Human rights activism has, historically, been centred around civil and political rights while economic, social and cultural rights have generally been viewed as aspirations. Partly arising from this, advocacy on corruption as a human rights issue has not found prominence among human rights organisations despite its many negative effects. Many African countries have made big gains in civil and political rights as they transition from autocracy to democracy. Corruption threatens this transition irredeemably and it is vital that these gains be safeguarded through vigilance.

The case of Kenya is illustrative of how the return of grand corruption can derail the reform agenda. Initially, the country took some brave actions to counter corruption, enacting new good laws, instituting a public judicial inquiry into a major past corruption scandal and suspending and sacking public officials suspected of engaging in corruption. Soon, disturbing questions about the government’s commitment to fighting corruption began to emerge as a result of scandals affecting procurement in the secretive world of national security. These have dealt a serious blow to the credibility of government’s reform efforts.

It is in the context of this background that a three-day regional conference in March 2006 brought together leading African civil society organisations and national human rights institutions to highlight the human rights aspects of corruption in Africa. The intention was to spur human rights and democracy non-governmental organisations, as well as national human rights institutions in Africa, to fight corruption. The conference was part of a broader strategy and campaign by the Kenya National Commission on Human Rights to demonstrate the links between corruption and human rights and poverty.

Corruption is a crime against humanity and amounts to a gross violation of individuals’ rights and freedoms. It also poses a threat to democracy. When a government or country fails to curb corruption, it also fails to fulfil its obligation to promote, protect and preserve the fundamental rights of people. It perpetuates discrimination, prevents the full realisation of social and economic rights and violates fundamental civil and political rights such as the right to free and fair elections.

Corruption seriously undermines the protection and enjoyment of human rights in a number of respects. First, it seriously inhibits the full realisation of economic, social, and cultural rights. Grand corruption in particular diverts resources from the intended public use in realisation of rights to decent livelihoods into private bank accounts. Besides creating sudden and extreme income inequalities, the diversion of these kinds of resources causes massive human deprivations. It also causes distortion of government expenditure by diverting public resources away from pro-poor expenditure, such as health and education, towards large capital projects where bribes are higher. In addition, when public contracting is conducted corruptly, it results in sub-standard and overpriced goods and services.

Corruption also introduces uncertainties into the economic environment, which discourage investments that are critical for economic growth and poverty alleviation. It is particularly harmful to the poor because the bribes they pay constitute a greater share of their income. The poor are also more dependent on public services. Corruption therefore worsens poverty and inequality within societies.
Secondly, corruption perpetuates discrimination. Whereas the Universal Declaration of Human Rights, for example, provides that all human beings are born free and equal in dignity and rights, and the International Convention on Civil and Political Rights provides equality as well as equal protection before the law, corruption makes a mockery of these entitlements. It confers a privileged status on those who bribe – such preferential treatment secured through the payment of a bribe constitutes discrimination.

Corruption is particularly harmful and poses great dangers when it becomes pervasive in law courts. By tilting the scales of justice, corruption denies citizens their right to legal redress when their freedoms are violated. In this way, a person’s rights to a fair trial and recognition as an equal person before the law are violated.

Thirdly, corruption leads to the infringement of numerous civil and political rights. When corruption permeates politics, for example, and electoral outcomes are determined through vote buying and bribery, citizens are denied their right to political participation. Their rights to vote through universal and equal suffrage are, therefore, greatly watered down. The consequences include incapable and weak leaders, patronage and sycophancy and the erosion of democratic principles.

The traditional relationship between corruption and human rights is always a negative one. In the words of the Council of Europe, corruption threatens the rule of law, democracy and human rights, undermines governance, fairness and social justice, distorts competition, hinders economic growth and endangers institutions and moral foundations of society. There is need to establish mutually reinforcing institutional and legal frameworks, strengthen complementing legal framework and increase involvement of national human rights institutions, non-governmental organisations and other civil society movements in the fight against corruption.

Since the effects of corruption on human rights are pervasive, national human rights institutions should be actively involved in fighting it. Corruption needs to be at the core of national human rights institutions’ priorities. The links between corruption and organised crime, terrorism, conflict, human rights abuses, environmental degradation and poverty are now universally recognised. Preventing and combating corruption must be seen as part of an overall effort of national human rights institutions to create the foundation for democracy, development, good governance and justice.

National human rights institutions can play a key role in the fight against corruption, as demonstrated by examples on the continent. The Commission on Human Rights and Administrative Justice of Ghana has prosecuted many corruption cases because the country’s constitution gives a clear legal mandate to do so.

The Kenya Government has continued to make huge efforts to fight corruption. In its first three years in office, the Government established the infrastructure for a sustained war against corruption. The Ministry of Justice and Constitutional Affairs develops policy and coordinates the entire anti-corruption effort while the Kenya Anti-Corruption Commission is responsible for investigations, prevention and public education. The National Anti-Corruption Campaign Steering Committee is running a five-year public campaign against graft.

Unforeseen factors such as the challenges of the transition process, the unresolved constitutional review and resistance from corruption networks have, however, complicated the fight against graft. Much remains to be done, but it is important to appreciate that corruption is a complex economic, political and social problem that can only be tackled in from several dimensions.
Kenya presents an interesting case of the contradictions that hamper the fight against corruption. Parliament has in its ranks members who are tainted by corruption. Provisions of the Economic Crimes Act, which prohibits those implicated in corruption from holding public office, are yet to be fully implemented. Such action requires a government that has the will and conviction to enforce such laws, and a very active citizenry. It also plays a peripheral role in the budget process, and is only involved in debating proposals presented by the Finance minister. Even then, such discussions are largely ritualistic and, therefore, do not change an of the minister's budget proposal.

Even though discussions of corruption tend to focus on governments, the private sector usually plays a critical role in perpetuating graft on the continent. Transparency International's Kenya Chapter published a bribe-payers index in 2002 which shows that corruption on the continent is deeply rooted among a number of multinational firms which ignore their home countries anti-corruption regulations and constantly pay bribes to gain influence.

Some of the legal frameworks for fighting corruption are already in place on the global and continental level. The African and UN Anti-corruption conventions provide an international legal framework for tackling corruption. The African Union Convention on Preventing and Combating Corruption represents regional consensus on what states on the continent should do to prevent and outlaw corruption, as well as how they can cooperate to recover assets and deal with culprits. Adopted on July 11, 2003, the Convention has been signed by 39 countries, ratified by 11 and shall enter into force 30 days after the deposit of the 15th instrument of ratification. The UN Convention against Corruption, on the other hand, represents international agreement that corruption is a major problem requiring urgent solutions and also represents consensus on internationally-agreed solutions. The Convention was negotiated in a period of less than two years at the UN office in Vienna. Some 129 countries were involved in negotiations, beginning in early 2001 and concluding in October 2003. Of concern, though is the low number of ratifications that these instruments have received on the continent. The African Convention is yet to muster the 15 ratifications needed to bring it into effect while the UN Conventions have faired only slightly better, mustering 15 ratifications from the continent to date.

Are there lessons that can be drawn from the pro-democracy movement in the fight against corruption? The extent of the African governance and corruption crisis has been mostly underestimated. Africans’ advocacy for change appears to have been episodic rather than systemic. Africans desired elections but failed to think about electoral systems. They desired political change but forgot to think about the transformation of the Civil Service. They wanted a just system but did not have a plan on how to change the judiciary and their out-dated legal systems. They wanted human rights without assembling the right humans for the job. They wanted to change government with the impossible script of doing it according to the old ways.

In Zimbabwe and Congo, civil society plays a very important role in the fight against corruption by keeping the public informed, criticising government actions and omissions that perpetuate corruption, and generally lobbying against corrupt practices by governments and their agents. From the experiences of these two countries, it is clear that civil society has a role to play in the fight against graft primarily by raising awareness, lobbying and advocacy, and keeping the anti-corruption agenda alive.

In Kenya, the media have framed corruption as a key test for leadership and public service. They have enabled the public to appreciate the scale of the problem through continuous coverage of corruption stories, follow-ups, and the placement of graft on the public agenda. The media share
with the people of Kenya credit for forcing the first three resignations from Cabinet over the Anglo-Leasing scandal, in which millions of dollars stood to be lost, and the Goldenberg scandal, in which millions of dollars were lost.

Since corruption is a crime against humanity, what sort of punishment should its perpetrators get? How do countries in Africa deal with economic crimes in the context of political transitions? Is there space for amnesty? UN assistant secretary-general and Registrar at the International Criminal Tribunal for Rwanda Adama Dieng, points out that the question of whether or not people who commit economic crimes should enjoy amnesty for the benefit of the political transition is a complex one. Though it is tempting to consider economic crimes due to their devastating effects on the fates of many citizens in the same league as other crimes against humanity, there are certain aspects of those crimes, mainly the aspect of intent of the perpetrators that often differentiates such crimes from ordinary economic crimes. There is, therefore, need for continued debate on the nature of economic crimes and the sanctions they attract within the international legal structure. Recovery of stolen assets, he stressed, is a very important issue and it ought to be de-linked from the question of criminal prosecution.

The regional conference came up with The Nairobi Declaration and Plan of Action, contained in the last part of this report.
The Government of Kenya has scaled up its efforts to decisively and conclusively deal with the scourge of grand corruption. This conference provides an excellent opportunity for regional dialogue on the impact of corruption on the enjoyment of human rights. It also comes at a time when Kenya is in the international limelight following the corruption allegations made by a former Government officer against senior officials. Once investigations into the Anglo Leasing and Goldenberg scandals that have preoccupied the country in recent months are complete, at the end of March or early in April, action will follow. The Government of Kenya has been engaged in a difficult but sustained war against corruption. When the present Government was elected slightly over three years ago, corruption in Kenya had attained endemic proportions. It had become a way of life and was accepted in official circles as a means of accumulating wealth and power. The previous regime officially sanctioned corruption.

From the outset, the current government was determined to wage a sustained war against corruption. Very early in its efforts, the Government realised that this war could not be won without effective institutions -- to develop appropriate policies, conduct investigation, undertake prosecutions, determine cases, and create awareness against the vice. Over the past three years, we have substantially established the infrastructure for a sustained war against corruption. This includes the ministry which is responsible for policy development and coordination of anti-corruption efforts, the Kenya Anti-Corruption Commission, which is responsible for investigation, prevention and public education and the National Anti-Corruption Campaign Steering Committee, charged with conducting a five-year public campaign against corruption.

We have also strengthened existing institutions, including the Judiciary and the office of the Attorney General, to effectively play their roles. The Judiciary, in particular, has been given a

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1 Ms Martha Karua is Kenya’s minister for Justice and Constitutional Affairs. She is also Member of Parliament for Gichugu and Deputy Leader of Government Business in Parliament. The views published here were first made in an official address during the opening of the Regional Conference on the Human Rights Dimensions of Corruption in Nairobi in May 2006.
new lease of life after an anti-corruption purge that saw all the judges implicated in corruption removed from office. Even then, the Government is learning that as important as that purge may have been, it is not enough to ensure an effective and corruption-free Judiciary. What is needed is a mechanism for continuous evaluation and monitoring.

Special anti-corruption courts have also been established to expedite graft cases. The Judiciary is currently working to establish a mechanism for self evaluation, monitoring and handling public complaints about corruption.

Over the past three years, many criminal and civil cases have been filed in court against perpetrators of corruption. Anti-corruption legislation has also been enacted to underpin the Government's efforts against the vice. However, most of these cases have not been heard due to a new wave of constitutional applications by the suspects intended to paralyse the hearings. Sometimes, professionals -- including lawyers -- are aiding and abetting major corruption scandals by incorporating dummy companies, channelling ill-gotten wealth into foreign accounts and placing obstacles in the way of corruption prosecutions by raising sometimes unmeritorious constitutional applications.

This very serious threat to the criminal justice system is being dealt with. The Judiciary has responded by enacting rules that will facilitate and expedite hearing of such applications in order to enable the wheels of justice to turn. Despite these substantial achievements within such a short period, significant challenges stand in the way of a successful campaign against corruption. These include:

1. **The war against corruption has been complicated by the transition process:** The National Alliance Rainbow Coalition victory brought into power a government made up of political parties with diverse interests, political agenda and vision. It was generally assumed that there was a common understanding of the need to fight corruption. However, there were (and still are) many in the coalition who stood (and stand) to lose from an effective campaign against corruption. Though outwardly supportive of the war against corruption, such persons are not enthusiastic about anti-corruption efforts. Many corrupt individuals have found political comfort among such persons. This has denied the government critical support and slowed down the implementation of the anti-corruption programme. Those who have corruption cases pending against them or are being investigated for serious economic crimes are currently the most vocal on issues of “corruption” but restricting their crusade to new cases that do not involve them and cry foul when the Government is tackling those against them. Thus the fight against corruption has become, to some, not a cause but a political weapon to fight prosecution and to avoid being called to account for previous crimes. Such newfound anti-corruption crusaders argue that following their previous crimes amounts to Government covering up for new corruption. Such is the dilemma that government has to deal with.

However the Government is firm in its resolve to deal with all corruption and economic crimes cases, past and present. The message is clear: there is an all out war against the vice. Perhaps rotating the civil service with after a political transition to implement the policies of a new administration, particularly anti-corruption policies, could additionally help.

2. **Unresolved constitutional review process:** The Government's efforts have also been undermined by the constitutional review process, which has polarised the ruling coalition and made it difficult for the Government to speak in one voice. In fact, a section of the original membership of
government has now ganged up with members of the former regime to frustrate the war against corruption by politicising it.

3. Resistance from the corruption networks of the past: Over the years, corrupt elements of the society accumulated vast wealth which is now being used to control and influence the media and political activity in Kenya. Those who benefited from corruption in the past have used the media and political platforms to create the perception that the war against corruption is not sincere—that it is a tribal purge, political vendetta and or witch hunting. This has had the effect of slowing down or undermining the Government’s efforts. Corruption networks of the past have also captured some members of the new administration, further complicating the war against graft. A number of private actors are major cogs in the corruption wheel. There perhaps is need for a national and regional Code of Ethics for the private sector.

Despite these challenges, the Government remains committed to the war against corruption. It is my hope that this conference will contribute to our efforts by making practical proposals on how the war against corruption can be escalated and improved. Your proposals should be more than mere condemnations against African governments, pompous declarations or self-congratulatory pontificating. You should offer actual solutions to the problems facing African countries. In my view, the continent must now move from diagnosis of this disease to treatment. While advocacy remains relevant, many governments, including Kenya’s, are fully aware of the need to combat corruption and are doing their best against major constraints of limited resources, collapsed governance institutions, weak civil society and debilitating poverty. Proposals on how to overcome these constraints would be most welcome. It is important to appreciate that corruption is a complex economic, political and social problem that can only be tackled through a multi-dimensional and multifaceted approach. A simplistic approach that assumes that corruption can be eradicated through press statements or mere exposure is not of much help. Issues of policy formulation, exercise of oversight or acting as watchdogs, prevention, education, investigation, prosecutions, arbitration of disputes and law enforcement as well as punishment need to be tackled.

A useful starting point in any anti-corruption campaign is the appreciation that the vice cannot be successfully fought without good governance, and that corruption is not the same as governance. Corruption is defined as the abuse of office for private gain while governance has been defined as the exercise of authority through formal and informal mechanisms and institutions for the common good. Unfortunately, many people wrongly equate corruption with governance and even use the terms interchangeably. They thus fail to see the two separate dimensions in the war against corruption.

Official governments do not loot; rather it is crooked individuals within it that for their own selfish reasons steal public resources. Furthermore in a number of cases, its outside forces fronted by shady businessmen who hatch financial scams and then draft political leadership and senior civil servants into the scheme.

A World Bank expert on corruption observes: ‘Corruption and governance are linked but they are distinct notions. Yet fighting corruption cannot be done by merely fighting corruption, campaign or by just adding corruption offices or incessant drafting and redrafting of laws. Instead corruption needs to be viewed within a broader governance context such as rule of law, protection of property rights, freedom of press, political competition, transparent campaign, financing and others that in turn affect corruption and need to be addressed head on.’

It is only those who understand corruption in this broader and deeper sense who would appreciate
how much African countries have done towards creating the enabling environment necessary to sustainably address the cancer of corruption. The democratisation process taking place across Africa, greater respect for human rights, poverty eradication programmes and initiatives towards facilitating competitive politics and transparent funding of political parties, enhancing the rule of law and rejuvenation of the various institutions of governance, are all geared towards addressing the root causes of corruption. A narrow, pedantic view of the war against corruption blinds one to the environment issues that sustain venality. Such a view or approach is neither effective nor sustainable. Kpundeh notes that anti-corruption campaigns are not a substitute for the difficult tasks of public sector reform and capacity building and that the roots of corruption lie in dysfunctional state institutions. The war against corruption must, therefore, be waged in a two-pronged approach. It must combine process interventions with structural reforms. Only an effective linkage between these two approaches can create a sustainable, legitimate and institutionalised effort.

The Government of Kenya’s anti-corruption action plan recognises the twin-pronged approach and is anchored on the following pillars:

- Enactment of necessary laws to establish a legal framework for the war against corruption.
- Vigorous enforcement of anti-corruption laws through investigation of corruption and economic crime offences as well as the recovery of corruptly acquired property.
- Identifying and sealing loopholes that facilitate corruption through institution of effective public sector managements controls.
- National public education aimed at stigmatising corruption including behaviour change.
- Implementation of macro-economic and structural reforms to reduce the incidence and demand for corruption.
- Institutional reform to create efficiency and effectiveness of public institutions in service delivery to remove the incentive for corruption by facilitating public access to services.
- Democratisation and good governance to enhance transparency and accountability in the management of public affairs and resources.

Corruption is an international problem. All countries in the world suffer from the problem at one level or another. There is, therefore, need for all countries to participate in efforts to combat it. Kenya was the first country to sign and ratify the UN Convention against Corruption because of our appreciation of the need for international action against it. I am glad to note that the Kenya National Commission on Human Rights is promoting the ratification of the AU Convention, an effort the Government pledges to support.
ENTRENCHING ACCOUNTABILITY

By Maina Kiai²

“Corruption seriously undermines the effective protection and promotion of Human Rights” –

The Regional Conference on the Human Rights Dimensions of Corruption took place at a time when corruption was in the headlines in Kenya. Elsewhere, Accra was hosting a conference to discuss the United Nations’ and African Union Conventions on Corruption. The task, for a long time, has been that of demanding better governance and more accountability from governments.

The demands of the Kenya National Commission on Human Rights for decisive Government action on corruption have customarily elicited querulous and loud questions from official circles about what corruption has got to do with human rights. How, those who ask also pose, does corruption become our issue?

It is not hard to put in perspective the relationship between corruption and human rights. Corruption seriously undermines the effective protection and promotion of human rights. In Africa, corruption deals are now bigger and the crooks themselves smarter and doing ever greater damage to our economies -- sucking out resources meant for health, education and clean water. Corruption has caused massive violations of fundamental human rights; as an illustration, roads have not been built because corrupt engineers took bribes, bridges and buildings have collapsed because corrupt officials did not enforce construction codes, the terrorist threat has increased because immigration officials took bribes to issue passports or looked the other way at border points, and there is rampant insecurity with citizens paralysed by fear because the police fail to enforce the law on account of bribes.

2 Chief Maina Kiai is the chairman of the Kenya National Commission on Human Rights. These remarks were first made during the opening of the Regional Conference on the Human Rights Dimensions of Corruption in Nairobi in March 2006.
By diverting public funding to personal pockets, corruption thus reduces what is available for the realisation of economic and social rights. It also perpetuates discrimination by favouring the few with access to power and impunity. It spirals to contracting political and civil rights when the perpetrators focus on limiting media freedom to avoid exposure and further adopt hard-line tactics to harass and intimidate critics of corruption. The attack on Kenya’s oldest media house on March 1, 2006, which shocked the entire world, is a classic example of this reaction.

It is why the Kenya National Commission on Human Rights’ anti-corruption campaign is geared towards getting Kenyans to see that our inability to achieve meaningful economic development is linked to the inability of successive governments to prudently utilise available public resources to realise the most basic of needs by a great majority of Kenya. Corruption is, therefore, a key element that has prevented African countries from moving expeditiously and as effectively as possible towards realising economic development. The concept of progressive realisation of economic and social rights under the International Covenant on Economic, Social and Cultural Rights recognises the fact that all economic, social and cultural rights cannot be achieved in a short period. The fact that realisation is envisaged over time, or in other words progressively, is a flexibility device. It reflects the realities of the real world and the difficulties any country will face in ensuring the full realisation of economic, social and cultural rights.

In a nutshell, corruption constitutes an egregious violation of human rights by:

a. preventing the full realisation of economic, social and cultural rights as well as political and civil rights by sucking out public resources into private hands.

b. perpetuating discrimination against the poorest class of society.

Corruption further hurts the poor disproportionately by diverting funds intended for development. It undermines a government’s ability to provide basic services, feeds inequality and injustice, and discourages investment (both domestic and local) as well as aid.

Africa has gained an abysmally poor record of good governance over the years. Corruption and bad governance -- and not the lack of resources -- remain the most intractable and perhaps the most treacherous obstacles to vigorous and sustained development. Africa’s development promise has been sapped by years of ‘grand corruption’. Public infrastructure in many countries has decayed and often has not been built because the resources were diverted to private ends. We all know instances in our countries where decisions on public expenditure were, and continue to be, tilted towards unproductive white elephant construction projects and dubious security projects with the capacity to deliver large kickbacks for the civilian and military officials that award the contracts. The identifying characteristic of our governments has been their appetite for grandiose projects that deliver little returns in form of development.

