption legislation mainly address corruption by criminalizing it. This is mainly because the phenomenon of corruption is being approached from an economic or political viewpoint.⁵ No doubt criminal anti-corruption legislation and institutions are necessary but this dissertation seeks to evaluate them in terms of their relative or possible successes and challenges, especially in cases of widespread societal corruption.

The premise of this dissertation is that from a preliminary assessment, it would seem that the law is losing ground in the battle against corruption. It thus posits that the effectiveness of the law in the fight against corruption will continue to diminish if it fails to address the social and economic factors

¹ L Cockcroft 'Corruption and Human Rights: A Crucial Link', available at <www.transparency.org/working_papers/cockcroft/cockcroft.html> (accessed 1 September 2005).

² CR Kumar 'Corruption and human rights - II', available at <www.flonnet.com/fl1920/stories/20021011008607500.htm> (accessed 1 September 2005).

³ Text of the Convention is available at <<http://www.africa-union.org/home/Welcome.htm>> (accessed 1 September 2005).

⁴ The Convention is to enter into force 30 days after the date of the deposit of the fifteenth instrument of ratification or accession. So far, only 10 countries have ratified it. These are Burundi, Comoros, Lesotho, Libya, Madagascar, Mali, Namibia, Rwanda, Tanzania and Uganda. List available at <http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/offTreaties_Conventions_&_Protocols.htm> (accessed 1 September 2005).

⁵ Z Pearson 'Human Rights and Corruption' *A Research Paper produced by the Centre for Democratic Institutions, Australian National University* 3, available at <http://www.cdi.anu.edu.au/research_publications/research_HumanRightsandCorruption.htm> (accessed 1 September 2005).

that cause the initial problematic behaviour.⁶ Presently, the law concentrates on merely proscribing and punishing corruption. It is not being used to address the social and economic conditions that perpetuate corruption, hence, its ineffectiveness especially in cases where the incidence of corruption is so high as to be classified as systemic. In these situations, mere legislative and institutional responses may not suffice as anti-corruption measures. The underlying catalysts for such a high degree of corruption – the social and economic injustices resulting in a cyclical reproduction of corruption – are usually not addressed by these responses. In addition, these responses tend to underrate the need to empower those who are at the receiving end of corruption. They thereby concentrate solely on the empowerment of institutional machineries in the fight against corruption. This is the premise upon which this dissertation is built: the need to transcend the traditional responses to corruption in a manner which hopes that by empowering people using a human rights approach, the underlying causes of systemic corruption may be reduced. Then, perhaps, the society would have discovered a veritable anti-corruption tool.

1.2 Statement of the research problem

The adoption of the AU Convention is commendable in many respects. It is an indication that the continent is at last taking the issue of corruption seriously as it seeks to promote and strengthen development in Africa by requiring states parties to prevent as well as impose penalties for corruption and related offences. The Convention, however, has its shortcomings. Notably, it does not seek states parties to address the root causes of corruption in their societies nor was it drafted from a human rights perspective. Rather, adopting a political and economic viewpoint, it mainly requires states parties to criminalize corruption and related acts. A pertinent question, therefore, is whether these legislative and other measures can ensure a more effective fight against corruption on the continent.

In view of this, this dissertation seeks to evaluate the potential of the AU Convention in addressing corruption in Africa. As this Convention mainly prescribes that states promulgate anti-corruption legislation and set up anti-corruption institutions, this dissertation, working on the premise that these frameworks already exist in many African countries, seeks to assess their impacts on different variations of corruption. It would emphatically seek to assess the success of these frameworks in combating systemic corruption in Africa. Secondly, it seeks to investigate, from a human rights perspective, other approaches that can be adopted in conjunction with the current legislative and institutional responses to ensure a more effective fight against corruption.

⁶ O Oko 'Subverting the Scourge of Corruption in Nigeria: A Reform Prospectus' (2002) 34 *New York University Journal of International Law and Politics* 407.

1.3 Focus and objectives of the study

Firstly, this dissertation intends to elucidate on the phenomenon of corruption and examine its effects on human rights in Africa. Secondly, it seeks to appraise the potential success and weakness of the AU Convention in addressing corruption in different contexts using Nigeria and South Africa as illustrations of countries where the main prescriptions of the Convention are already in place. Thirdly, it seeks to propose that corruption be addressed from a human rights perspective such that the root causes of corruption are addressed as seen from its effects on human rights. This human rights perspective involves, primarily, a strengthening of the mechanisms that guarantee human rights, especially social and economic rights. Additionally, it proposes the elevation of a freedom from corruption as a human right. In concluding, this study will prescribe mechanisms by which the human rights perspective to addressing corruption may be concretised and applied.

1.4 Significance of the study

In spite of the debilitating effects of corruption on human rights in Africa, the continent has failed to significantly address it as a human rights issue. More so, the little effort to continentally address it through the AU Convention seems destined for little or no impact on the problem. This is because its main prescriptions are generally already in place in many African countries with little or no significant impacts on the trend in corruption. This study is, therefore, significant as it represents an effort in understanding corruption as a human rights issue. This understanding reproduces likewise in seeking a human rights perspective to anti-corruption responses. It is believed that this study will contribute to the development of knowledge on the unexplored jurisprudence of linking corruption and anti-corruption efforts with human rights.

1.5 Hypotheses

Firstly, this dissertation is based on the premise that in order to effectively combat corruption, anti-corruption legislation need to be complemented by other approaches, which address the social and economic conditions that perpetuate corruption. Secondly, it suggests that the guaranteeing of human rights and a regional appreciation of a right to freedom from corruption would be helpful in combating corruption.

1.6 Overview of existing literature

Though there is some literature on the effects of corruption on human rights, there has been little academic exploration on transforming this understanding into anti-corruption measures.

Nonetheless, Ndiva Kofele-Kale has tried to raise this issue by campaigning for a right to a corruption-free society.⁷ According to him, the most effective way to combat corruption is by elevating it to the status of a crime of universal interest, i.e., a crime under international law that entails individual responsibility and punishment, and is subject to universal jurisdiction. Raj Kumar has adopted this idea, though with slight modifications. He advocates for a human rights approach to combating corruption in Asia by the development of this human right to be observed within the context of the states' constitutions.⁸ This would involve, in effect, the development of a human rights standard encapsulated as 'freedom from corruption'. According to Kumar, the freedom from corruption would mean the existence and development of a few rights for the citizenry.⁹

Within the scope of the research carried out in Africa, it was discovered that the possibility of this approach has not been explored. The purpose of this dissertation is to explore avenues for the possibility of adopting this approach in the African context. However, this dissertation does not adopt wholesale the proposal according to these writers. It would seek to deviate on the proposal of elevating the right to the status of a crime under international law.

1.7 Methodology adopted

This study is, in the main, library based and carried out through review of literature sourced from the Internet, statutes, articles and reports on the main thematic issues – corruption and human rights. A core part of the research is carried out through analysis of statutes and case studies. The study is contemporary in nature as reflected in recent news articles that it was able to draw on. It also adopts a comparative analysis between two jurisdictions - Nigeria and South Africa – and a theory-creating style in seeking to promote the development of a further right in response to corruption.

1.8 Limitations of study

A major limitation to this study is the challenge of concretising an almost illusory emerging concept – freedom from corruption – as a human right. In that regard, this study takes up a more philosophic approach in the proposal for a freedom from corruption. Furthermore, in proposing the second human rights approach to combating corruption – the guaranteeing of human rights, especially social and economic rights – this study works within the confines of the fact that the

⁷ N Kofele-Kale 'The Right to a Corruption-Free Society as an Individual and Collective Human Right: Elevating Official Corruption to a Crime under International Law' (2000) 34 *International Law* 149 – 178.

⁸ Kumar (n 2 above). See also CR Kumar: 'Human Rights Approaches of Corruption Control Mechanisms - Enhancing the Hong Kong Experience of Corruption Prevention Strategies' (2004) 5 *San Diego International Law Journal* 323 – 351.

⁹ Kumar (n 8 above) 336.

proposal is more case-specific than general. This is due to the fact that there are deviants in every society and the mere guarantee of human rights is not an all-embracing anti-corruption tool.

1.9 Overview of chapters

This dissertation consists of five chapters. Chapter one provides the general introduction into the study. Chapter two then analyses the phenomenon of corruption and its impact on human rights in Africa. This analysis focuses on case studies and situations in Africa. Chapter three follows with an appraisal of the AU Convention and anti-corruption initiatives in Nigeria and South Africa. This appraisal begins with highlights of the normative framework of the Convention and goes on to assess the impact of such frameworks in the two countries under focus where they are already largely being implemented. Chapter four thereafter introduces a two-pronged human rights approach to combating corruption. This approach consists of a reinforcement of the guarantee of human rights, as well as the proposal for a freedom from corruption as human right. Chapter five consists of conclusion and recommendations.

CHAPTER TWO

CORRUPTION AND ITS IMPACT ON HUMAN RIGHTS IN AFRICA

2.1 Introduction

In order to appreciate the proposal that anti-corruption efforts need to be complemented by a human rights approach, it is important to understand the phenomenon of corruption and its relation to human rights. This chapter discusses corruption in order to place it within the context of human rights. The focus is on analysing corruption and its impact on human rights in Africa.

2.2 Understanding corruption

Corruption has no single definition; it varies from region to region and remains largely contextual.¹⁰ In fact, understanding the problem of corruption remains a problem in itself.¹¹ Despite the fact that most people, most of the time, know corruption when they see it, defining the concept does raise difficult theoretical and empirical questions.¹² This is because it is difficult to generalise about the form that corruption assumes in different country contexts,¹³ as it may refer to many different human activities and behaviour in differing circumstances. As the causes and effects of corruption are different depending on the context of the country, it is perhaps not surprising that it is difficult to formulate a single comprehensive definition that covers all the manifestations of corruption. As a result of this difficulty, it has been noted that much of the literature adopts a minimalist definition, concise and broad enough to be of use in most instances of corruption.¹⁴

As noted by Pearson, most of these broad definitions focus on corruption in the public sector, although there is recognition that corruption may also be present in the private sector. Likewise, as this study examines corruption as a systemic societal issue, it will, therefore, consider the broader effects of corruption as a prevalent phenomenon. Thus, in this dissertation, corruption would be described as ‘the abuse of public roles or resources for private benefit’¹⁵ and ‘an act done with an

¹⁰ D Gould ‘Administrative Corruption: Incidence, Causes, and Remedial Strategies’ in A Farazmand (ed) *Handbook of Comparative Development and Public Administration* (1991) 467 quoted in Pearson (n 5 above) 5.

¹¹ S van der Merwe *Combat Corruption Collectively: Mobilising South African Civil Society on Corruption, Governance and Ethics* (2001) 7.

¹² M Johnston ‘The Search for Definitions: The Vitality of Politics and the Issue of Corruption’ (1996) 149 *International Social Science Journal* 321 – 325 quoted in M Johnston ‘Fighting Systemic Corruption: Social Foundations for Institutional Reform’ in M Robinson (ed) *Corruption and Development* (1998) 89.

¹³ M Robinson ‘Corruption and Development: An Introduction’ in Robinson (n 12 above) 3.

¹⁴ Pearson (n 5 above) 5 – 6.

¹⁵ Johnston (n 12 above) 89.

intent to give some advantage inconsistent with official duty and the rights of others.¹⁶ These descriptions apparently only cover the recipients of proceeds of corruption. Thus, to also embody those who are accomplices alongside these recipients, corruption in this dissertation is additionally described as the facilitation of officials to confer undeserved benefits and advantage. In this sense, corruption involves behaviour on the part of officials in the public sector through which they improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them,¹⁷ as well as the facilitation of these officials to behave in such manner. It is not unlikely that the terms in these descriptions may be contested in actual cases but as a whole, they fit cases of a pervasive trend of corruption, which is the form of corruption on which this study concentrates.

2.3 Forms of corruption

Just as it is difficult to have an all-embracing and accepted definition of corruption, so it is in accepting the forms in which it manifests. There have been different classifications of corruption depending on the perspectives from which it is observed. However, a most comprehensive attempt at categorisation of corruption is by the United Nations Office on Drugs and Crime (UNODC) as part of its Anti-Corruption Toolkit.¹⁸ In that document, the UNODC highlighted the following forms of corruption reproduced, with slight modifications, below:

2.3.1 'Grand' and 'Petty' Corruption¹⁹

Grand corruption is corruption that pervades the highest levels of a national government, leading to a broad erosion of confidence in good governance, the rule of law and economic stability. On the other hand, petty corruption can involve the exchange of very small amounts of money, the granting of minor favours by those seeking preferential treatment or the employment of friends and relatives in minor positions. The most critical difference between grand corruption and petty corruption is that the former involves the distortion or corruption of the central functions of government, whilst the latter develops and exists within the context of established governance and social frameworks.

