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Nigerian Current Law Review 1998-2006



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Nigerian Current Law Review 1998-2006

Professor A. O. Adekunle

Nigerian Institute of Advanced Legal Studies

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CORRUPTION: INTERNATIONAL LAW AND AFRICA IN THE FIGHT AGAINST THE MALAISE: EFFORTS SO FAR

by

Olagunju Gbadebo Anthony

When, in a society, the shameless triumph, when the abuser is admired, when principles end and only opportunism prevails, when the insolent rule and the people tolerate it, when everything becomes corrupt but the majority is quiet because their slice is waiting. When so many "whens" unite, perhaps it is time to hide oneself, to suspend the battle, time to stop being Quixote; it is time to review our activities, re-evaluate those around us, and return to ourselves.¹

Introduction

In 1999, the United Nations launched the Global Programme against corruption with the aim of helping countries overcome this malaise. A lot has been done on this programme to date. As a follow-up to that programme, the United Nations Convention against Corruption was opened for signatures and ratification in Merida, Mexico from the 9th of December 2003. As at the time of the Convention entering into force in December 2005, about 134 countries had signed it. Out of the 36 ratifications, 17 of them were African countries with Nigeria being one of them.² Besides the above, the African Union Convention on Preventing and Combating Corruption has also been opened for signatures and ratification since July 2003. What is the position of that Convention now?

It is the intent of this article to look at the issue of corruption in its widest ambit, and its negative impact on governance, as it relates to the lives of the people. By way of comparative analysis, the paper will also look at

1. Robert Klitgaard, former Professor at a South African University and a respected expert on anti-corruption measures. Quoted by Pino Arlacchi, Under-Secretary-General, and former Executive Director United Nations Office for Drug Control and Crime Prevention. See P. Arlacchi: "United Nations Confronting Corruption," in A. Alvazzi del Frate and G. Pasqua (eds.): *Responding to the Challenges of Corruption*, Rome/Milan, 2000, 13.
2. See United Nations Convention against Corruption, Signatures, available at <http://www.unodc.org/unodc/en/crimesignaturescorruption.html>, last visited 17.11.05.

efforts at international level to fight the deadly virus, particularly in some African countries. While the platform is international, Nigeria *vis-à-vis* Africa shall be the main focus.

Corruption: Attempt at Definition

We must accept the limit of definitions at the very onset. As noted by the United Nations anti-corruption toolkit, "There is no single, comprehensive, universally accepted definition of corruption. Attempts to develop such a definition invariably encounter legal, criminological and, in many countries, political problems."³ The toolkit, like most authors on the subject, therefore, took an approach of listing some of the more common forms of the social malaise and attempted a definition from that perspective, rather than give a broad-view definition, which could be subject to narrow interpretation.⁴

Some of the ascertained forms of corruption listed by the toolkit include "grand" and "petty" corruption,⁵ "active" and "passive" corruption,⁶ bribery,⁷ embezzlement, theft and fraud,⁸ extortion,⁹ abuse of discretion,¹⁰

3. United Nations Office on Drugs and Crime, *The Global Programme against Corruption: UN Anti-Corruption Toolkit*, Article 1, at <http://www.unodc.org/pdf/crime/corruption/toolkit/corruptionunanticorruptiontoolkitsept04.pdf>, last visited 16.11.05.
4. The meaning of the term has also been the subject of discussions among many political scientists. See for example, A. A. Rogow & H. D. Lasswell: *Power, Corruption & Rectitude*, Englewood Cliffs, N. J., 1963, 132. According to these renowned political scientists, "a corrupt act violates responsibility towards at least one system of public or civic order and is in fact incompatible with (destructive of) any such system." Further, they added "a public or civic order exalts common interest over special interest." And that "violations of common interest for special advantage are corrupt."
5. The former, defined as that which "pervades the highest levels of national Government, leading to a broad erosion of confidence in good governance, the rule of law and economic stability," while the latter is defined as that which "involves the exchange of very small amounts of money, the granting of minor favours by those seeking preferential treatment or the employment of friends and relatives in minor positions."
6. Interchangeably used with bribery, the former is described as "the offering or paying of bribe," while the latter is described as "the receiving of such bribe." These same terms were used by the European Criminal Law Convention on Corruption. See *European Treaty Series (ETS) No. 173*, Articles 2 and 3 thereof.
7. Described as "the bestowing of a benefit in order to unduly influence an action or decision." The toolkit asserts that it is "probably the most common form of corruption known." Many categories of bribery are listed as follows: influence-peddling; offering or receiving improper gifts; bribery to avoid liability for taxes or other costs; bribery in support of fraud; bribery to avoid criminal liability; bribery in support of unfair competition; private sector bribery; and bribery to obtain confidential or "inside" information.

favouritism, nepotism and clientelism,¹¹ conduct creating or exploiting conflicting interests,¹² and finally improper political contributions.¹³

Africa the Most Corrupt Continent in 2005?

Even though corruption has been recognized as a "citizen" of the world that knows no boundary and respects no borders,¹⁴ records of studies, surveys and

8. These "involve the taking or conversion of money, property or valuable items by an individual who is not entitled to them, but, by virtue of his or her position or employment, has access to them."
9. According to the toolkit, "whereas bribery involves the use of payments or other positive incentives, extortion relies on coercion, such as the use or threat of violence or the exposure of damaging information, to induce cooperation."
10. This is the exercise of discretion in favour of someone to the detriment of others, for personal gain; especially where there is competition e.g. bids and contract awards.
11. These are also described as involving 'abuses of discretion, not for self-interest, but where the interests of someone linked to the public officer involved is at stake, either through membership of a family, political party, tribe, religious or ethnic group.'
12. The toolkit does not define this one, but merely states that in 'most cases of embezzlement, theft or fraud, the individual involved is merely yielding to temptation that already exists in circumstances in which his personal interest conflicts with that of his responsibility to act in the best interest of the State or that of his employer.'
13. Described as "a donation made with the intention or expectation that the party will, once in office, favour the interests of the donor over the interests of the public..."
14. See World Bank, *Governance and Development 10* (1992). This home truth was also drummed into all of us with the recent 'oil for food' scandal and the attendant corruption saga that followed it at the highest international body- the United Nations. See the *Final Report of the Independent Inquiry Committee into the United Nations Oil-For-Food Programme* (October 27, 2005), available at http://www.iic-offp.org/documents/IIC_Final_Report_27_Oct_2005.pdf, last visited 21.11.05. See also N. Kofele-Kale, "The Right to a Corruption-Free Society as an Individual and Collective Human Right: Elevating Official Corruption to a Crime Under International Law," *The International Lawyer*, Vol. 34, No. 1, 149 esp. at 151-152, where Professor Kofele-Kale, after reviewing the many lessons learnt from the Asian financial crises of 1998 and 1999 and its impact on world economy, concluded that: "The crises also demonstrated that corruption of public officials is a practice that is not confined to any one region of the world but occurs everywhere. More especially, corruption flourishes in countries where the culture of transparency and accountability is lacking; where republican institutions have been compromised; where the rule of law has broken down and, as a consequence, legal rules no longer exist or where they do, are simply not enforced; and where market participants do not operate under an internationally accepted set of principles or standards. It is in environments such as this that the abuse of public office for private gain is frequently encountered." See further, the comments of Pino Arlacchi, (*Supra*, note 1), at 14, where he rightly said: "... corruption is by no means limited to Africa or to developing countries." Even the main UN office charged with the responsibility of overseeing programmes relating to eradicating the malaise (the UNODC), was at one time accused of falling prey to the 'virus.' The allegations were, however, found to be untrue since