For our case in Kenya, the cost of corruption has exacted a heavy toll on the economy, which has stagnated for years and, as a result, ordinary Kenyans are facing the toughest social and economic conditions that their lives will ever encounter. Here are a few illustrations:

i) According to the Library of Congress, the current Government since assuming power in 2003 has been responsible for the loss of at least $1 billion per year ---
nearly a quarter of annual Government spending!

ii) A report into illegal and irregular allocations of public land (otherwise known as the Ndungu Report), even when using lower than market prices per acre, estimates that the Government lost over $2.4 billion.

iii) Kenya’s biggest financial scandal, the Goldenberg affair, involving fictitious exportation of diamonds, cost the taxpayer another $2.4 billion. This sum could pay 870,000 people $215 per month (Ksh15,000) for a year; or develop 15,000 water projects at $140,000 (Ksh10 million) each.

iv) An analysis of the reports of the Controller and Auditor-General by the Centre for Governance and Development (CGD) estimates that taxpayers lost another $2.4 billion between 1990 and 1997. If recovered, this money would be enough to see 7.4 million children through 8 years of primary school; tarmac 8,200 kilometres of roads (at $300,000 per kilometre, Kenyan roads are among the most expensive to construct in the world); or pay for anti-retroviral therapy for the 2 million people living with HIV/AIDS for 14 years.

v) CGD’s analysis of parliamentary watchdog committee reports reveals the loss of close to $1 billion between 1993 and 2002. Imagine where this nation would be if these, our funds, had been put into development!

vi) The current Anglo-Leasing scandal on dubious and questionable security-related procurements, which have seen the sacking or stepping aside of several ministers and the sidelining of a key presidential aide for alleged involvement, are worth over $650 million -- and yet the same government has requested donors for half this amount to fight the prevailing drought in the country!

It is beyond argument that issues of accountability are core human rights issues. What, therefore, should be our priorities now?

1. The recovery of looted funds: Parliaments -- both African and from the developed countries -- international development partners, the media, civil society and other stakeholders must sit together and find creative mechanisms of recovering looted assets and cash, including changing the law to ensure Africa’s money is brought back. I am compelled to point out the special role of the international community in this process. You will recall the Nigerian Government’s efforts to recover billions of dollars stashed away by the Sani Abacha regime and traced to Swiss banks and the subsequent action of the Swiss Government in placing conditions before the money was returned. That was akin to a person being found in possession of stolen property arguing that he or she would only surrender it if the true owner undertook to use his or her property accountably!

2. Access to information held by our governments: Freedom of information will be particularly important in combating corruption, which has traditionally thrived in secrecy and obscurity. We need to make our governments more open to scrutiny in order to deter and contain corruption. Citizens must have the right to receive information on functions and decisions of Government that are not a matter of national security. Availability of information on Government finance, procurement and contracting is extremely important.
3. **An end to impunity for perpetrators:** Corrupt conduct in public and private life must be prosecuted with zeal and energy to make it painful for the perpetrators and not just a matter of embarrassment when disclosures are made against high-ranking government officials. The rule of law through a fearless judiciary and complementary accountability bodies needs to function to punish the behaviour of corrupt public officials and further ensure that those found guilty do not find their way back into public office.

4. **Wealth declaration:** Primitive accumulation of wealth through theft of public resources is a cardinal feature of corrupt activity that we are easily able to identify. Presidents, cabinet ministers, Members of Parliament, provincial governors, high level bureaucrats, senior military and police officers and other appointed and elected officials above a certain level should be required to make public declarations of their assets, which should then be verified to look for signs of malfeasance in a process where the threat of detection of wrongdoing without interference from the highest levels of government is real. Anti-corruption bodies need the ability to prosecute violators of ethics laws independently even if it means overruling the Attorney General.

5. **Multiple layers of accountability:** Parliaments have a crucial role to act as a general check upon Executive power hence presenting another source of accountability in the fight against corruption. Parliamentary committees are obligated to perform an oversight function and legislate on areas such as defence or public works where corruption networks are known to thrive. In a democracy, it is expected that the oversight committees will check waste, fraud and abuse of office.

6. **The international fraternity:** Endemic corruption inevitably involves the banking systems, stock markets and many other areas of the private economy, hence the need to pre-empt corrupt links between government power and business locally and abroad. We must formulate ways of unmasking the network of international crooks involving corrupt bankers who launder money, equally corrupt lawyers who set up dummy companies, crooked accountants who collect the bribes, contract-hungry directors, local middlemen and the corrupt officials in government.

7. **The role of professional regulatory bodies:** What should be the role of auditors and other national professional associations in fighting corruption? Scandals such as those that involved Enron in the US or Uchumi Supermarkets in Kenya were, to a large extent, facilitated by audit reports that gave these enterprises a clean bill of health only a few months before. How can an audit give a clean bill of health to a company that goes bankrupt two months down the line? We need professional associations, at a minimum, to scrutinise the conduct of their members and discipline those who are guilty of violating the trust of the profession.

8. **A vigilant citizenry:** The last line of defence is a vigilant, politically aware and informed citizenry ready to challenge those who abuse power. Whistle blowing by lower level government and corporate officials needs to be facilitated by laws that offer protection from dismissal and other retaliation. In fact, there is need
for laws that offer incentives for reporting wrongdoing.

Finally, we need to recognise that the campaign for anti-corruption and good governance can only be durable and successful if it is home-grown and then involves a broad coalition of actors from below and from outside (the international donor community). Attempting to combat corruption without anchoring it on accountability (and even some form of retribution for the guilty) is like building a dirt road into the rainforest. Sooner or later, it will get overgrown or simply be washed away. Those in positions of public power should not be relied upon to govern for the public good. We have to force them to be “good”. It is a formidable challenge.
In societies that are riddled with corruption, the paradigm of ‘institutional functionality’ is reversed. Public institutions as a resource paid for by the citizenry actually function on the opposite premise -- where the user of the resource pays. However, that it is not the state or the agency that is nominally providing the service that receives payment, but rather, an individual functionary who has real control of the service.

Previously, the relationship between human rights and corruption has been seen as being tangential and one-way. The parties to the Criminal Law Convention expressly acknowledge that “corruption threatens the rule of law, democracy and human rights, undermines governance, fairness and social justice, distorts competition, hinders economic growth and endangers the stability of democratic institutions and moral foundations of society” (Council of Europe, Preamble to the Criminal Law Convention on Corruption, 2000).

New thinking now recognises that this traditional relationship does not paint the complete picture. It is not a comprehensive approach to establishing the relationship between human rights and corruption because it only looks at the impact of corruption on human rights.

In the new paradigm, there is a mutual relationship between human rights and corruption. This understanding recognises the impact of human rights on corruption, vice versa.

Dr Kwadwo Appiagyei-Atua is a Legal and Constitutional Policy Fellow at the Ghana Centre for Democratic Development (CDD-Ghana) and lecturer in the Law Faculty at the University of Ghana in Legon.
Mutual Linkages between Corruption and Human Rights

It is important to establish the mutual linkage between corruption and human rights. This affirms that human rights are a vital and indispensable complementary tool in the anti-corruption fight. Human rights support the traditional anti-corruption structures, that is, the legal (criminal law) framework and the institutional framework.

Ideally, a comprehensive anti-corruption structure would include a legal (criminal and administrative) framework, a constitutional framework, strengthening and complementing legal framework; governmental institutional framework, the human rights framework (indirect, direct, mutual), international framework (indirect, direct, mutual), and the non-governmental civil society framework (indirect, direct, mutual).

Ghana at first only had a legal anti-corruption framework consisting of the criminal law system. For example, the country had a law against general, electoral and judicial corruption. The law on judicial corruption read as follows: “Every public officer or juror who commits corruption, or wilful oppression, or extortion, in respect of the duties of his office, shall be guilty of a misdemeanour.”

Over time, an institutional framework for fighting corruption has been established, as is evidenced by the presence of the Ombudsman’s office, and the Citizenship Vetting Committee, among others. The Special Fraud Office is a specialised agency created by law (the SFO Act, 1993 – Act 466) to tackle offences involving serious financial and economic losses occasioned on the State. There is also an Office of Accountability at the Office of the President and the Bureau of National Investigations, which tangentially, clashes with functions of SFO). The police and other agencies, Parliamentary Oversight Committee and Civil Society, are also involved in the fight against corruption in Ghana.

The huge role of the executive in the anti-corruption work is not an entirely good thing. Ghana’s BNI, for example, acts only on the instructions of the government and reports directly to a government minister.

The Council of Europe’s Criminal Law Convention on Corruption, 2000; the UN Convention against Corruption; the AU Convention on Preventing and Combating Corruption; and American Convention, constitute the international legal framework for tackling venality.

In the African Union Contention on Corruption, ‘human rights’ is mentioned four times in the entire document, thrice in relation to the linkage with corruption.

This linkage is, however, expressed weakly, and the strongest one is only in the preamble (paragraph 4): “Aware of the need to respect human dignity and to foster the promotion of economic, social, and political rights in conformity with the provisions of the African Charter on Human and People’s Rights and other relevant human rights instruments.” (Contrast this with the preamble in Criminal Law Convention on Corruption).

Corruption is also tangentially linked to human rights in article 3(2), but the best proper linkage is expressed in article 2(4), which reads: “The objectives of the Convention are to promote socio-economic development by removing obstacles to the enjoyment of economic, social and cultural rights as well as civil and political rights.” It is important to note, however, that this linkage refers only to the second relationship between the two concepts: the impact of corruption on human rights.

The UN Convention has stronger linkages between corruption and human rights. The first linkage is in Article 13, which requires states parties to take appropriate measures to ensure the
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“active participation of individuals and groups outside the public sector, such as civil society, non-governmental organisations and community-based organisations, in the prevention of and the fight against corruption.”

Such measures shall include ensuring that the public has effective access to information; respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption; and guaranteeing the right to information.

The existence of a weak framework for the enjoyment and enforcement of human rights induces, fosters and breeds corruption. A corruption-infected regime leads to further abuse of rights, both civil-political and economic-social-cultural. This leads to the creation of a cycle. Therefore, a uni-dimensional approach to the relationship is not effective in using human rights to tackle corruption.

Currently, Ghana has a legal anti-corruption framework, constituting the criminal and administrative units, a constitutional framework that strengthens the legal, established government institutions and human rights institutions. This is backed by an international framework consisting of the UN and AU Conventions – which are yet to be domesticated.

The tasks ahead for Ghana seem clear and straightforward – to ratify the international conventions and incorporate them into local laws, convert the country’s human rights framework in the constitution from recognising an indirect relationship between corruption and human rights to adopt the mutual relationship approach; and to ‘create’ a new right: the right to a corruption-free service.

Right to a Corruption-free Society

The approach to creating the right to a corruption-free society is similar to how right to development evolved. It was born out of an ensemble of human rights and development-related principles teased out of the UN Charter, the International Charter on Economic, Social and Cultural Rights.

The same approach can be used since all the rights that need to be put together to form this new right are already in the Constitution. They only need to be stirred together and out of it will emerge the right to a corruption-free service.

In the case of Ghana, the right to a corruption-free society is already in Chapter 5 of the Constitution, which contains the Fundamental Human Rights, as well as in Chapter 6, which contains the Directive Principles of State Policy. The only addition would be making governments accountable for abuse of economic, social and cultural rights.

Human rights are an effective vehicle for promoting the anti-corruption message that is already contained in Ghana’s laws, such as:

- Article 35 (8), which says: “The State shall take steps to eradicate corrupt practices and the abuse of power.”
- Article 218: “The functions of CHRAJ shall include the duty (a) to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties”.

Economic, social and cultural rights can be claimed and enforced as obligations on the state by demanding the following:
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- Respect – requiring a State Party to refrain from any action that would interfere with citizens’ enjoyment of their rights;
- Protection – obligation to prevent violations of human rights by others; including encouraging people (both legal and natural) to respect the rights of others, as well as imposing sanctions for violations that are committed by such persons;
- Fulfilment – obligation to take action to achieve the full realisation of rights; including enacting laws, implementing budgetary and economic measures, enhancing the functioning of judicial bodies and administrative agencies, etc.
- Enforcement -- “Progressive realisation” and NIEO arguments can be circumvented:
  i. African Charter, Article 1: “The Member States of the Organisation of African Unity, parties to the present Charter shall recognise the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them.”
  ii. Violations approach – a more feasible approach. Does not depend on availability of statistical data. Thus, violations can be identified without having first to conceptualise the full scope of the right in question. Also, the identification of violations can link to strategies to end and rectify abuses and thereby reduce human suffering.

Poverty Production

The poverty production approach to human rights moves away from the neutral language associated with ‘causes’ of poverty to an analysis that suggests some kind of action to produce poverty and the actors involved. This approach helps us to understand the power dynamics between the corrupter and the corrupted; the imbalance in power relations which the dominant exploits through corruption to perpetuate these power relations. Corruption is not only about wealth-creation for the powerful, but it is also about consolidating such power and perpetuating patron-client relations in order to buy votes during elections.

To fully understand corruption within the human rights context, there is need to change the language of corruption and poverty by verbalising poverty. Poverty verbalised is translated into a transcriptive process that somebody or an agency can be held responsible for.

Further, there is a need not only to distinguish between purely local corruption and that which has international dimensions. Corruption should also be considered as:

  a) patrimonicide – which involves government officials robbing the country.
  b) competitive corruption – which is basically retail corruption perpetuated by individual government officials and private citizens for unlawful personal gain. There are no grand conspiracies to rob the country.
  c) subsistence corruption -- mainly practised by lowly and poorly paid state officials, such as police officers, for subsistence

The concern is, therefore, on how to prevent subsistence corruption from translating to patrimonicide.

A large part of Africa’s population is in the undocumented state. Most economic activity in the continent is outside the formal structures, the infrastructure of corruption feeds on this state of undocumented and informal structures where information is unavailable.
New ideas on how to bring as many people as possible into the documented state are required. The undocumented economy of the informal sector is a puzzling phenomenon that needs looking into and so does politically induced poverty. The notion of responsibility for poverty is an idea that would help in developing agency relationship to pinpoint who is responsible for impoverishment. If there is such a large undocumented portion of the population in which corruption is not detected, then the problem is much bigger and needs even greater effort. The classification of corruption as petty and grand springs from greater concern about the latter because of the amount of money involved and the great impact it has on the economy. If societies can deal with elite corruption, there is likely to be a trickle down effect on petty corruption. Africa’s history shows that whenever any of the three arms of government fails to perform, democracy does not work well. Accountability and transparency, which are the bedrock of the anti-corruption war, go beyond national and international legal instruments, and must involve all arms of government -- Judiciary, Parliament and the Executive -- to be effective. The erosion of norms and breakdown of the legal system -- especially the criminal justice system -- have a huge and negative impact on the fight against corruption. Ignorance of the law is certainly a problem as lack of understanding of the bureaucracy breeds corruption giving the example of long delays in business registration, which compels many businesspeople to pay bribes to speed up process. Ignorance of one’s rights makes one vulnerable and thus susceptible to corrupt demands.

Freedom of association is a key civil and political right for a democratic society. Regretfully, in Nigeria for instance, this freedom exists only on paper, and is not actualised. Political parties are only formed by the wealthy to serve their interests, with only one party, the PRP, giving a clear manifesto of what it stands for. Further, there can be no freedom of association where there are no free and fair elections. For Nigeria, the 2003 General Election was neither free nor fair. For instance, in some places, elections were not held at all yet results were announced. Electoral officials are bought by corrupt people through corruptly obtained funds mainly due to poverty. There is a lacuna in the area of electoral finance, and candidates cannot therefore be held accountable over the sources of their funds.

There is not much hope that the AU heads of state can come out strongly against the ‘third term phenomenon’, where presidents who have served their constitutional term limits seek to extend their tenure by changing the law. Articles 3 and 4 of the AU Constitutive Act prohibit unconstitutional change of government but at previous session in 2004, the heads of state excluded third terms and extension of terms as part of unconstitutional change of government.

Since corruption is usually committed in the context of the exercise of governmental power or authority, its incidence undermines the people’s right to self-determination. There is, therefore, a persuasive point to be made for highlighting corruption as a human rights violation. Other rights that similarly get undermined are the freedom of assembly, association and a host of other civil and political rights.
Way Forward
There is need to deepen the relationship between anti-corruption and human rights non-governmental organisations, on the one hand, and public anti-corruption and human rights organisations, on the other.
National human rights institutions that do not have a direct anti-corruption mandate should use arguments in support of the relationship between corruption and human rights to take on corruption issues. Those with dual mandates should deepen the relationship between the two.
Just as Amnesty International has succeeded in doing, Transparency International should also set up not only national chapters but local groups at regional, community and district levels to create human rights/corruption awareness.
Countries in Africa must also adopt a development-oriented approach to preach about benefits of anti-corruption drive. They should also explain the consequences of seeking private solutions to public problems by creating gated communities, private schools and running four-wheel-drive vehicles. These actions only widen the gap between the rich and the poor, and create socio-political tension.
Some development non-governmental organisations concentrate only on alleviating the causes of corruption without examining them. A few are doing a good job of creating awareness through advocacy, but more mechanisms for Public Interest Litigation should be sought as a means of seeking legal redress on behalf of the public for corruption.
Corruption & Civil and Political Rights

Corruption remains a major obstacle to the consolidation of democracy in the world today. It threatens democracy because it erodes the capacity of the state to ensure sustainable development, denying people the enjoyment of their rights. Its effects and preventive mechanisms cannot thus be viewed narrowly.

Efforts to eradicate corruption and enhance transparency, accountability and integrity in all areas of national life and international relations can improve the utilization of development resources for all citizens, the poor in particular, and thus strengthen democracy.

Corruption is a universal phenomenon, prevalent in developing as well as developed countries. Corruption in any form, “takes two to tango”. There is usually the corrupter and the corrupted. As elsewhere in the world corruption has permeated all sectors of the Tanzania society. Decline of moral values and ethics is partly to blame for the entrenchment of corruption in our society. Tanzania has a long history of fighting corruption and has enacted several laws to deal with it. Appropriate policies and strategies have been formulated to ensure an effective implementation of the anti-corruption laws. These include establishment of the Prevention of Corruption Bureau (Prevention of Corruption Act No. 16 of 1971), the Ethics Secretariat, a Presidential Commission of Inquiry against Corruption (PCIAC) and the Commission for Human Rights and Good Governance (CHRAGG). The President has also established the coordination mechanism under the Minister of the State responsible for Good Governance in his office. Other stakeholders that work very closely with these institutions are the Police Force and the office of the Attorney General as well as the public at large.

Rule of Law

The rule of law is essential for a predictable, stable environment in which citizens know their rights and are confident that such rights will be upheld by an independent and well functioning
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The rule of law is also essential to control private and public sector corruption and to promote a climate conducive for development. The existence of the rule of law is manifested by the presence of:

1. legal protection of constitutionally defined rights,
2. existence of an independent Judiciary,
3. existence of an environment whereby people are generally know their rights and have access to the legal system,
4. budgets and Government expenditures are made public,
5. provision of legal and regulatory frameworks to control corruption,
6. existence of a civil service where appointments based on merit,
7. government officials are subject to the rule of law,
8. political openness and tolerance, and
9. participation and communication by all.

Corruption as a Threat to Democracy

Corruption perpetuates discrimination. Both international and national human rights covenants prohibit discrimination in the enjoyment of recognized rights. All persons are guaranteed equality before the law and the equal protection of the law. Corruption prevents the full realisation of economic, social and cultural rights. The principal commitment undertaken by a government should be to take steps with a view to progressively achieving the full realisation of all democratic values. Corruption leads to the infringement of several civil and political rights. As a remedy, many administrative decisions involving the exercise of discretion may be vitiating if it can be demonstrated that the decision was influenced by a corrupt motive. In such cases, administrative law may treat the discretion as not having been exercised at all or may regard the decision as having been made for improper purposes, on irrelevant considerations, or unreasonably. Where the decision has an impact on the exercise of democratic rights, the corrupt motive will render such decision arbitrary, e.g. arbitrary arrest, deportation or the arbitrary intrusion into privacy will constitute a violation of the relevant protected right.

The freedom to receive information is an important attribute of the freedom of expression. The right to vote and be elected in a genuine election is an attribute of the right to participate in public life. This right comprises two broad elements. The first is procedural and includes guarantees of equality and universality of suffrage and secrecy of the ballot. The second is that the election must reflect the free expression of the will of the electors. Bribery to induce them to vote or refrain from voting, or bribing election officials to induce them to interfere with the election process by such acts as wrongly marking ballot papers for voters with disabilities, replacing ballot boxes with those stuffed in favour of a particular candidate or party, or falsifying the ballot count, all constitute interference in the integrity of the election and are therefore infringements on the right to participate in public life.
Conclusion
Corruption is the number one enemy to human rights and democracy. It is enhanced by problems of insufficient awareness levels of rights on the part of the civil society. Success in the war against corruption largely depends on co-operation from the people, who must be politically mature and conscious, actively organised and alert.
Poverty is a hindrance to the fight against corruption and achieving democracy. For the anti-corruption war to succeed, a strong coalition of anti-corruption agencies, civil society and the populace must exist. A comprehensive strategy for fighting corruption requires attitudinal changes in all strata of the population in favour of zero-tolerance for corruption and a strong political will among national political leaders.
Introduction
Corruption is akin to cheating; but it goes beyond that. It is cheating in the use of public office so as to achieve personal gain in terms of resources such as money, services and other goods. Corruption is also akin to bribery; when a public official receives payment in any form in exchange for some service rendered to an individual or the public -- that is tantamount to corruption. In short, corruption is the misuse of public office for personal gain. The important word here is *misuse*, i.e. putting to wrong use.

In democratic systems of government, public affairs are conducted in accordance with the rule of law by both civil servants and elected officials. In both cases, there are laws and regulations that guide public conduct and the delivery of services. When an act of corruption is alleged to have been committed, it must be subjected to, and proven in a legal process. When the legal process is flawed, or subject to injunctions that border on filibustering, punishing corruption can at times be a daunting task.

It has often been argued that when civil servants and elected officials do not receive sufficient remuneration for the work they do, they may be tempted to *supplement* their wages through corrupt deals. The logical outcome of such arguments leads to the conclusion that public officials should be paid well enough to protect them from the temptations of corruption, and judicial officers are included here.

Yet, even in situations where well-to-do people are elected to positions of leadership and public officials are well remunerated, incidents of grand corruption still occur. Thus, to avoid corruption in public offices, more than a good pay package and terms of service are required. Laws, regulations and procedures must be both strong and enforceable to ensure that any act of corruption is severely punished to deter public officials from abusing such offices. But more than that, a political culture and a political leadership that frowns on corruption is necessary to reinforce the legal process.