¹⁶ The Lectric Law Library's Lexicon on Corruption, available at <<http://www.lectlaw.com/def/c314.htm>> (accessed 13 September 2005).

¹⁷ N Jayawickrama 'Corruption - A Violation of Human Rights?' *Transparency International Working Paper*, available at <http://www.transparency.org/working_papers/jayawickrama/jayawickrama.html> (accessed 12 September 2005).

¹⁸ See UNODC *The Global Programme against Corruption: UN Anti-Corruption Toolkit* (2004), available at <http://www.unodc.org/pdf/crime/corruption/toolkit/corruption_un_anti_corruption_toolkit_sep04.pdf> (accessed 13 September 2005).

¹⁹ UNODC (n 18 above) 10 – 11.

2.3.2 'Active' and 'Passive' Corruption²⁰

In discussions of transactional offences such as bribery, 'active bribery' usually refers to the offering or paying of the bribe, while 'passive bribery' refers to the receiving of the bribe. In criminal law terminology, the terms may be used to distinguish between a particular corrupt action and an attempted or incomplete offence. For example, 'active corruption' would include all cases where payment or acceptance of a bribe (or both) had taken place. It would not include cases where a bribe was offered but not accepted, or solicited but not paid.

2.3.3 Bribery²¹

Bribery is the bestowing of a benefit in order to unduly influence an action or decision. It can be initiated by a person who seeks or solicits bribes or by a person who offers and then pays bribes. Bribery is probably the most common form of corruption known. The 'benefit' in bribery can be virtually any inducement: money and valuables, company shares, inside information, sexual or other favours, entertainment, employment or, indeed, the mere promise of incentives. The benefit may be passed directly or indirectly to the person bribed, or to a third party. The conduct for which the bribe is paid can be active: the exertion of administrative or political influence, or it can be passive: the overlooking of some offence or obligation. Bribes can be paid individually on a case-by-case basis or as part of a continuing relationship in which officials receive regular benefits in exchange for regular favours. Once bribery has occurred, it can lead to other forms of corruption.

2.3.4 Embezzlement, Theft and Fraud²²

In the context of corruption, embezzlement, theft and fraud all involve the taking or conversion of money, property or valuable items by individuals who are not entitled to them but who, by virtue of their positions or employment, have access to them. In the case of embezzlement and theft, the property is taken by someone to whom it was entrusted. Fraud, however, consists of the use of false or misleading information to induce the owner of the property to relinquish it voluntarily.

²⁰ UNODC (n 18 above) 11.

²¹ UNODC (n 18 above) 11 – 12.

²² UNODC (n 18 above) 13 – 14.

2.3.5 Extortion²³

Whereas bribery involves the use of payments or other positive incentives, extortion relies on coercion to induce cooperation. As with other forms of corruption, the 'victim' can be the public interest or individuals adversely affected by a corrupt act or decision. In extortion cases, however, a further 'victim' is created, namely the person who is coerced into cooperation. Whilst government officials or insiders can commit extortion, they can also be victims of it. For example, an official can extort corrupt payments in exchange for a favour or a person seeking a favour can extort it from the official by making threats.

2.3.6 Abuse of discretion²⁴

In some cases, corruption can involve the abuse of a discretion, vested in an individual, for personal gain. For example, an official responsible for government contracting may exercise the discretion to purchase goods or services from a company in which he or she holds a personal interest. Such abuse is often associated with bureaucracies where there is broad individual discretion and few oversight or accountability structures, or where decision-making rules are so complex that they neutralise the effectiveness of any accountability structures that do exist.

2.3.7 Favouritism, Nepotism and Clientelism²⁵

Generally, favouritism, nepotism and clientelism involve abuses of discretion. Such abuses, however, are governed not by the self-interest of an official but the interests of someone linked to him or her through membership of a family, political party, tribe, religious or other group. If an individual bribes an official to hire him or her, the official acts in self-interest. If a corrupt official hires a relative, he or she acts in exchange for the less tangible benefit of advancing the interests of family or the specific relative involved (nepotism). The favouring of, or discriminating against, individuals can be based on a wide range of group characteristics: ethnicity, religion, geographical factors, political or other affiliation, as well as personal or organisational relationships, such as friendship or membership of clubs or associations.

²³ UNODC (n 18 above) 14 – 15.

²⁴ UNODC (n 18 above) 15.

²⁵ UNODC (n 18 above) 15.

The above headings represent a few of the forms in which corruption has been classified. For the purposes of this dissertation, however, corruption will be categorised as proposed by Robinson. These are incidental, institutional and systemic forms of corruption.²⁶

2.3.8 Incidental corruption

Incidental or individual forms of corruption are confined to instances of malfeasance on the part of individual politicians or public officials, and are episodic rather than systemic.²⁷ It is small-scale corruption and usually involves isolated individuals or small numbers of individuals.²⁸ This form of corruption is a feature of life in almost all societies.²⁹

2.3.9 Institutional corruption

In cases of institutional corruption, corruption pervades particular institutions or sectors of activity. For example, certain line ministries may be riddled with corrupt officials whereas in others the practice is much less pervasive, reflecting differential opportunities and controls. Corruption may also feature more routinely in sectors where it is easier for public officials to extract rents due to weaknesses in the prevailing system of controls and regulations.³⁰ Also known as systematic corruption, it involves larger numbers of public officials and an element of organisation and conspiracy. It is typically found in government departments or parastatals such as procurement agencies and marketing boards.³¹ The intensity of such corruption varies from *ad hoc* incidents to situations where corruption becomes intrinsic to the way power is exercised. This could range from major decisions of the state to very localised project management decisions.³²

2.3.10 Systemic corruption

Systemic or entrenched corruption occurs where corruption pervades the entire society and in the process becomes 'routinised' and accepted as a means of conducting everyday transactions. It

²⁶ Robinson (n 13 above) 3 - 4.

²⁷ Robinson (n 13 above) 3.

²⁸ SP Riley 'The Political Economy of Anti-Corruption Strategies in Africa' in Robinson (n 12 above) 139.

²⁹ A Doig & S Riley 'Corruption and Anti-Corruption Strategies: Issues and Case Studies from Developing Countries' in UNDP *Corruption & Integrity Improvement Initiatives in Developing Countries* (1998) 49, available at <<http://www.undp.org/dpa/publications/corruption>> (accessed 13 September 2005).

³⁰ Robinson (n 13 above) 3.

³¹ Riley (n 29 above) 139.

³² C Heymans & B Lipietz 'Corruption and development: Some perspectives' (1999) Vol 40 *Institute of Security Studies Monograph Series* 8.

affects institutions and influences individual behaviour at all levels of a political and socio-economic system. This form of corruption has a number of characteristic features: it is embedded in specific socio-cultural environments, and tends to be monopolistic, organised and difficult to avoid.³³ It is a situation in which the major institutions and processes of the state are routinely dominated and used by corrupt individuals and groups, and in which many people have few practical alternatives to dealing with corrupt officials.³⁴ The near-inevitability of official abuses may be as much a matter of expectations as a positive fact but that corruption is pervasive is no longer an exception to the political or administrative norm. In this form of corruption, organisational structures – the way organisations, departments or units are structured or are functioning – as well as social systems – such as political, organisational, economic, cultural or religious systems – operate in such a way that power is allowed and justified to be abused for personal or sectional gain at the expense of others.³⁵ Where corruption has become systemic, formal and informal rules that are at odds with each other become interchangeable and decisions increasingly arbitrary. At its worst, this would make bribery and favouritism routine in interactions between the public sector and private interests. This may develop such a strong momentum that no one even challenges the corruption.³⁶

Having analysed the phenomenon of corruption and the forms in which it manifests, this study will proceed to examine the intricate links between corruption and human rights.

2.4 Corruption and human rights

Literature is scant that directly establishes the relationship between corruption and human rights. However, a number of authors mention the serious economic, social and political adversity it causes to a nation and its population, which directly results in violation of fundamental rights and freedoms.³⁷ In adopting this approach in her research paper, Pearson established the link between corruption and human rights on the basis that international human rights law rests upon the International Bill of Rights as the cornerstone of the human rights system.³⁸ However, this study proceeds to establish the link between corruption and human rights strictly from the perspective of

³³ Robinson (n 13 above) 3.

³⁴ Johnston (n 12 above) 89.

³⁵ van der Merwe (n 11 above) 19.

³⁶ Heymans & Lipietz (n 32 above).

³⁷ SJ Wei 'Policy Research Working Paper' in World Bank (ed) *Corruption in economic development: Beneficial grease, minor annoyance, or major obstacle* (1999) 1 – 30, quoted in Action Professionals' Association for the People (APAP) *An Overview of Corruption in relation to the Ethiopian Legal System* (2001) 14, available at <<http://www.telecom.net.et/~apap/pdf/An%20Overview%20of%20Corruption.pdf>> (accessed 11 September 2005).

³⁸ Pearson (n 5 above) 20 – 21. These comprise of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

the African regional human rights system. To that extent, the basis for establishing the link between corruption and human rights in Africa is the African Charter on Human and Peoples' Rights (AfCHPR).³⁹

The AfCHPR is a significant instrument upon which to establish the link between corruption and human rights in Africa. Unlike most other international or regional foundational human rights instruments, it does not delimitate the unnecessary distinctions between generations or forms of human rights. Rather, it acknowledges the fact that it is essential to pay particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.⁴⁰ It thus represents a most progressive and innovative approach to the rights discourse, particularly as regards the universality and interdependency of all human rights. The fact that 53 of the 54 states in Africa have either ratified or acceded this instrument, thereby affirming their obligations to its provisions also give added value to it being the most veritable basis upon which to link corruption and human rights in Africa.⁴¹

In view of this fact, the approach taken in this study is to group the rights contained in the AfCHPR into categories that concentrate on the inherent needs of people and how these needs are being impacted upon by corruption. In doing this, an analysis of the obligations of African states under the AfCHPR and the impact of corruption on these obligations shall be carried out. The obligations arising from the provisions of the AfCHPR shall be considered in the light of the decision of the African Commission on Human and Peoples' Rights (African Commission or Commission) that all rights generate at least four levels of duties to a state.⁴² These are the duties to respect, protect, promote, and fulfil these rights. Hence, the duty to respect entails that the state should refrain from interfering in the enjoyment of all the rights under the AfCHPR; the duty to protect implies that a state is obliged to protect right-holders against other subjects by legislation and provision of effective remedies; the duty to promote obliges the state to promote the enjoyment of all human rights by making sure that individuals are able to exercise their rights and freedoms; and the duty to fulfil requires states to fulfil the rights and freedoms they freely undertook under the AfCHPR by moving their machineries towards the actual realisation of these rights. The groupings of rights

³⁹ Text available at http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Banjul%20Charter.pdf (accessed 14 September 2005).

⁴⁰ See Preamble to AfCHPR.

⁴¹ The list of these countries is available at <http://www.africa-union.org/home/Welcome.htm> (accessed 14 September 2005).

⁴² See Communication 155/96 *The Social and Economic Rights Action Center & the Center for Economic and Social Rights v Nigeria* (SERAC decision), 15th Annual Activity Report, paras 44 – 47.

proposed in this study are by no means rigid. They merely serve as a productive means of examining how the fundamental needs of people are affected by corruption, and how their rights are consequently also affected.⁴³ These groupings of rights and the impact of corruption on them are discussed below.