reports, however, seem to point to the inescapable conclusion that Africa as a continent is the most infected with this social virus, Nigeria being the second most infected in the continent. According to the latest survey carried out by Transparency International Watchdog reports, out of the 44 African countries covered in its 2005 Corruption Perception Index (CPI), 31 scored less than three.¹⁵ Topping the list of the most corrupt nations in the world, according to the index, in Africa, was Chad, followed by Nigeria, Equatorial Guinea, Cote d'Ivoire, Angola, Sudan, Somalia, Kenya, Congo Democratic Republic, Liberia, Ethiopia, Cameroon, Congo Republic, Burundi, Sierra Leone, Niger, Uganda, Libya, Zimbabwe, Zambia, Eritrea, Swaziland, Gambia, Mozambique, Malawi, Madagascar, Algeria, Tanzania, Mali, Gabon and Benin, all with scores less than 3.0. Rwanda, Senegal, Morocco, Lesotho, Egypt, Burkina Faso and Ghana, in that order, followed with scores below 4.0.

Least corrupt in the continent were Botswana with a score of 5.9, followed by Tunisia, South Africa, Namibia, Mauritius and Seychelles, with scores ranging between 4.0 and 4.9, Nigeria, which was declared the most corrupt in the world in 2004,¹⁶ despite its poor ranking again in 2005, was singled out as Africa's most improved country, having moved up in scores from 1.6 to 1.9. According to a report, TI's chief executive noted, "It is encouraging that a poor and developing country can change its score and it's

they could not be substantiated. See *Report of Investigation conducted by the Investigations Division of the Office of Internal Oversight Services (OIOS) into the Allegations of Corruption in the UN Office on Drugs and Crime (UNODC)*, ID CASE NO. 0033/03, available at http://www.unodc.org/pdf/oios_report_2003-11-25_1.pdf, last visited 23.11.05.

15. See Transparency International Corruption Perceptions Index 2005 at <http://www.transparency.org>, last visited 14.11.05, and also the *Press Release* on the same site: "Africa and the Middle East Regional Highlights: Corruption Perceptions Index (CPI) 2005," where it is asserted that: "Countries in the Middle East continue to score significantly better than those in Africa, with Jordan showing some improvements compared with last year. Due to the inclusion of a new source (UNECA), more African countries have been included in the CPI this year. However, Africa is the continent with the lowest average in the CPI and 31 countries out of 44 listed in the CPI 2005 score less than 3.0, a sign of rampant corruption." This Report has been commended by the World Bank President as an "important contribution toward curbing corruption." See World Bank, *Press Release No.2005/385/S*: "World Bank Hails Transparency International's Annual Report," available at <http://www.worldbank.org>, last visited 02.11.05.
16. See "Transparency International Corruption Perceptions Index 2004" at <http://www.transparency.org/cpi/2004/cpi2004.en.html>, last visited 14.11.05.

ranking in our index.”¹⁷ For Kenya, it had an unchanged score of 2.1, thus ranking it one of the worst in Africa and placing it in 144th position out of the 158 countries sampled around the globe. According to the report mentioned earlier, ‘unresolved procurement scandals involving top level public officials and the potential loss of billions of shillings could, if unsatisfactorily addressed, reverse any prospect of progress in improving the CPI’s score’, noted the executive director of Transparency International in Kenya.¹⁸

Other available reports and surveys both past and present, confirm most of the above ratings/assessments of Transparency International regarding Africa.¹⁹

Referring to Nigeria, the Under-Secretary-General and Executive Director of the United Nations Office for Drug Control and Crime Prevention speaking at the opening ceremony of the International Conference on Responding to the Challenges of Corruption held in Milan in 1999, noted *inter-alia* that:

In Nigeria there was for many years a traditional small-scale corruption system based on the payment of “dash” money for services. When the sudden influx of oil wealth hit the country, the society changed at great speed. People flocked to the cities to join the consumer society. The country lost its self-sufficiency in food. Wealth became the primary objective. Corruption exploded as a result.²⁰

Some Reasons for the Deep Rooted Cankerworm in Africa

Many reasons have been proffered for the rampancy of this deep-rooted cankerworm called corruption in Africa. Some of those reasons include, but are not limited to: poverty, greed, war, political instability and bad governance. As a result of constraints tied to space this paper examines just a few of them below:

Poverty

Africa ranks highest in terms of poverty in the world today. According to a United Nations Development Programme (UNDP) report, in sub Saharan Africa, one out of every two persons, survive on less than \$1 per day, while 33% of the population suffers from malnutrition. Per Capita Income keeps decreasing on a daily basis. Less than 50% of the population has access to hospitals or doctors. About the same number has access to safe water. One out of every six children dies before the age of five.

The report further notes that less than one person out of every five has electricity; and that while only 15 out of every 1,000 inhabitants have a

2002, 13 available at http://www.unodc.org/pdf/southafrica/southafrica_corruption.pdf, last visited 05.12.05.

20. See P. Arlacchi, (*Supra*, note 1), at 14. This is even more true today with the mounting numbers of public officers in the country pilfering away the country’s wealth. See also S. O. Osoba: “Corruption in Nigeria: Historical Perspectives,” *Review of African Political Economy*, Vol. 23 No. 69 (September 1996), 371-386. See further P. D. Ocheje: “Law and Social Change: A Socio-Legal Analysis of Nigeria’s Corrupt Practices and Other Related Offences Act, 2000,” *Journal of African Law*, 45, 2 (2001), 173-195, esp. at 174-177, and 184-185.

17. See Andrew Cawthorne: “Africa, Worst Offender on World Corruption List,” available at the Reuters website, <http://www.alertnet.org/thenews/newsdesk/112964288362.htm>, last visited 05.12.05. See also Transparency International Corruption Perception Index 2005: *Press Release*, “Progress has been Made Against Corruption,” at <http://www.transparency.org>, last visited 14.11.05, and *Press Release*: “Africa and the Middle East Regional Highlights: Corruption Perception Index (CPI) 2005” (note 16, *Supra*).

18. *Supra*, note 17.