For example, when civil servants are allowed to engage in private business, they will easily be tempted to use public procurement systems to their advantage, i.e., giving their own companies...
preference in providing goods and services to the state, quite often at inflated prices. Thus the recommendations of the Ndegwa Commission (1972), which allowed Kenyan civil servants to engage in business, created a big loophole for corruption in Kenya. It was indeed after the Ndegwa Commission Report that corruption in public offices started to escalate in Kenya.

When laws are loose and leave room for too much discretion in decision making and their application, public officials may also tend to abuse the discretion so as to get personal gain. For example, during the days of foreign exchange allocations and import licensing, too much discretion was given to the Finance minister to make these allocations and issue licences. Obviously it is such discretionary powers that led to the schemes such as the Goldenberg scandal, and others before it of equally astounding magnitude.

Discretionary powers in the Judiciary, the tax collection system, the public vehicle inspection system and many other branches of government have also encouraged corruption. Thus substantial public resources have been diverted into private hands, thus crippling government activities, undermining the delivery of services and deepening underdevelopment in the entire economy. Cumulatively, corruption undermines public faith in government, and this often leads to —among other things — tax avoidance, a shadow economy and capital flight.

Many professionals whose skills are internationally marketable are also likely to leave their countries for nations where their services are better appreciated and better remunerated. Such professionals also put a premium on the improved governance environment in which they find themselves when they escape from their corrupt home environment to societies they consider as better governed.

Kenya, for example, has lost hundreds of doctors, nurses, lawyers, accountants, engineers, surveyors, university lecturers and even clergymen to the southern African countries and the West, not to mention Australia and New Zealand, over the past two decades. In effect, we spend billions of shillings developing rare skills only to lose them to more developed countries such as the United States of America and Great Britain. This brain drain is part and parcel of the process of underdevelopment that corruption aids and abets.

But much more ominous is when corruption destroys the productive capacity of the nation and subverts the process of development towards a mercantile economy and pure speculation. Between 1991 and 1994 when, as a result of the Goldenberg scandal involving the fictitious export of gold and diamonds from Kenya, billions of shillings were paid out from the national treasury, leaving behind a big hole in the public purse. The treasury was then forced to borrow heavily from the domestic market through Treasury Bills and bonds, driving annual interest rates for both to close to 76 per cent.

Many banks, rather than lend to the productive sector and stimulate economic growth as well as create jobs, preferred to trade these government securities, and to raise their own interest rates as well, making it very difficult for manufacturers, industrialists and traders to service their bank loans. Many industries and businesses were soon foreclosed during this period, and Kenya, to this very day, has not really recovered from the adverse shocks of the Goldenberg scandal on the economy.

**Historical Background**

Let it not be said that corruption is a uniquely African disease, nor would it be correct to assert that it is an affliction of post-independence Africa. The white settlers in colonial Kenya made their fortunes through corruption. Without cheating in collusion with colonial officials, stealing
from the coffers of the colony, appropriating land for which they paid next to nothing, sucking the blood of poor peasants for labour not paid for and literally getting public transport for free for their farm products, the Blundells and Delameres of colonial Kenya would not have built their fortunes and “moved on to better things” when the nationalists finally took over political power.

In a recent book on the Mau Mau, Histories of the Hanged, David Anderson unearths corruption in the then City Council of Nairobi involving white administrators and Asian contractors during the construction of Ofafa and Mbotela residential estates for what was then regarded as the African middle class. He says:

“Never had a commission of inquiry been less welcome in Kenya than was that led by Sir Alan Rose. A distinguished barrister of the Inner Temple, and a confirmed bachelor with a reputation for probity, austerity and sternly conservative values, Rose was hardly the kind of man likely to find many kindred spirits among the robust, hard-drinking and womanising white highlander. The scale of corruption unearthed by the Rose Commission surprised even Kenya’s most cynical observers. The operation of the City Architect’s office and its supervision of the Ofafa and Mbotela contracts in particular, came in for savage criticis. On inspection, numerous contraventions of the building specifications came to light—shallow excavation footings, under-strength concreting in floors and lintels, substandard joinery, the use of cheaper, weaker materials throughout, and generally poor standards of workmanship. Yet, throughout the contract this work had apparently been inspected and approved by City Council officer.

“The implications of these revelations soon became clear. European officials had accepted ‘gifts’ from building contractors before and during the Ofafa and Mbotela contracts, entering false specifications and logging inspection reports when no inspections had taken place. Malpractice was found to be widespread in every aspect of the tendering and management of the Council’s building contracts, and had evidently been so for many years.”

It sounds very much like today, and it is as if Kenya really never became independent. At independence, Kenya decided to inherit from the colonialists the good, the bad and the ugly in governance -- corruption remaining at the centre of what subsequently came to be known as neo-colonialism.

But the civil service, though corrupt in colonial times, had its avarice kept to a minimum by the vigilance of the white settler community that it served. It was not as avaricious as its counterpart that emerged after the Ndewga Commission legalised official corruption. It was a service that was meant for the white society to deliver goods and services at the least cost to the master. It had to be small, lean and efficient, and any corrupt deal was carefully tucked away under some justifiable expenses at the senior levels dominated by the whites, therefore kept to a minimum. If it was discovered that one was taking advantage of an administrative office for personal gain, and hence passing the transaction cost to the master, the punishment was prohibitive at junior levels where most of the officials were African.

Civil Service after Independence

The much spoken about clean and efficient civil service at independence was therefore not an accident; it had its own origin in the political economy of colonial Kenya. After independence, the service became an employment bureau, an arena — quite understandably — of rewarding the boys and girls with jobs and new opportunities. As it expanded, it demanded more wages and more services for itself: houses, clinics, schools, holidays, pension schemes, and so on. These salaries and services were to be paid for — from the taxes levied on Kenya citizens.

The Kenyatta government opted for the easier, though more sinister, option. Rather than raise taxes to sustain a bloated civil service, the government allowed public servants to supplement their own wages through private business. This was the essence of the Ndegwa Commission Report. The Commission had been set up to review salaries and terms of service for civil servants in the early 1970s, but for all intents and purposes, it legalised official corruption. From then on, the civil service lost its cleanliness, and entered the ranks of the police and provincial administration in corruption and the most debilitating forms of rent seeking that soon brought the whole administrative edifice to its knees as far as service delivery and economic growth were concerned.

A Political Culture of Corruption

What the Ndegwa Commission brought to the civil service was already an acceptable and quite noble practice in the world of politics. Jomo Kenyatta, Kenya’s first president, and his courtiers had no qualms whatsoever interpreting their ascendancy to state power as also meaning immediate inheritance, if not at times, usurpation, of economic power from the departing colonialists, in what was justified as the Africanisation of the economy.

There was, of course, nothing fundamentally wrong with the Africanisation of the economy, especially when it meant the opening up of the frontiers of private property to Africans in terms of agricultural settlement schemes, trading licences, small and medium-size enterprises supported by the Kenya Industrial Estates, and new business empires financed by bank loans from the Industrial Development Bank, housing estates put up through Housing Finance Company of Kenya and so on.

What was wrong, however, was when some people used their proximity to state power -- particularly the presidency -- to access these business opportunities for themselves and their friends in a corrupt manner, in exclusion of the others, and quite often disregarding the wider interest of society. They also indulged in corruption when they used their discretionary powers within the state (powers to licence, to allocate foreign exchange in the treasury and the Central Bank, to approve and award contracts, to procure goods and services, etc) to enrich themselves and their friends, to accumulate power and wealth, to “Africanise” businesses and enterprises to themselves. Many of the economic and political potentates who today stride the streets of Nairobi as successful African businessmen trace their steps to the corrupt deals of this era. It is not surprising that they are averse to any talk of Truth and Reconciliation and dismantling of the authoritarian presidency.

Amendments to the independence constitution that heaped more and more powers on the presidency had a lot to do with the material interests of the power elite around the president, who found an authoritarian presidency a ready tool for aiding and abetting the accumulation of power, property and wealth. This phenomenon was not unique to Kenya: it has been the cause of corruption and underdevelopment in Indonesia, the Philippines, Mexico and Nigeria among many other low-income developing nations.
Very early in the life of the independence Parliament, cries of corruption started to be heard. One of the key issues that the Kenya People’s Union raised in breaking away from the Kenya African National Union government was corruption. A substantial section of the Wananchi Declaration, the KPU’s manifesto of 1966, is devoted to a discussion of corruption in Kenya, which the party billed as “the biggest drawback to the country’s future development”.

Even the Minister for Economic Planning and Development, Tom Mboya, Kenyatta’s ablest and perhaps least corrupt minister, decried corruption and nepotism in the following words in a speech at the University of Nairobi:

“I find it appalling that some of us in positions of power and authority quite often resort to cheap clanism in making appointments to public positions, and very often this is done to aid and abet corruption.”

When Paul Ngei, then Minister for Marketing and Cooperatives, diverted maize meant for food relief to Emma Stores, a shop owned by his wife, thereby inviting tremendous public disapproval, Kenyatta was quick to change the law and allow him to retain both his parliamentary seat as well as his position in the Cabinet.

Kenyatta perhaps saw nothing wrong with what Ngei had done because for him this was a way of Ngei ‘improving himself’, helping himself to something that did not belong to any particular person, something that was not owned by ‘anybody’s mother’. Thus when the Kenya People’s Union cited corruption as one of the ways by which KANU misruled Kenya, Kenyatta chided freedom fighter Bildad Kaggia in that famous speech at the rally in Nairobi in 1966, accusing him of having failed to build a house for himself while he, Kenyatta, had put up a mansion in rural Gatundu. For Kenyatta it was not corruption which was the issue, it was the inability of some ‘leaders’ to make use of ‘opportunities’ open to them within the state to improve themselves.

In this public and dramatised setting, a tradition was set from the highest political authority that made public officials enjoy impunity against the law should they be accused of corruption.

When corruption goes thus unpunished, it soon becomes rooted in a society’s political culture. Kenyatta aided and abetted the institutionalisation of corruption in Kenya’s political culture. Presidents Daniel arap Moi and Mwai Kibaki followed in the tradition, quite often more than not excelling in the art, much to the chagrin of ordinary Kenyans.

**Fighting Grand Corruption under Three Regimes**

It is not as if Kenyans have sat by and seen corruption happen without doing anything about it. Struggles have been waged; resistance has been put up, but the forces of corruption have always ignored, removed, pushed aside or totally eliminated those who have fought against the vice. The student and staff revolts in the public universities, the Saba Saba (July 7, 1990) uprising and the popular struggles for democracy dating back to the 1960s are part and parcel of the history of Kenya’s quest for good governance.

The reports of the Public Accounts Committee and the Public Investments Committee, as well as many other parliamentary reports and debates have sufficiently documented corruption during the Kenyatta, Moi and Kibaki presidencies. The statutes are full of laws seeking to keep...
corruption in check, the Anti-Corruption and Economic Crimes Act being the latest addition to
the legal speed governors.
Books, treatises and articles have been written analysing and drawing attention to the debilitating
effects of corruption on economic growth, poverty eradication and democratic governance.
Politicians and other leaders have been detained, imprisoned, killed and assassinated for speaking
about, investigating or opposing corruption in society and high places. We can remind ourselves
of Pio Gama Pinto, Tom Mboya, J.M. Kariuki and Robert Ouko.
Lawyers have been killed in broad daylight in the streets of Nairobi while dealing with cases
of corruption in the courts; arrests have rarely been made that lead to conclusive prosecutions.
University lecturers were thrown into police cells and detained, students were butchered while
demonstrating and violence meted out against their parents as they demanded transparent use
of national resources in the development of the nation. Recently a policeman, hot on the trails of
drug traffickers, was gunned down in his compound; the police do not seem to be making much
progress on that case either.
In the end, law enforcement agents begin to operate under fear, and fear leads to conscious
omission of performing duties that could lead to apprehending criminals engaged in corruption
or complicit in such affairs. An ineffective and compromised law enforcement agency becomes a
weak and ineffective speed governor. If anything, it becomes a speed governor checking people
intent on fighting corruption; it joins the chorus of those calling for 'going slow' in dealing with
corruption cases and investigations.
If law enforcement agents had not been ignored, compromised, derailed or stopped from
performing their duties, such mega corruption cases as Ken Ren, Molasses Plant, the expansion
of Nzoia Sugar Mills Phases I and II, the Turkwell Gorge Hydroelectric Power project, the
many botched privatisation schemes, etc would not have gone unpunished to the extent that,
finally, such mega rip-offs like Goldenberg and Anglo Leasing came as nothing to be surprised
about. A culture had been set in the civil service and the high echelons of government that it
became normal to make money this way! And, as John Githongo soon found out, being a law
enforcement agent under such circumstances can easily earn you a ticket to the gallows, courtesy
of the engine of high-level corruption.

Hunters Become the Hunted
When the hunters become the hunted, then the fight against corruption in government is
high-jacked by a mafia of plutocrats, in public speaking against the vice but in private urging
that the hunters go slow in their job, or abandon it altogether. Even the judges before whom
corruption cases appear engage in the game of filibustering -- adjourning cases endlessly, losing
files deliberately and even excusing themselves from hearing a case when many months have gone
down the drain as evidence is given and witnesses grilled. The rich and powerful are quick to file
court injunctions that delay, and even obstruct corruption cases against them while the poor are
punished for receiving or giving small bribes.
Lawyers following up witnesses in corruption cases have been bought off or bumped off.
Prosecutors have been threatened. Witnesses have disappeared without a trace. Wrong people
have been deliberately arrested and brought to court, charged with corruption or drug smuggling,
when the law enforcement agencies know exactly what they are doing: pulling the wool over the
faces of Kenyans in a make-believe exercise of fighting corruption.
The Anglo Leasing Scandal

What is now known in Kenya as the Anglo Leasing scam -- had it been allowed to travel the full journey as Goldenberg did -- would have had an equally devastating effect, if not worse, on the country's political economy.

Like the Goldenberg scandal, it involved both public officials and private wheeler dealers who entered into the affair for two purposes. One was for those in politics to make 'easy money' from the state for purposes of buying and keeping political power. The other was for the wheeler dealers to make money for private gain as well as for access to, and control of, high level public officials and politicians in the Kibaki government.

For both groups, this scam could not succeed if the rule of law was to be respected. And yet to carry it out in the name of the state some form of legality had to be respected. Hence certain public officials had to be used with powers to 'sign documents' so as to pass the test of legality notwithstanding the criminality of the scheme.

Under the previous regime of President Moi, such schemes could be carried out provided the name of the President was invoked to compel public officials to do what they knew was illegal. Since the presidential authoritarian regime was still very much in place, few people feared too much that they would be found out. Even if they were, the President's name was enough to protect them. This is why Kamlesh Paul Pattni moved with so much ease within the corridors of power, and why he could sit and scheme scams with Vice Presidents, Finance ministers, permanent secretaries and Customs officials.

Under the current regime of President Kibaki, presidential authoritarian powers, though still intact in the constitution, had been substantially eroded in the sphere of politics. Following the December 2002 elections, the people had asserted their power against the existing political order: society would no longer simply be ordered around by the politicians. It was now an open and free society. Secondly, Parliament had itself become increasingly assertive and independent of the executive since the Inter-Parties Parliamentary Group reforms of 1997; the 2002 coalition politics simply crowned this independence by counterpart departmental committees in the Parliament. And thirdly, a free, independent and fierce mass media was now a menace to the corrupt, and their victim as well at times.

So undertaking a scheme like the Anglo Leasing one would require much more care and much less ruthlessness, with regard to the law now that authoritarian politics were on the wane. This is what the schemers in the President's office and their civilian underworld contacts in the Anglo Leasing and Finance Company did not fully appreciate. But they knew, however, that in order to retain political power after usurping it from the coalition by trashing the pre-election Memorandum of Understanding, they needed some muscle to push their way through. This muscle, they concluded, was to be found by building a financial war chest with which to control the National Rainbow Alliance Coalition, the constitution review process and votes in Parliament. What they did not factor in was an unusual man of integrity as a law enforcement agent who was working in State House as the Permanent Secretary in charge of ethics and governance: one man called John Githongo.

The men and women who were involved in wheeling and dealing as politicians and 'businessmen' under Moi were still around: Kamlesh Paul Pattni, Deepak Kamani, Merlyn Keterring, Anura Pereira and now their running dogs abroad. Some had been elected to Parliament under the Narc arrangement while some had even financed the Narc campaigns without necessarily revealing
their underworld identities. Those who were looking for ‘easy money’ to buy and control political power did not therefore lack advisors, or partners with whom to do business. In any case, these partners came forth and offered their useful services, and the new Narc clients were only too eager to play ball.

The Anglo Leasing deals had been started under Moi but had not been consummated. The wheeler dealers advised that here was an open area where easy money could be made -- provided the scheme was consummated, and the Narc officials could actually do so under cover of ‘legal procedure’. The wheeler dealers would make their money by selling fictitious goods and services to the state while the politicians would raise enough cash to buy and keep power. All this was done in the name of the President.

Unfortunately for both the politicians and the business tycoons, John Githongo discovered the scam and reported to the President. In no time, monies which had been paid out to the non-existent Anglo Leasing and Finance Company were returned to the treasury into what was called the Miscellaneous Revenue Account.

The ministers and government officials involved argued that since the money had been returned, close to $15 million, the matter had to end there and no further investigations were necessary. Githongo thought otherwise; thorough investigations were necessary and all involved had to be prosecuted as laid out in the Economic Crimes and Anti-Corruption Act. A constellation of these politicians and their counterparts in the business underworld now threatened Githongo either to shut up or risk the gallows. By the end of 2004, Githongo had decided to quit when the opportune moment presented itself.

**Presidential Involvement in Corruption**

Many questions have been asked regarding the personal involvement of the President in this scam. Did the President know what was going on? Did he sanction it? If he did not know, was it because information was kept from him? If he did, why didn’t he stop it?

From Githongo’s published diaries, it is quite clear the President was informed and he knew what was going on. The question to ask, therefore, is why he did not do anything to stop it or to bring the culprits to book.

One possible answer is that he did not do something to stop it, nor did he quickly punish the wrongdoers because he sanctioned the scam. If this is the case, then Kenya is facing a Watergate-type situation.

The other possible answer is that the President knew but was mentally and physically unable to do anything, in which case the responsibility must be put squarely on the Cabinet, the Chief Justice and the Speaker of the National Assembly.

Section 12 of the Constitution of Kenya regarding ‘Removal of the President on grounds of mental or physical incapacity to hold office’ gives the Chief Justice the powers to appoint a tribunal to look into the matter after an appropriate Cabinet resolution requesting him to do so. The report of the tribunal is then handed in to the Speaker for further action.

From Githongo’s diary, by June 2004, it was quite clear that ministers and high ranking officials in government were involved with fictitious firms in procuring non-existent security-related services and equipment under the names of several fictitious companies, chief among them Anglo Leasing and Finance Company Limited and Infotalent Company Limited. When Githongo pressed the relevant officials about these fake contracts, monies were paid back to the treasury
equally mysteriously. Githongo comments in his dossier to the President:

“I found this unsettling. First Euro 956,700, on 17-05-04 and then USD 4.7 million is repaid on 07-06-04, by a company that does not have legal status and no indication from within the government who its owners were. Only hon. Mwiraria’s admission to me on the 14th of June 2004 that J. Oyula, then Financial Secretary, had called up Kamani who had then repaid the money gave an indication as to who Anglo Leasing was. Now another bogus company, Infotalent, had ‘repaid’ Euro 5.2 million.

Your Excellency, I informed you of these developments on this day 16th June, 2004. We agreed that we were talking about the ‘refund’ of almost Kenya shillings 1 billion and no one was celebrating; those making the refunds were not making themselves known; none of the civil servants involved were saying they knew who Anglo Leasing was.

“Anglo Leasing refunded USD 4.7 million (Kshs.370 m.) on the Forensic Laboratories project; Anglo Leasing refunded Euros 956,700 (Kshs.95 m.) on the Immigration Security project and Infotalent Ltd refunded Euros 5,287,164 (Kshs.506 m) on the E-Cops Security project.”

Why didn’t the President take any action on these anomalous repayments? Why did he continue to say nothing one year later when Githongo finally submitted to him this report after the Referendum on the proposed new constitution for Kenya?

These questions remain pertinent, and will need to be addressed by the relevant organs of government, particularly Parliament and its select and departmental committees. No doubt this process is under way, and may soon answer questions that bother every Kenyan that has sought for long to have good, clean and democratic governance that can deliver on the rule of law, human rights and development.

Corruption: What Is to Be Done?

Philosophers have explained the world in various ways; the point, however, is to change it. That was Karl Marx’s invocation to the revolutionaries of the nineteenth century when he wrote the Theses on Feurbach. Likewise, it does us no good to analyse and describe corruption in all its forms and historical evolution in Kenya if we do not use this knowledge to do something about it. Kenya has the institutions and laws with which to fight corruption. The Anti-Corruption and Economic Crimes Act was well crafted and gives Parliament, the courts and other law enforcement agencies sufficient powers and institutional leverage to investigate crime, apprehend offenders and prosecute corruption. As the Mexican novelist, Carlos Fuentes, says:

The question is not whether there is corruption, it is whether corruption can be exposed and punished. *(The Years with Laura Diaz—2001)*

To expose and punish corruption, three interdependent factors, institutions and processes are necessary: a political leadership with the vision, programme and will to do so; a political culture that encourages, nurtures and reinforces exposure and punishment; and law enforcement agencies, particularly the Judiciary, that will try to punish corruption.

We have seen the pitfalls in the past and present Kenyan political leadership in the fight against corruption. Since 1992, however, with the tremendous growth of an open society — freer press, political pluralism, aggressive assertion of civil liberties and press freedom — the public fight against corruption has been heightened.

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In 2003, soon after Narc came to power, the Minister for Justice and Constitutional Affairs carried out what was seen as a surgery of the Judiciary. It was meant to root out compromised, incompetent and corrupt judges and magistrates. In their place were to be recruited new people on merit. As it turned out, the exercise was infiltrated by favouritism and nepotism, promoting people who could not deserve those positions on grounds of merit, and victimising others on fictitious charges or mere suspicion.