2.4.1 Rights to affiliation

This category is proposed by this study to include the right to freedom of religion, rights to freedom of association and assembly, the right to freely take part in the cultural life of one's community, and the right to self-determination.⁴⁴ A classic example of a possible violation of these rights is based on the *SERAC decision* and the background facts that culminated in the Communication being brought before the Commission. These relate to corrupt behaviour on the part of successive military governments in Nigeria regarding the operations of oil companies in the Niger-Delta region. There, as a result of corruption, the government became directly complicit in a series of events that showcased violations of the rights of the Niger-Delta people to religion, to freely take part in the cultural life of their community and to self-determination,⁴⁵ as well as their rights to association and assembly.⁴⁶ These facts thus reveal how corruption can negatively impact upon the rights classified under the rights to affiliation in which case the government failed to respect and protect the rights of the Niger-Delta people.⁴⁷

2.4.2 Rights to life, health, liberty, integrity of the person and dignity

The rights under this category include the rights to life and integrity of the person, the right to the respect of the dignity inherent in a human being and the prohibition of torture, cruel, inhuman or degrading punishment and treatment, the right to liberty and security of the person, and the right to enjoy the best attainable state of physical and mental health (which includes the obligation of the state to ensure that people receive medical attention when they are sick).⁴⁸ Corruption impacts on these rights directly and indirectly in various ways. Violations of the rights to life, liberty, dignity and integrity of the person as a result of corruption are particularly rampant in Nigeria where members

⁴³ Pearson (n 5 above) 22.

⁴⁴ These are provided under arts 8, 10, 11, 17(2), and 20 of the AfCHPR.

⁴⁵ This is due to the fact that most of the oilfields lie in the ancestral homes of members of minority ethnic groups.

⁴⁶ The fact that resulted in these violations was because the Ogoni people founded the Movement for the Survival of the Ogoni People (MOSOP), against which the government launched massive attacks.

⁴⁷ See *SERAC decision* (n 42 above). See also BBC News 'Shell admits fuelling corruption', available at <<http://news.bbc.co.uk/1/hi/business/3796375.stm>>; ratical.org 'Factsheet on the Ogoni Struggle', available at <<http://www.ratical.org/corporations/OgoniFactS.html>> and CP Lucas 'Nigeria's Delta Problem', available at <<http://www.africare.org/news/editorials/nigeria-delta.html>>. All accessed 14 September 2005.

⁴⁸ These are provided under arts 4, 5, 6, and 16 of the AfCHPR.

of the police are wont to indiscriminate arrests, incarcerations and killings of individuals who fail to accede to their frequent requests for bribes.⁴⁹ Likewise, in relation to the right to health, it is reported that in some Cameroonian public hospitals, patients say they have to put some money in the doctor's consultation book before they are attended to.⁵⁰ All these situations establish the fact that acts of corruption can constitute violations of the rights listed above.

2.4.3 Rights to political participation

The rights included under this category are the rights to receive information and to express and disseminate opinions, as well as the right to participate freely in the government of one's country.⁵¹ Corruption has also played a major role in the violation of these rights in Africa. In Egypt, for instance, the government is known for its hard stance against journalists who venture to report on instances of corruption in government, thereby curtailing the right of the people to receive information and the right of journalists to disseminate their opinions.⁵² Also, in Ethiopia, following widespread allegations of electoral fraud – a glaring violation of the people's right to participate freely in government – and anticipating public outrage, the Prime Minister banned street demonstrations for one month and assumed full control of the country's security forces.⁵³ These events further mirror the dimensions through which corruption negatively impacts on human rights.

2.4.4 Rights to social and economic development

Included under this category are the right to work under equitable and satisfactory conditions, the right to education, the right of peoples to economic, social and cultural development, and the right to a general satisfactory environment favourable to their development.⁵⁴ In Africa, violations of these rights as a result of corruption are rife. In Zambia, for example, doctors went on strike in 2000, imploring the government to improve not only their conditions of service but also the quality of facilities in the country's hospitals. Though the government had announced that reforms would

⁴⁹ See Democratic Socialist Movement (DSM) 'Six Apo killings: Nigerians should expect more except...', available at <<http://www.socialistnigeria.org/paper/2005/aug-sept/5.html>> and Economic and Financial Crimes Commission (EFCC) 'President Obasanjo regrets Apo killings, warns police against corruption', available at <http://www.efccnigeria.org/index.php?option=com_content&task=view&id=499&Itemid=2>. Both accessed 14 September 2005.

⁵⁰ See BBC News 'How deep is corruption in Africa?', available at <<http://news.bbc.co.uk/2/hi/africa/3819027.stm>> (accessed 14 September 2005).

⁵¹ These are provided under arts 9 and 13(1) of the AfCHPR.

⁵² Amnesty International (AI) 'Egypt: Muzzling Civil Society', available at <<http://web.amnesty.org/library/Index/engMDE120212000?OpenDocument&of=COUNTRIES%5CEGYPT>> (accessed 14 September 2005).

⁵³ See GBN Ayittey 'Smart Aid for Africa', available at <<http://www.thisweekghana.com/ThisWeek/Commentary.AYITTEY.061505.htm>> (accessed 14 September 2005).

⁵⁴ These are provided under arts 15, 17(1), 22 and 24 of the AfCHPR.

be commenced to improve the unsatisfactory conditions, the people in charge of implementing these reforms had embezzled the allocated funds.⁵⁵ With regards to education, in Zimbabwe where education is not free, a government program of social welfare grants for needy children, including funds to assist them with their education was undermined by corruption. The members of selection committees in some communities gave grants to their relatives and friends and denied them to the children of opposition supporters.⁵⁶ These violations of the right to work under satisfactory conditions and the right to education also translate to violations of the right of the people mentioned to all aspects of development and to a general satisfactory environment favourable to their development. This is a logical deduction as there is no gainsaying the fact that people cannot be presumed to develop without education or employment under satisfactory conditions.

2.4.5 Rights to non-discrimination, equality before law and the rule of law

Listed under this category are the right to the enjoyment of rights and freedoms without distinction of any kind, equality before the law and equal protection before the law, as well as the right of every individual to have his or her cause heard.⁵⁷ Generally, as indicated in the preceding categories, acts of corruption perpetuate discrimination, as their effect is to make distinctions between classes and groups of persons without any rational or reasonable basis. Thus, when a person offers a bribe to a public official and that bribe is accepted, that person immediately acquires a privileged status in relation to other persons similarly placed who have not offered any such gratification.⁵⁸ In the same scenario, the right to equality before the law is thereby undermined. In this case, it may be argued that corruption directly violates the protection guaranteed under the equality clause, because a corrupt public servant discriminates against a person who does not bribe him as opposed to a person who bribes him. This isolated incident of discrimination gets institutionalised into an all-pervasive phenomenon, thereby violating the equality clause.⁵⁹ What corruption does is to strike at the heart of the rule of law, which is central to human rights protection.⁶⁰ This is especially manifested where corruption occurs within the judicial system where the procedural equality of parties – the equality of arms – is an inherent element of

⁵⁵ A Muyebe 'Priorities upsided-down: The Doctors' case', available at <<http://www.jctr.org.zm/bulletins/priorities.htm>> (accessed 14 September 2005).

⁵⁶ United States Department of State 'Country Reports on Human Rights Practices - 2004: Zimbabwe', available at <<http://www.state.gov/g/drl/rls/hrrpt/2004/41634.htm>> (accessed 14 September 2005).

⁵⁷ These are provided under arts 2, 3 and 7 of the AfCHPR.

⁵⁸ Jayawickrama (n 17 above).

⁵⁹ Kumar (n 2 above).

⁶⁰ B Rajagopal 'Corruption, Legitimacy and Human Rights: The Dialectic of the Relationship' (1999) 14 *Connecticut Journal of International Law* 499.

fair trial. This element is missing if, for example, one of the parties has bribed the judge.⁶¹ Corruption in the judiciary not only distorts the equality of persons before the law; by itself, it constitutes an abuse of the rule of law.⁶² Hence, corruption directly infringes on human rights in these situations.

2.5 Conclusion

The discussion in this chapter provides a descriptive analysis of the phenomenon of corruption whilst locating it within the human rights discourse. It concluded by positing that corruption has serious consequences for human rights. With this background foundational analysis, the next chapter seeks to evaluate the African regional response to the issue of corruption using current anti-corruption initiatives in Nigeria and South Africa as a basis for assessing the projected implementation of the AU Convention.

⁶¹ Jayawickrama (n 17 above).

⁶² See Africa News Update 'Nigeria: President claims judiciary is corrupt', available at <<http://www.afrika.no/Detailed/10114.html>> (accessed 14 September 2005).

CHAPTER THREE

APPRAISING THE AU CONVENTION AND ANTI-CORRUPTION INITIATIVES IN NIGERIA AND SOUTH AFRICA

3.1 Introduction

Having established the link between corruption and human rights in Africa, the next issue is to inquire into how the continent has fared in confronting the phenomenon of corruption. In examining the means by which Africa as a continent has sought to confront its corruption problem, the first – and perhaps the only – port of call is the AU Convention.⁶³ Thus, this chapter dissects the AU Convention in order to evaluate its viability as a tool for combating corruption in Africa, especially with the hindsight of the effects of corruption on human rights. As the Convention is yet to enter into force, the appraisal of the Convention is done using illustrative mechanisms in Nigeria and South Africa. However, the focal comparative mechanism is the Nigerian anti-corruption initiatives with the South African initiatives only serving some juxtaposing and reinforcing effects. This is due to the fact that systemic corruption upon which this study concentrates is best illustrated using Nigerian case studies and situations.

3.2 The African Union Convention on Preventing and Combating Corruption

Amongst others, the main root of the AU Convention stems from Resolution AHG-Dec 126(XXXIV) adopted by the 34th Ordinary Session of the Assembly of Heads of State and Government (Assembly) of the Organisation of African Unity (OAU) in June 1998 in Ouagadougou, Burkina Faso.⁶⁴ The Resolution requested the Secretary-General to convene, in cooperation with the African Commission, a high level meeting of experts to consider ways and means of removing obstacles to the enjoyment of economic, social and cultural rights, including the fight against corruption and impunity and propose appropriate legislative and other measures. This Resolution, in addition to the Declaration adopted by the first session of the Assembly of the AU held in Durban, South Africa in July 2002, relating to the New Partnership for Africa's Development (NEPAD) which calls for the setting up of a coordinated mechanism to combat corruption

⁶³ This is not intended to discredit other international and sub-regional treaties dealing with the issue of corruption to which African countries may be parties, such as the United Nations (UN) Convention against Corruption (UN Convention), available at <http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf> and the Southern African Development Community (SADC) Protocol against Corruption, available at <<http://www1.oecd.org/daf/nocorruptionweb/pdf/SADC.pdf>>. The focus on the AU Convention is because this study concentrates on African states as a continental region and not as states within the globe or sub-regions.

⁶⁴ Text of the Resolution is available at <<http://www.africa-union.org>> (accessed 12 October 2005).

effectively, eventually led to the adoption of the Convention on 11 July 2003 at the Second Ordinary Session of the Assembly of the AU held in Maputo, Moçambique.⁶⁵

3.2.1 Overview of the structure of the Convention

In terms of article 2, the Convention has the following objectives:

1. Promote and strengthen the development in Africa by each state party, of mechanisms required to prevent, detect, punish and eradicate corruption and related offences in the public and private sectors.
2. Promote, facilitate and regulate cooperation among the state parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption and related offences in Africa.
3. Coordinate and harmonize the policies and legislation between State Parties for the purposes of prevention, detection, punishment and eradication of corruption on the continent.
4. Promote socio-economic development by removing obstacles to the enjoyment of economic, social and cultural rights as well as civil and political rights.
5. Establish the necessary conditions to foster transparency and accountability in the management of public affairs.

Besides these objectives, the Convention also prescribes the principles by which the state parties to the Convention undertake to abide. These are:

1. Respect for democratic principles and institutions, popular participation, the rule of law and good governance.
2. Respect for human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments.
3. Transparency and accountability in the management of public affairs.
4. Promotion of social justice to ensure balanced socio-economic development.
5. Condemnation and rejection of acts of corruption, related offences and impunity.⁶⁶

The Convention goes on to define corruption as the acts and practices including the related offences proscribed in the Convention.⁶⁷ Article 4(1)(a) to (i) then delimits the scope of application of the Convention to some acts of corruption and related offences. These offences include the solicitation or acceptance by, or the offering or granting to, a public official or other person of goods or other benefit in exchange for an act or omission in the performance of his or her public functions;⁶⁸ any act or omission in the discharge of duties by a public official for the purpose of

⁶⁵ Texts of the decision and resolution are also available at <<http://www.africa-union.org>> (accessed 12 October 2005).

⁶⁶ Art 3.

⁶⁷ Art 1.