19. See (1). “Ghana Governance and Corruption Survey: Evidence from Households, Enterprises and Public Officials (August 2000),” 12, at http://www.worldbank.org/wbi/governance/ghana/pdf/gha_cdd_aug00.pdf, last visited 18.11.05; (2). “*Enquete Nationale sur la Corruption et la Gouvernance en Guinee* (The National Report on Corruption and Governance in Guinea (ENACOG/2003)),” 11 & 12, at http://www.worldbank.org/wbi/governance/guinea/pdf/RAPPORT_FINAL_DU_20_Juin_2005.pdf, last visited 18.11.05; (3). *United States Agency for International Development (USAID)*, “Final Report on Assessment of Corruption and Red Tape as Barriers to Trade and Investment in Mozambique (December 2002),” 6 at http://www.worldbank.org/wbi/governance/mozambique/pdf/mz_usaid_rpt.pdf, last visited 18.11.05; (4). “CMDA/GRS Governance and Corruption Study on Sierra Leone,” (2002), 72 at http://www.worldbank.org/wbi/governance/sierraleone/pdf/sl_gacreport.pdf, last visited 18.11.05; (5). “Zambia National Government Baseline Survey Report” (October 2004), 8 at http://www.worldbank.org/wbi/governance/zambia/pdf/Zambia_Executive_Summary.pdf, last visited 18.11.05. For other countries included in the World Bank Reports/Surveys, see the World Bank website at <http://www.worldbank.org/wbi/governance/capacitybuild/d-surveys.html>, last visited 18.11.05. In one analysis by the UNODC regional office for Southern Africa in collaboration with the Southern African Development Community (SADC), the data indicates that 75% of respondents believe that corruption is a very serious problem in the region, while 87% maintain the same belief for the African continent. Some 42% equally believe it is a serious problem in Europe and the USA as well. The analysis was based on a survey carried out by the Human Rights Trust of Southern Africa (SAHRIT) in 2000. See Ugljesa Zvekic (eds.), *Corruption & Anti-Corruption in Southern Africa*,

telephone line, only about 7 or 8 out of every 1,000 people surf on the Internet. The report notes that in addition, the average life expectancy in Africa is 41 years.²¹ When one considers the fact that with an estimated population of about 120 million people, Nigeria is today the most populous black nation in Africa, it stands to reason that Nigeria is responsible for a sizeable proportion of the numbers in the data from the UNDP report.

Unemployment and Lack of Productivity

Tied to poverty is unemployment and lack of productivity. In fact, unemployment and poverty are like Siamese twins, in the sense that the former often leads to poverty and starvation. The unemployment rate in most parts of sub-Saharan Africa (Nigeria inclusive) is as high as 30% or more, of the active population. Compared to other parts of the world, it is skyrocketing.²²

Inadequate/Delayed Remuneration of Public Officers

Closely related to the above, is inadequate remuneration/delay in payment of remuneration even where there is employment. In many cases in these countries, public officers are either poorly paid or have their remuneration delayed for months on end, leaving public officers scavenging for the wherewithal to survive from just about anywhere. Sometimes, the delay in payment of salaries is born of an inefficient budgetary system, with money meant for salaries wrongly diverted to capital projects, or vired from Head to Head, even engendering lay offs. According to a World Bank report, corruption tends to thrive when resources are scarce, and governments, rather than markets, allocate them, when civil servants are unpaid, when rules are unreasonable or unclear, when controls are pervasive and regulations excessive and when disclosure and punishment are unlikely.²³

Family Pressures

Another reason proffered for corruption in Africa is tied to family pressures. Africa is known to embrace the large family system, where a married-couple could have as many as twelve children and one man could have as many as two hundred wives and a staggering number of children. In this case, no

matter the income of such a household, the tendency would normally be to look in other directions, including the not so legitimate, in order to cater for the family. Coupled with this, is the extended family system which expects those lucky enough to work, to cater for unemployed family members.

Greed

This, whether alone, or taken along with all of the above, has been described as the major cause of corruption anywhere in the world. While not excusing or down-playing the other causes, greed appears to be the main focus of attention in discussions of corruption whether nationally, or internationally. Thus, careful consideration of the attempted definitions of corruption, clearly suggests that the other reasons simply represent attempts to justify commission of the act itself. In other words underlying those other reasons is the greed of the officer(s) involved, whether as giver or receiver/taker in the pursuit of some particular advantage to himself or herself. In this case, it does not matter whether the person involved is a messenger, a clerk or the big politician; or whether the act is "petty" or "grand."

The Effect of Corruption on the Economy and the Society

In recent years, economists, as well as lawyers have come to recognize that corruption is not just an aberration, it is also a feature of many economies, large and small, developed and developing. Its effect seems to bite harder on small and developing economies where it is in fact more prevalent.²⁴ For example, evidence suggests that it creates major impediments to those countries attracting foreign investment or engaging in international transactions.²⁵

24. Hess and Dunfee, looking at the cost of corruption argue that: "Tremendous levels of corruption impose many costs on societies. Corruption limits a government's ability to perform vital functions and may even threaten its overall effectiveness." Going further, they observe, "In Ecuador, estimates indicate that the government could pay off its foreign debt in five years if corruption was brought under control. In Argentina, corruption in the customs department defrauded the government of \$3 billion in revenue." They add "Corruption also influences government spending, moving it out of vital functions, such as education and public health into projects where public officials can more easily extract bribes." See D. Hess *et al.*: "Fighting Corruption: A Principled Approach; The C2 Principles (Combating Corruption)," 33 *Cornell Int'l L. J.* 593 (2000), at 596-597.

25. See O. Azfar *et al.*: "The Causes and Consequences of Corruption," 573 *Annals Am. Acad. Pol. & Soc. Sci.*, 42-57 (2001), esp. at 47. See also N. A. Goodling: "Nigeria's Crisis of Corruption- Can the U.N. Global Programme Hope to Resolve this Dilemma?" 36 *Vand. J. Transnat'l L.* 997 (2003), esp. at 1002 where Goodling argues that as a result of this impediment, "the effects (of corruption) on development can be

21. See UNDP, "Facts on Poverty in Africa," at <http://www.africa2015.org/factspoverty.pdf>, last visited 15.11.05.

22. See the United Nations Population Information Network at <http://www.un.org/popin.data.html>, last visited 15.11.05.

23. See World Bank, *Governance and Development*, 10, (1992).

Besides the above, no experts from Mars are required to determine the impact on development which the staggering sums of money stolen by public officers, and siphoned to foreign lands considered as "safe havens," would have had in those economies where plundering is sustained.²⁶

Corruption Takes Centre Stage in International Law

International attention has been so focused on the subject of corruption in the last ten years²⁷ that virtually every continent has passed legislation on it. Besides these, many international organizations have also articulated policies, strategies and ways of eradicating the social malaise. Such bodies include: the

staggering." Words in bracket mine for emphasis. He argues further that: "Corruption exacerbates poverty and disproportionately affects those of lower incomes because it pulls resources from the national treasuries, placing the money into the bank accounts of a few individuals who are politically powerful." He then concludes: "This type of corruption exerts devastating effects on developing economies that desperately need the money." *Ibid.*, at 1002-1003. The World Bank also notes that: "The consequences of the malaise on economic and social development are detrimental"; 'It deters investment and hinders growth'. 'It spurs inequality and erodes macroeconomic and fiscal stability'; 'It reduces the impact of development assistance and provides an incentive to exploit natural resources, further depleting assets.' See "Costs & Consequences of Corruption," the *World Bank Group: Anticorruption*, available at <http://www1.worldbank.org/publicsector/anticorrupt/topic1.htm>, last visited 18.11.05. See also *United States Agency for International Development (USAID)*, "Final Report on Assessment of Corruption and Red Tape as Barriers to Trade and Investment in Mozambique" (*Supra*, note 22), at 6, where it is asserted that: "Applying the results of the recent studies and considering both loss of effective foreign direct investment (FDI) and foregone FDI, corruption in Mozambique can be viewed as having reduced FDI by over 50%. These findings lead to the inescapable conclusion that GDP growth remains below its potential, at least, in part, because of corruption."