Yes, there was indeed a tremendous effort made to turn the Judiciary upside down, but it has not led to improving performance in the Judiciary. It is not simply a question of ‘fighting the good fight’ in trying to bring about changes in the Judiciary; it is more important to ensure that this good fight delivers in terms of performance in the administration of justice and the fight against corruption.

The same can be said of the Kenya Anti-Corruption Commission. Since it was revamped under the Narc administration, with a director and a bevy of officials earning tremendous sums of money to justify their ‘heavy duties’ and ‘to keep them away from temptation’, the number of people who have been prosecuted for corruption in high places is not terribly impressive.

A recent advertisement published by the Government Communications Officer in the daily newspapers showed hundreds of Kenyans apprehended for corruption involving embezzling Ksh200 --Ksh20,000. While we would not want to forgive such sins offhand in the fight against corruption, they really cannot be paraded, in good conscience, as major achievements by KACC in three years.

What is the implication of our argument? First, that good institutions and laws are not enough in the fight against corruption; qualified, committed and independent people are needed to work in these institutions and to exercise these laws for the corrupt to be duly apprehended and punished. By independent we mean independent from undue external influence, by the powers that be or any other party interested in subverting the cause of justice. But independence is tough and costly; it requires high resolve and tremendous competence and courage in the Kenyan context, as Githongo’s experience has shown.

Second, that getting the right individuals into the right institutions is not enough. A society needs to develop a political culture that discourages corrupt practices, or makes it difficult for the corrupt to parade the proceeds of corruption as signs of success or social status.

With the recent revelations on Anglo Leasing and the call for ministers to resign from office following their being cited in the scandal, we may have started on the road towards effectively shaming corruption and the corrupt. But as long as the corrupt of yesterday are capable of successfully posing as the saints of today for election and appointment to public offices, then the enabling political culture for fighting corruption is yet to be built.

Such a culture will not be born spontaneously; it has to be cultivated through struggle. And it is a struggle which will not, at the moment, be led from the top; it has to be engineered from below, whether we are talking about government, the religious order, civil society or the business community. At the top of all these institutions in Kenyan society are men and women intertwined by webs of interest and relationships that have been compromised by corrupt practices, knowingly and unknowingly, over time. While a few may commit class suicide like Githongo did and fight bare knuckles against the vice, the majority will compromise themselves through silence as an easy option. The usual middle class sin: complain and do nothing; partake of the benefits of corruption but blame others for it.

But the realm of the political is always the most visible and the quickest to activate. It concentrates
experiences of society and aspirations of the people into one act: the vote. If, in that one act, the issue of corruption and how to fight it is condensed; if in that one act the true soldiers are selected with the armour and the spirit to fight bereft of the compromises of the past, then a political leadership can take up the mantle of the fight against corruption and move it a notch further. Good, committed, visionary and truly democratic political leadership is what Kenya needs to successfully keep corruption at bay.

There are MPs, though, who are tainted and it is a contradiction that hampers the fight against corruption. The way round this obstacle is to implement the provisions of the Economic Crimes Act, which prohibits those implicated in corruption from holding public office. Kenya needs a government strong enough and possessed of the will and conviction to enforce such laws, as well as a very active citizenry.

The Kenyan Budgetary system has a very week role for Parliament. Members of Parliament only wait to react to the Budget after it is presented -- and even such discussions are ritualistic, not changing an iota in the Budget. Fortunately, there is a proposal to create a Parliamentary Budget Office as part of the process of increasing the independence and effectiveness of Parliament.

Corruption is a political issue and the opposition (or anyone else) cannot politicise it: those implicated will use all methods and means to fight it, including invoking ethnic passions. Politicisation of the fight against corruption is, therefore, no major concern. An independent commission will do its job properly even if certain MPs oppose it.

The reality of our times may be that politics is becoming commercialised, but there is need for strong institutions and regulation to check improper mobilisation of finances. In Kenya, the upcoming Bill on political parties is expected to deal with funding of political activity and is a step in the right direction.

In this regard, civil society organisations that are ready to go beyond the rhetoric of accusation into the realm of constructing a future that zero tolerates corruption must now take up their crosses and make this history. The next General Election in Kenya needs to be fought on the anti-corruption platform. Parties need to qualify and disqualify candidates given their corruption credentials: corruption free ones to run and those blemished by the vice to decline from contesting for any elected office. That having been done, we shall change history for the better, and not simply continue to explain the causes of our underdevelopment woes, including corruption.

**Lessons on Corruption**

The following lessons are important from the issues we have addressed as we look at the political economy of corruption in Kenya from colonial times to our day, now confronted not only with Anglo Leasing, but with the menacing ‘Armenian brothers’ as well.

- **First**, any repressive regime prepares a fertile breeding ground for corruption. From colonial rule through Kenyatta to the darkest days of the Moi government, corruption and authoritarianism rose in tandem. In fact, it was during the most repressive years of Moi regime from mid 1980s onwards, that mega corruption became a feature of bad governance in Kenya.
- **Two**, it is the struggle for democracy and the advancement that the popular national forces have made in opening up society that has provided the biggest onslaught against corruption. A few brave ambassadors like America’s Smith Hempstone, Germany’s Bernd Mutzelburg and Britain’s Sir Edward Clay must be congratulated for their contribution,
but these laurels cannot be bestowed on the so-called donor community in general. The victory of the popular national forces in the 2002 elections is what has opened the democratic political space for transparency, free debate, an aggressive press, independent Parliament, a vibrant civil society and now the exposure of Goldenberg and Anglo Leasing. We still need to know more about the Halal Meat Factory Scandal, the Ken Ren fertiliser saga and many others of yesteryear.

- Three, if it had not been for Githongo, Anglo Leasing would have gone the way of Ken Ren. We need public officers of unquestionable integrity and patriotism in the fight against corruption. Men and women who will implement procurement procedures and laws in public interest.
- Fourthly, we need to eliminate the culture of impunity in our political system and government as a whole. Big or small, public officers indulge in corruption because we have set a poor precedent — the corrupt are left to flaunt their wealth and are serenaded as ‘development conscious leaders’ in ostentatious harambee gatherings. A competent and home grown rule of law culture must prevail.
- Fifthly, a politically committed leadership with a clear democratic and national developmental vision for Kenya is a sine qua non for fighting corruption. As Githongo has shown, the fight against corruption must begin from the very top of government and be seen to begin there.
- Sixthly, transparency in government expenditure and procurement, including the hitherto sacred defence and security expenditures, is vital.
- And finally, we must, as Kenyans, believe in ourselves and congratulate ourselves when we do good. Those who have given so much for the democratic struggle in this country need to be recognised and encouraged. We quite often overstate the role of donors in the fight against corruption. It is to be noted that aid to Kenya was at its highest when the country was most repressive and corrupt (1988-91). It was cut when Kenyans ashamed donors by coming out to the streets on Saba Saba and several times in the early nineties. Even with Anglo Leasing, it is the loud and clear voices of Kenyans that have now compelled significant changes in government that will, finally, herald a truly democratic and clean government.
Corruption as the Business of Business

In May 2002, Transparency International published the second Bribe Payers Index. The Index showed very high levels of bribery in developing countries by corporations from Russia, China, Taiwan and South Korea as well as numerous leading industrial nations, all of which now have laws making corrupt payments to foreign officials a crime. It was our conclusion that these laws were not being properly enforced (e.g. the OECD convention Against Bribery of Foreign Public Officials and the US Foreign Corrupt Practices Act). Politicians and public officials from the world’s leading industrial nations are ignoring the rot in their own backyards and criminal bribe-paying activities of multinational firms headquartered in their countries, while increasingly focusing on the high level of corruption in developing countries. The governments of the richest nations continue to fail to recognise how bribe-paying by multinational enterprises is undermining fair global trade.

The BPI 2002 showed that companies from Russia and China, which are increasingly exporting to other emerging market countries, are using bribes on an exceptional, and intolerable, scale. The extent to which companies from Taiwan and South Korea use bribes abroad is only marginally less. The authorities in all these countries need to do more to prevent bribery by their firms abroad.

The BPI shows that US multinational corporations, which have faced the risk of criminal prosecution since 1977 under the Foreign Corrupt Practices Act, have a high propensity to pay bribes to foreign government officials. The US score of 5.3 out of a best possible clean 10 is matched by Japanese companies and is worse than the scores for corporations from France, Spain, Germany, Singapore and the United Kingdom. The highest scores, indicating the lowest propensity to bribe abroad, were for companies from Australia, Sweden, Switzerland, Austria, Canada, and New Zealand.

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9 Mwalimu Mati was the Executive Director of the Kenya Chapter of Transparency International at the time he made these remarks at the Regional Conference on the Human Rights Dimensions of Corruption. He is now the Executive Director of the Media Analysis and Research Services Group in Kenya. Mr Julius Okaro is vice chairman of the Kenya Private Sector Alliance.
The Human Rights Dimensions of Corruption

Canada, the Netherlands and Belgium.

The BPI was conducted in 15 emerging market economies: Argentina, Brazil, Colombia, Hungary, India, Indonesia, Mexico, Morocco, Nigeria, the Philippines, Poland, Russia, South Africa, South Korea and Thailand, which are among the very largest such countries involved in trade and investment with multinational firms.

The Transparency International Bribe Payers Index, 2002

Some 835 business experts in 15 leading emerging market countries were asked this question: In the business sectors with which you are most familiar, please indicate how likely companies from the following countries are to pay or offer bribes to win or retain business in this country. A perfect score, indicating zero perceived propensity to pay bribes, is 10.0, and thus the ranking below starts with companies from countries that are seen to have a low propensity for foreign bribe paying. All the survey data indicated that domestically owned companies in the 15 countries surveyed have a very high propensity to pay bribes – higher than that of foreign firms.

<table>
<thead>
<tr>
<th>Rank</th>
<th>Country</th>
<th>Score</th>
<th>Rank</th>
<th>Country</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Australia</td>
<td>8.5</td>
<td>12</td>
<td>France</td>
<td>5.5</td>
</tr>
<tr>
<td>2</td>
<td>Sweden</td>
<td>8.4</td>
<td>13</td>
<td>United States</td>
<td>5.3</td>
</tr>
<tr>
<td>3</td>
<td>Switzerland</td>
<td>8.4</td>
<td>14</td>
<td>Japan</td>
<td>5.3</td>
</tr>
<tr>
<td>4</td>
<td>Austria</td>
<td>8.2</td>
<td>15</td>
<td>Malaysia</td>
<td>4.3</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Hong Kong</td>
<td>4.3</td>
</tr>
<tr>
<td>5</td>
<td>Canada</td>
<td>8.1</td>
<td>16</td>
<td>Italy</td>
<td>4.1</td>
</tr>
<tr>
<td>6</td>
<td>Netherlands</td>
<td>7.8</td>
<td>17</td>
<td>South Korea</td>
<td>3.9</td>
</tr>
<tr>
<td>7</td>
<td>Belgium</td>
<td>7.8</td>
<td>18</td>
<td>Domestic companies</td>
<td>1.9</td>
</tr>
<tr>
<td>8</td>
<td>United Kingdom</td>
<td>6.9</td>
<td>19</td>
<td>Taiwan</td>
<td>3.8</td>
</tr>
<tr>
<td>9</td>
<td>Singapore</td>
<td>6.3</td>
<td>20</td>
<td>People’s Republic of China</td>
<td>3.5</td>
</tr>
<tr>
<td>10</td>
<td>Germany</td>
<td>6.3</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Spain</td>
<td>5.8</td>
<td>21</td>
<td>Russia</td>
<td>3.2</td>
</tr>
</tbody>
</table>

“The BPI results signal the rejection by multinational firms of the spirit of international anti-bribery conventions, while their actions lead to a huge misallocation of very scarce resources in developing countries,” said TI Advisory Council chairman Kamal Hossain at a press conference in Hong Kong. “The data also points to very heavy bribe-paying by domestic firms in developing countries. Today’s BPI underscores the fact that we have a global problem of corporate bribe-paying that demands concerted global actions by official international organizations, civil society organisations and national governments,” he added.

Bribery in Business Sectors
The BPI shows that the most flagrant corruption is seen in the public works/construction and arms or defence sectors, which are plagued by endemic bribery by foreign firms. In a new study by the UK chapter of TI, it is estimated, for example, that foreign bribery is associated with tens of billions of dollars of defence deals”, said Kamal Hossain.

While even agriculture, the sector considered least likely to involve bribery by foreign companies, scored only 5.9 against a clean score of 10, public works/construction was deemed highly corrupt, with a score of 1.3, followed by arms and defence with 1.9, and the oil and gas sector with a score of 2.7.

How likely is it that senior public officials in this country would demand or accept bribes, e.g. for public tenders, regulations, licensing in the following business sectors? When this question was posed, the following were the responses. The score is the mean of all the responses on a 0 to 10 basis where 0 represents very high perceived levels of corruption.

<table>
<thead>
<tr>
<th>Business Sector</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public works/Construction</td>
<td>1.3</td>
</tr>
<tr>
<td>Arms and defence</td>
<td>1.9</td>
</tr>
<tr>
<td>Oil and gas</td>
<td>2.7</td>
</tr>
<tr>
<td>Real estate/property</td>
<td>3.5</td>
</tr>
<tr>
<td>Telecoms</td>
<td>3.7</td>
</tr>
<tr>
<td>Power generation/transmission</td>
<td>3.7</td>
</tr>
<tr>
<td>Mining</td>
<td>4.0</td>
</tr>
<tr>
<td>Transportation/Storage</td>
<td>4.3</td>
</tr>
<tr>
<td>Pharmaceuticals/medical care</td>
<td>4.3</td>
</tr>
</tbody>
</table>

*BPI Survey Questions on the OECD Anti-Bribery Convention*
(Responses in the new 2002 BPI survey compared to the first 1999 BPI report)

<table>
<thead>
<tr>
<th>How familiar are you with the Convention?</th>
<th>2002</th>
<th>1999</th>
<th>What is your firm doing with regard to the Convention?</th>
<th>2002</th>
<th>1999</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of survey respondents</td>
<td>835</td>
<td>779</td>
<td>Number of respondents who knew of the Convention</td>
<td>164</td>
<td>146</td>
</tr>
<tr>
<td>I am familiar with the Convention</td>
<td>7%</td>
<td>6%</td>
<td>Review of practices being undertaken</td>
<td>13%</td>
<td>19%</td>
</tr>
<tr>
<td>I know something about it</td>
<td>12%</td>
<td>13%</td>
<td>Compliance programme already exists</td>
<td>35%</td>
<td></td>
</tr>
<tr>
<td>I have only heard about it</td>
<td>32%</td>
<td>43%</td>
<td>No action required, doesn’t apply</td>
<td>30%</td>
<td>43%</td>
</tr>
</tbody>
</table>
How do anti-corruption crusaders discourage the business community from corrupting government officials? There is first a need for a critical analysis of the structure of what is called the private sector in Africa.

What is normally described as the corporate sector in Africa is normally 90 per cent foreign corporations operating in Africa, with the remaining 10 per cent being indigenous businesses. Even then, it needs to be noted that Western countries are not ready to hold their multinational corporations accountable for corrupt practices committed in Africa. Even more worrying is emergence of gangster capitalist corporations holding governments captive and answerable to no one. In Congo Brazzaville, for example, a whole country has come to near-collapse because of rivalry over control of oil between foreign companies. A similar case is evident in the Democratic Republic of Congo.

It is, therefore, challenging for citizens to hold multinational corporations with influential backing from their governments who also happens to be our donors to account.

A case of private-public sector alliance, is when the late George Anyona, then MP for Kitutu Masaba, raised questions to the scandal of a German company that wanted to sell the Kenya Railways Company old railway wagons at three times the cost of new wagons. The data and information that the MP used to support his whistle-blowing in Parliament were provided by friends in the private sector. A similar situation occurred in 2004 when Ntonyiri MP Maoka Maore raised the matter of what has since become known as the Anglo leasing scandal.

The starting point in unravelling corrupt practices stretching back to independence should be opened up for public scrutiny the Public Debt Register. There are a number of outstanding bills that are dubious. For that reason, the private sector working with the Catholic Church has resolved that the public debt register must be made public, demystified and the people who claim to be owed substantial sums of money unmasked.

Regretfully, the international cooperation that is needed to effectively tackle corruption is lacking and international agreements with multinationals ensure that they are immune from domestic citizen interrogation. Yet, locally, there are actions that can be taken to bring corporations in line.

**Political and Electoral Reform**

Corruption has been central to Kenyan politics. Corruption money has been used to underwrite elections, as was revealed recently during the judicial commission of inquiry hearings into the Goldenberg scandal. Secondly, corrupt money is laundered through politics. Thieves earns respectability by spending corruptly acquired money on socially legitimate programmes through harambee and other fund-raising activities, to forestall the possibility of social criticism and
censure over how they acquired their wealth. The Narc government’s attempt to solve this problem has been by enacting the Public Officer Ethics Act and proposing to pass the Political Parties Bill. Both initiatives are unlikely to succeed in ridding electoral politics of corruption since they have misdiagnosed the problem. So long as the incentives to buy an election exist, and so long as businesses think that the way to influence politics is to get friendly Members of Parliament elected, political spending and the corruption it buttresses will continue. The proper solution to the problem is twofold: tighten the laws on lobbying, and give companies incentives to contribute directly to social programmes without the mediation of politicians. The first proposal would entail changing the Companies Act to outlaw certain categories of spending by corporations. Under such reforms, it should be possible for companies to pay per diems to MPs or even to arrange lobby workshops for them. The second would entail revising the laws governing charities in Kenya in order to make charitable gifts tax-deductible and to enhance corporate disclosures regarding such gifts.

**Anti-corruption and Private Sector Reform**

Most corruption occurs at the intersection of the public and private sector, yet little has been done to link anti-corruption efforts with private sector reform. The governance reforms being implemented in the public sector need to be complemented by governance reforms in the private sector.

As former World Bank president James Wolfensohn once said, “the governance of companies will become as important, if not more important, as the governance of countries”. He made these remarks long before the collapse of Enron, World Com and Global Crossing. Yet there has been little action at the official level to institute corporate governance reforms as part of the anti-corruption reforms. Capital markets’ listing requirements and banking regulations do not insist that companies disclose beneficial owners of shares or of funds deposited. The corrupt can hide their wealth behind this regulatory lapse.

Secondly, there are no corporate honour codes or integrity pacts for companies that supply goods to or perform services for the government. Thirdly, there is no special corporate governance requirement for companies that deal with government. Such corporate governance requirements, where they exist, are derived from the Companies Act and the articles of association of specific corporations. These are invariably inadequate. Corporate advisors -- accountants, lawyers, tax consultants -- owe few legal duties to the investing public and many are snared in complex conflict of interest webs. The failure to deal with corporate governance issues as part of anti-corruption reform will be a significant dampener of the success of anti-corruption reform.

In 2003, the Capital Markets Authority in Kenya put out a paid-up advertisement to highlight a number of corporate governance requirements. It was sketchy, poorly written and poorly thought out. In the private sector, the only notable work is by the Private Sector Corporate Governance Trust, which has renamed itself the Centre for Corporate Governance. The Centre has produced a Code of Best Practices, but even this is now dated. In order to deepen its anti-corruption reforms, the Narc government needs to embrace corporate governance reforms. The world over, there is now an emerging consensus that certain aspects
of the management of companies must be governed either by statute or through subsidiary rules formulated by regulatory agencies. Some of the key aspects that need statutory foundation include:

- the appointment, qualification and role of directors;
- the remuneration for directors and the chief executive;
- questions of compliance with the law;
- the appointment and independence of auditors;
- the role of advisors;
- the extent and integrity of disclosures of corporate information;
- the quality and quantity of financial information that companies must disclose;
- the nature of corporate social responsibility and
- the duty towards, and respect for, shareholder rights.

1. **Directors: Role and appointment:** The collapse of Enron, WorldCom and Global Crossing shows that the traditional role of directors must change. Directors of companies need specialised knowledge and they need to spend sufficient time and effort on company matters. Many of Enron's directors did not understand fully the nature and risks of some of the businesses and accounting strategies adopted by Enron's management. Directors cannot stop corporate fraud and illegalities if they are not professionally equipped to ask the right questions and do not have the time to attend to company affairs. In another Mckinsey Survey, 30 per cent of directors interviewed said that they had no clear idea what risk their companies were taking. Another 40 per cent said that their companies had no risk or management strategy in place. Yet managing risk is what Enron and WorldCom had failed to do. There are a range of requirements that directors must be subject to. They include

- specifications of directors have a range duty of care.
- minimum educational requirements.
- the transparency of directors’ elections and nominations.
- how they are paid and evaluated, and
- the number of directorships that one can legitimately hold.

2. **Audit committees:** These are gate-keepers of corporate integrity. When they go bad, companies go bad. In the post-Enron world, much more now depends on them than before. Audit committees are committees of the board. They owe a duty of care and loyalty. In the post-Enron world, the independence and role of the directors serving on audit committees will be increasingly scrutinised.

What relationship does the director have with the company? For instance, are his personal interests interfering with his ability to make objective commercial decisions? The key question in accessing independence was laid out in the case of *Aronson v. Lewis* in the Delaware Supreme Court. The issue is “whether through personal or other relationship the director is beholden to the controlling person”.

Audit committees are supposed to ensure the independence of external auditors: but are they equipped to do so? Before Enron, external auditors used audits as an opportunity to create additional work for their management consultancy divisions. In many cases, large audit firms like PriceWaterhouseCoopers and KPMG made as much, if not more, fees from this management consultancy work as from the audit. Would such an auditor
be truly independent?
The nature of internal company regulations and the law need to change to make it clear that:

1. external auditors are answerable to the board through the audit committee, not to management.
2. regular closed meetings between audit committee and chief internal auditors are part of the job.
3. audit committees have a responsibility to ensure that internal codes regarding financial record and practice are obeyed. Where there is an exemption, it should be recorded and disclosed to shareholders. Enron’s board waived portions of the company’s code of conduct in order to allow the chief financial officer to be involved in some of the many partnership that were trading with Enron.