⁶⁸ Art 4(1)(a) and (b).

illicitly obtaining benefits for himself or herself or a third party;⁶⁹ the diversion of property by a public official or other person for purposes unrelated to those for which they were intended;⁷⁰ the offering or giving, promising, solicitation or acceptance of any undue advantage to or by any person who directs or works for a private sector entity for him or her to act, or to refrain from acting, in breach of his or her duties;⁷¹ and illicit enrichment,⁷² which is defined in article 1 as the significant increase in the assets of a public official or any other person which he or she cannot reasonably explain in relation to his or her income. Also included as offences are the use or concealment of proceeds derived from any of the acts referred to in article 4,⁷³ as well as participation as a principal, co-principal, agent, instigator, accomplice or accessory after the fact, or on any other manner in the commission or attempted commission of, in any collaboration or conspiracy to commit, any of the acts referred to in the article.⁷⁴

Under article 5 of the Convention, states parties undertake to, amongst others, adopt legislative and other measures to establish the acts stated in article 4 as offences;⁷⁵ strengthen national control measures to ensure that the setting up and operations of foreign companies in the territory of a state party shall be subject to the respect of national legislation;⁷⁶ establish, maintain and strengthen independent national anti-corruption authorities or agencies;⁷⁷ and adopt and strengthen mechanisms for promoting the education of populations to respect the public good and public interest' and awareness in the fight against corruption and related offences.⁷⁸ Furthermore, by virtue of articles 6 and 8 of the Convention, states parties undertake to criminalize the laundering of the proceeds of corruption as well as illicit enrichment. Under articles 7 and 9 of the Convention, states parties commit themselves to fighting corruption through requiring the declaration of assets by public officials and creating committees to establish codes of conduct, as well as adopting legislative and other measures to give effect to the right to access to information required to assist in the fight against corruption and related offences. In addition, states parties

⁶⁹ Art 4(1)(c).

⁷⁰ Art 4(1)(d).

⁷¹ Art 4(1)(e).

⁷² Art 4(1)(g).

⁷³ Art 4(1)(h).

⁷⁴ Art 4(1)(i).

⁷⁵ Art 5(1).

⁷⁶ Art 5(2).

⁷⁷ Art 5(3).

⁷⁸ Art 5(8).

undertake to put in place measures to address corruption in the funding of political parties as well as in the private sector.⁷⁹

Moving on to article 12, states parties undertake to fight against corruption in cooperation with the media and civil society at large. Articles 13, 15, 18 and 19 stipulate jurisdictional provisions, extensive provisions to facilitate extradition of offenders and provisions on cooperation and mutual assistance as well as international cooperation, whilst article 14 provides for minimum guarantees of a fair trial. Articles 16 and 17 include provisions on confiscation and seizure of the proceeds and instrumentalities of corruption, as well as provisions on bank secrecy. Article 20 then includes a provision requiring states parties to communicate, at the time of ratification, the national authorities responsible for the offences stipulated in article 4(1), whilst article 21 provides for the relationship of the Convention with other agreements between states parties to the effect that the former shall supersede the latter.

Thereafter, a follow up mechanism is provided under article 22. It establishes an Advisory Board on Corruption that shall, amongst other functions, submit reports to the Executive Council of the AU on the progress made by each state party in complying with the provisions of the Convention.⁸⁰ In this vein, states parties are required to ensure that their national anti-corruption authorities or agencies report to the Board at least once a year before the ordinary sessions of the policy organs of the AU.⁸¹ Articles 23 to 28 are basically final clauses referring mainly to signature, ratification, accession, entry into force, reservations, amendment, denunciation, depositary, and authentic texts of the Convention.

3.2.2 Assessing the Convention

From the overview of the provisions of the Convention, one can say that it generally prescribes measures that are primarily aimed at the prevention and criminalisation of corruption, regional cooperation and mutual legal assistance, as well as recovery of assets.⁸² The AU Convention is thus commendable in many respects and researchers have extrapolated its many benefits.⁸³ These include the fact it contains many progressive provisions such as restrictions on immunity for public officials,⁸⁴ and requirement of transparency in political party funding.⁸⁵ The Convention is,

⁷⁹ Arts 10 and 11.

⁸⁰ Art 22(5)(h).

⁸¹ Art 22(7).

⁸² U4 - Utstein Anti-Corruption Resource Centre 'Conventions overview: African Union (AU)', available at <<http://www.u4.no/themes/conventions/auconvention.cfm>> (accessed 17 September 2005).

⁸³ See, for example, U4 (n 83 above).

⁸⁴ Art 7.

however, not without its shortcomings. For instance, article 22(5)(h) only prescribes that the Advisory Board submit a report to the Executive Council *on a regular basis* on the progress made by each state party in complying with the provisions of this Convention. It does not explicitly provide for a peer review procedure when compared with article 63(5) of the UN Convention. Several other weaknesses of the Convention have been explored but do not form the focus of this study.⁸⁶

Within the scope of this study, which has analysed corruption as a human rights issue, a striking flaw of the Convention is the manner in which its original human rights background and focus was muddled up and lost in the substantive provisions. For example, it is interesting that the main impetus for the AU Convention came from Resolution AHG-Dec 126 which made a link between the enjoyment of economic, social and cultural rights and corruption. Thus, in the history of the AU Convention these issues were linked. These linkages are made even in articles 2(4) and 3 of the Convention which outline its objectives and the principles by which states undertake to abide. Under these articles, corruption is seen as a barrier to the enjoyment of these rights, which is of course accurate and one way of looking at it. It follows from these that tackling corruption is good for human rights. In this vein, to the extent that it already does make some linkages between corruption and human rights and not solely focusing on corruption as an economic issue, the Convention is commendable. However, as would be argued in this study, the human rights focus adopted by the Convention should rather have been that that respect for human rights will assist efforts to combat corruption. A pertinent question, therefore, is whether the implementation of the legislative and other measures proposed by the Convention can ensure a more effective fight against corruption in Africa, especially where the problem is systemic.

3.3 Can the implementation of the AU Convention ensure a more effective fight against corruption in Africa?

The fact that the AU Convention is yet to enter into force does not preclude an assessment of the potentials of its implementation in situations of systemic corruption as compared to those of institutional corruption. In practice, many African states already have legislative and institutional mechanisms that have put into place the basic requirements of the Convention. These countries can serve as illustrative examples of assessing how the Convention would work out in practice. For

⁸⁵ Art 10. It is the only Convention to have mandatory provisions on this subject.

⁸⁶ For a more comprehensive appraisal, see PW Schroth 'National and International Constitutional Law Aspects of African Treaties and Laws against Corruption' (2003) 13 *Transnational Law and Contemporary Problems* 83 – 108. See also PW Schroth 'The African Union Convention on Preventing and Combating Corruption' (2005) 49 (1) *Journal of African Law* 24 – 38.

the purposes of this dissertation, the assessment would be carried out using Nigerian anti-corruption initiatives with South African initiatives serving the purpose of comparison.

3.4 Assessing the Nigerian anti-corruption regime

3.4.1 Corruption in Nigeria

Corruption in Nigeria can be classified as a classic case of systemic corruption. Corrupt practices transcend nearly every stratum of Nigerian society.⁸⁷ Corruption in Nigeria is not only incidental,⁸⁸ or institutional,⁸⁹ it is systemic. In the words of the former helmsman of the country's anti-corruption agency, corruption in Nigeria is 'endemic, pandemic and systemic.'⁹⁰ The systemic aspect is evident from the fact that corruption pervades the entire society and has become so routinised and accepted as a means of conducting everyday transactions that many people have few practical alternatives to dealing with corrupt officials. No doubt, this explains why Transparency International (TI), the leading global non-governmental organisation (NGO) devoted to combating corruption, consistently ranks Nigeria abysmally in its Corruption Perceptions Index (CPI).⁹¹ Though one may question the methodology adopted by TI in coming to its conclusions, the fact remains that corruption in Nigeria has become the very epitome of many aspects of the polity. Several writers have attempted to reason out why this is the case in Nigeria,⁹² but in this study, it suffices to say that Nigeria has a phenomenal problem of corruption in virtually every sector of societal life.

⁸⁷ S Ekwowusi 'Curbing Corruption in Nigeria' *THIS DAY*, 15 October 2000, quoted in NA Goodling 'Nigeria's Crisis of Corruption - Can the U.N. Global Programme hope to resolve this Dilemma?' (2003) 36 *Vanderbilt Journal of Transnational Law* 999.

⁸⁸ Cases of incidental corruption on the part of politicians and civil servants abound. See, for example, G Oji 'Corruption: Council Boss Dragged Before EFCC' *THIS DAY ONLINE*, available at <<http://www.thisdayonline.com/nview.php?id=28523>>. See also T Adedoja 'Obasanjo Backs Alamieyeseigha's Arrest: Fresh facts emerge on money laundering' *THIS DAY ONLINE*, available at <<http://www.thisdayonline.com/nview.php?id=28530>> and G Oji and J Lohor 'EFCC Quizzes Obasanjo Over Corruption' *THIS DAY ONLINE*, available at <<http://www.thisdayonline.com/nview.php?id=28181%22>>. All web sites accessed 18 September 2005.

⁸⁹ Ranging from the police force to the judiciary and legislature, institutional corruption manifests repeatedly in Nigeria. See, for example, EFCC (n 49 above), Africa News Update (n 62 above), and E Aziken 'How we shared N55m bribe — SENATOR ADIGHIJE * Says Wabara charged N10m interest on outstanding bribe' *VANGUARD*, available at <<http://www.vanguardngr.com/articles/2002/headline/f107042005.html>> (accessed 18 September 2005).

⁹⁰ I Ige & D Lawal 'Akanbi Reels Out Causes of Corruption in Nigeria' *allAfrica.com*, available at <<http://allafrica.com/stories/200509160223.html>> (accessed 18 September 2005).

⁹¹ The CPI relates to perceptions of the degree of corruption as seen by business people, risk analysts and the general public and ranges between 10 (highly clean) and 0 (highly corrupt). In the CPI for the last five years save for the most recent, Nigeria has been ranked consistently within the last three countries on the scale of countries ranked which ranged from 91 to 158 countries. See TI 'Corruption Surveys and Indices', available at <<http://www.transparency.org/surveys/index.html#pci>> (accessed 26 October 2005).

⁹² See Goodling (n 87 above) and Oko (n 6 above) 397 – 473. See also Ige & Lawal (n 90 above).

With this background, this study proceeds to highlight the current anti-corruption regime in Nigeria, especially as it relates to the measures prescribed in the AU Convention for states to adopt in combating corruption. Hence, the aspects of the regime that are on all fours with those prescribed by the AU Convention will be examined in order to use them as the basis upon which the provisions of the Convention could be assessed.

3.4.2 The Nigerian anti-corruption regime

Nigeria is an example of a country that has put in place legislative and other measures to fight corruption as recommended by the Convention, the foremost being the enactment of the Corrupt Practices and Other Related Offences Act No 5 of 2000 (Anti-Corruption Act).⁹³ This Act established the Independent Corrupt Practices and Other Related Offences Commission (ICPC) to, amongst others, investigate and prosecute bribery, corruption and related offences as well educate the public on and against bribery corruption and related offences.⁹⁴ The Anti-Corruption Act was followed by the Economic and Financial Crimes Commission (Establishment) Act 2004 (EFCC Act),⁹⁵ and the Money Laundering (Prohibition) Act 2004 (Money Laundering Act).⁹⁶ In addition to these three pieces of legislation, the 1999 Constitution of the Federal Republic of Nigeria (Constitution) also includes provisions relevant to those prescribed by the AU Convention.⁹⁷ This section thus highlights the provisions in these legislation which replicate those in the AU Convention.

Beginning with offences, the current anti-corruption legislation in Nigeria replicate the list of offences prescribed in article 4 of the Convention and even transcend it. For example, the offence of corrupt solicitation by a public officer under article 4(1)(a) and (c) of the Convention is reproduced by the offences described in sections 8 and 10 of the Anti-Corruption Act.⁹⁸ Likewise, sections 9, 12 and 18 create offences akin to the offences prescribed in article 4(1)(b) and (d) of the Convention.⁹⁹ Furthermore, the offences of illicit enrichment and private sector corruption

⁹³ Text is available at <http://www.nigeria-law.org/Corrupt%20Practices%20and%20other%20Related%20Offences%20Act%202000.htm> (accessed 18 September 2005).

⁹⁴ Anti-Corruption Act, sections 3 and 6.

⁹⁵ This replaced the 2002 Economic and Financial Crimes Commission (Establishment) Act.