26. Of this, an African Political Scientist writing about corrupt Nigerian officials, notes that in contrast to their colleagues abroad, they siphon huge sums of money out of their country to bank accounts abroad and invest same in property abroad, thereby making the money unavailable for use in the Nigerian economy. This, he argues removes such money from the proper owners, the Nigerian people, not just once, but twice. Subjecting them, in effect to double jeopardy. See B. N. Umez: *The Tragedy of a Value System in Nigeria: Theories and Solutions*, San Francisco, 1999, 50.
27. In October 1995, the Inter-Parliamentary Union adopted a Resolution at its 94th Inter-Parliamentary Conference, in Bucharest, stating that the Union, acutely aware that corruption is a global phenomenon which occurs in developed and developing countries alike and has existed at all times and in virtually every society, called on all countries to develop international co-operation, in the form of extradition agreements, mutual legal assistance or any other measure likely to improve knowledge and repression of the malaise. See the Text of the Resolution at the Union's website at <http://www.ipu.org/conf-e/94-1.htm>, last visited 26.11.05.

United Nations, the World Bank,²⁸ the IMF,²⁹ the Council of Europe,³⁰ the European Union (EU), the Organization of American States (OAS), the Organization for Economic Co-operation and Development (OECD), the Global Coalition for Africa (GCA); the International Chamber of Commerce (ICC), and lately, the African Union (AU).

The UN Global Programme against Corruption

The programme was jointly initiated in 1999 by the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the United Nations Secretariat and the United Nations Interregional Crime and Justice Research Institute, with the purpose of assisting "Member States in their efforts to curb corruption."³¹

The programme is composed of two main parts, the research component and the technical component, and seeks to provide:

28. Since 1996, the Bank has supported more than 600 anti-corruption programs and governance initiatives developed by its member countries. The bank identified 'corruption as the single greatest obstacle to economic and social development which undermines development by distorting the rule of law and weakening the institutional foundation on which economic growth depends.' The bank noted, that 'the harmful effects of corruption are on the poor, who are hardest hit by economic decline, are most reliant on the provision of public services, and are least capable of paying the extra costs associated with bribery, fraud, and the misappropriation of economic privileges.' The Bank also noted that 'Corruption sabotages policies and programs that aim to reduce poverty.' Thus, 'attacking corruption is critical to the achievement of the Bank's overarching mission of poverty reduction.' See the *World Bank Group: Anticorruption* at <http://www1.worldbank.org/publicsector/anticorrupt/index.cfm>, last visited 18.11.05.
29. On the efforts of the IMF, and the World Bank in combating the malaise, see A. Posadas: "Combating Corruption under International Law," *10 Duke J. Comp. & Int'l. L.*, 345 (2000), esp. at 399.
30. See *Programme of Action against Corruption*, Council of Europe, 1997. The Council on its 50th anniversary in October 1999 held its Fourth European Conference of Services Specialized in the fight against corruption, in Limassol, Cyprus. Welcoming guests and participants to the conference, the President of the Republic of Cyprus, H.E. Glafcos Clerides in his opening address noted: "Corruption is today an international problem which undermines the basic values of society and threatens the rule of law. Corruption does not respect borders and does not discriminate between nations. That's why the fight against corruption requires a united international effort." See *International Co-operation in the Fight against Corruption and Offshore Financial Centres: Obstacles and Solutions*, Council of Europe, May 2001, 5.
31. See *Global Programme against Corruption: An Outline for Action (February 1999)*, 2, available at http://www.unodc.org/pdf/crime/corruption_programme.pdf, last visited 21.11.05.

- (a) reliable and up-to-date information on trends in corruption, as well as effective policy strategies to reduce and control corruption; and
- (b) technical cooperation with developing countries and countries with economies in transition to prevent, detect and fight corruption.³²

As regards the latter, Governments of countries in which technical cooperation will be implemented are requested to sign a national anti-corruption programme agreement with the United Nations, in which such Governments shall commit themselves to:

- (a) facilitating needs assessment missions and the provision of advisory services and research and technical cooperation, which, depending on the country's request, could relate to:
 - (i) a review of the criminal, administrative and commercial legislation and regulations currently in force, with a view to incorporating into them relevant internationally accepted principles related to the fight against corruption;
 - (ii) implementation of relevant administrative reforms;
 - (iii) strengthening of the national anti-corruption framework by establishing, to whatever extent possible, anti-corruption bodies and/or strengthening existing ones;
 - (iv) providing the necessary facilities for the administration of the corruption monitoring protocol;
 - (v) implementing and/or strengthening preventive measures (such as codes of conduct, public awareness campaigns and hotlines); and
 - (vi) provision of training.
- (b) concluding and ratifying international treaties on extradition and legal mutual assistance in the fight against corruption; and

32. *Ibid.*, at 6.

- (c) utilizing, if and when established, the international transparency and accountability mechanisms and reporting actions resulting from the submissions received from those mechanisms to the Centre for International Crime Prevention.³³

Projects under the programme are currently, being undertaken in the following countries: Colombia, Afghanistan, Gaza/West Bank, Hungary, Indonesia, Iran, Iraq, Kenya, Lebanon, Mozambique, Nigeria, Romania and South Africa.³⁴ It is hoped that more projects will be undertaken in more countries under the programme in the near future.³⁵ The projects focus mainly on strengthening judicial integrity.

In Nigeria, the first phase of a comprehensive assessment of judicial integrity and capacity, exploring the location of corruption and other factors that impinge on access to justice and quality of justice delivery was completed in December 2003.³⁶ In view of the positive impact of the project, the second phase has been launched.³⁷ For other countries involved, this is still ongoing.

The United Nations Convention against Corruption

The climax of the United Nations fight against corruption was in the General Assembly's establishment of an *Ad Hoc* Committee in December 2000,³⁸ to

- 33. See *Global Programme against Corruption: An Outline for Action (February 1999)*, 2, available at http://www.unodc.org/pdf/crime/corruption_programme.pdf, last visited 21.11.05. Particularly Annex III, "Draft National Anti-corruption Programme Agreement," at 17.
- 34. More information on the programme's country projects is available at <http://www.unodc.org/unodc/corruptionprojects.html>, last visited 22.11.05. See also United Nations Convention against Corruption, *Priorities for the provision of technical assistance: Global Programme against Corruption*, at http://www.unodc.org/pdf/crime/corruption/corruptionpacstrategy_jul04.pdf, last visited 23.11.05.
- 35. See *United Nations Office on Drugs and Crime*, "Global Programmes, Update November 2003," 18, at <http://www.unodc.org/pdf/crime/publications/cicpglobalprogrammes.pdf>, last visited 22.11.05, where it is stated that "By 2005 the GPAC plans to manage 15-20 technical assistance projects supporting Member States in preventing and controlling corruption."
- 36. See UNODC, "Terminal Evaluation Report, FS/NIR/01/R16 Strengthening Judicial Integrity and Capacity, Nigeria, 5 December, 2003," available at <http://www.unodc.org/pdf/crime/corruption/corruptionnigeriaevaluationreportfinal.pdf>, last visited 28.11.05.
- 37. See UNODC, "Nigeria Judicial Integrity Project, Phase II," available at <http://www.unodc.org/unodc/corruptionprojectsnigeria.html#2>, last visited 28.11.05.
- 38. This was effected by the General Assembly Resolution 55/61 of 4 December, 2000. In that Resolution, the Assembly recognized that an effective legal instrument against

carry out negotiations on the United Nations Convention against Corruption.³⁹ The Committee was established in Vienna at the headquarters of the Centre for International Crime Prevention, UN Office on Drugs and Crime and began its work in January 2002. After almost two years and seven sessions, the Committee completed negotiations on 1st October 2003,⁴⁰ with the draft text of a new international treaty dealing with corruption.⁴¹