3. Corporate social responsibility and compliance with law: Companies exist by dint of law. As citizens, they have a responsibility beyond that which they owe to their shareholders. They must not damage the environment, engage in illegal activities, including corruption, or engage in business that facilitates crime. Co-operative Bank of Kenya says that it will not do business with drug dealers. The impact of lack of social responsibility can be dramatic. Twenty years ago, weak oversight and poor safety measures at the Union Carbide’s plant in Bhopal, India, led to nearly 3,000 deaths. Consider also the role of conflict or blood diamonds in fuelling war in Angola, the DRC and Sierra Leone, as another illustration.

4. Quality and quantity of financial information: This is not just good practice; it is at the heart of corporate integrity and consumer protection. Companies must provide adequate information in a timely manner. Late, even if it is accurate and adequate, information is useless. But information is not only central to integrity, it is also key to consumer choice. Without information, consumers spend too much time searching for products or else they make what economists call adverse selection. Adverse selection happens in situations where one party to a transaction has better information than the other. In other words, it happens in situations of asymmetric information.

5. Respecting shareholder rights: A company belongs to shareholders. Directors and management should work to maximise shareholder value. This is not always the case because of what are called agency problems. In a principal-agent relationship, there is also the problem of information asymmetry. The agent, say company directors, know more about the company than the principals, in this case the shareholders. In addition, much of the agent’s behaviour is not observable by the principal and his interests do not necessarily coincide with those of the principal. The result is either shirking of responsibility or abuse of office. The traditional approach to solving this problem has been to align the interests of directors with those of shareholders. This is done by giving directors and chief executives shares or share options. The theory is that the director thereby acquires an interest in the performance of the company.

6. Role of external advisors: The corporate collapses of 2001 put advisors, especially accountants and credit rating agencies, under the spotlight. Advisors must exercise greater care in the degree of scrutiny they bring to bear on their work. It is likely that directors are likely to seek technical advice more and more as the full scope of their responsibilities become clear to them. Advisors must bear responsibility when companies pay bribes, flout the law or otherwise engage in illegal
activities.

7. Corporate governance rating for anti-corruption reform: In terms of using corporate governance in the anti-corruption fight, there is some good news. Rating agencies such as Standard and Poor’s, as well as Moody’s, are now developing tools to award governance ratings. Some of the questions they ask include:

- how is dividend policy set?
- how are corporate acquisitions made?
- what is the company’s capital structure?
- how are liabilities reported and managed?
- what about board accountability?
- how well does the company comply with the country’s laws?
- what is financial disclosure like?
- how deep is the information provided?

Such tools can be refined to assess the extent to which companies are facilitating or helping to fight corruption through their attitude and behaviour as regards issues such as political spending.
Background
Corruption has long been recognised as a cancer with a wide range of very damaging effects on societies. The Kenya National Commission on Human Rights believes that corruption is the single most critical impediment to the realisation of human rights and further democratisation in most countries in Africa. It is a major obstacle to poverty alleviation and development. As a former Minister for Justice and Constitutional Affairs in Kenya so well put it:
“……It has taken away medicine from our hospitals; it has taken away books from our schools; it has taken away food from famine-stricken families; it has eaten up our roads; it has destroyed our agriculture; it has killed our industries; it has rigged our elections, destroyed our police and acquitted the guilty; and it has robbed, looted and plundered our resources. Corruption has killed and dehumanised our people.”

International instruments such as the African Union Convention on Preventing and Combating Corruption and the United Nations Convention against Corruption provide governments and nations on the continent with useful and practical tools with which to fight this plague.

The African Union Convention on Preventing and Combating Corruption (AU Convention) represents regional consensus on what African states should do in the areas of prevention, criminalisation, international cooperation and asset recovery in matters related to corruption. It was adopted on July 11, 2003, has been signed by 39 countries, ratified by 11 and shall enter into force 30 days after the deposit of the 15th instrument of ratification.

The United Nations Convention against Corruption (UNCAC) represents international agreement that corruption is a major problem that needs to be addressed and also represents consensus on internationally-agreed solutions. The UN Convention was negotiated in less than two years at the United Nations office in Vienna. The negotiations, which involved 129 countries, began in early 2001 and ended in October 2003.

10 Mr Maina Mutuaaruhiu Heads the Economic, Social and Cultural Rights Programme at the Kenya National Commission on Human Rights.
11 Global Action Against Corruption -- The Merida Papers.
The UN Convention was initially signed in Mérida, México on December 9, 2003. By September 2005, it had been signed by 133 countries and during the same month, the 30 ratifications required for the Convention to come into force were reached on. The Convention entered into force on December 14, 2005 (on the 90th day after 30th ratification).

**Why the Conventions?**
The main factors driving the need for a regional and international convention in combating corruption were the realisation that:

1. Corruption is not just a local matter – it is a global challenge requiring a global response. For example, corruption networks are a transnational phenomenon. International cooperation is imperative if it is to be prevented and controlled. An effective regional or international legal instrument against corruption is thus desirable to prevent, detect and deter international transfers of illicitly acquired assets in a more effective manner and to strengthen asset recovery.

2. Corruption cases involve vast amounts of resources, often constituting a substantial proportion of state resources. According to some estimates, the Goldenberg scandal in Kenya, for example, involved over 10 per cent of the country’s Gross Domestic Product. Other estimates suggest that 3 per cent of global GDP is criminally acquired in the developing world, through schemes involving money laundering, transfer pricing and other corrupt actions.12

3. Only a comprehensive and multi-disciplinary approach targeting the political, social and economic domains is likely to effectively prevent and combat corruption. No institution or sector can win the fight against corruption in isolation. Hence, a successful anti-corruption strategy would need to involve all institutions active in the fight against corruption, including supreme audit institutions, public prosecution, the police, the financial oversight institutions, the public administration and the private sector as well as civil society.

The preambles to the conventions also explain other concerns including the following:

- Problems caused by corruption to the stability and security of societies undermining the institutions and values of democracy, ethical values and justice and jeopardizing of sustainable development and rule of law
- the links between corruption and other forms of crime in particular organized crime
- the illicit acquisition of personal wealth and its damaging effects on democratic institutions, national economies and the rule of law
- the need to enlist the support and involvement of individuals and groups outside the public sector, such as civil society
- the negative effects of corruption and impunity on the political, economic, social and cultural stability of states
- the need to address the root causes of corruption
- the need to pursue a common penal policy, including the adoption of appropriate legislative and adequate preventive measures.

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Highlights of the Conventions
Both the AU Convention and the UN Convention contain some innovative and valuable provisions -- they take a comprehensive approach to the corruption problem, oblige the states to put in place a wide and detailed range of anti-corruption measures affecting their laws, institutions and practices. The UN Convention in particular is fairly detailed, with eight chapters and 71 articles.

The following are the major provisions of the conventions:

1. **Asset recovery:** The return of assets is a fundamental principle of the UNCAC- states. Parties are obliged to give one another the widest measure of cooperation and assistance in this regard. The provisions on asset recovery, give details on the tracing, freezing, confiscation, forfeiture and recovery of assets derived from corruption related offences.

   They are unique and represent a major break-through in the fight against corruption. They require Member States to return assets obtained through corruption to the country from which they were stolen. These provisions make it possible for many of our countries in Africa to recover billions of dollars looted by corrupt elites and stashed in foreign countries.

   According to Transparency International for example, between 1995 and 2001, Haiti, Iran, Nigeria, Pakistan, the Philippines, Peru and the Ukraine had claimed losses ranging from US$ 500 million to US$ 35 billion due to the corruption of former leaders or senior officials whose money had been channelled out into foreign bank accounts. The provisions on asset recovery send a powerful message to corrupt elites that proceeds of corruption, wherever hidden can be recovered.

2. **Prevention:** The conventions also emphasise the importance of prevention of corruption and outline various measures directed at both the public and private sectors. Among the model preventive policies and measures are:
   - the establishment of anticorruption bodies
   - enhanced transparency in the financing of election campaigns and political parties
   - safeguards that promote efficiency, transparency and recruitment based on merit.
   - subjecting public servants to codes of conduct
   - requirements for financial and other disclosures
   - transparency and accountability in matters of public finance with specific requirements for preventing corruption in critical areas such as the Judiciary and public procurement
   - public education-raising public awareness about corruption and measures that can be taken to combat it
   - active involvement of civil society
   - public reporting, access to information and whistleblower protection
private sector standards, like accounting and auditing standards.

3. **Criminalisation/ Punitive Measures**: The UN Convention requires governments to establish or consider establishing criminal and other offences to cover various acts of corruption. It calls for the outlawing of acts such as bribery, illicit enrichment by a public official, embezzlement, and misappropriation.

It also goes further to include trading in influence, concealing and laundering of the proceeds of corruption, offences committed in support of corruption, including money-laundering and obstructing justice, and problematic areas of private-sector corruption.

4. **International cooperation**: The UN Convention provides for a comprehensive international cooperation framework covering every aspect of the fight against corruption, including prevention, investigation, and the prosecution of offenders. The provisions cover extradition, gathering and transferring evidence, assisting investigations and prosecutions, joint investigation, transfer of criminal proceedings and special investigative techniques and support in tracing, freezing, seizure and confiscation of the proceeds of corruption.

5. **Assistance to developing countries**: Chapter VI of the UN Convention contains provisions on technical assistance and information exchange that are necessary for countries in Africa and the developing world to meet its requirements. They include:
   - training programmes in prevention and enforcement,
   - collection, exchange and analysis of information on corruption and
   - material support in implementing plans and programmes.

**Who has Ratified the Treaties?**

By September 2005, 30 countries had ratified the UN Convention against Corruption. Fifteen of these were in Africa – Algeria, Benin, Djibouti, Egypt, Kenya, Libya, Madagascar, Mauritius, Namibia, Nigeria, Sierra Leone, South Africa, Tanzania, Togo, and Uganda.

By December 2005, 11 countries (Burundi, Comoros, Libya, Lesotho, Madagascar, Mali, Namibia, Rwanda, South Africa, Tanzania, and Uganda) had ratified the AU Convention. The convention requires 15 signatures for it to come into force.

International anti-corruption conventions have a poor ratification record generally, but in Africa particularly, there is a general fatigue towards them. Countries are becoming increasingly sceptical about conventions, arguing that they never change anything. There is also the cost element in ratification. The systems and required actions under the conventions may be very costly and some countries could be reluctant to immediately assume that financial burden that comes with signing. Another serious impediment to ratification is lack of political will – the political leadership may be beneficiaries of corruption.

The likely reason for there being more signatories to the UN Convention rather than the AU Convention might be because of a desire among African nations to impress the international community, and also because donor agencies tend to have more faith in international conventions than in African ones.

**Critiques on the Conventions**

The Conventions are the result of long and difficult negotiations involving complex issues.
and concerns from different quarters. When all the concerns had been addressed and certain concessions made, several shortcomings were notable. Some of those that have been pointed out with regard to the UN Convention include:

1. The large number of provisions that are discretionary in nature therefore undercutting the objective of developing consistent international rules.
2. The unevenness of the mandatory obligation to adopt laws regarding the offering of a bribe, and the obligation to only consider legislation to deal with solicitation by foreign public officials.
3. Concern that a number of the Convention’s provisions could be interpreted in unfair and unpredictable ways like:
   - The private right of action provided under Article 35 could lead to a flow of unwarranted litigation, with potentially damaging effects on companies.
   - Article 18 “Trading in Influence” and Article 20 “Illicit Enrichment”, may be interpreted unfairly and unpredictably.
4. Lack of a proper monitoring mechanism to ensure its effective implementation and enforcement by all signatory countries.

Some observers note that the AU Convention contains some unacceptable provisions that violate the presumption of innocence, make it too easy to disregard data privacy and threaten good faith whistle-blowers. Additionally, the translations are unsatisfactory -- texts in different languages are significantly different in substance and sometimes contradict one another.

The following have also been identified as further weaknesses of the AU Convention:

- Access to information provision too limited
- No provision on statutes of limitation
- No requirement of liability of companies
- No provision on sanctions
- Provision allowing for reservations
- No real peer review process envisaged
- Current lack of resources for follow-up mechanisms

Giving Life to the Conventions -- Beyond Ratification

If fully enforced, these instruments can make a real difference to the quality of life of millions of people on the continent. Enforcing these conventions requires extra effort beyond the signing and ratification. The road to implementation calls for much more including the appropriate legislative tools. The provisions of the conventions have to be transformed into national law. National parliaments have a crucial role in passing legislation and monitoring its effective implementation.

13 http://www.iccwbo.org
15 U4- Ulstein Anti-Corruption Resource Centre.
Additionally, countries must create an institutional framework that ensures implementation of the legislation -- including establishing independent anti-corruption agencies with a broad and comprehensive mandate covering investigation and prosecution, prevention and awareness-raising.

Existing national and regional anti-corruption instruments, such as those dealing with preventive measures and asset recovery, need to be harmonised.

A broad internal regime of regulation and supervision of financial institutions, including the use of registries to verify the identity of clients must be put in place. When necessary, authorities must take reasonable measures to determine the identity of the final beneficiary of any financial transaction.

Professional associations should be encouraged to play a crucial oversight role in promoting and monitoring their members’ compliance. Financial institutions and professional organisations, such as those bringing together accountants and lawyers, must be encouraged to report suspicious transactions.

Swift and effective international cooperation is necessary to address crime beyond national borders. Governments must have strong political will to tackle corruption, the Judiciary impartial and independent and civil society should be actively committed. Civil society can exert pressure on governments, monitor political candidates in elections and scrutinise government expenditure.

Finally, a free and vibrant media -- to identify and expose corruption, hold governments accountable for their actions and promote a culture of intolerance of corruption – is a critical success factor.

Conclusion

The number of ratifications for international anti-corruption conventions -- 30 for the UN Convention and 11 for the AU Convention -- are not enough. In order for the potential of these instruments to be realised in combating corruption, as many countries as possible must sign up soonest.

These conventions provide a unique opportunity to realise huge gains in the fight against corruption and consequently in alleviating poverty, reducing exclusion, inequality and injustice. It is important that we seize the moment.
Introduction
Establishing democratic government is in itself an anti-corruption strategy. The dispersal of power within the institutions and processes of democratic forms of government should, at least theoretically, constrain opportunities for venality. The accompanying protection of civil liberties and human rights should make for open and transparent government and provide a check on abuse of power. Competitive politics under-pinned by periodic renewal through elections of the mandate to govern should reward politicians with a credible record of protecting the public resources and interest. Together, these three occurrences – dispersal of power, kinetising the institutions of accountable government, and competitive electoral politics for periodic renewal of government’s mandate – are essential elements of democratisation as an anti-corruption strategy.

The experience of Africa’s pro-democracy movements in the past two decades shows, however, that these assertions cannot be taken for granted. Democracy is perhaps too general a label for the diverse forms of government that it could refer to. In Africa, it has, for the most part, been reduced to an event – the conduct of elections. The reason for this is obvious even as it remains unacceptable. For the most part, Africa’s post-independence regimes precluded any form of political competition for power through the creation of nation-building projects in which power was monopolised by single parties. Pluralism or advocacy for it was criminalised. The institutions of state became personalised, corrupted, and instrumentalised to keep the single party in power, thus destroying governmental systems.

Anatomy of a Tripod Dismantled
Good government is founded on a tripod of three values: credibility, accountability and capacity. The credibility of the government is essential for its service delivery. Credibility is a function of
both the nature of its electoral legitimacy or mandate, and its fidelity to the norms of political behaviour.

There is a logical connection between credibility and accountability. Accountability has both political and institutional dimensions. Politically, it speaks to people’s ability to participate in their government, and if necessary, to change it through transparent electoral processes. Institutionally, accountability refers to how far the institutions and mechanisms of government can play their roles in ensuring that government operates properly within the law. Implicit in the political, institutional, and service delivery dimensions of government is the assumption that there is the institutional capacity to fulfil these functions. This institutional capacity is to be found in the independence and abilities of the judiciary, civil service, and bureaucracies of government.

In many African countries, these three essential elements of government had been deliberately destroyed by the dawn of the 1980s. Those who controlled government enabled themselves to deliberately conflate the essential distinction between state and personal resources, get away with this, and preclude the possibility of ever being held accountable -- whether through the legal process of investigations and prosecutions or through the political process of competitive elections. Writing in 1995, Cameroonian legal scholar Ndiva Kofele-Kale called this patrimonicide – the crime of exterminating the patrimony.¹⁷

In some countries, this remains the case. In Equatorial Guinea, for instance, an investigation by Senator Carl Levin on the Permanent Sub-Committee of Investigations of the US Senate in 2004¹⁸ revealed that the earnings from that country’s petroleum were held in accounts controlled personally by President Obiang and his family. In the Riggs Bank alone, this family held over $700 million through over 60 accounts in the names of the President, his wife, his sons, and in-laws. President Obiang, who has been in power since 1978, has eviscerated every prospect of competitive elections or legal accountability within Equatorial Guinea.

Around the continent, the establishment of democratic governments is increasingly fraught with challenges and has suffered many recent reversals. In many countries -- Cameroon, Zimbabwe, Ethiopia, Uganda, Nigeria, Rwanda -- electoral competition is, at best, endangered and has increasingly been replaced by competitive authoritarianism, the instrumentalisation of the processes and institutions of government to the simultaneous ends of eliminating effective opposition, creating the appearance of minimal electoral legitimacy, and precluding electoral alternation. As a former pro-democracy advocate, and Zambia’s former President, Fred Chiluba famously said, “Why do you want to organise elections you cannot win?”

What Price, Stability?
The relationship between human rights and democracy and corruption in the very complex African milieu is embodied in the dynamic tension between stability and justice. It pits the interests and expectations of an overwhelming majority of the continent’s pauperised peoples for better living conditions and an accountable leadership, on the one hand, against the desire of a powerful minority of entrenched local and international elite for predictability and privilege on the other. Regimes offering ‘stability’ have mostly been rewarded with effusive international support that is often prepared to gloss over egregious violations of the most basic rights or
relativise the goalposts of acceptable political behaviour, including, where necessary, conscious complicity in patent electoral fraud. In seeking to trade off (structural) justice for short-term stability, the partnership of domestic and international interests that has so far shaped Africa’s destiny succeeds in damaging the prospects of both justice and stability and, with these, of human rights and democracy in Africa.

Take the case of Côte d’Ivoire. Félix Houphouët-Boigny led Côte d’Ivoire as its President from its Independence from France in 1960, until his death in December 1993 at the presumed age of 88, three years into his fifth seven-year term. During his presidency, Côte d’Ivoire enjoyed appearances of stability, which was attractive to foreign investment in the country. The result of each election was a foregone conclusion. The African Development Bank located its headquarters in Abidjan, the Ivorian capital. The country’s citizens reputedly enjoyed the highest standards of living and per capita income in Africa. To celebrate the virtues of Le Vieux as he was fondly called, Unesco created in 1989 the Félix Houphouët-Boigny Prize for the ‘safeguarding, maintaining and seeking of peace’. Less than one year after his death, it became evident that the stability of the Houphouët-Boigny era was worse than a mirage. The country descended into fast-track meltdown, suffering a succession of constitutional instability, coups d’etat, assassinations, currency devaluation and asset-runs, economic and livelihood collapse, and war. This precipitated the exodus of foreign investment and the relocation of the ADB to Tunis, the capital of another African country with appearances of stability.

Steeped as it is in the history, politics, cultures and economics of the continent, it is impossible to disinfect the fates of human rights and democracy in Africa in the peroxide of political ‘neutrality’ and economic illiteracy. Although not interchangeable, human rights and democracy are cousins in a relationship not much different from the proverbial chicken-and-egg conundrum. In Africa, these concepts represent the project of realising both economic and political justice for individuals as well as groups in the post-colonial era. It is the search for a just and accountable stability. To be fair, this was always going to entail hard toil and committed leadership. The tragedy of Africa is that it got neither. Across the continent, direct colonialism ended without resolving or even addressing the explosive problem of sharing power in the multi-national, multi-ethnic and, in some places, even multi-civilisational masterpiece of cartographic arbitrariness that became Africa. The elite of Africa’s nationalists who inherited the raft of dictatorial powers, legislation and attitudes that sustained colonialism were quick to experiment with their new-found muscle with an impatience only matched by the enthusiasm of a child trying out a new toy.

Immediate post-independence African governments appeared more accountable and delivered services, because of two main reasons: a) the independence movements that brought those governments to power were largely quite inclusive; and b) the governments faced with an acute shortage of indigenous professionals with the expertise to run the government had a self-interest to deliver services such as education in order to create an educated cadre of professionals. Yet, in less than the time it took colonial administrators to evacuate from the continent, the high-sounding, high-minded rhetoric of the independence movement -- perhaps, the second truly popular human rights movement with its origins or inspiration in Africa, the first being the anti-slavery movement -- was replaced by the instinct of the political leaders to survive in power as the raison d’être of government. Towards this objective, the enormous powers of the post-colonial African state, together with all the goodwill that could be wrung from Cold War belligerents – now replaced in the unipolar world by competition for the endorsement of Washington and
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its anti-terror ideologues -- and post-colonial metropolitan powers, not to mention (in some countries) the odd presidential shaman or Marabou were pressed into service. Political patronage privileged persons with the right ethnic or political origins, or with the right pedigree, filial, genital, or other relationships of narrow presidential propinquity, at the expense of merit or service delivery skills.

Dissent was criminalised, and the judiciary was abolished as in Sekou Toure’s Guinea, emasculated into irrelevance as in Kamuzu Banda’s Malawi, intimidated into obsequiousness as in Kwame Nkrumah’s Ghana or simply corrupted as in many African countries. Onto this canvas, the unfinished, even virgin business of post-colonial power-sharing exploded with a vengeance, accounting for the cycle of zero-sum politics, military adventurism, gross human rights violations and instability that all appear to characterise Africa. In nearly all African countries, corruption became a modus vivendi of government.

All this achieved a stability of the graveside, at the expense of a quiescent people. The people’s capacity to make demands on their governments was eviscerated. Instead of making demands on government, most African communities contrived to exist or cope outside the reach of government; to live in spite, not because, of the state. Having as such got used to a population afraid of asking them to provide the services or play the roles for which government exists, it was a short road to travel before those in government found it easy to turn the resources meant for providing these services into their private estates. Grand corruption and abuse of power had morphed into one. Thereafter, from their point of view at least, the case for using the instruments of state to perpetuate this privilege became a matter of self-preservation.