⁹⁶ This replaced the 2003 Money Laundering (Prohibition) Act. Available at http://www.efccnigeria.org/index.php?option=com_docman&task=cat_view&gid=75 (accessed 18 September 2005).

⁹⁷ Text is available at <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm> (accessed 18 September 2005).

⁹⁸ These sections create the offences of accepting gratification and corrupt demand by persons.

⁹⁹ These are the offences of corrupt offers to public officers, fraudulent acquisition of property, and bribery to public officer.

provided under article 4(1)(e), (f) and (g) as well as article 8 of the Convention are well covered under section 44(2) of the Anti-Corruption Act and sections 6 and 7 of the EFCC Act. Besides these offences, the Anti-Corruption Act also provides for other corruption related offences such as making false statements or return,¹⁰⁰ and gratification by and through agents.¹⁰¹ Remarkably, a general feature of the offences created by the Act is the fact that they are defined widely. The aim is obviously to catch within its ambit all forms of dishonesty relating to corruption and allied offences.¹⁰²

Moving on to other aspects of the Convention, the undertaking by state parties to adopt legislative and other measures such as establishing and maintaining independent national anti-corruption authorities and agencies under article 5 has obviously been fulfilled by Nigeria following the creation of the ICPC and the EFCC. The requirement that states criminalize money laundering under article 6 has also been fulfilled by Nigeria through the promulgation of the Money Laundering Act. Furthermore, the requirement under article 7 that states parties put in place measures to combat corruption in the public sector such as requiring declaration of assets and establishing a code of conduct for public officials is provided under sections 52, 94, 140, 149, 152, 185, 194, 172, 209 and 290 of the Constitution.¹⁰³ In addition to these, the Code of Conduct for Public Officers is annexed to the Constitution as the Fifth Schedule. Besides this, there had been in existence in Nigeria a Code of Conduct Bureau and Tribunal Act.¹⁰⁴ The Preamble to this Act states that it is an Act to provide for the establishment of the Code of Conduct Bureau to deal with complaints of corruption by public servants. These provisions are buttressed by article 7(5) of the Convention, which requires states to ensure that any immunity granted to public officials shall not be an obstacle to investigation of corruption. In that vein, section 52 of the Anti-Corruption Act allows the investigation of 'immuned' officers such as the President and Vice-President by an independent counsel. Also, the right to access to information required to assist in the fight against corruption prescribed in article 9 of the Convention is guaranteed to the ICPC under its power to investigate reports and enquire into information.

¹⁰⁰ Section 16.

¹⁰¹ Section 17.

¹⁰² CN Ojukwu *Legal and Institutional Mechanisms Combating Corruption in Nigeria*, Paper presented at 15th International Conference of the International Society for the Reform of Criminal Law, Australia, 26 - 30 August 2001, 4, available at <<http://www.isrcl.org/Papers/Ojukwu.pdf>> (accessed 19 September 2005).

¹⁰³ These require members of the executive, legislature and judiciary to declare their assets and liabilities before taking the oath of office. They also require all persons in the public service to observe and conform to the Code of Conduct.

¹⁰⁴ Chapter 56, Laws of the Federation of Nigeria 1990.

Several other aspects of the AU Convention are covered by the current anti-corruption regime in Nigeria. With regards to requirement for transparency in the financing of political parties, the Constitution sufficiently covers this under sections 225 and 226. The requirement under article 16 of the Convention that states adopt legislative measures to enable confiscation of the proceeds and instrumentalities of corruption is also given impetus by section 20 of the Anti-Corruption Act and also by section 20 of the EFCC Act. With regards to provisions on bank secrecy under article 17 of the Convention, the Anti-Corruption Act extensively deals with the issues under sections 43 and 45.

There is, therefore, no gainsaying the fact that the Nigerian anti-corruption regime is very comprehensive. The Anti-Corruption Act has been hailed as a comprehensive legislation without precedent.¹⁰⁵ It covers a wide range of subjects such as institutional issues, definition of applicable offences and rules governing the prosecution and trial of offenders. The institutional substance relates to the establishment of the ICPC and its administration under articles 3 to 7 and articles 43 to 51. Furthermore, it lays down legal principles defining the applicable offences.¹⁰⁶ It also establishes rules governing evidence in the conduct of trial of the applicable offences and the prosecution of offenders.¹⁰⁷ In the words of Hansungule, the comprehensiveness of this Nigerian legislation is all too clear from the sections dealing with the issues governing admissibility of evidence in corruption-related proceedings. According to him,

[t]hese provisions will have far-reaching consequences in the fight against corruption and related offences. It is one of the few cases in common law jurisdictions that a government has departed from the established practice of relying on unwritten common law of evidence in the prosecution of crimes provided thereunder towards codifying those rules that apply in such situations. One of the problems that face Anti-Corruption Commissions ... is how to secure convictions of accused persons in courts that are based on unfriendly procedures and rules governing the admissibility of evidence. This is a nightmare in most of these commissions but Nigeria now seeks to address this obstacle. Courts when dealing with cases under Act No. 5 will now no longer stray to unwritten rules of common law but will be expected to have regard to relevant provisions set out in the Act, which is the fundamental departure from previous practice.¹⁰⁸

In the light of the legislative and institutional mechanisms put into place to combat corruption in Nigeria, one would expect that the level of systemic corruption in the country would plunge into deep abyss. The question, therefore, is whether this is really the case, and whether stronger

¹⁰⁵ M Hansungule, 'Anti-Corruption Initiatives in Africa: An Overview' *Lecture Notes, Good Governance Academy, Pretoria*, July 2004, 12.

¹⁰⁶ Sections 9 to 42.

¹⁰⁷ Sections 53 to 63.

¹⁰⁸ Hansungule (n 105 above) 12 – 13.

legislation as envisaged by the AU Convention has laid to rest the incidence of corruption in Nigeria.

3.4.3 Effects of the current anti-corruption regime on the incidence of corruption in Nigeria

In order to assess the effectiveness of the current anti-corruption regime on the incidence of Nigeria, one needs to adopt a multi-faceted approach. This is in view of the fact that it is almost impossible to get a quantitative evaluation of the incidence of corruption anywhere; corruption as a phenomenon thrives in clandestineness. However, the 2004 Global Corruption Barometer (GCB) of TI is a very useful instrument in measuring the current levels of corruption in countries and future expectations about corruption.¹⁰⁹ According to it, Nigerians still rate grand corruption as a very serious issue. Likewise, of the African countries surveyed, Nigerians are amongst the most pessimistic when asked for their opinion on how corruption will change in the next three years.¹¹⁰ Corroborating this, a news agency, the Voice of America stated that,

Nigeria's president, Olusegun Obasanjo, was elected in 1999, promising to rid his country of rampant graft ... But, six years on, ... many Nigerians say little has changed... Although the commission has brought several investigations against leading politicians and public officials, it has yet to make a high profile conviction.¹¹¹

However, the most pertinent source of evaluation would perhaps be the agencies and authorities at the forefront of combating corruption in Nigeria. Thus, according to the EFCC, as at 9 August 2005, its gains since inception include an increased societal confidence and a record of 13 convictions.¹¹² Likewise, the main agency, the ICPC, according to a March 2005 Press Release, had 40 criminal matters filed in court.¹¹³ Of these, it could not be ascertained how many convictions had been secured. In a country with such a high incidence of corruption, these figures are admittedly too paltry to posit that the fight against corruption is being won.¹¹⁴

¹⁰⁹ The GCB is a public opinion survey that was carried out in 64 countries among more than 50,000 people to assess perceptions about corruption, experience of corruption, and expectations concerning corruption levels in the future. See TI *Global Corruption Barometer* available at <http://www.transparency.org/surveys/barometer_report_8_12_2004.pdf> (accessed 17 October 2005).

¹¹⁰ TI (n 109 above) 7, 11 & 22. The survey indicated that 39% of Nigerians expected corruptions levels to increase a lot.

¹¹¹ J Bavier 'Questions Arise in Nigeria About State of War on Corruption' VOA, available at <<http://voanews.com/english/Questions-in-Nigeria-About-State-of-War-on-Corruption.cfm>> (accessed 20 September 2005).

¹¹² MN Ribadu 'Challenges of Prosecuting Economic and Financial Crime' *National Seminar on Economic Crimes, 6 - 9 August 2005*, available at <http://www.efccnigeria.org/index.php?option=com_docman&task=cat_view&gid=86> (accessed 20 September 2005).

¹¹³ This figure would have increased following recent events but it is the latest available on the web site. See ICPC Press Release, 24 March 2005, available at <<http://kweenandkweens.com/icpc/pr21.htm>> (accessed 20 September 2005).

¹¹⁴ This is, however, not to discredit the immense contribution being made by the EFCC in fighting economic crimes. Unlike the ICPC, the EFCC is writing its name in gold in Nigeria in barely two years of existence. This is more

All these facts reveal that however laudable the promulgation of anti-corruption legislation and the setting up of anti-corruption institutions are, they have not been able to effectively curb the prevalence of corruption in Nigeria where corruption is at epidemical levels. Legislation and institutions are but a part of the solution. The fact remains that the incidence of corruption in Nigeria has not reduced by a tangible quota. On the contrary, all the signs are that corruption is spreading.¹¹⁵ Thus, it seems not far-fetched to conclude that despite its new regime in line with the prescriptions of the AU Convention, the level of systemic corruption in Nigeria has by no means reduced. There has been progress but whether this progress impacts on a majority of the citizenry is a different question altogether. Undoubtedly, it seems not at all. From a human rights perspective, these reforms have not impacted on the ordinary people. This study thus goes on to draw comparative assessments from what obtains in South Africa.

3.5 Assessing the South African anti-corruption regime

3.5.1 Corruption in South Africa

For years in South Africa, the apartheid regime's authoritarian culture and practices obscured the levels of corruption.¹¹⁶ However, public opinion suggests that political corruption is entrenched in South Africa. Democratisation has made government less secret, inhibiting corruption in certain domains but – through extending government's activities – opening up possibilities for abuse in others.¹¹⁷ Political corruption here is located within the institutions of government: legislatures, courts, bureaucracies and statutory bodies such as parastatal corporations or commissions.¹¹⁸ The implication of this is that the prevalent corruption in South Africa is largely institutional corruption, with occasions of incidental corruption. South Africa is in general not perceived to be systemically corrupted. Corruption is not seen, in other words, as pervading the whole of society and as something that has become routine and accepted as a means of conducting everyday transactions.¹¹⁹

than the ICPC has done in its five years of existence. See I Balarabe *Two years of EFCC*, available at <http://www.efccnigeria.org/index.php?option=com_docman&task=doc_download&gid=25&Itemid=2> (accessed 1 October 2005).

¹¹⁵ IRIN News 'NIGERIA: Why Obasanjo's war on corruption is faltering', available at <http://www.irinnews.org/report.asp?ReportID=42448&SelectRegion=West_Africa> (accessed 20 September 2005).

¹¹⁶ Heymans & Lipietz (n 32 above) 3.

¹¹⁷ T Lodge 'Political Corruption in South Africa' (1998) 97 *African Affairs* 157.

¹¹⁸ Lodge (n 117 above) 158.

¹¹⁹ L Camerer 'Extent, Locations and Seriousness of Corruption' *Corruption in South Africa, Results of an Expert Panel Survey* Published in Monograph No 65, September 2001 <<http://www.iss.co.za/Pubs/Monographs/No65/Chap3.html>> (accessed 21 September 2005).

Within this kind of institutional corruption, both the political and bureaucratic components of government could become sources and targets of corruption.¹²⁰ In a survey carried out on the extent and location of corruption in South Africa, Safety and Security (or the police) and Home Affairs stood out in the expert opinion as the most corrupt national departments. Safety and Security accounted for almost one-fifth (19%) of the responses, and Home Affairs accounted for more than a tenth (15%) of the total responses provided.¹²¹ Corruption in South Africa is also particularly prevalent in the area of service delivery and it poses a major challenge at provincial and local government level. TI corroborated this fact in its 2005 Country Study Report for South Africa where it reported that at a national level, almost R2 billion (US \$332 million) was lost in 2003 to corruption in social welfare.¹²² Other peaks of political corruption in South Africa include the four million rand paid to 'ghost' workers in Kwa Zulu-Natal's Department of Nature Conservation, and the defrauding of 5.3 million rand from the justice department in Lusikisiki.¹²³ The list goes on but perhaps the incidence of corruption in South Africa climaxed with the arms corruption scandal,¹²⁴ which led to the dismissal of the Deputy President.¹²⁵ Having established the prevalence of incidental and institutional corruption in South Africa, the anti-corruption regime will be succinctly examined.