Noting the significance of the Convention at the conclusion of the negotiating process, the then UN Secretary-General, Mr. Kofi Annan: said, "This Convention can make a real difference to the quality of life of millions of people around the world."⁴² In the same vein, the Executive Director of UNODC, Mr. Antonio Maria Costa also noted:

The agreement reached on the Convention against corruption shows the international community's determination to do something concrete against corruption. It is a Convention with strong enforcement power, a true global response to the global challenge posed by corruption worldwide.⁴³

The Convention was then adopted by the General Assembly on 31 October, 2003.⁴⁴ Addressing the Assembly on the adoption of the Convention, the Secretary-General stated:

Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and

corruption, independent of the United Nations Convention against Transnational Organised Crime (see Resolution 55/25, annex I) was desirable.

39. The committee was chaired by the late Colombian Ambassador Hector Charry Samper.

40. For analysis of the negotiating history of the Convention, see P. Webb: "The United Nations Convention against Corruption: Global Achievement or Missed Opportunity?," *Journal of International Economic Law* 8 (1), 191, (2005), esp. at 205.

41. See the United Nations Convention against Corruption at <http://www.unodc.org/unodc/en/crimeconventioncorruption.html>, last visited 23.11.05.

42. See *United Nations Information Service (UNIS), Vienna, Press Release*, "Consensus Reached on UN Convention against Corruption," UNIS/CP/447 of 2 October 2003 available at <http://www.unis.unvienna.org>, last visited 23.11.05.

43. *Ibid.* Elsewhere, the director also noted, that "The completion of the negotiation of the United Nations Convention against Corruption marks a special day in the efforts of the world community to strike a series of effective blows against corruption, a scourge that impoverishes our societies and affects us all." See "Foreword" to the *Compendium of International Legal Instruments on Corruption*, Second Edition, United Nations, New York, 2005, available at <http://www.unodc.org/pdf/crime/corruption/compendium.pdf>, last visited 28.11.05.

44. See GA Resolution 58/4 of 31/10/2003.

the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life, and allows organized crime, terrorism and other threats to human security to flourish.⁴⁵

Going further, he said:

This evil phenomenon is found in all countries, big and small, rich and poor, but it is in the developing world that its effects are most destructive. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid. Corruption is a key element in economic under-performance, and a major obstacle to poverty alleviation and development.⁴⁶

By Resolution 57/169 of 18 December, 2002, the Assembly accepted the offer of the Government of Mexico to host a high-level political signing conference in Merida for the purpose of signing the Convention. Between the 9th and 11th of December 2003, more than 120 governments met in the southern Mexican city of Merida to attend the high-level political signing conference.⁴⁷ On the very first day of the conference, 45 countries signed the Convention.⁴⁸ By the end of the conference, 95 countries, 25 of them African countries (Nigeria inclusive) had already signed the Convention, with Kenya outstandingly and significantly being the only country that ratified the same day it signed the Convention.⁴⁹ There are presently 134 signatories and 36

45. See "Statement of the Secretary-General on the Adoption by the General Assembly of the United Nations Convention against Corruption, New York, 31 October 2003," available at <http://www.unodc.org/unodc/en/speech2003-10-311.html>, last visited 24.11.05.

46. *Ibid.*

47. 9th of December, the day that the signing of the Convention was declared open, has been officially declared as the "UN International Day against Corruption."

48. See *United Nations Information Service, Press Release*, "Momentum Builds for Anti-Corruption Convention at Merida Signing Conference," UNIS/CP/457 of 11 December 2003 available at <http://www.unis.unvienna.org/unis/pressrels/2003/cp457.html>, last visited 24.11.05.

49. This was the 9th of December 2003, which was the very first day of the conference. This action was noted by the UN Legal Counsel, Mr. Hans Corell, representing the Secretary-General, as being the first time a country would sign a UN Convention and deposit the

parties to the Convention.⁵⁰ The Convention entered into force on 14 December, 2005 in accordance with Article 68 thereof, which reads:

- (1) this Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization; and
- (2) for each State or regional economic integration organisation ratifying, accepting, approving or acceding to this Convention after the deposit of the thirtieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Convention enters into force pursuant to paragraph 1 of this Article, whichever is later.⁵¹

Battle against Corruption: A Survey of Efforts of Some African Countries

It will be unfair and also unkind to conclude that African countries are not doing anything to curb corruption just because of the seeming rise of the social malaise in the continent. A random look at some of the countries reveals measures already taken by them at the national level, even though, positive results seem very slow.

Nigeria

With the return to democratic rule in 1999, the Government made the fight against corruption top priority on its agenda.⁵² First, it set up the Independent

instruments of ratification on the first day of a signing conference. (*Supra*, note 48). For a list of the other signatories, see note 3 *supra*.

50. Of these, as noted earlier 17 are African Countries, i.e. Algeria, Benin, Egypt, Kenya, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Mauritius, Namibia, Nigeria, Senegal, Sierra Leone, South Africa, Togo, Uganda, and the United Republic of Tanzania.
51. With the deposit of the instruments of ratification by Ecuador on 15 September 2005, the thirty ratifications needed for the Convention to come into force were complete. Thus, at the end of ninety days thereafter, the Convention entered into force as stipulated in Article 68.
52. It should be noted that even before now efforts had always been geared towards fighting the malaise in the past. But some of those efforts seemed like paying lip service to the

Corrupt Practices and Other Related Offences Commission (ICPC) in 2000, pursuant to the Corrupt Practices and Other Related Offences Act of the same year.⁵³ The body was inaugurated on 29 September, 2000 with a Chairman and 12 members, with a mission 'to rid Nigeria of all forms of corrupt practices and other related offences.' The body is charged with the responsibility to:

1. receive and investigate reports of the conspiracy to commit, attempt to commit or actual commission of offences as created by the Act and, in appropriate cases, prosecute the offender(s);
2. examine, review and enforce the correction of corruption-prone systems and procedures of public bodies, with a view to eliminating or minimizing corruption in public life; and
3. educate and enlighten the public on and against corruption and related offences, with a view to enlisting and fostering public support for the fight against the malaise.⁵⁴

fight, rather than giving it the seriousness it deserves. For example, between 1981 and 1983, there was Ethical Revolution during the Second democratic dispensation under President Shehu Shagari. That government was overthrown by the military on allegations of mass corruption within the system. The military government of Buhari-Idiagbon that succeeded it introduced a War against Indiscipline in 1984. This was effectively pursued, and, to a very large extent, was yielding results by the time that government was overthrown by another military one headed by Babangida who introduced the National Orientation Movement in 1986, and the Mass Mobilization for Social Justice in 1987. Then in 1996, Abacha, another of the country's despotic rulers, introduced War against Indiscipline and Corruption. Corruption, however, reached its highest peak in the country under the last two regimes. It should be pointed out that all these efforts revolved around moral suasion. There were, of course, administrative and judicial commissions of enquiry at some point during the lifetime of one or two of these regimes, to enquire into allegations of corruption. Examples will include; the Civil Service Commissions and Other Statutory Bodies (Removal of Certain Persons from Office) Decree No. 16 of 1976 under the Murtala-Obasanjo regime, which empowered "an appropriate authority" to summarily dismiss or remove any person from office on account of corrupt practices and; the Special Tribunal (Miscellaneous Offences) Decree No. 24 of 1984, under which several persons were tried and jailed for corrupt practices during the Buhari-Idiagbon regime.