Plus ça Change?

It is not for nothing that the widely advertised wave of democratisation and non-governmental human rights initiatives in Africa roughly coincided with the end of the Cold War, the decimation of Africa’s middle-classes by post-colonial dictatorships, and the popularisation of kitchenware for high intensity political violence. At the end of this decade (of democratisation of Africa), very little had changed in the capacities or desire(s) of the people to make demands on their governments. In many ways, as much as the continent had changed, it pretty much remained the same. How?

Across much of Africa, it is not unusual to hear advocates of pluralism of any sort being blamed by local communities for inflicting instability on the people. This sentiment deserves close examination. To many people, the ‘wave’ of human rights and democratisation that ‘swept’ through Africa only meant optimal political turbulence and hardly a ripple of positive difference to their well-being. These notions offered a terminally endangered middle and intellectual class a limited facility of protest, where in the past they were actively complicit in or indifferent to bad government. Anxious to preserve something of shrinking aid budgets from the weight of expectation imposed by domestic electorates unburdened by Cold War appropriations, Northern “philanthropies” made common cause with recently articulate voices of mainstream protest in Africa, consecrating them into ready beneficiaries of the post-Cold War dividend.

With the venom of a bushfire, the fate of Africa’s democratisation was tied in country after country to the city-dwelling parvenu or disgruntled ex-apparatchik for whom democracy meant replacing existing power with a different face and human rights represented the prerogative to realise this ambition as theirs. They prosecuted the project of democratisation ‘for’, defended human rights ‘on behalf of’, and sought power ‘in the name’ of the ‘people’ rather than ‘with’
them. Newfangled national constitutions entrenched partial franchise conferring the right to vote on everyone but restricting the right to be voted for to only those few who had gone to school and spoke English or French. And all this without providing for access to basic education that met the constitutional threshold for access to public office. Preferring the devils they know to unfamiliar and distant angels, our people have, where they have been allowed to do so in free and fair elections, mostly responded by voting with their feet in conferring electoral legitimacy on existing, defunct or resurrected dictatorships.

Thus, it is that democracy -- which in the rest of the world represents, among other things, a choice between different visions of organising society and protecting rights -- is, in Africa, an experience that offers neither choice nor change to the people. To the extent that there is choice, it has become reduced to a choice between less execrable versions of venality. Moreover, democracy in Africa is still portrayed as an electoral event rather than a process of making society more just and government more respectful of law and people’s rights.

Consequently, with a few exceptions to be found mostly in the women’s movement and the faith-based, social justice initiatives and networks, Africa’s contemporary pluralism advocates -- as human rights or pro-democracy advocates or opposition politicians -- share a core of values as members of a narrow urban protest movement with approximately similar or convergent political outlooks. Inspired and actively supported by Northern watchdog and advocacy initiatives in a marriage of convenience, and underwritten almost exclusively with funding from the outside, they are economical in cultivating genuine domestic legitimacy outside a core urban, literate constituency, and have little real existence outside the cocktail, media and workshop circuits. Evidently, with the exception of South Africa where the African National Congress came into government with a popular base and long institutional traditions, very few of those who have ended up in government from the pro-democracy community have inflicted fundamentally changed values on how government in Africa works.

For Human Rights and Right Humans
Towards the end of the last century, the slogan of the international human rights movement invited activists to 'think global and act local'. ‘Glocalisation’ became a new expression in the lexicon of fashionable advocacy. Ostensibly underlying this slogan was the perfectly valid claim that human rights as norms asserted a universally valid common denominator of human values. In practice, however, this slogan also represented the co-option of the legitimising language of human rights by a motley crowd of new incarnations of hegemony. It furthermore expressed the domination by Northern organisations of both the capital for and the identity (including the language and methods) of human rights advocacy everywhere with little respect for the divergent local realities confronted in different parts of the world and for constructing communities of solidarity that thrive on being suspicious of the very same Africans on whose suffering and marginalisation they thrive. So it is that, just as in the period before the democratisation struggles caught fire, the capacity of people to make demands on government as the most basic check on corruption and abuse of power, remains -- at best -- undeveloped.

If truth be told, we have mostly underestimated the extent of the African governance and corruption crisis. Africa’s advocacy for change was episodic rather than systemic. We desired elections, but failed to think of electoral systems. We desired political change but forgot to think about the transformation of the civil service. We wanted a just system but didn’t have a plan on
how to change the judiciary and our out-dated legal systems. We wanted human rights without assembling the right humans for the job. We wanted to change government with the impossible script of doing it according to the old ways.

There is a distinction between resource corruption and value corruption (which is erosion of values). Previously the emphasis has been laid on creating structures and institutions (the hardware) in the fight against corruption while ignoring personnel (software). Except for South Africa, most sub-Saharan countries are cash-and-carry without credible economic systems that can inspire investment so that those who loot public coffers invariably take out the money to Western countries with more secure economies.

At the beginning of this century, therefore, globalisation is no longer a sufficient mantra, even if it is not entirely unnecessary, for advocates of human rights anywhere, certainly not in Africa. Unlike their African counterparts whose mostly unviable national boundaries have been elevated to a form of unregulated geo-political ideology, the operations of Northern-based human rights activists and institutions are regulated by strict laws, trust deeds and mandates in deference to which they think local but act global. For Africa's contemporary advocates and activists for pluralism and human rights, it is now more important to think economic and act political if we are going to make any impact on corruption and accompanying abuse of power. In doing this, it is now necessary to be more systematic in organising for the political transformation of the continent.

To accomplish this, we need both technical and political capacities. At the technical level, one challenge is how to drag a majority of Africans out of the undocumented, informal state, into the documented one. In nearly every African state outside perhaps South Africa, Morocco, and Tunisia, the undocumented state, as a civic and economic proposition, outstrips the documented one. The fight against corruption and for human rights morph in the realisation that they will ultimately be judged by the extent to which they bring people from a zone of status outside the state sector, to a zone of citizenship within it. In addition, people outside the documented state system do not and cannot make demands on it. When they do so, it is through a rent-inducing relationship of intermediaries who prey on them, and contribute even further to their impoverishment. Moreover, a documented and documentary state assures the evidence needed for accountability and effective anti-corruption measures.

Secondly, the corollary to the documentary and documented state is the disclosure society. We cannot fight corruption in a society in which every act of government of the people enjoys a presumption against disclosure. This makes freedom of information essential.

In the architecture of pro-democracy advocacy in Africa, we need both the documented and disclosure societies in order to construct political communities capable of making demands on government, and through that, holding governments accountable. Without such communities, it is impossible to envisage effective anti-corruption work. This will necessitate a re-examination of the methods and mandates of the pro-democracy communities on the continent. The legitimacy of our actions matters -- as do the communities with which we perform these actions. It may mean resorting to more direct methods of reaching communities and citizens. It may also mean an escalation of personal risk, but the zone of anti-corruption work is one fraught with considerable personal risk -- about this we must be clear.

Then, of course, we need credible electoral systems. It is no use encouraging people to get into the game of electoral politics if the only mechanisms for guaranteeing their choices and outcomes are dependent on those self-interested people who stand to lose if the people's votes were counted.
and their choices mattered. Perhaps there is a need for African states to have not one but two electoral institutions – one, an electoral commission to organise elections; another, an Electoral Credibility Board, as an independent civic organisation within the state to certify the credibility or otherwise of electoral processes for purposes of establishing the legitimacy of government and, indeed, ordering burdens of proof in election petitions.

Finally, it is necessary to return to the question of the nature of the crime of corruption and its consequences. In 1944, Raphael Lemkin invented the crime of Genocide. In Africa increasingly, the biggest crime is now patrimonicide -- the destruction of our patrimony by those charged with protecting it. This crime comprises the wholesale plunder of a people’s resources, the exportation of these resources to other countries where they perform as assets, and the destruction of the institutions and people of the motherland to the end of precluding accountability for both the specific crime and for wider failures of governance. This is a crime of mass destruction. There is a clear argument for defining this crime and elevating it to the same status as those crimes currently recognised in international law.

The myth of the burden of proof always being on the prosecution to prove an accused person’s guilt can be shifted in appropriate cases as experience from United Kingdom and United States has shown. By shifting the burden, it would be possible to effectively prosecute corrupt individuals who then have the burden to explain their wealth.
Chapter 7

HOW NATIONAL HUMAN RIGHTS INSTITUTIONS CAN FIGHT CORRUPTION

By Bukhari Bello

Introduction

National Human Rights Institutions are established in line with the initiative by the United Nation's Economic and Social Council and the Paris Conference of 1991. Two years after the Paris Conference, the World Conference on Human Rights in Vienna, Austria, reaffirmed the importance and constructive roles played by national human rights institutions. It also encouraged all states to establish and strengthen these institutions. The conference elaborated the principle approved by the UN General Assembly Resolution No. 48/134 of December 20, 1993 and affirmed the guidelines for the establishment and operation of national human rights institutions, now known as The Paris Principles. The World Conference also reaffirmed the importance of national human rights institutions' role in promoting and protecting human rights, in particular, in advising the competent authorities, in remedying violations, in disseminating human rights information and in educating the public about human rights.

Since the World Conference, national human rights institutions have become more prominent actors in national, regional and international arenas. They support the basic institutions of democracy and have the capacity to make substantial contributions to the realisation of human rights by transforming the rhetoric of international human rights instruments into reality. Their ability to understand national circumstances and local challenges often places them in a vantage position to effectively tackle the challenges of their environments, such as corruption.

Fighting Corruption

Corruption is a systemic defect, caused by deficient formal rules (primary and secondary legislation) that regulate the activities of the public sector, and deficient informal rules, i.e., the distortion of the value systems and personal orientations of people. The fight against corruption can only be effective if it is preceded by identification of its underlying causes.

19 Mr Bukhari Bello is the Executive Secretary and Chief Executive Officer of the National Human Rights Commission of Nigeria and the chairperson of the Coordinating Committee of African National Human Rights Institutions.
The Transparency International Corruption Perception Index shows that levels of perceived corruption are high in most nations of the world. The citizens of many countries testify to how corruption in its worst form, notably abuse of public office for private gain, takes a daily toll on their lives. For years, nationally and internationally, this issue was ignored. Now a new era might well be dawning, which can give hope to millions of people in many poor countries who pay bribes to get their children into schools, who provide under-the-table cash payments to nurses and doctors to receive health care, who must deal with corrupt officials to obtain water and electricity, who know that only through corrupt practices can they win their cases in the courts, and who understand that many of their officials are vastly wealthy at the expense of the public they are meant to serve. National human rights institutions must, therefore, carve out roles in this fight, in line with the stated mandate.

By its very nature, corruption is the deprivation of entitlement by few to the detriment of the many. Indeed, it means the unlawful taking of public patrimony by a few to the detriment of others who are in the majority, and equally entitled to it. The result of this is that apart from violating numerous civil and political rights, economic and social rights are the most visibly violated. This leads to endemic and extreme poverty.

Societies where corruption thrives invariably harbour people living in extreme poverty. Poverty negates all human rights. That is why, in spite of the oil wealth Nigeria claims to earn, its people are among the poorest in the world. In concrete terms, this translates into poor health facilities, a weak educational foundation, spiralling inflation, acute shortage of housing, poor public power supply or unavailability of potable water, high infant and maternal mortality rates, and environmental despoliation. The connection between corruption and violation of human rights is real and threatening.

National human rights institutions operate on the basis that all human rights are universal, equal, interdependent, interrelated and mutually reinforcing. On this basis, therefore, the violation of any right triggers a national institution into action to seek remedy or redress.

Legal Framework
Apart from the Commission for Human Rights and Administrative Justice in Ghana, there is no other national human rights institution that has the express statutory provision to fight corruption. Yet, corruption is a violation of human rights. Section 7 (1) of the Commission for Human Rights and Administrative Justice (CHRAJ) Act of Ghana provides that:

“The functions of the Commission are to investigate complaints of violations of human rights and freedoms, injustice, CORRUPTION, abuse of power and unfair treatment of any person.”

In exercise of its power on corruption, the Commission indicted three ministers and one presidential staff member, all of whom were forced to resign. The public outpouring of commendations that followed this action gave the Commission much credibility.

In Nigeria, there are two recently established statutory bodies that have a specific mandate to prevent, investigate, combat and prosecute corruption. The first is the Independent Corrupt Practices and other Related Offences Commission (ICPC), established in 2000. The other is the Economic and Financial Crimes Commission (EFCC), established in 2002. While the former seeks to prohibit and prosecute corrupt practices, the latter is charged with enforcing all
economic and financial crime laws and adopting measures to investigate, identify, trace, freeze or confiscate proceeds derived from economic and financial crimes — including corruption. Before this, Nigeria had since 1979 had the Code of Conduct Bureau and the Code of Conduct Tribunal, whose mandate was to detect, prosecute and punish corrupt practices, respectively particularly within the public service.

Article 8 of the African Union Declaration and Plan of Action on Human Rights (199) recognises mismanagement, bad governance and corruption as violations of human rights. The African Union Convention on Preventing and Combating Corruption (2003) also recognised that one of the impediments to the enjoyment of economic, social and cultural rights in Africa is corruption. Indeed, the African Commission on Human and Peoples Rights made the same finding long before the Convention was adopted.

Where a national institution has a broad mandate to deal with all human rights issues, it usually extends to and covers economic and social rights. In a situation where all rights are regarded as equal, universal, interdependent and interrelated, corruption becomes very visible at the level of promoting and protecting economic and social rights.

That is also where national institutions can use their mandate to fight corruption. National human rights institutions ought, therefore, to take the fight against corruption as part of their mandate to promote and protect human rights. They should not limit their actions to the specific powers or functions within their enabling statutes.

This is where the issues of creative mandate arise.

In the year 2000, the National Human Rights Commission of Nigeria appointed one of its commissioners as Special Rapporteur on Corruption and Good Governance. The role of the Special Rapporteur is to monitor corrupt practices in Nigeria and to ensure that all bodies established to deal with corruption function effectively within their mandates. The commissioner is assisted by a full time program officer who is a member of staff at the Commission.

The UN system has held a number of major events devoted specifically to corruption. The most important of them being the December 1989 Conference at the Hague, the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders held in Cuba in 1990, which adopted the resolution ‘Corruption in State Authorities’. The 9th Congress held in Cairo was devoted entirely to corruption issues.

The UN has also come up with a number of instruments related to the fight against corruption and most nations are parties to them. They include:

- the UN Declaration on Organised Crime and Bribery in Trans-national Commercial Activities,
- the Dakar Declaration on the Prevention and Control of Organised International Crime and Corruption,
- the Draft International Code of Conduct for Public Officials of November 21, 1996,
- the Global Anti-corruption Programme of April 23, 1999, and
- the UN Convention against Corruption.

At the regional level, the African Union Convention on Prevention and Combating Corruption and Related Offences is of relevance.

These instruments provide an operational framework for national human rights institutions’ roles in this fight, particularly the most recent of these instruments – the UN Convention against Corruption.

- Article 5 stipulates that State parties shall develop and implement effective and
coordinated anti-corruption policies, which promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

- Article 6 concerns the establishment of preventive anti-corruption bodies aimed at implementing the policies outlined in Article 5 and increasing and disseminating knowledge about the prevention of corruption.
- Article 13 aims to promote the active participation of individuals and groups outside the public sector in the prevention of and fight against corruption, and to raise public awareness regarding the existence, causes and gravity of the threat corruption poses. Such participation should be strengthened, *inter alia*, by enhancing transparency and promoting the public contribution to the decision making process, ensuring public access to information, undertaking public information activities and educational programmes and facilitating the reporting of corruption incidents.

The Convention provides clear guidance on national anti-corruption policies and mechanisms, and national human rights institutions can be a part of these mechanisms.

**How NHRIs Can Fight Corruption**

The UN Convention deals explicitly with crucial aspects of corruption. It provides a comprehensive set of standards and measures to promote international cooperation and domestic efforts to prevent corruption.

The Convention addresses glaring inadequacies in two of the most critical tools for combating international corruption: mutual legal assistance and repatriation of funds sent abroad by corrupt officials. It also provides for an effective mutual legal assistance system, which is critical. Frequently, anti-corruption cases are abandoned because lack of cooperation abroad makes it almost impossible to follow the money trail.

The Convention is ground-breaking in including, for the first time in an international legal instrument, the concept, description and processes for international cooperation in the recovery of such stolen assets. The Convention also establishes the right of people who have suffered damage from corruption to initiate legal proceedings against responsible parties. National human rights institutions can support these provisions of the Convention through their activities.

The World Bank today estimates that $1 trillion is paid out each year in bribes. It is more than 10 times the total amount of development aid released annually.

Money laundering remains the world third largest business, estimated by the International Monetary Fund at about $500 billion each year. High levels of corruption significantly aggravate poverty. Its existence implies discrimination, injustice and disrespect for human dignity. Emphasis on human rights is, therefore, a key element in the corruption discourse.

States need to take the necessary steps to ensure that there is no discrimination in the efforts of their citizens to exercise their rights to development, employment, food, health, education and other basic human rights. Where corruption reigns, basic human rights and liberties come under threat and social and economic contracts become unpredictable. In line with this thinking, the 11th International Anti-corruption Conference in Seoul in May 2003 confirmed the conviction that all human beings have a basic right to live in a corruption-free society. In order for the fight against corruption to improve the lives of the millions of people who live in extreme poverty, it has to be a top priority at all levels -- and the responsibility lies with poor and wealthy nations.
alike, involving both the public and the private sectors and civil society organisations. National human rights institutions must develop strategies to work with these sectors of society. Indeed, what this means is that the fight against corruption must start at home. A critical focus of the UN Convention (Chapter 2) is prevention – providing the institutional and regulatory framework to reduce the likelihood of corrupt practices in the first instance. Ensuring that this preventive framework is in place in societies severely affected by corruption constitutes the first step in this crusade.

The Convention not only provides benchmarks that allow civil society to hold their governments accountable for anti-corruption efforts, but it also includes a mechanism that provides for international cooperation in the recovery of assets illicitly acquired by corrupt officials. National institutions must find relevance in this fight. They need to, among other strategies,

- see what others have been doing and what they can do in the fight against corruption – formulating Action Plans which would comprise specific timetable of steps to be taken in preventing corruption.
- organise a series of events to advance the UN Convention’s agenda in the domestic arena as part of their support for its implementation.
- structure advocacy campaigns against corruption – closer involvement of the citizens in the monitoring and evaluation of the delivery of public services may be explored. Examples from some areas show that this has resulted in increased citizen participation and a decline in budget leakages and corruption.
- be at the forefront of pushing for Freedom to Information legislation in their jurisdictions. Access to information and freedom of expression are basic human rights which are considered prerequisites for empowering people and ensuring voice and participation, and thus a key weapon in the fight against poverty and corruption. Although the constitutions of many countries guarantee the right to information, the denial of such right remains widespread. The UN Convention now invites states to take the necessary steps to enhance access to information to the general public and to promote active participation of individuals and groups outside the public sector.

Where there are separate institutions for anti-corruption and human rights protection, cooperation would yield significant results. Corruption cannot be fought by a single institution; and the multiple institutions would help each other. Ghana’s CHRAJ has a dual mandate because of historical reasons, but whatever arrangement is adopted by a country depends on its circumstances. Provided the institutions are independent, they should be effective.

Impact of Corruption on Economic and Social Rights

Corrupt enrichment usually arises from the process of budgeting and disbursing appropriated funds. National institutions must monitor what is budgeted and how it is spent. Sometimes projects that appear in annual budgets do not get implemented at all, or they are implemented below standard because proceeds meant for them have been misappropriated. Closely related to the above is the need for national institutions to demand transparency and accountability not only in the process of budgeting, but also in its implementation. Apart from legislative oversight on budget implementation, the central nature of human rights to the realisation of economic and social rights requires that national institutions pursue transparency, accountability and good governance. This can be achieved through openness and regular, periodic public auditing of political actors.
The requirement for transparency and accountability is the main plank for fighting corruption. The absence of these exacerbates and perpetuates corrupt practices. Everywhere corruption is endemic, poverty and underdevelopment reign. Persons who have responsibilities to deliver services to the masses, but corner them and deprive the people of the their use impoverish the majority, ensure social services are not available or where they are available, are made so expensive that the ordinary citizen cannot afford them. They compound and complicate poverty.

Impact on Civil and Political Rights
The classification of rights stated here is merely intended for academic purposes. However, such classification sometimes assists in graphically bringing out explanations on human rights discourse. In view of the interdependence and interrelatedness of all human rights, the violation of one right would impact on or involve the violation of some other right. Those who have no money to pay bribes before being granted police bail would no doubt have their rights to liberty, movement and fair trial violated. Wherever human rights are violated, national human rights institutions must be at the forefront of defending them.

Perhaps nowhere else is the negative impact of corruption more dangerous and debilitating than in the administration of justice. If the corrupt buy justice, those who have been impoverished as a result of that corruption would only be sold injustice. While corruption must not be condoned anywhere, it is more condemnable in the administration of justice. The courts must be shielded from corruption, and corrupt judicial officials must be dealt with firmly and decisively. Without justice, our world would be a jungle -- short and brutish.

National Action Plan for the Promoting and Protecting Human Rights
Under the Paris Principles together with the Vienna Declaration and Programme of Action, 1993, each state is required to develop and operate a National Action Plan to promote and protect human rights. The Vienna Declaration required that:

“Each state considers the desirability of drawing up national action plan identifying steps whereby the state would improve the promotion and protection of human rights.”

A National Action Plan is an integrated and systematic national strategy to help realise the advancement of human rights. It is:

1. an audit of the human rights situation in a country and identifies areas that need protection and improvement.
2. a commitment to concrete measures that can be adopted to build and entrench a culture of human rights enjoyment.
3. a framework for sustained and coordinated ways for the country to promote and protect human rights.