3.5.2 The South African anti-corruption regime

The 1996 Constitution of South Africa provides the basis for fighting corruption. It enshrines the need for public administration to be accountable and transparent, and for services to be provided impartially, fairly, equitably and without bias.¹²⁶ In addition to it, various pieces of legislation that explicitly address the issue of corruption were established. Some of the recent ones include the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 (Corrupt Activities Act), Interception and Monitoring Prohibition Act (1992), Drugs and Drug Trafficking Act (1992), Public Protector Act (1994), Special Investigation Units and Special Tribunals Act (1996), International Cooperation in Criminal Matters Act (1996), National Prosecuting Act (1998), Prevention of

¹²⁰ Heymans & Lipietz (n 32 above) 7.

¹²¹ Camerer (n 119 above).

¹²² See H van Vuuren 'National Integrity Systems Transparency International Country Study Report Final Draft South Africa 2005' 8, available at <http://www.transparency.org/activities/nat_integ_systems/dnld/draft_s_africa_18.03.05.pdf> (accessed 21 September 2005).

¹²³ Lodge (n 117 above) 174.

¹²⁴ B Slaughter 'Arms corruption scandal erupts in South Africa' *World Socialist Web Site*, available at <<http://www.wsws.org/articles/2001/mar2001/arms-m20.shtml>> (accessed 21 September 2005).

¹²⁵ BBC News 'South African leader sacks deputy', available at <<http://news.bbc.co.uk/2/hi/africa/4092064.stm>> (accessed 21 September 2005).

¹²⁶ See section 195. Text of these and all South African legislation are available at <<http://www.info.gov.za/documents/index.htm>> (accessed 22 September 2005).

Organised Crime Act (1998), Promotion of Access to Information Act (2000), and Promotion of Administrative Justice Act (2000).¹²⁷

The main legislation, the Corrupt Activities Act, makes several interesting innovations especially by creating a broader base of offences that deal with corruption.¹²⁸ In this vein, it expands the scope of application of the common law of bribery to all employees, whether in the private or public sector;¹²⁹ creates a specific offence that prohibits public officials from acquiring a private interest in certain contracts in their place of work;¹³⁰ and makes bribery of foreign public officials by South African residents or citizens an offence punishable in South Africa.¹³¹ The Act imposes a duty on people in certain official positions of authority in both the public and private sectors to report a range of crimes.¹³² It also expands the available modes of punishment for corruption by establishing a register of tender defaulters. If found guilty of a crime, a 'defaulter's' name will be endorsed in the register, ensuring that they do not qualify for public contracts for a period of between 5 and 10 years.¹³³ Other novel features include investigative and evidential tools to help fight corruption cases,¹³⁴ and general extraterritorial jurisdiction to try South African citizens, residents, or company, regardless of where the crime is committed.¹³⁵

With regards to institutional mechanisms, it should be noted that the Corrupt Activities Act was introduced into a context that is affected by pre-existing mechanisms and institutions.¹³⁶ The main investigative unit of the state is the South African Police Service (SAPS). Its work is complemented by the Special Investigations Unit (SIU), which takes over investigations upon the specific directive of the President, and usually confines itself to cases in which there are prospects of significant

¹²⁷ van der Merwe (n 11 above).

¹²⁸ Apart from creating a general offence of corruption in section 3, it goes on in sections 4 to 21 to create other offences in respect of corrupt activities relating to specific persons, offences in respect of corrupt activities relating to receiving or offering of unauthorised gratification, offences in respect of corrupt activities relating to specific matters, miscellaneous offences relating to possible conflict of interest and other unacceptable conduct, and other offences relating to corrupt activities such as accessory to or after an offence and attempt, conspiracy and inducing another person to commit offence.

¹²⁹ Section 10.

¹³⁰ Section 17

¹³¹ Sections 5 and 35.

¹³² Section 34.

¹³³ See sections 28 to 33.

¹³⁴ See section 24, a clause on unexplained wealth, which provides an investigative tool that if suspicion is raised on account of a disparity between known means and standard of living, then that can create a basis for a court application for permission to investigate.

¹³⁵ Section 35.

¹³⁶ C Goredema 'Regional efforts to combat corruption and terrorism in Southern Africa' *Lecture Notes, Good Governance Academy, Pretoria*, March 2005, 33.

asset recoveries. In addition to these, by June 1997, the Code of Conduct for the Public Service had become part of the regulations governing every public servant and was the subject of an ethics promotional campaign by the then Public Service Commission.¹³⁷

From the above, it is safe to state that South Africa has a comprehensive legal and institutional framework to deal with corruption though the framework is fragmented and in some instances, the mandates for public institutions overlap. However, in line with the AU Convention, there are provisions for a definition and criminalisation of corruption; transparency for the budgeting of public funds; the establishment of rules of conduct and disclosure of assets and financial interests for public officials and political office bearers; transparency, accountability and administrative justice in public administration and access to certain information of private entities; the jurisdiction and independence of the courts and the prosecuting authority; the criminalisation of money laundering and financial intelligence; international co-operation; the protection of whistle blowers and of witnesses in criminal trials; and the framework for the funding of political parties.¹³⁸

3.5.3 Effects of the current anti-corruption regime on the incidence of corruption in South Africa

Although, like Nigeria, South Africa has laid the foundations for a strong anti-corruption regime in line with those prescribed by the AU Convention, corruption in the public sector continues to impact on government's ability to ensure adequate service delivery to the public.¹³⁹ Corruption remains particularly problematic at provincial and local government levels, with recent demonstrations illustrating the extent of public dissatisfaction with corruption.¹⁴⁰ However, the government's resilience to combat it is becoming very apparent and yielding some significant results.¹⁴¹ The prevalent form of corruption in South Africa being largely institutional, the anti-corruption reforms centred on legislative and institutional reforms as proposed by the AU Convention are paying off.

¹³⁷ UNODC, Regional Office for Southern Africa & Department of Public Service and Administration (DPSA) *Country Corruption Assessment Report: South Africa* (2003) 16, available at <<http://www.capegateway.gov.za/Text/2004/4/sacorruptionassessmentreport2003.pdf>> (accessed 21 September 2005).

¹³⁸ UNODC & DPSA (n 137 above) 26. The Report provides a more detailed analysis of these legislative and institutional frameworks.

¹³⁹ SS Sangweni 'Overview of Anti-Corruption Programmes and Strategies in South Africa' *Address at the Free State Provincial Anti-Corruption Summit*, Bloemfontein, 29 July 2005, available at <http://www.psc.gov.za/docs/sp/2005/anti_corruption_programmes_stratergies.htm> (accessed 13 October 2005).

¹⁴⁰ Sangweni (n 139 above). See also South African Institute of International Affairs *New Money, Old Buckets Anger South Africa's Poor*, available at <<http://www.saiia.org.za/modules.php?op=modload&name=News&file=article&sid=579>> (accessed 13 October 2005).

¹⁴¹ The most important being the dismissal and current prosecution of former Deputy President, Jacob Zuma. See BBC News "S Africa's Zuma appears in court", available at <<http://news.bbc.co.uk/1/hi/world/africa/4329070.stm>> (accessed 13 October 2005).

As corruption is not pervasive, it can be located in specific institutions where it is particularly prominent making it easier to target and deal with manifestations of corruption. Thus, for example, the national government, realising the prevalence of corruption in the Eastern Cape Province, set up the Joint Anti-Corruption Task Team (JACTT) to specifically target this manifestation of institutional corruption.¹⁴² In this regard, a Disciplinary Cases Task Team (DCT) set up to deal with backlogs and emerging disciplinary cases has recorded over 1324 cases on its database.¹⁴³ This would not have been possible in a case of systemic corruption where corruption has become so 'routinised' that it is difficult to locate specific targets. It has been postulated that for legislative and institutional reforms to succeed, a politically committed leadership, and public confidence in the sincerity of politicians to effect change is of central importance.¹⁴⁴ These two factors are presently combining with the fact that corruption in South Africa is mainly institutional to bring about expectations that corruption is on a steady decline.¹⁴⁵

3.6 A general assessment of the prescriptions of the AU Convention as illustrated by the assessment of Nigerian and South African anti-corruption regimes

Undoubtedly, the prescription of the AU Convention that states combat corruption mainly through criminalisation and the employment of legislative and institutional frameworks is an important step in the right direction. Though the Convention is yet to enter into force, the effects its provisions could generate can be predicted in this chapter through the examination of similar provisions in Nigeria and South Africa. Both country studies reveal that adopting wholesale the provisions of the Convention would have differing consequences depending on the form of corruption in different country contexts.

As regards South Africa, one can say that though corruption is gradually becoming a phenomenon to contend with, it still remains at the level of incidental and institutional corruption. In these kinds of cases, one can posit that corruption can be combated solely by such legislative and institutional mechanisms as are prescribed by the AU Convention. These institutional reforms may be

¹⁴² See Address of the President of South Africa, Thabo Mbeki, at the opening of the Second National Anti-Corruption Summit, CSIR, Brummeria, Tshwane, available at <<http://www.info.gov.za/speeches/2005/05032213151001.htm>> (accessed 18 October 2005).

¹⁴³ ST Cwati *Comparing anti-corruption strategies in South Africa's Western and Eastern Cape Provinces*, Research Report submitted to the School of Government, University of the Western Cape, available at <http://www.uwc.ac.za/library/theses/Cwati_s_t.pdf> (accessed 18 October 2005).

¹⁴⁴ The dismissal of Zuma is a major illustration of this fact. There had been immense pressure on the President by the opposition, media, civil society and even a minority of the ruling ANC party asking that Zuma be sacked or else South Africa would lose its credibility. The groups represent a majority of the public who now have more confidence in the anti-corruption initiatives. See afrol News *South Africa's President fires Deputy*, available at <<http://afrol.com/articles/16583>> (accessed 17 October 2005).

¹⁴⁵ Perhaps this explains the fact why in the GCB, compared to Nigeria's 39%, only 23% of South Africans expect that corruptions levels will increase a lot over the next three years. See TI (n 109 above) 21.

appropriate and effective in countries where corruption is not entrenched and where anti-corruption laws, agencies and organisations are in place and have broad public support. Such countries invariably tend to have the institutional trappings of democracy with governments that are subject to electoral contestation and popular accountability.¹⁴⁶ Thus, it is safe to assume that the proposals of the AU Convention as already being applied in South Africa have the potential to combat corruption in that country-specific context. In the words of the Bertelsmann Transformation Index (BTI) 2006 Country Report for South Africa,¹⁴⁷ '[t]heoretically, the legal framework and the quality of prosecuting agencies are sufficient to curb corruption.'¹⁴⁸

Corruption in Nigeria is, however, not merely incidental or institutional; it is systemic. Where corruption is so entrenched, it limits the scope for effective intervention in the short term since it is deep-set and related to a complex set of societal features, which may only change gradually over the longer term. In such cases, institutional reforms by themselves do not fare well.¹⁴⁹ While institutional reforms enhancing transparency and accountability in state and economic institutions are indispensable parts of any anti-corruption strategy, they also need a long-term social foundation, particularly where corruption is systemic.¹⁵⁰ To that extent, the provisions of the AU Convention as put into place in Nigeria by the legislation mentioned above may not necessarily suffice for combating corruption.

3.7 Conclusion

The reasoning that can be deduced from this chapter is that whilst laws can provide an effective means of ordering a society, they cannot provide all of the answers to remedying a society. It is possible that corruption has so embedded itself in the fabric of a society, such that policies have to be adopted to target the social aspects of widespread corruption.¹⁵¹ When corruption is as pervasive in a society as it is in Nigeria, more efforts should be directed at developing an understanding of how the Nigerian culture understands corruption. For Nigeria's efforts truly to be effective in the long-term, more attention should focus on helping people to understand that

¹⁴⁶ Robinson (n 13 above) 10.

¹⁴⁷ BTI is an international ranking of 119 developing and transition countries. Detailed country reports provide information on the underlying factors for each country examined. See <<http://www.bertelsman-transformation-index-de/46.0.html?&L=1>> (accessed 13 October 2005).