53. For analysis of that Act, see P. D. Ocheje, (*Supra*, note 20).
54. See Section 6, Corrupt Practices and Other Related Offences Act (Nigeria) 2000. Hereinafter referred to as the ICPC Act. See also Independent and Corrupt Practices Commission (ICPC) at *Nigeria Direct: the Official Information Gateway of the Federal Republic of Nigeria*, available at http://www.nigeria.gov.ng/reforms_ant Corruption_icpc.aspx or the official website of the Commission at <http://www.icpcnigeria.com>, last visited 29.11.05.

Recently, the Commission arraigned the former Senate President of the country who had been forced to resign his post as a result of allegations of bribery against him. Arraigned along with him, were the former Minister of Education and some senators.⁵⁵ In a similar vein, the National Vice Chairman (for the North Central Zone) of the ruling party in the country⁵⁶ was charged to court by the Commission for offering and giving gratification of N1million and N500, 000 respectively to a judge, sometime in 2000.⁵⁷

Apart from the above body, there is also the Economic and Financial Crimes Commission (EFCC) in Nigeria which has the mandate to combat financial and economic crimes in all their ramifications. The Commission is empowered to prevent, investigate, prosecute and oversee the enforcement of the provisions of other laws and regulations relating to economic and financial crimes including:

1. The Money Laundering Act, and the Money Laundering (Prohibition) Act, 1995 and 2004 respectively;
2. The Advance Fee Fraud and Other Fraud Related Offences Act 1995;
3. The Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 1994;
4. The Banks and Other Financial Institutions Act 1991; and
5. The Miscellaneous Offences Act.⁵⁸

In its latest efforts, the Commission succeeded in securing the conviction of the former Inspector General of police on charges of corrupt enrichment

55. The legislators were accused of demanding and receiving the sum of N55 million bribes from the Education Minister in order to help the latter facilitate the passage of the budgetary allocation to his ministry at the country's National Assembly. As at the writing of this article, the court has ruled that they all have a case to answer and the trial is still continuing. See Wabara, others to face trial, available at the Commission's website, (*Supra*, note 54).

56. The Peoples' Democratic Party (PDP).

57. Though his lawyer made a "no case submission," which the court was yet to rule on at the time of writing of this paper, for his failure to appear in court on the date the ruling on the "no case submission" was to be delivered, the trial judge revoked his bail and ordered his arrest and remand in prison custody till the next adjourned date. See also the ICPC website, (*Supra*, note 54).

58. See the Economic and Financial Commission Establishment Act (2004).

while in office.⁵⁹ In fact the Commission's investigation led to the early retirement of the police chief,⁶⁰ who was subsequently arrested and charged.

More recently, is the case of the erstwhile Governor of Bayelsa State.⁶¹ He was arrested in London by the Metropolitan police presumably after a tip-off by the Commission that he was in possession of large sums of money⁶² removed from the treasury of the State he was governing in Nigeria. Charges of money laundering were subsequently brought against him by the British police.⁶³

There is an array of investigations, and prosecutions still being pursued by these anti-corruption bodies.⁶⁴ Some critics have, however, argued that the

59. See *The [Nigerian] Punch*, "Court jails Balogun," available at <http://www.punchng.com/main/article03>, last visited 29.11.05. Other charges are still pending against the police boss.

60. See *BBC News*, "Nigerian Police Boss's Shock Exit," available at <http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/africa/4184257.stm>, last visited 29.11.05.

61. D.S.P. Alamieyesigha.

62. About US\$3 Million.

63. The Governor in question jumped bail and escaped to his State in Nigeria, after having argued before British courts, that he was entitled to Sovereign Immunity and without waiting for the court's ruling. On his return, people in his home State were reported to have given him a rousing reception. These are the very same people he had deprived of employment and better living conditions by stealing their common resources meant for development. This actually gives one a rethink about the Nigerian situation on the subject of corruption. The moral psyche of the masses seems to have been so bastardised by the ruling class that they see and sing heroism where many would expect outright condemnation. See *Africa Confidential*, Vol. 46 Number 24, 2nd December, 2005, "Tummy tuck, Bellyache- the Dramatic Farce in Bayelsa State is about Money, not Local Patriotism." The British court eventually ruled that the immunity, which he laid claim to, only exists in Nigeria (as a result of s. 308 of that country's Constitution) but does not extend to the shores of Britain. See *BBC News*, "Nigerian governor 'Skips UK Bail'," available at <http://news.bbc.co.uk/1/hi/world/africa/4456300.stm>, last visited 29.11.05. The BBC noted in the same report, that a year before this incident, another Nigerian State governor, also on money-laundering charges in the UK had similarly jumped bail and escaped to his home State in Nigeria, in order to escape prosecution. This was in fact the Governor of Plateau State, Chief Joshua Dariye. The EFCC is still making efforts to bring these Officers to justice, even though the Commission's path is clogged by the Constitutional immunity provided by the Nigerian Constitution for serving Presidents, Vice-Presidents, Governors and their Deputies.

64. Some of them are actually yielding positive dividends. For example, in one of the recent trials, the Commission secured the convictions of some international fraudsters in the country commonly referred to as "419" (an acronym derived from section 419 of the country's criminal code dealing with the offence of "obtaining by false pretences"). The court, after sentencing the offenders to various jail terms ordered that the proceeds of the corrupt enrichment should be confiscated by the Commission and returned to the victims as restitution. Delivering the judgement, the judge noted: "A balance must be arrived at

present government's action is not only selective, it is also targeted at the opposition.⁶⁵ The argument is that there are other corrupt officers within the ruling class being left as "sacred cows." This may be true; this writer, however, believes that the sanitation has to begin somewhere. In a place such as Nigeria, with multi-ethnic groups, and a very large population, such allegations are to be expected.