The NAP is used by governments, human rights defenders and other stakeholders to monitor and assess the observance of, and gauge the commitment of government to the realisation of all human rights. The development of and adherence to a National Action Plan is necessary as an instrument for measuring the progress made in the promotion and protection of human rights within a specified time frame. The fight against corruption must be part of a National Action Plan.
Conclusion
Corruption has become a critical issue in the economic and democratic development of all nations. The greatest impact of corruption is on the poor – those least able to absorb its costs. By illegally diverting state funds, corruption undercuts services such as health, education, water supply, public transportation, policing and public utilities, among others, that those with few resources are dependent upon. Most fundamentally, corruption undermines the prospects for economic investment. Few foreign firms wish to invest in societies where there is an additional level of ‘taxation’. National and international companies, too, by offering bribes to secure business, undercut legitimate economic competition, distort economic growth and reinforce inequalities. In many societies, widespread public suspicion that judicial systems are corrupt and that criminal acts are committed by elites in both the private and public spheres undercuts government legitimacy and undermines the rule of law. Corruption fuels and thrives on conflict. In places where legal systems fail to protect the rights of groups and individuals, the risk of conflict increases.
Corruption must, therefore, be at the core of the priority concerns of national human rights institutions. The links between corruption and organised crime, terrorism, conflict, human rights abuses, environmental degradation and poverty are now universally recognised. Preventing and combating corruption must be seen as part of an overall effort of national human rights institutions’ role to create the foundation for democracy, development, good governance and justice.
Introduction
Although the circumstances and environments of various countries may differ, the experiences of Ghana’s Commission for Human Rights and Administration of Justice provide lessons for other national human rights institutions in fighting corruption, especially in Africa. NHRI.s have an important role to play in the fight against corruption. The promotion and protection of human rights cannot be divorced from the fight against corruption because the two are interrelated.

“The fight for human rights and the fight against corruption share a great deal of common ground. A corrupt government which rejects both transparency and accountability is not likely to be a respecter of human rights. Therefore, the campaign to contain corruption and the movement for the promotion and protection of human rights are not disparate processes. They are inextricably linked and interdependent. The elimination of corruption and the strengthening of human rights both require a strong integrity system. Indeed, there is a remarkable similarity between the two” (Lawrence Cockcroft, 1998).

Therefore, the work of NHRI.s ought not to be narrowed to the promotion and protection of human rights only.

Corruption Landscape in Ghana
Transparency International’s Global Corruption Perception Barometer has given Ghana a score of 3.9 in 1999, dropping to 3.3 in 2004 and below that in 2005. In 2004, Ghana was ranked 72nd out of 133 nations surveyed.
The Centre for Democracy and Development Corruption Survey found that nearly three in four households saw corruption as a serious problem in Ghana. Of the households surveyed, 61 per cent agreed that corruption had worsened over the years; and the public sector also agreed that corruption was pervasive. About 82 per cent of public officials thought that corruption was more prevalent than ever. Of these, 46 per cent of support staff in the public service said that corruption

20 Mr Charles Ayamdoo is the Deputy Director of the Commission on Human Rights and Administration of Justice, Ghana
was extremely prevalent, while 41 per cent of policy makers and 42 per cent of programme officers said corruption was extremely prevalent. The survey also revealed that in Ghana, public officials are perceived to be more corrupt than employees in the private sector. Organisations or groups seen by citizenry as most dishonest included:
- the regular Police Motor Transport and Traffic Unit of the Police Service;
- Government ministers;
- Customs, Excise and Preventive Service (CEPS);
- Passport Office;
- Metropolitan District Assemblies;
- Ministries of Finance and Roads Transport; and
- the Judiciary;
It was also revealed that unofficial payments regularly consumed 10 per cent of household incomes while many firms routinely spent as much as 44 per cent of their revenue on bribes (CDD-Ghana/WB, 2000).

Measures to Combat Corruption
Until the Commission on Human Rights and the Administration of Justice was established, the existing institutional framework for handling cases of corruption consisted of the following:
- the Economic Crimes Unit of the Police Service,
- the Bureau of National Investigations (BNI),
- the Attorney-General’s Department;
- the Judiciary; and
- the Auditor-General;
These institutions primarily investigate, prosecute and/or impose sanctions in respect of cases of corruption. The Serious Fraud Office (SFO) is another agency whose functions include investigating complaints involving serious financial or economic loss to the state or to any state organisation, or any other institution in which the state has a financial interest (S.3, Act 466 of 1993). Since attaining independence on March 6, 1957, Ghana has recorded several attempts at fighting corruption:
- 45 Commissions of Inquiry into bribery and corruption.
- Military takeovers of government were justified on the need to eradicate corruption from the Ghanaian society.
- House ‘cleaning’ exercises, (flushing out corrupt officials from the Ghanaian society) -- (three former heads of state and five senior military officers were executed for various corruption practices).
- Arrests of alleged corrupt officials of previous governments, former Members of Parliament and businessmen suspected of trading on the black market.
- Establishment of the Citizens Vetting Committee, (Office of Revenue Commissioners), which investigated persons whose lifestyles and expenditures substantially exceeded their income.
- The National Investigations Committee investigated other economic crimes, among others, and had corrupt officials prosecuted before tribunals (courts) that were established to dispense speedy justice (PNDCL 2, 1982)
The Human Rights Dimensions of Corruption

The Commission on Human Rights and Administrative Justice (CHRAJ)
Established under Article 216 of the 1992 Constitution of Ghana, the Commission is a unique institution. It fuses in one, three distinct institutions, namely, a Human Rights Commission, an Ombudsman and an Anti-Corruption Agency.
The uniqueness of the Commission on Human Rights and Administration of Justice lies in the fact that it has direct responsibility for the investigation of corruption, and in discharging its functions, its operational independence is guaranteed in the Constitution.
CHRAJ’s independence was put to the test as early as 1995/96 when it investigated allegations of corruption and illegal acquisition of assets made against four ministers of state and some senior government officials.
The Commission has power to investigate:
1. complaints of injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties.
2. allegations that a public officer has contravened or has not complied with Code of Conduct for Public Officers, including requirements of assets declaration and conflict of interest by public officials.
3. all instances of alleged or suspected corruption and the misappropriation of public monies by officials and to take appropriate steps, including reports to the Attorney-General and the Auditor General, resulting from such investigation

Successes
CHRAJ has investigated some high profile cases, among them:
- P.V. Obeng and others (illegal acquisition of wealth)
- The Appiah Ampofo Case (bribery)
- Joy FM vs. SSNIT (misappropriation, COI, others)
- Prof. Kwaku Asare vs. Clerk of Parliament (The MPs Car Loans Case) (abuse of office and corruption)
- NDC Minority in Parliament vs. President J.A. Kufuor and others (COI)
- The Hotel Kufuor Case (illegal acquisition of wealth, and COI)
- Hon. Richard Anane (corruption and COI)

Between 1994 and May 2005, CHRAJ had investigated 148 cases – 58 by 2000, another 82 by 2004 and 8 (including investigations into the cases of Hotel Kufuor and Dr Richard Anane) in 2005.
The Commission has held a national integrity workshop with the objective of reviewing efforts to confront corruption, realign the tenor of debate and promote sustainable control measures. It has also established an AC Department, built coalitions with the Ghana Anti-Corruption Commission of which it is a founder member and vice chair, and published Guidelines on Conflict of Interest. Besides carrying out awareness campaigns on the evils of corruption, CHRAJ is also working to ensure a suitable legislative framework for combating corruption, and has hosted an international workshop on “The Role of National Human Rights Institutions and the Ombudsman in the Fight against Corruption-International cooperation”.

Challenges and Constraints
The Commission is faced with three legislative limitations:
It cannot investigate a matter that is pending before a court or judicial tribunal; or a matter involving the relations or dealings between the Government and any other government or an international organisation; or a matter relating to the exercise of the prerogative of mercy.

Where recalcitrant parties refuse to implement CHRAJ’s recommendation within three months of its being made, and where the Commission deems it necessary to have the recommendation enforced, it must go to court.

The Commission lacks prosecutorial powers. Under Article 88 (4) of the 1992 Constitution, prosecution of corruption cases by agencies -- including the CHRAJ -- within the criminal justice system remains the prerogative of the Attorney General.

Additionally, the absence of a Freedom of Information and Whistleblower Protection laws (there is Whistleblower Bill), together with resource limitations and insufficient political will make the Commission’s work difficult.

Conclusion
The enjoyment of human rights would be meaningless without ensuring a corruption free environment. National human rights institutions must, therefore, fight corruption -- however lonely and dangerous it may be.
Chapter 9

CIVIL SOCIETY AND THE FIGHT AGAINST CORRUPTION
By Baudouin Hamuli Kabarhuza and Nokuthula Moyo

Introduction
Corruption is the siphoning of resources from the public purse and channelling them to individual pockets, depriving the State of the means with which to render services with a view to improving people’s lives. Corruption manifests itself as ‘grand’ or ‘petty’, where the former involves national institutions, the elite and big companies, while the latter affects small local institutions.

A classic case of grand corruption is Mobutu Sese Seko’s Zaire, which was characterised by predation on the state through the creation and maintenance of a patron-client system. Parasitic wheeler-dealers criminalised the State by looting public property and resources, and then using these as an instrument for retaining political power, personal enrichment and controlling the population.

From the perpetrators of this looting, have emerged a cadre of wealthy people who own residences and other plush properties in Europe, America and South Africa.

Petty corruption is usually a consequence of grand corruption. In Zaire, the Judiciary, as many other institutions, was unable to act on corruption because it had been compromised. Mobutu would often ask for money from the government over the telephone. When he gave his Finance minister orders to send $2 million, the minister would in turn request for $3 million of his own. The Central Bank would release $5 million as a result of the Field Marshal’s request.

When Mobutu died, his fortune was estimated to be $10 billion, similar to the foreign debt the Democratic Republic of Congo (so named after Mobutu was deposed in May 1997) owed.

When corruption gnaws away at a country, it hinders growth and destroys any chance for development, scares away investors, taints a country’s international image and progressively leads to collapse.

Civil Society’s Role in Fighting Corruption
Civil society groups together diverse associations, formal or informal, that mobilise citizens at the local, national and international level to play an active role improving the quality of their daily lives, promote democracy and human rights, work towards achieving an equitable development and fight for a more healthy environment.

Civil society provides space for free expression and collective action. The dynamism of civil society in any country is often a reflection of the population’s awareness of its destiny and development issues.

Civil society should, ideally, act as a balance to the power that governments, political parties and companies wield in order to improve the quality of justice, social conditions, the participation of citizens in controlling their future, the respect for human rights. Civil society

21 Mr Baudouin Hamuli Kabarhuza is the Chief Executive Officer of CENADEP and the national coordinator of the Preparatory Committee of the International Conference of the Great Lakes. Ms Nokuthula Moyo works for Zimbabwe Lawyers for Human Rights
should encourage citizens to play a role in determining development policies, electing policy makers and contributing to their own governance.

Throughout the world, the end of the Cold War marked the beginning of a more open political environment conducive to the civil society expression. In the DRC, ever since the 1991 National Conference was held, civil society demands representation in discussion for a relative to the country’s policies. Civil society in Southern Africa has played an important role in combating corruption, though the inescapable conclusion is that graft cannot be effectively tackled without political will.

Combating Corruption in Southern Africa

In Southern Africa, corruption tends to be rooted in governments who seem to wink at it. The Southern African Development Cooperation has adopted a Protocol on Corruption that was spearheaded by civil society organisations, mainly the Human Rights Trust of South Africa (SAHRIT). Sahrit spearheaded and facilitated the exercise that created the protocol. It thus played a crucial advocacy role, raising awareness among SADC governments and creating a platform for them around the issues and finally crafting the protocol.

Civil society organisations have also raised awareness among SADC populations on issues around corruption.

In Zimbabwe, corruption began right after independence with the giving of jobs to the ‘homeboys’. Due to their incompetence, service delivery deteriorated. Nepotism also took root. For instance a company that was formerly state-owned had one third of its employees to be the managing director’s relatives. Another third of the staff was related to the human resources director. Corruption manifests in many ways in the Zimbabwean society. Sexual harassment of female employees at the work place, for example, is a pervasive form of abuse of authority that amounts to corruption.

In the public sphere, a number of scandals have been exposed in the recent past. The Willowgate Scandal, the Forex scam, the Fuel scam are poignant examples. Others, such as the Operation Ruwanzira housing scandal and the War Victims’ Compensation Fund scandal, in which fake claims were made by many people -- some of whom never even participated in any war, and included government ministers -- for fictitious injuries. The government set up a commission to investigate the War Victims Compensation Fund scandal in 2005, but the commission is thought to be far from independent.

The media has played a crucial role in exposing corruption and informing people on instances of corruption. In Zimbabwe, it was The Chronicle, a daily newspaper that exposed what became known as Willowgate, a scandal involving the assembly and sale of motor vehicles by Willowvale Motor Industries. It was also the media that published and informed the public about the abuse of the War Victims Compensation Fund. The media also exposed Travelgate and Oilgate. Unfortunately for Zimbabwe, the media is no longer free.

The government directly and indirectly interferes with and intimidates the media and the civil society. The problem is further compounded by the unstable political situation in the country. There are encouraging stories from other SADC countries, however. Botswana and Zambia cases provide great encouragement. IDASA, for instance, took legal action to compel political parties to disclose the source of their funding. Although the action failed, it was a noble attempt that highlighted the corrupt sources of political funding.

The Oases Forum in Zambia successfully lobbied against an amendment of the country’s
constitution to provide for a third term for President Chiluba, who had served the maximum two terms allowed under the law. Civil society in Malawi also succeeded in preventing an amendment to the constitution to provide for a third term for the President. In Zimbabwe, the student movement held demonstrations for action on perpetrators of the Willowgate scandal, forcing the government to set up a commission to investigate it. Similar pressure led to the formation of a commission to investigate the War Victims compensation scandal.

Generally, civil society movements in the Southern African countries have informed the public, criticised government actions and omissions that perpetuate corruption, and generally lobbied against corrupt practices by governments and their agents. From their experience, it is clear civil society has a role to play in the fight against graft -- primarily by raising awareness, lobbying and advocacy and keeping the anti-corruption agenda alive.

In monitoring corruption, international obligations can sometimes overlap. In such cases, these obligations, such as those laid out under the SADC protocol, as well as the UN and AU Conventions on Corruption, should be harmonised.

Fighting Corruption in DRC
In the DRC, post-Mobutu, the corruption situation has not significantly improved, although the context has greatly changed. A sustained campaign, together with institutional reforms, can place the corruption war on the right footing.

First, the freedom of association and expression has promoted the war against corruption. The opening up of democratic space has led to the public denouncement of embezzlement and other corrupt deals.

On governance, it is necessary to decentralise power to the provinces so that they not only directly manage part of the resources they mobilise, but also put in place operational controls. The internal weaknesses of provincial administrations do not allow them to intervene when corruption occurs. As was witnessed during the war, looting and illegal exploitation of natural resources in the DRC occurred as the local administration looked on helplessly. Reports from United Nations panel of experts explained how local administrations had been neutralised and exposed their weaknesses in detail.

Additionally, the June 2005 report of the special parliamentary commission charged with evaluating the validity of the financial and economic conventions signed during the war reveals the extent to which corruption, which has regional and international tentacles, threatens the future of the DRC.

During the inter-Congolese talks held in Sun City, South Africa, the civil society delegation successfully lobbied for the creation of a pro-democracy institution, the Ethics and the Anti-corruption Commission, which is managed by a member of the civil society. It includes delegates from public institutions and political parties as well as civil society organisations. The government also adopted the national anti-corruption strategy on November 9, 2002. Civil society was widely consulted in the drafting of the strategy, which recognises the important role civil society plays in the fight against corruption.

Several independent associations coalesced to act together, and set up the Observatoire Anti-corruption (the Anti-corruption Observatory). Although there have been many independent associations advocating transparency, such as the Observatoire Gouvernance Transparence (The Governance Observatory OGT), there is no corresponding effect in improving the management
of public resources over the years. Experience has generally shown that associations based in the capital, Kinshasa, do not have a national following. Civil society is trying to promote specialised networks for every sector, such as the Réseau National sur les Ressources Naturelles (the National Network for Natural Resources).

CENADEP has been monitoring the exploitation of the Congo Forest; human rights associations and networks working on the respect of economic and social rights. The associations draft reports on studies conducted and disseminate them.

The fast-growing independent media in the DRC is doing a commendable job exposing scandals on the misappropriation of public resources. These exposes allow for national debate of these issues and even result in public demands for a crackdown on such activities. The publication of the UN panel of experts report on the illegal exploitation of natural resources forced the government to sack some high profile personalities.

Recently, a permanent secretary in the Office of the President was forced to resign after he was accused of involvement in embezzling revenue from SNEL (the National Electricity Company). Dismissals and resignations alone, however, are not enough to instil high political morality in leaders. It is essential that justice takes its course to fight the impunity that breeds corruption.

In the DRC, civil society continues to exert pressure on the authorities to get back the resources Mobutu looted from the country. One of the complications is that many of Mobutu’s assets have been transferred to third parties. Secondly, given that DRC is in transition, a more fundamental concern at the moment is which government will manage these resources.

Towards a Civil Society Action Plan in the War on Corruption

Fighting corruption in a country requires a strong citizen’s coalition -- one can not go it a lone. Reaching agreement on priority actions is critical.

At a workshop in Kinshasa on good governance, transparency and the fight against corruption in central Africa from February 16 to 18, 2006, delegates from Congo Brazzaville, the Central Africa Republic, Rwanda, Burundi and Chad adopted the following recommendations:

- Comprehensively diagnose corruption in their countries and its effects.
- Sensitise the public on the corruption phenomenon.
- Strengthen civil society capacities in monitoring and observing corruption.
- Carry out advocacy for the establishment and support of a committee to implement their national anti-corruption plans.
- Carry out advocacy for the adoption of a law on transparency in the mining industry.
- Strengthen monitoring of the implementation of the state budget.
- Carry out advocacy for the publication of an annual report of the Court of Audit
- Demand respect for and enforcement of UN and AU conventions on the fight against corruption.
- Strengthen warning mechanisms for flagrant offences published in the press.
- Set up regional anti-corruption observatories.
- Encourage the improvement of salary policies; strengthen monitoring of state institutions, and the implementation of institutional reforms within the frame work of a decentralisation policy.
- Support a sustained sensitisation campaign accompanied by judicial crackdowns.
- Strengthen cooperation between movements in the North and those in the South
- Continue to strengthen action spaces for civil society and the media.
African civil society is today more active than ever before, although in the anti-corruption arena, it is yet to quite find its footing. Civil society is defined by the circumstances in a given society or community. As more countries in Africa manage complex political transitions, corruption will continue to assume a more important place in civil society’s agenda.
REPORTING ON CORRUPTION: SUCCESSES AND CHALLENGES
By Kwamchetsi Makokha

Everywhere around the world, the media have arrogated themselves several roles, among them being public watchdogs, setting, protecting the status quo, ethicising, promoting debate, defending rights and freedoms, spurring development, gate-keeping and mirroring society. But they are also commercial empires and ideologues.

It is by performing these roles that the media claim social relevance and acquire voice and influence. From the hotchpotch of these, sometimes conflicting roles, journalists find it impossible to ignore salient issues such as graft – especially in a country that has never climbed out of the abyss of the 20 most corrupt nations of the world ever since the Transparency International corruption index was launched.

In recent years, media in Kenya have robustly reported corruption because it directly affects the lives of its customers and thus passes the saliency and self-interest test, but also because doing so helps it to fulfill its public watchdog role.

Covering corruption?
Generally, the kind of venality that has been the focus of media attention has been what Kenyan anti-graft crusader John Githongo has called grand corruption. It has manifested itself in the following six main ways:

- Payments for goods and services, which are either not supplied at all, or are defective or substandard. The supply to the City Council of Nairobi of chalk instead of chlorine for water purification is a notorious example. Others are the Goldenberg scandal, in which billions of shillings were lost in fake foreign exchange and export compensation deals, and the importation of the Mahindra jeeps for the police when they were unsuited for the work they were required to perform.
- Purchase of goods in excess of requirements, or for which there is no available market – such as the purchase of bicycles by Kenya National Trading Corporation when there was no ready market for them.

Kwamchetsi Makokha is former editor at Daily Nation and The Standard. He works as a communications consultant and runs a weekly column in the Nation.

CGD Bills Digest: ‘Better’
The Human Rights Dimensions of Corruption

- Splitting of tenders to avoid the ceiling set by tender requirements.
- Over-invoicing by contractors.
- Payments to contractors on account of variations – the bidder makes a low tender so as to get the contract, then issues variations and invoices for them.
- Classification of certain tenders or contracts as relating to national security and, therefore, not processed through normal tender procedures. The Anglo-Leasing type contracts, which covered the whole gamut of security operations from installing radio communication systems to building a warship for the Navy, are an example.

Effects of Covering Corruption

The Kenyan public appreciates the scale of the corruption problem. The media have succeeded in framing corruption as a key test for leadership and public service. The media shares with the people of Kenya credit for forcing the first three resignations from Cabinet this year over the Anglo-Leasing scandal, in which millions of dollars stood to be lost, and the Goldenberg scandal, in which millions of dollars were lost.

This has been achieved through continuous coverage of corruption stories, follow-ups, and the placement of graft on the public agenda.

It is now becoming increasingly accepted that acquiring wealth dishonestly is not acceptable, that misusing public funds has consequences and government must be run accountably and transparently.

People are aware that their leaders might have been compromised; they understand that theft of public resources denies them the enjoyment of their rights.

Gaps in Coverage

But corruption has not always been the hottest news in the Kenyan media.

Fig. 1: Articles (all) on corruption in the Nation by month 2001-2005

Source: Helge Kvandal, Oslo University – MA thesis
The *Daily Nation* and *Sunday Nation* are the newspapers with the highest circulation in East and Central Africa, with average daily sales of 200,000 copies and read by an estimated 10 people per copy. Studying the market leaders can give an indication of how the rest of the field plays since newspapers in Kenya are all sold at cover price and competition to capture readers and retain them is intense.

Although there is coverage of corruption throughout the year over the five-year period studied by Helge Kvandal, the graphs only shoot up when there is something happening around corruption.

In 2001, then President Daniel arap Moi had invited experts to advise his government on corruption in August 2001. In October 2003, the report of the committee on corruption in the Judiciary became public, with the resultant sacking of 23 judges of the High Court and Court of Appeal. In May and July 2004, the Anglo Leasing scandal became public knowledge. And in February 2005, John Githongo resigned as Permanent Secretary for Ethics and Governance.