¹⁴⁸ See page 8 of the Report, available at <<http://www.bertelsman-transformation-index.de/de/fileadmin/pdf/en/2006/EasternAndSouthernAfrica/SouthAfrica.pdf>> (accessed 13 October 2005).

¹⁴⁹ Johnston (n 12 above) 86.

¹⁵⁰ Johnston (n 12 above) 85.

¹⁵¹ Goodling (n 87 above) 1022 – 1023.

engaging in corrupt practices violates a deeper sense of right versus wrong.¹⁵² Corruption, like any other crime, cannot be regulated solely by means of legislative intervention, however comprehensive these may be. Over and above, corruption is a social and not just a legal issue. The means of fighting it can only be successful if based on the widest support of society at large and not just the technical minds of legislators. No amount of legislative strengthening can eliminate corrupt practices if not followed with the collective involvement of all people.¹⁵³ In line with this proposition, this study proceeds to examine how the law can be part of this move towards finding 'socially-rooted' solutions to corruption.

¹⁵² Goodling (n 87 above) 1023.

¹⁵³ Hansungule (n 105 above) 13.

CHAPTER FOUR

A HUMAN RIGHTS APPROACH TO COMBATING CORRUPTION IN AFRICA

4.1 Introduction

The discussion in the preceding chapter concludes that legal and institutional mechanisms as prescribed by the AU Convention may not necessarily suffice in combating corruption in Africa especially cases of systemic corruption. It further proposes that the elimination of corruption must be accompanied by the collective involvement of all people. The purpose of this chapter, therefore, is to seek means by which the law can serve as a basis for social involvement in the fight against corruption. This social involvement is proposed in the form of a social empowerment that manifests in a human rights law approach. The human rights approach proposes the creation of a right to freedom from corruption as well as underlies the necessity of strengthening the guarantee of human rights, especially social and economic rights.

4.2 Social empowerment as an anti-corruption strategy

A means by which to ensure that the fight against corruption transcends legislative – mainly criminal – and institutional responses is through social empowerment as postulated by Johnston.¹⁵⁴ This involves the expansion and protection of the range of *political* and *economic* resources, and alternatives, open to ordinary citizens.¹⁵⁵ In its classic postulation, social empowerment entails strengthening civil society in order to enhance its political and economic vitality, providing more orderly paths of access and rules of interaction between state and society, and balancing economic and political opportunities.¹⁵⁶ Where it is successful, social empowerment will not totally eradicate corruption. It can, however, provide necessary support for institutional reforms, weaken the combinations of monopoly, discretion, and lack of accountability that make for systemic corruption, and help institutionalise reform for the long term by linking it to lasting interests contending in active political and social processes.¹⁵⁷

The view in this study, however, is that social empowerment should transcend the stereotypical understanding about strengthening civil society. In expanding and protecting the range of political and economic resources and alternatives open to ordinary citizens, social empowerment should –

¹⁵⁴ Johnston (n 12 above) 85 – 104.

¹⁵⁵ Johnston (n 12 above) 85.

¹⁵⁶ Johnston (n 12 above) 85.

¹⁵⁷ Johnston (n 12 above) 85.

in order to effectively combine with legislative and institutional reforms aimed combating corruption – be adopted using a human rights approach. In much of the existing literature, the approach to analysing corruption determines the means advocated for tackling the problem.¹⁵⁸ Likewise in this study, as corruption has been analysed as a human rights issue, the social empowerment being proposed is rooted in a human rights discourse.

4.3 A human rights approach to combating corruption

Corruption does not explain all that is wrong with developing societies, nor does it negate all that is right in them. It is not something that ‘happens to’ a country, but rather a symptom of deeper difficulties. In many respects, it is a profoundly *social* process involving real people in concrete situations.¹⁵⁹ Looked at one way, corruption is a problem of official ethics and public dealings; but viewed another way, it is a function of the opportunities and alternatives that people have in life. While institutional reforms focus – rightly – upon the opportunities and alternatives open to officials, it makes equal sense to consider those available to citizens, both as they affect their vulnerability to corruption and as they shape possible opportunities for responding to it.¹⁶⁰ For serious cases of corruption, reform from the bottom upwards, opening up political and economic alternatives and bringing excluded segments of society into an active mainstream, is an essential counterpart to increased official transparency and institutional change.¹⁶¹

The fulcrum upon which the social empowerment being proposed in this study rests is transcending empowering civil society to empowering the ordinary people who have no tool for advocacy by employing a human rights approach to combating corruption. The human rights approach to combating corruption is two-pronged: firstly, a need to institutionalise a right to freedom from corruption and secondly, a proposition that if basic human rights are guaranteed, especially socio-economic rights, then the incidence of corruption and related offences would be reduced. In the light of this, an analysis of the proposal of a right to freedom from corruption is hereby undertaken.

4.4 The right to freedom from corruption

According to Mendes,

¹⁵⁸ Robinson (n 13 above) 8.

¹⁵⁹ Johnston (n 12 above) 88.

¹⁶⁰ Johnston (n 12 above) 88.

¹⁶¹ Johnston (n 12 above) 89.

there is a critical right missing from the Universal Declaration of Human Rights, and the two International Covenants that make up the International Bill of Rights. That missing right is the right of all members of the human family to be free from the evil of corruption.¹⁶²

Much as this sounds like a truism, its potential significance cannot be under-estimated. Corruption – in every facet in which it appears whether social, economic or political - is not a tangible phenomenon. What it does is to destroy a peoples' value system. Where corruption has become engrained or systemic, a strategy intended to address it must, therefore, go beyond rehashing criminal sanctions or educating the populace about its ill effects. The strategy must pronounce corruption as an evil totally averse to the inherent dignity of man such that engaging in it is not just a crime but also an act contrary to virtues inalienable to every person. In his book *Taking Rights Seriously*, Dworkin argues as follows:

The institution of rights against government is not a gift of God, or an ancient ritual, or a national sport. It is a complex and troublesome practice that makes the government's job of securing the general benefit more difficult and more expensive, and it would be a frivolous and wrongful practice unless it served some point. Anyone who professes to take rights seriously, and who praises our government for respecting them, must have some sense of what that point is. He must accept, at the minimum, one or both of two important ideas. The first is the vague but powerful idea of human dignity. The second is the more familiar idea of political equality.¹⁶³

4.4.1 Basis for the right to freedom from corruption

Where corruption has become endemic in a particular society, it attacks the fundamental values of human dignity and political equality of the people. Hence, this study proposes that there is a need to formulate a fundamental human right to freedom from corruption. This right to freedom from corruption is inherently a basic human right because the right to life, dignity, equality and other important human values depend significantly upon this right.¹⁶⁴ The freedom from corruption would mean the existence and development of a few rights for the citizenry. For instance, it is possible that corruption-free service can be framed as a human right, to which every resident is entitled. It is not argued that the mere existence of such a right will ensure that corruption will not exist in administration or, for that matter, that the people will experience good governance policies that promote sound public administration. However, the importance of such a right to corruption-free society would be vastly enhanced by the commitment of all institutions to ensure the protection and promotion of this right.¹⁶⁵

¹⁶² EP Mendes 'Corruption: The Cancer of the International Bill of Rights – Democracy and Freedom of Expression, the Main Treatments?' in *Bridging the Global Divide on Human Rights: A Canada-China Dialogue* (2003) 287.

¹⁶³ R Dworkin *Taking Rights Seriously* (1977) quoted in C R Kumar 'Corruption and human rights: Promoting transparency in governance and the fundamental right to corruption-free service in India' (2003) 17 *Columbia Journal of Asian Law* 38.

¹⁶⁴ Kofele-Kale (n 7 above) 163.

¹⁶⁵ Kumar (n 8 above) 336 – 337.

The proposal for this right to freedom from corruption is premised upon the fact that the law enforcement and public policy approach of attacking corruption has potential risks if it is pursued alone.¹⁶⁶ It is, therefore, important that corruption be brought into the central political discourse. Consequently, this proposal represents a form of social empowerment aimed at expanding and protecting the range of *political* resources and alternatives open to ordinary citizens.

4.4.2 Formulating the right to freedom from corruption

The main proponents of the development of a right to freedom from corruption, Kofele-Kale and Kumar, propose that the right to a corruption-free society will be observed initially from an international perspective so as to elevate the violation of this right to the status of an international crime. According to them, this would provide the comparative basis to elevate the right to the status of a fundamental right within the framework of national constitutions. They argue that there is sufficient state practice to support a claim for an international customary law to prohibit corruption in all societies. Therefore, in their view, a case can be made for the right to a corruption-free society as fundamental right, a right that should be recognised as a component part of the right to economic self-determination and the right to development.¹⁶⁷

The aim of this study, however, is to situate the right to freedom from corruption within the AfCHPR flowing from the analysis in Chapter two above on how corruption in Africa breaches several provisions of the AfCHPR. From an examination of the AfCHPR, apart from the plethora of rights highlighted in Chapter two which can be violated as a result of corruption, there are specific rights from which the right to freedom from corruption can be extrapolated. The first of these rights are the rights to non-discrimination and equality provided under articles 2, 3 and 19. As corruption perpetuates discrimination in administration and undermines the equality of persons before the law, one can postulate that inherent in these rights is the right to freedom from corruption. This is based on the doctrine of implicitly guaranteed rights – a theory already being applied by the African Commission in the formulation of rights that are not explicitly provided in the AfCHPR.¹⁶⁸ In addition, article 13(2) and (3) also serves as a basis for the recognition of a right to freedom from corruption. The AfCHPR therein guarantees to citizens the right to equal access to the public service of their country, and to individuals the right of access to public property and services in strict equality of all person before the law. One can postulate that the wording of article 13(3)

¹⁶⁶ Kumar (n 8 above) 324.

¹⁶⁷ Kofele-Kale (n 7 above) 163 - 165.

¹⁶⁸ See *SERAC* decision (n 42 above) paras 59 to 66, where the Commission found violations of the implicitly guaranteed rights to housing and food. The doctrine of implicitly guaranteed rights is further discussed F Viljoen 'The African Commission on Human and Peoples' Rights: Introduction to the African Commission and the Regional Human Rights System' in C Heyns (ed) *Human Rights Law in Africa* Vol 1 (2004) 410.

barely stops short of expressly guaranteeing a freedom from corruption as it emphasises the very ethos of anti-corruption efforts: the fact that people should have equal access to public benefits without undue preference. Furthermore, the right to freedom from corruption could be developed within the framework of articles 22 and 24, which guarantee the right to development and to a general satisfactory environment favourable to development. As corruption undoubtedly curbs development and stultifies any environment favourable to it, a freedom from corruption can be developed within the framework of these rights.

Thus, within the provisions highlighted above, the right to freedom from corruption in Africa could be extrapolated at a regional level. What is required is a dynamic Commission that is willing to spur the innovation through its jurisprudence. Reviewing some past communications brought before the Commission, one can glean instances of how the right to freedom from corruption could have arisen. For example, in Communication 100/93, one of the communications in *Free Legal Assistance Group and Others v Zaire*, amongst the allegations made against the kleptomaniac government of Mobutu Sese Seko in then Zaire was that public finances were mismanaged.¹⁶⁹ Unfortunately, in coming to its decision, the Commission touched on all the other allegations contained in the Communication but conspicuously refrained from making any pronouncement on the mismanagement of public finances.¹⁷⁰ Hence, an opportunity to pronounce on a right to freedom from corruption was bypassed in spite of the fact that some of the other allegations addressed by the Commission, such as the failure of government to provide basic services and shortage of medicines, stemmed from the mismanagement of public finances.

This kind of jurisprudential background will then provide the comparative basis to elevate the right to freedom from corruption to the status of fundamental right within the framework of African countries where corruption is particularly systemic. This would be especially relevant to countries such as Nigeria, which has not only ratified the AfCHPR but also domesticated it as national law.¹⁷¹ In Nigeria, for example, the development of this right as a constitutional right would be invaluable in the fight against corruption. What it would do is to widen the citizens' political resources in the fight against corruption. This kind of social empowerment can then help sustain institutional reforms. Where it is effective, institutional reforms can converge with social values and thus grow in legitimacy and effectiveness.¹⁷²

¹⁶⁹ See Communications 25/89, 47/90, 56/91, 100/93, *Free Legal Assistance Group and Others v Zaire*, 9th Annual Activity Report, para 4.

¹⁷⁰ See paras 46 – 49 of the decision.