In so far as those presently being caught are given a fair trial, the government efforts must be lauded. To back this up, at a recent meeting with the President of Nigeria, the Director of Global Programmes and Governance, World Bank Institute and his Economic Management Team noted, *inter alia*: that momentum and credibility have been on the rise in Nigeria, that recent reforms have shown that some gains have already been attained and they have been taken notice of both domestically and

by the court in ensuring that not only is the financial element, which induces and motivates this class of offences taken care of, it also imposes sanctions that would be a wake up call to the rest of society that crime does not pay and that certain conduct is simply not acceptable." He went further: "It is sad that the activities of the accused persons not only led to the collapse of a bank in a foreign country, it also brought misery to many innocent people. See *The [Nigerian] Guardian*, Saturday, November 19, 2005, "Court Jails Convicts 37 Years in Biggest Fraud." See also the EFCC website, "\$242M SCAM: NWUDE Pleads Guilty, Bags 25 Yrs Jail Term" available at http://www.efccnigeria.org/index.php?option=com_content&task=view&id=713&Itemid=2, last visited 29.11.05. In this regard, substantial sums of money running into millions of dollars have been returned to victims of fraud and corruption by the Nigerian government. Addressing the media, sometime in November 2005, the EFCC chairman informed them of the return on different occasions to victims of \$17m and another \$4.48m. These he claimed were moneys recovered from fraudsters, under the Commission's assets recovery drive. See "Text of A Media Conference by Mallam Nuhu Ribadu, Executive Chairman, EFCC," available at http://www.efccnigeria.org/index.php?option=com_content&task=view&id=716&Itemid=2, last visited 23.11.05. At a forum recently organised by the Society of Government Economists, Washington DC, the Nigerian Minister and Head of the Economic and Commercial Desk, Embassy of Nigeria in the US, after listing notable high profile casualties of Nigeria's anti-corruption war, added that the EFCC is compiling data for the prosecution of 9 State governors in the country. He concluded that even though the problem of the malaise has not been solved, the war against it in that country is being won. See E.E. Imohe: "Nigeria's Progress in Curbing Economic Corruption," Article presented at a Forum Organised by the Society of Government Economists, Washington DC, 27th September, 2005, available at <http://www.worldbank.org/wbi/governance/pdf/NIGERIAPROGRESS2.pdf>, last visited 29.11.05.

65. See *BBC News (Supra*, note 63).

internationally; but that if reforms deepen, by the end of 2006, overall gains may prove to be historical, and irreversible.⁶⁶

Apart from all the above, the Constitution of the country in its Fifth Schedule makes provisions regarding the conduct of and integrity to be maintained by public officers while in office. Among other things, the code prohibits the receipt of bribe by a public officer in the performance of his duties. Besides, the code requires, and indeed compels every public officer, subject to the provisions of the constitution, to make periodic declarations of his assets and in fact those of his unmarried children under the age of 18 years.⁶⁷ All these are tailored towards curbing corruption in the system.

Other African countries have similar provisions in terms of institutional frameworks and legislation to combat the malaise. What runs through most of them is the desire to respond to international demands as laid down by international law and practices elsewhere that have succeeded, to some extent, in fighting the malaise, and are reaping the rewards in terms of development and poverty alleviation, through the consolidation of wealth that would otherwise have been stolen by a single individual or a set of them. We provide below a comparative analysis of some of such countries:

Ghana

At a recent meeting of Commonwealth Law Ministers held in Ghana,⁶⁸ President Kufuor informed the meeting that his cabinet has approved the UN Convention against Corruption and that ratification by Parliament will take place at its next meeting, later in the month. He admitted that despite the absence in the country's domestic legislation of the preventive measures contained in Article 11 of the Convention, current legislation in Ghana does have some preventive measures against the illegal acquisition of wealth. The President further noted that the government had taken steps to strengthen integrity and prevent opportunities for corruption by enacting both the Public Procurement Act, and the Finance Administration Act in 2003.⁶⁹

66. See Daniel Kaufmann and Colleagues, "Nigeria in Numbers- the Governance Dimension: Moving in the Right Direction, Opportunity over the Next Year," Wednesday, October 12th, 2005 available at http://www.worldbank.org/wbi/governance/pdf/Nigeria_EMT_Presid_1005.pdf, last visited 29.11.05.

67. See Constitution of the Federal Republic of Nigeria 1999, Fifth Schedule.

68. Held between 17 and 20 October 2005. For details on that meeting and its Communiqué see *Commonwealth Law Ministers Meeting, Accra, Ghana*, available at <http://www.thecommonwealth.org/Templates/Internal.asp?NodeID=146513>, last visited 30.11.05.

69. (Acts 663 and 654, respectively)

Under the Public Procurement Act, rules and guidelines are laid down to control procurement, with sanctions for non-compliance prescribed for correlative offences under the country's criminal code⁷⁰. The Finance and Administration Act on the other hand regulates the financial management of the public sector and empowers the Attorney General to institute criminal proceedings for recovery of money in cases of corruption.

Apart from the above, there is also the Serious Fraud Office (SFO),⁷¹ an anti-corruption agency which is a special investigative arm of government, coordinated by the office of the Attorney General. The office has very wide powers for monitoring, investigating and dealing with corruption-related activities within the country⁷² and liaising with international agencies and organisations dealing with fraud and corruption. It is also the central body responsible for collecting, collating and disseminating information on fraud and corruption. There is also an Office of Public Accountability in the Presidency administratively established to compliment the work of the statutory anti-corruption bodies. This latter body also advises the President as to checking corrupt behaviour among senior government officials.

Kenya

In Kenya, the Kenya Anti-Corruption Authority (KACA) legal framework was put in place in 1997, although the authority did not become fully operational until October 1999. Headed by a Director/Chief Executive, the authority has as its vision, the attainment of zero tolerance for corruption in Kenyan society. The authority is mandated by its statute to investigate and prosecute cases involving corruption and also assigned responsibility for any investigation or prosecution commenced by the police for an offence involving corruption. Beyond all of the above, the authority is also responsible for designing strategies for the prevention of corruption in the country and public education of the people within the country.⁷³ Arising from a suit by two civil servants challenging the authority's power to prosecute

70. (Act 29) 1960.

71. Established under the Serious Fraud Office Act, 1993 (Act 466).

72. In 2002, the office interdicted one of its senior staff - an Assistant Director - on allegations of corrupt practices, in order to pave way for investigations against him. He was alleged to have fraudulently deceived a company to employ him while still in the services of the SFO.

73. See the *International Anti-Corruption Newsletter*, July 2000 available at <http://www.icac.org.hk/text/eng/news1/issue3/kaca1.html>, last visited 29.11.05.

them,⁷⁴ a constitutional court has declared the body unconstitutional for being ascribed powers that rival those of the Attorney General. The body was subsequently dismantled in December 2000.

In December 2002, President Mwai Kibaki swept to victory with his crusade against fraud and bribery in the country and by April 2003, the Kenyan Parliament had passed a new law, the Anti-Corruption and Economic Crimes Act, a comprehensive piece of legislation which expanded the definition of corruption and economic crime to cover various forms of abuse of office, conflict of public interest, misappropriation, theft and plunder of public resources. The act also established a powerful anti-corruption commission with investigative, prevention, public education and asset recovery functions. Thus, was born the Kenya Anti-Corruption Commission (KACC) with wider powers than the previous anti-corruption authority.⁷⁵ Other bodies in the fight against the malaise in Kenya include: the Ministry of Justice and Constitution Affairs and the Cabinet Committee on Anti-Corruption.

The Anti-Corruption Commission has, from its establishment to date, completed 21 cases; among which it recommended 15 prosecutions, some involving senior civil servants. The Attorney General reserves the power to prosecute the cases.⁷⁶

Also, in 2003, Parliament enacted the Public Officers Ethics Act which provides for separate mandatory codes of conduct for all public officers. The

74. See the *TI Newsletter*, "Hard Times for World's Anti-corruption Bodies," March 2001 available at <http://www.transparency.org/newsletters/2001.1/editorial.html>, last visited 30.11.05.