In effect, the media never ferreted out corruption and placed it on the agenda. Instead, someone else brought the issue to the fore, and the media took a piggy-back ride.

In discussing the quantitative changes in the coverage of corruption before and after the election in 2002, it is apparent that the issue has only featured in the media sporadically. Was corruption a big issue for the media prior to the General Election in 2002 and during the referendum campaigns in 2005. The results from the study, unfortunately, are not encouraging.

So, when do Kenya's media focus on corruption, and why?

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**Fig. 2: Front page references in the Nation, 2001-2005**

The answers seem to be that the media focus on corruption when somebody else [outside the media] raises the flag, and when the media are convinced that public interest is at stake.

It was not until TI Kenya was formed that media in Kenya began to pay close attention to corruption as a social and political problem. It was not until civil society, donors and other interest groups began to speak about corruption and governance in the same breath that the media began to pay attention. In the absence of a credible voice on corruption, there is a temptation to retreat

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lest the media become open to accusations of witch-hunting, negativity and bias. Even with all the work that the government has done on corruption, it does not like to be caught trying to get into bed with old graft. It gets brutal; its face grows grotesque, its speech threatening and its actions unspeakable.

Fig 3: Volume of coverage on corruption in the Nation 2001-2005. All articles included.

If Kenya’s media seem vibrant in the fight against corruption, it is because there is sufficient malice within the political and business system to fuel it, disgruntled suppliers who feel short-changed, as well as honesty and indignation in the public service. The staying power in the civil society to focus on corruption also keeps the issue alive. Without the politicians seeking publicity in creating embarrassment for their foes, genuine whistle-blowers, and organisations whose mandate includes researching and exposing corruption, the media in Kenya would be at a loss as to how to catch graft. Investigating corruption is an expensive affair, and the media is Kenya have probably not reached the stage where they are able to absorb these costs without seeing how they will be recouped.

Kenyan media have, however, placed the coverage of corruption at the forefront of their agenda, going by volume and story placement.

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Kenya's media are hampered by staff shortages, lack of expertise, lack of training and a weak financial base. Although there may be a desire to report on corruption, pursue it and keep it in the public domain, there are always competing interests, such as the 21-day rule – whereby news, however earth-shaking, runs its course and must give way for something new after three weeks of daily flogging. Even the terrorist attack on the twin towers in New York on September 11, 2002, did not stay on the front page for that long.

Something of a feat was achieved in February 2005 and February 2006 in Kenya with regard to the 21-day rule: Corruption was on the front pages of all the major newspapers and among the first three news bulletins on all radio and television stations for two weeks and a month respectively. Focused attention with comments, reactions, demonstrations, and releases around the John Githongo dossier kept the Anglo Leasing case alive. A year before, when Githongo fled to the UK, *The Standard* stretched corruption coverage to a fortnight by commissioning an opinion poll – and even this when no less than five Cabinet ministers insisted that corruption was a problem in government and wanted a clean-up.

Additional to this is the unique problem of the news cycle and the resources available to editors and media managers. Kenya's journalism profession is still very young, and only has about 700 active practitioners. These are often distributed into editing roles, reporting on lifestyle, health, business and finance, Parliament, police, courts, and other issues that recur more frequently.

Investigative desks, which are the only attempts at committing resources to pursue one story, pore over the detail and check facts over and over again, do not usually produce as often as editors would like them to because they are understaffed, under-funded, and mostly un-led. The fact that corruption appears only sporadically has encouraged editors to put together investigative desks and disband them at will.
In newsrooms, investigative journalists are sometimes viewed as bleeding the organisation and not pulling their weight.

Worse, all attempts in the newspapers at creating investigative teams and a place where their work can be published have fallen flat on their faces. Many advertisers are shy to associate with a publication that exposes scandals and aggravates customers – sometimes very important customers. That is perhaps why Monday’s Notebook in the Nation, and The Big Issue in The Standard have either died, or are permanently on life support.

Media reporting of corruption has not always endeared it to officialdom. In Kenya, the government seems to be insatiably hungry for praise and easily offended by negative coverage. The lack of proper constitutional and legal guarantees for access to information, the presence of outdated laws like the Official Secrets Act and punitive libel and defamation laws make covering corruption a daunting task.

Then there is the judgment call media as business have to make: Some of the beneficiaries of grand corruption are big media clients. Sometimes, the media are directly involved in corruption as was claimed in the fracas over the Journalist of the Year Awards in 2005. These issues undermine the credibility of the media to report on and expose corruption.

There is need for the public to support at every opportunity media practitioners and media owners to ensure that they continue concentrating on the anti-corruption agenda without fear or favour. But the greatest support that can be given to media practitioners is to continue to provide them with information documentation, research and reports. There is also need for the civil society to partner in investigative journalism to sustain it due to the high costs involved.
Since the early 1990s, we have witnessed a tremendous development in the international community’s resolve to fight impunity. This new momentum has been developed in the first place around the concepts of genocide, war crimes and crimes against humanity, and other gross violations of international humanitarian law. Now it has somehow spilled over to embrace other categories of crimes, including economic crimes. The mechanism and procedures developed to undertake the universal fight against serious violations of international humanitarian law are being tested for the benefit of economic crimes.

It is, therefore, no surprise that the issue of amnesty, often raised in the context of political transition, in countries where gross violations of international humanitarian law have been committed, be also waived about economic crimes. The latter may indeed have deprived the country of important assets, thereby compromising its future. The question of whether or not economic crimes should enjoy amnesty for the benefit of the political transition does not elicit a straightforward answer. It is just as complicated as in the case of crimes against humanity or other gross violations of human rights. The Cambodia stalemate over 30 years, the South African post-apartheid transition, to name but a few, are very illustrative of the difficulties in meting out well deserved punishments when this exercise has the potential of derailing a fragile political transition. The dialectics between the new and old order are similar, irrespective of the nature of the offences in question. It is a matter of survival for the old order and a matter of a bright future for the new order. One is never ready to voluntarily relinquish power when one knows that in so doing one would be facing the prospect of a long term jail or even worse. Conversely, the quandary of the supporters of the new order is no less difficult. The choice may be as difficult as having to compromise the future by refusing to bury the past.

27 Hon. Adama Dieng is an Assistant Secretary-General of the United Nations and Registrar of the International Criminal Tribunal on Rwanda in Arusha.
Amnesty, in a transitional context, has its pros and cons. Each side may put across convincing arguments. They are all worth considering. We will propose to explore quickly the usual arguments put forward to justify or rule out the granting of an amnesty. Before this exercise, we will first make an attempt to clarify the content of the concept of Economic Crimes.

Clarification of the Notion of Economic Crimes
When speaking of economic crimes, people usually refer to corruption, also called bribery. However, the concept covers situations far beyond this. Corruption has now become a mere generic reference covering situations as diverse as embezzlement, misappropriation, trading influence, abuse of functions, illicit enrichment, laundering of proceeds of crimes or other diversions of property, be it by a public official or in the private sector. The recent United Nations Convention against Corruption confirms this global approach. Its chapter III (Articles 15 to 30) envisions the various economic-related offences as part of the Corruption Convention.

These offences are usually ordinary crimes provided for in the penal codes of domestic jurisdictions or in specific laws dealing with financial crimes. The UN Convention encourages the repression of economic crimes by urging states to adopt the appropriate legislation in respect of substantive law, procedural law as well as international cooperation. Apart from the statutes of limitation encouraged to be extended enough to authorise efficient prosecution, there is no strong suggestion in the Convention for the enhancement of the usual penalties applicable to economic crimes. It is up to domestic legislations to enact the appropriate penalties. Comparative law studies show that legislation may vary in this regard. Life sentence may be incurred in some countries (as in the United States following the Enron scandal) while in some others, most economic offences would merely carry a more or less light sentence applicable to misdemeanor (most economic offences are not qualified as felonies but as misdemeanours in Senegal).

Besides the variety in the sentencing practice, the trend towards equating economic crimes with crimes against humanity is still very well represented, particularly in the world of non-governmental organisations. The rationale being resorted to is that in poor countries, economic crimes, by their consequences, may be as damaging as the worst violations of human rights. Misappropriation of funds may indeed result in the starvation of hundreds, or even thousands, of citizens who would otherwise have survived were the money rightly used for the purpose it had been made available.

Attempts have already been made to include economic crimes in the statute of the International Criminal Court as part of gross violations of human rights, which may give rise to international prosecution. The move was not successful but its supporters have not given up. The next review of the ICC Statute will certainly provide another opportunity to discuss the issue. While awaiting the outcome of future discussions on the issue, one may ponder about the legitimacy of the assimilation of economic crimes to crimes against humanity or gross violations of international humanitarian laws.

It is true that economic crimes may have devastating consequences on the fate of a nation. But does this justify embarking on a venture which has the potential of watering down the very concept of crimes against humanity? Genocide and crimes against humanity are very special offences, which need to remain as such. They are set forth to castigate situations whereby human beings are wilfully denied the basic status of human being, or in some cases, the mere right to exist, just because they belong to a targeted group.
One important aspect of those crimes lies with the *mens rea* (or intent) that inhabits their perpetrators. Their acts are conducted to achieve specific ends. In criminology, intent is often more important than the consequences. This element of intent is often missing when it comes to economic crimes. Their perpetrators are usually only focused on their enrichment, and may not necessarily want to cause the indirect consequences of their misdeeds. In focusing on the consequences rather than the intent, the risk is to end up having sweeping offences that could make crimes against humanity commonplace. The most ordinary offence may cause devastating results. This, though, ought not to change automatically the qualification of the offence as to their level of gravity. Even mismanagement or just bad policy choices, which do not carry any criminal liability, may have very bad consequences on the fate of an important part of the population.

These words of caution do not, however, mean that the fight against economic crimes is not worth being forcefully undertaken. On the contrary, it can be and should be carried on tirelessly, but without necessarily calling for a change in the legal nature of those ordinary offences. These offences may often be intertwined with more serious offences linked with organised crimes. Then, the legal qualification would naturally derive from the more serious offences involved.

As regards the 'crime of patrimonicide', there is still room for debate and distilling the idea further at the regional level, in Africa, and globally at the next review conference of the Rome Treaty. In seeking to develop the notion of patrimonicide and other economic crimes as crimes against humanity, the dilemma is, do we want to dilute the crimes against humanity by including economic crimes in that category? For without doubt, not all economic crimes are crimes against humanity.

Anyhow, whatever the situation, the methods and techniques being developed to fight impunity regarding gross violations of international humanitarian laws could be usefully borrowed when relevant to the fight against economic crimes. This applies to the issue of amnesty.

### The Issue of Amnesty

One of the tools being used to keep the momentum in the fight against impunity regarding violations of international humanitarian law is the refusal to uphold domestic amnesties. There is no legal international instrument containing such a prescription but the practice is gaining more and more strength. Analogy can be made to the 1969 Convention proscribing statutory limitation regarding war crimes and crimes against humanity. The legal obligations of states to prosecute or extradite persons suspected of gross violations of humanitarian laws, deriving from different international instruments like the 1948 Genocide Convention or the 1984 Convention against Torture, has provided the legal justification to some interpreters who construe the requirements contained therein to be irreconcilable with an amnesty. The American Court of Human Rights has recently, in 2001, upheld this stand by denying any legal effect to amnesties granted to senior officials in Chile. The UN has also taken a similar stand by refusing to condone the amnesty contained in the Lome Agreement putting an end to the war in Sierra Leone. The same UN position prevailed in the preparatory discussions regarding the setting up of the Special Chamber in Burundi, which would deal with serious crimes committed during the civil war.

Is it possible to import this technique and apply it to economic crimes? The question begs many answers, starting with the legal authority of national jurisdictions to uphold amnesties on economic crimes. One should acknowledge that the enactment of economic crimes is mostly a matter for domestic legislation. The forthcoming UN Convention on Corruption will not change
this state of affairs because, in most instances, the anticipated Convention only urges state parties to enact the necessary domestic legal tools to give it full effect. Technically, nothing would, therefore, prevent a sovereign country from adopting a legislation granting amnesty on economic crimes. The choice whether or not to grant amnesty is, therefore, political rather than legal. Why and when should amnesty be granted in the context of political transition? This issue is often raised when the transition is not a straightforward process. Regimes that are in place may see difficulties in relinquishing power may be out of fear for their future in respect of past crimes that might be prosecuted. It is, of course, theoretically not acceptable to hold a nation to ransom by subjecting a smooth transition to any kind of amnesty. However, the reality cannot be ignored. Irrespective of the gravity of the offences involved, be they economic or even more serious ones, different situations should be envisaged. Depending on the circumstances, either amnesty or justice could be viable options. The different situations may be represented in a matrix showing cases in which amnesty is an option and cases in which justice is also a secure option. These alternatives are represented based upon the understanding that securing the future of the country would be the overriding consideration.

<table>
<thead>
<tr>
<th>Amnesty</th>
<th>Justice</th>
</tr>
</thead>
<tbody>
<tr>
<td>A complete internal reconciliation process without involvement of the international community in which the different stakeholders deem it necessary to bury the past and focus on the future</td>
<td>The authors of the crimes have lost power and can no longer be harmful to the transition process.</td>
</tr>
<tr>
<td>The authors of the crimes still hold power and may be willing to surrender it against amnesty</td>
<td>The authors of the crimes still hold power but are vulnerable to some form of pressure from inside or from outside</td>
</tr>
<tr>
<td>The authors of crimes do not hold power but are powerful enough to derail the smooth transition of the country and thereby compromise its stability</td>
<td>The criminal offences are liable to prosecution by foreign countries, which may claim jurisdiction over those crimes</td>
</tr>
</tbody>
</table>

As shown in this matrix, there is not one single way to answer the question of amnesty. The situation on the ground may dictate a suitable solution. The guiding principle being that justice always needs force on its side in order to be implemented. Otherwise, people may recite good principles but this would remain hollow words. Of course, in cases of economic crimes, besides meting out sanctions, the recovery of stolen assets is the most important issue. It is, therefore, very important that whenever possible, the question
of recovery of assets be disconnected from the question of prosecution. Even in cases where amnesty is granted because of the fear of compromising a fragile transition, actions can always be taken, including instituting civil proceedings to recover assets deposited abroad. There are always provisions in the laws passed to grant amnesty, a caveat indicating that the amnesty is without prejudice to the rights of the victims. This caveat protects legitimate rights of a state to recover assets even in the worst cases where internal reasons have justified an amnesty. Banks and other financial institutions know that they can no longer hide behind the secrecy of their operations or their obligations to protect the anonymity of their customers to cover up illegal operations. This new environment is, therefore, very conducive to recovery of stolen assets.

In this regard, international cooperation to recover the assets is particularly important. Many legal instruments provide for such cooperation, including the UN Convention against Corruption. It is, therefore, of paramount importance that as many countries as possible be urged to be part of that convention so as to give it the full effect as quickly as possible.
THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS
Regional Conference on the Human Rights Dimensions of Corruption

THE NAIROBI DECLARATION

We, the participants at this conference:

Appreciating the warm welcome and hospitality of the Kenya National Commission on Human Rights,

Reaffirming the inextricable connection between respect for Human Rights and the fight against corruption, and the responsibility of National Human Rights Institutions in the protection and promotion of Human Rights,

Acknowledging that corruption threatens the rule of law, democracy, self determination of people’s and human rights, undermines governance, fairness and social justice, distorts competition, hinders economic growth and endangers the stability of democratic institutions and the moral foundation of society,

Recognising that corruption seriously undermines the protection and promotion of human rights and especially inhibits the full realisation of economic, social and cultural rights, by diverting resources from intended public use to illegitimate private benefit, which causes massive human deprivation, especially of the poor and vulnerable members of the society,

Also recognising that corruption perpetuates discrimination by putting the people at a disadvantage, while favouring the few with access to power, wealth and personal connections, contrary to tenets of fundamental Human Rights,

Further recognising that corruption leads to infringement of civil and political rights by tilting the scales of justice in courts, undermining the electoral process and access to public service, leading to widespread patronage, Big Man syndrome, sycophancy, an inept and inefficient civil service, loss of confidence in the machinery of the state by the citizenry and eventual collapse of the state,

Aware that Africa’s people are increasingly becoming vigilant, and increasingly demanding accountability from their leadership after years of authoritarian, closed and unaccountable governance,

Applauding the courageous actions at great personal and financial risk, of many public-spirited persons who have blown the whistle on cases of corruption in their countries, the media who continue to expose financial scandals, National Human Rights Institutions and Civil Society that are engaged in advocacy, awareness creation, investigation and exposition of corruption,
Noting with concern that despite the widely publicised statements by our Governments of commitment to the fight against corruption, to date, only 12 African countries have ratified the African Union Convention on Preventing and Combating Corruption, which requires 15 ratifications, in order to enter into force, a number less than the 15 that have ratified the United Nations Convention against Corruption,

Recognising that creative strategies aimed at increasing accountability are indispensable in the fight against corruption, such as that employed by the Commission on Human Rights and Administrative Justice of the Republic of Ghana, which has kept the Presidency and other high political offices under permanent public scrutiny, emphasising that these high public offices bear special responsibility for integrity to the public,

Calling on all governments to match their declarations of zero tolerance on corruption with credible action in the fight against it,

Reaffirming that our peoples have a right to a corruption-free society

Now agree as follows:

1. To actively encourage and promote the development of technical and political capacities within the African countries to fight corruption, by bringing a majority of citizens currently living in the undocumented, informal state where rights violation go unaddressed and un-redressed to the documented, formal state.

2. To work progressively towards the recognition of corruption and economic crimes as crimes against humanity.

3. To be actively engaged in ensuring that African countries ratify the ‘African Union Convention on Preventing and Combating Corruption’ and the ‘United Nations Convention against Corruption’ within the shortest time period, and further to ensure that countries domesticate and operationalise the regional and global conventions.

4. To encourage governments to implement macro-economic and structural reforms within their countries which will reduce the incidences and demand for corruption.

5. To work with governments in harmonising existing national, regional and global anti-corruption instruments.

6. To deepen and strengthen collaborations and concerted action among members of National Human Rights Institutions, National Anti-Corruption Institutions, Civil Society, the Private Sector and Government in the fight against corruption.

7. To actively encourage the vigorous, consistent and impartial enforcement of Anti-Corruption and Economic Crimes laws and policies.
8. To work towards the development of national and regional corporate codes of ethics and standards to curb corrupt practices within the private sector and ensure that such codes are enforced and subscribed to by both indigenous companies and international corporations operating within Africa.

9. To strengthen current institutional, legislative, regulatory and constitutional frameworks to fight corruption.

10. To work towards the enactment of legislation for: Access to Information, Electoral/Political Parties Financing and Whistle-Blowers Protection and Reward.

11. To establish independent oversight institutions in countries for the tracing and recovery of looted resources.

12. To call for international cooperation, especially from Western countries, in the fight against corruption, particularly in the areas of tracing and recovery of looted resources, sealing conduits of siphoning out corruptly acquired funds through foreign financial institutions and the apprehension and prosecution of perpetrators.

13. To encourage and support all persons in naming and shaming corrupt practices perpetrated both in public and private institutions.

14. To resist fraudulent and illegitimate constitutional changes witnessed recently within the continent, meant to extend the terms of office of incumbent Presidents and other political office bearers popularly known as the “the third term phenomenon”, and all attempts to cling on to power beyond constitutional terms, which perpetuates corrupt administrations who are afraid to relinquish control and privilege.

15. To work towards reforming both domestic and international business operations by demanding transparent procurement procedures and regulation, unveiling the cloak of companies’ ownership, in order to expose and shame corrupt and shady businessmen who arrogate themselves the label of foreign investors and consequently demand privileged status while oiling the wheels of corruption.

16. To encourage formulation of policies and laws that reward and protect whistleblowers in order to encourage as many citizens as possible to expose corrupt practices.

At Nairobi, This 22nd day of March 2006
THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

Regional Conference on the Human Rights Dimensions of Corruption

ACTION PLAN

1. Deepen relationships with all stakeholders in the fight against corruption.

2. All National Human Rights Institutions should take on corruption issues even without an express anti-corruption mandate given the direct relationship between corruption and human rights.

3. Work towards the publication of the national debt registers and the demystification of such registers.

4. Work towards the ratification of the AU and UN Conventions against Corruption, the domestication and implementation of the two conventions within their respective countries.

5. Continue to hold their governments and the private sector accountable for incidences of corruption, abuse of office and waste of public resources.

6. Publish and disseminate reports and other publications that highlight instances of corruption, waste and mismanagement in public service and within the private sector.

7. Facilitate, in consultation with other stakeholders, the development of a corporate code of ethics for the private sector.

8. Work, within the shortest time possible, for the enactment of:
   a) The Access to Information Legislation,
   b) Electoral/Political Parties Finances Act,
   c) Whistle-Blowers Protection and Reward Act and
   d) Asset Declaration Legislation.

9. Continue to encourage political and electoral reform.

10. Continue with advocacy and awareness programmes in order to encourage citizen vigilance.
11. Deepen linkages and networking channels for information and experience-sharing between the various National Human Rights Institutions.

12. Work for the establishment of legislative and institutional frameworks to oversee asset tracing and recovery.

13. Work towards the enactment of laws that provide for wealth declaration by public officials, public access to those declarations and verification procedures.

14. Further explore methods of ensuring that criminal laws and procedures in their respective countries do not fetter the prosecution of corruption and abuse of office cases.

15. Lead by example in the fight against corruption by instituting internal mechanisms to eliminate corruption within the civil society.

16. Raise the agenda of “third term” at the next meeting of African National Human Rights Institutions, and work towards its adoption at the African Commission on Human & Peoples’ Rights and of the African Union.

17. Advocate the recognition of corruption and economic crimes as crimes against humanity.

18. Support the strengthening of the oversight role of Parliament in utilisation of public resources through committees such as the Public Accounts Committee and the Public Investments Committee.

19. Advocate the establishment of mechanisms for enhanced participation of Parliament in the budget process from the preparatory stage right through to the implementation of budget approvals in consultation with citizens.

20. Encourage a democratic and effective party candidate selection process before elections to keep persons implicated in corruption out of Parliament.