¹⁷¹ See African Charter on Human and Peoples' Rights (Ratification And Enforcement) Act, Laws of the Federation of Nigeria 1990.

¹⁷² Johnston (n 12 above) 91.

In postulating the right to freedom from corruption in Africa, all the elements associated with human rights also apply. The right-holder – the person who has the right in question –¹⁷³ would refer to every person on African soil. The duty-bearer would be ‘all of us’, individuals and institutions.¹⁷⁴ In this case, the right would be developed as applicable both vertically and horizontally such that it is enforceable against the state and its institutions as well as the public at large.¹⁷⁵ This will also cater for both public and private sector corruption.

4.4.3 Potential benefits of the right to freedom from corruption

There are several potential advantages to a human right to freedom from corruption. Firstly, when what is perceived as an illegal act is understood to be a human rights violation, then there is valuable judicial space for ensuring mandatory enforcement of its directions providing for transparency in governance and freedom from corruption. This judicial empowerment would necessitate an attitudinal change in government to facilitate the development of corruption prevention systems while recognising that combating corruption is no longer merely a public policy goal, but a constitutional imperative.¹⁷⁶ Secondly, if corruption is recognised as a human rights issue, it will ensure that the civil society actors take an active part in protecting and promoting this right.¹⁷⁷ Thirdly, when corruption is recognised as a human rights issue, it is possible to achieve political consensus on corruption. This can ensure that neutrality is maintained in the enforcement of laws relating to corruption so there is no biased or selective enforcement.¹⁷⁸ Overall, the recognition of a right to freedom from corruption would open up several avenues for lawyers, judges, NGOs and parliamentarians to mobilise public opinion on the subject.¹⁷⁹

Like Kumar, in proposing this right, one needs to be mindful of the inherent weaknesses of any law or legal response if the enforcement mechanism is weak - that would only amount to paying lip service to the law.¹⁸⁰ It is, therefore, not enough to provide for this right. Its enforcement must be guaranteed. This *caveat* is useful in opening the analysis on the second prong of the human rights

¹⁷³ For detailed understanding of the basic vocabulary and core concepts in human rights, see B Orend *Human Rights: Concept and Context* (2002).

¹⁷⁴ Orend (n 173 above) 138.

¹⁷⁵ For a brief introduction to vertical and horizontal application of human rights, see South African Human Rights Commission Workshop Manual *Building a Culture of Human Rights* 10 – 11, available at <http://www.sahrc.org.za/workshop_manual.PDF> (accessed 26 September 2005).

¹⁷⁶ Kumar (n 8 above) 348.

¹⁷⁷ Kumar (n 8 above) 349.

¹⁷⁸ Kumar (n 8 above) 350.

¹⁷⁹ Kumar (n 2 above).

¹⁸⁰ CR Kumar ‘Corruption and human rights’, available at <<http://www.flonnet.com/fl1919/19190780.htm>> (accessed 26 September 2005).

approach to combating corruption, which is the proposition that if basic human rights are guaranteed, especially socio-economic rights, then the incidence of corruption and related offences would be reduced.

4.5 The guarantee of human rights as an anti-corruption strategy

Unlike the proposition of a human right to freedom from corruption, which applies with stronger force to a society where corruption is endemic, the proposition of a guarantee of human rights as an anti-corruption strategy is one that cuts across all forms of corruption – incidental, institutional or systemic. The proposition under this heading is that if basic human rights are guaranteed, especially the rights to the basic necessities of life, then the incidence of corruption and related offences would be reduced. It is, therefore, the flipside to the original focus of the Convention which was that combating corruption is a means of removing obstacles to the enjoyment of economic, social and cultural rights.¹⁸¹

This proposition is a means of canvassing for a preventive approach to combating corruption as the fight against corruption needs to be multi-dimensional, addressing both preventive and curative aspects. According to Oforu-Amaah, Soopramanien & Uprety,

From a domestic point of view, there are two separate, but complementary, aspects of the fight against corruption. The first consists of upstream rules and norms of good behaviour (codes of conduct, manifestos, declarations) conducive to a corruption free society (preventive approach). The second aspect consists of anticorruption laws proper (general or specific legislative enactments), whose purpose is to provide appropriate remedies, including criminal sanctions and penalties, procedural rules, and institutional mechanisms as needed, to combat acts of corruption that have already occurred (curative approach). The first aspect deals with corruption *ex ante*; the second aspect deals with corruption *ex post*.¹⁸²

Unlike these writers, however, the preventive approach being proposed in this study relates not to rules and norms of good behaviour but to a credible and strengthened guarantee of human rights – mainly social and economic rights – by states in Africa. This proposition is based on the premise that the success of anti-corruption agencies appears to be conditioned by a wider set of socio-economic factors.¹⁸³ It should be understood that people who engage in corrupt acts do so for a host of reasons. However, for most, it is basically because of a lack of legitimate avenues to satisfy their basic needs (for ‘recipients of corruption’, say in instances where the right to work under favourable conditions – including pay and wages – is not guaranteed) and also because of the

¹⁸¹ Refer to paragraph 3.2.2 above.

¹⁸² WP Oforu-Amaah, R Soopramanien & K Uprety *Combating Corruption: A comparative review of selected legal aspects of state and major international initiatives* (1999) in Ojukwu (n 102 above).

¹⁸³ Robinson (n 13 above) 10.

need to find ways, however reprehensible, of meeting their needs (for 'givers or donors of corruption', say in instances where one needs to give a bribe in order to enjoy the right to health in a public hospital). Where these rights are guaranteed and implemented in a society, this study proposes that there would be a decline in corruption and related offences.

This proposition is an offshoot of the social empowerment theory; in this case, expanding and protecting the range of *economic* resources and alternatives open to ordinary citizens. Thus, where grassroots communities and the people within them deal with corrupt officials because they have few alternatives, and respond to corruption in evasive or illicit rather than direct ways, we must search for ways of reducing their economic vulnerability.¹⁸⁴ Applying the social empowerment theory in this case would lead to the postulation that widening their social and economic resources (or guaranteeing their social and economic rights) can reduce their vulnerability to exploitation.¹⁸⁵ This likewise applies with respect to corrupt officials. If and when these persons come to believe that they can pursue their goals of living comfortably by other means rather than corruption,¹⁸⁶ a decline in corruption is sure to ensue. Given the level of severe economic hardships in Africa, public servants often engage in corrupt practices not necessarily because of greed or avarice, but because they need extra money to meet their immediate needs. Corruption becomes an escape route for public servants trapped by economic hardship.¹⁸⁷ As flippant as it may sound, most officials care about the functions they are supposed to perform; once assured of a living wage they may respond positively to changes that increase their effectiveness, professional status, and sense of personal security.¹⁸⁸

In postulating this proposal, however, several qualifications need to be emphasised. Firstly, it needs to be emphasised that this generalised system of linkage between the guarantee of human rights and the reduction in incidences of corruption need not be applicable in all situations. Hence, it should not be presumed that the fight against corruption is synonymous with the struggle to enforce all aspects human rights.¹⁸⁹ It is perhaps safer to emphasise the guarantee of socio-economic rights. Secondly, there are always deviants in every society. Therefore, there would still be instances of corruption even where all rights are guaranteed to their maximum.

¹⁸⁴ Johnston (n 12 above) 87.

¹⁸⁵ Johnston (n 12 above) 91.

¹⁸⁶ Johnston (n 12 above) 95 – 96.

¹⁸⁷ Oko (n 6 above) 416.

¹⁸⁸ Johnston (n 12 above) 96.

¹⁸⁹ For example, in the Corruption Perception Index for the year 2000, Singapore was considered to be the eight least corrupt country. At the same time, Singapore is hardly known for its progressive position on human rights. On the other hand, there is evidence to show that whilst the human rights situation in Central America and many parts of Latin America and India has been improving steadily, the incidence of corruption has also been increasing. See Kumar (n 180 above).

4.6 Conclusion

Sustainable reductions in corruption are possible; but direct attacks upon it as an institutional problem require a sound social foundation if they are to succeed, and if they are to be sustained over the long term.¹⁹⁰ Lasting progress against corruption was not to be made only by detecting, deterring and punishing corrupt behaviour but also required the long-term construction of a system of public order.¹⁹¹ This has been the thrust of the arguments in this chapter: social empowerment in Africa through the lens of human rights. The next chapter proceeds to recapitulate the essence of this and preceding chapters whilst concluding and making recommendations on ensuring a human rights approach to combating corruption in Africa.

¹⁹⁰ Johnston (n 12 above) 101.

¹⁹¹ M Johnston 'Social Development as an Anti-Corruption Strategy' *Paper presented at VI International Anti-Corruption Conference, Mexico, November 1993*, available at <<http://www1.oecd.org/daf/nocorruptionweb/pdf/johnston4.pdf>> (accessed 25 September 2005).

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

Corruption is a phenomenon that human societies have experienced and attempted to overcome for thousands of years.¹⁹² This study likewise has concentrated on seeking to overcome corruption in Africa through a human rights perspective. This perspective to anti-corruption stems from the understanding in Chapter two that corruption is as much a human rights issue as it is a political or economic issue. The human rights perspective to combating corruption is also rooted in the fact, as examined in Chapter three, that acknowledging differing forms of corruption in different country contexts is important in assessing the potential effects of the provisions of the AU Convention on corruption. The case studies of Nigeria and South Africa illustrate vividly that an approach of criminalizing corruption and ensuring a formidable institutional capacity against corruption may not always result in the desired change. Systemic corruption especially is the nemesis of anti-corruption reformers, and a new government may find itself impotent in reforming the very system it must rely on to govern.¹⁹³ Based on this analysis, Chapter four, adopting a human rights approach, then attempted to locate the need to have legal and institutional mechanisms to fight corruption within the imperative of empowering the society where corruption is to be fought. This was based on the premise that as it is incontestable that law is crucial in the fight against corruption,¹⁹⁴ then the law can be improved upon to have a human face. These discourses, therefore, make a strong case for a human rights approach to combating a corruption in Africa, an approach clearly missed by the AU Convention and one that had not been innovatively adopted by the African Commission. This study thus goes on to recapitulate its main proposals on how to ensure that corruption is continentally confronted through a human rights approach.

5.2 Recommendations

From the analysis carried out in this study, combating corruption should move beyond a law enforcement and public policy issue and attain the status of a human right. The purpose of evolving a human rights-based approach to corruption control is to supplement and enhance the institutional approach to tackling corruption. This proposal is anchored on the fact that research emphasises the fact that the provision of international human rights norms (in this case, regional

¹⁹² S Alatas *Corruption: Its Nature, Causes and Functions* (1990) 13 quoted in Pearson (n 5 above) 4.

¹⁹³ F Stapenhurst & P Langseth 'The role of the public administration in fighting corruption' (1997) 10 (5) *International Journal of Public Sector Management* 316.

¹⁹⁴ Ojukwu (n 102 above).

norms) can effectively translate into means of influencing the behaviours of states and individuals through a process of socialization.¹⁹⁵ The provision of a right to freedom from corruption can, therefore, have positive impacts on deterring corruption in Africa.

In canvassing for a regional appreciation of the human rights approach to corruption and anti-corruption, it is proposed that article 5(8) of the AU Convention compelling states to educate their population on corruption should be amended and rewritten from a human rights perspective that compels states to educate their citizens that corruption is a violation of human rights

Additionally, the African Commission, whilst interpreting the Charter, should be innovative and expand its jurisprudence to identifying the right to freedom from corruption in deciding communications such as that of *Free Legal Assistance Group and Others v Zaire* where specific allegations of financial impropriety have been made against governments.

Moreover, the civil society in Africa should pivot its advocacy against corruption from a human rights perspective such governments should be held accountable for violations of rights that reveal that the right to freedom from corruption has been impinged.

Most importantly, the AU should promote the protection of socio-economic rights as a means of fighting corruption. Therefore, the functions of the Advisory Council created in article 22 of the Convention should be expanded to include in its report outcomes of investigation into how national governments are guaranteeing socio-economic rights as a means of fighting corruption.

With all these in place, it is submitted that Africa would have conceived of an innovative and, hopefully, effective means of ploughing back the incidence of corruption on the continent.

WORD COUNT: 17,997 (including footnotes)

¹⁹⁵ For an in-depth analysis on this issue, see T Risse, SC Ropp & K Sikkink (eds) *The Power of Human Rights: International Norms and Domestic Change* (1999) 1 - 38.

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