75. It should be noted that all these were coming on the heels of the suspension by international donor agencies of all international aid to the country because of corruption. Following the aid suspension, President Kibaki, among other things, set up the National Anti-Corruption Steering Committee in July 2004 to educate Kenyans about the need to fight corruption. See *BBC News*, "Kenya's Anti-corruption Go-ahead," available at <http://news.bbc.co.uk/1/hi/world/africa/3536284.stm>, last visited 30.11.05. Series of other efforts have been made by the Kibaki government since 2003. They include: investigations into the Goldenberg Affair; inquiry on the illegal and irregular allocation of public land; and the setting up of an Ethics and Integrity Committee to look into the extent of corruption in the judiciary, as a result of which a "radical surgery" was carried out on that arm of government. About 23 judges from the Court of Appeal down to the Magistrates Court were suspended as a result of the committee's report. See "Reforms in Governance in Kenya" available at <http://siteresources.worldbank.org/INTKENYA/Resources/governancebrief.pdf>, last visited 30.11.05.

76. See *The East African Standard*, Monday October 31, 2005, "Ringera Wants AG to Act on Graft Cases." The Commission is presently headed by Justice Aaron Ringera.

codes, which are legally enforceable, prohibit dishonesty, conflict of interest, tribalism, and nepotism in the public service. They also make it mandatory for all public officers to declare their assets and liabilities at the end of every financial year.

Lesotho

For Lesotho, the country passed its Prevention of Corruption and Economic Offences Act in 1999. The Act bears very close resemblance to Botswana's Corruption and Economic Crime Act of 1994.⁷⁷ The Act just like its Botswana counterpart, makes certain patterns of behaviour on the part of public officers punishable as corruption, and criminalizes the possession of unexplained wealth. The Act creates a Directorate on Corruption and Economic Offences, headed by a Director to be appointed by the President 'on such terms and conditions as he thinks fit.' The body is vested with educational, advisory, advocacy and investigative functions. The prosecuting power of the Directorate is, however, subject to the consent of the Attorney General.

South Africa

A National Anti-Corruption Summit was held in April 1999, which produced a detailed resolution setting out the essential elements of a national plan to control and prevent corruption. This was followed by the National Anti-Corruption Initiative launched in October 1999. Preceding this, were a number of landmark events worth mentioning. In 1998, the country held a Moral Summit where religious and other leaders adopted a code of conduct and a pledge of 'ubuntu' or 'common humanity.'⁷⁸ The same year, a Public Sector Anti-Corruption Conference was convened to propel a plan of action to prevent and control corruption in the public sector.

Following the Summit, the government formally endorsed the resolution and nominated the Public Service Commission to lead the national anti-corruption effort. The Commission is vested with broad powers to investigate, monitor and evaluate the functioning of the civil service. The National Anti-Corruption Forum was created, and launched in June 2001 as a formal national structure under the auspices of the Commission. The Forum,

77. For example, whereas the Botswana law uses the term "valuable consideration", the corresponding term in the Lesotho Act is "benefit." Both however, mean the same in their application. See sections 24 and 21 of both Acts, respectively.

78. The term 'ubuntu' is simply a South African concept of humanitarian coexistence, which impliedly means that "a person is a person through other people."

consisting of 30 members has authority to: contribute towards the establishment of a national consensus through the co-ordination of sectoral strategies against corruption, advise Government on national initiatives on the implementation of strategies to combat corruption, share information and best practices on sectoral anti-corruption work and advise sectors on the improvement of sectoral anti-corruption strategies.

Other initiatives targeted at corruption in the country include the establishment of constitutionally independent bodies such as: the Auditor-General's office which is assigned the duty of detecting any improper usage of state funds, the Office of the Public Protector incorporating the old Ombudsman's office, and vested with certain investigative powers in cases of corruption. In accordance with section 182 (1) of the Constitution of the Republic of South Africa,⁷⁹ this Office has the power 'to investigate any conduct in State affairs, or in the public administration in any sphere of government that is alleged or suspected to be improper, or to result in any impropriety or prejudice.'

The Special Investigative Unit (S.I.U) was established by the President, and is headed by a judge. The Unit was established pursuant to the Special Investigating Units and Special Tribunals Act, 1996,⁸⁰ 'for the purpose of investigating serious malpractices or maladministration in connection with the administration of State institutions, State assets and public money as well as any conduct which may seriously harm the interests of the public.' This body is seen as the most independent and aggressive anti-corruption institution in South Africa.⁸¹

The body is, however, only empowered to investigate and recover misappropriated public monies through civil remedies.⁸² The country also has the Investigating Directorate on Corruption located in the office of the National Director of Public Prosecutions. There is also the Executive Members' Ethics Act and its Code of Conduct governing the conduct of and disclosure of interests by members of the Cabinet, including the President, Deputy-President, Deputy Ministers, and Members of Provincial Executive Councils. The Code of Conduct for public servants contained in Article M of

79. Act 108 of 1996.

80. Act No.74 of 1996.

81. See Ernest Harsch: "Africa Mounts Drive Against Graft," *Africa Recovery*, Vol. 13 No. 4, Dec. 1999, 8 or the Online version, available at <http://www.un.org/ecosocdev/geninfo/afrec/vol13no4/8corrupt.htm>, last visited 30.11.05. The body was reputed to have saved the government more than R500 million within its first six months of operation.

82. See section 5 of the Act.

the Public Service Regulations, governs the relationships between public servants, the legislature, the executive and the public, both in the performance of their duties and in their personal conduct.

Besides the above, the South African Parliament just recently passed the Prevention and Combating of Corrupt Activities Act. This law replaced the Corruption Act of 1992. It extends the application of the expression 'corrupt activities' beyond the offices of public officers to corporate boardrooms. The law makes provisions for the protection of witnesses and makes it compulsory for people in positions of authority particularly managers in government, parastatals and the private sector, to report corrupt activities, failure to do which attracts a penalty of 10 years maximum imprisonment.

Worth mentioning is the recent firing,⁸³ and subsequent trial of that country's Deputy Prime Minister on allegations of corruption, in June 2005. In an earlier trial, the Deputy's former financial adviser had been convicted of fraud and corruption and sentenced to 15 years imprisonment. The judge in that trial had found that there was a 'generally corrupt relationship' between the Deputy Prime Minister and his former financial adviser.⁸⁴

At the continental level, a few other initiatives have been embarked upon by African leaders to fight the malaise. Recently, Justices of more than 40 African countries met in Abuja, the capital of Nigeria, with development partners to chart a roadmap designed to end crime and corruption across the continent.⁸⁵ The new programme of action under the auspices of UNODC has as its goals the targeting of corruption and the looting of natural resources.

The African Union Convention on Preventing and Combating Corruption

The need for a legal framework to combat corruption and impunity on a continental basis in Africa started gathering momentum in 1999 at the 9th International Anti-Corruption Conference (IACC) held in Durban, South Africa.⁸⁶ Prior to this time, only Europe⁸⁷ and Latin America⁸⁸ had such

83. See *BBC News*, "Is Africa Getting Serious about Corruption?," available at <http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/africa/4102742.stm>, last visited 06.12.05.

84. See *BBC News*, "SA's Zuma in Court for Corruption," available at <http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/africa/4632563.stm>, last visited 06.12.05.

85. See *United Nations Information Service, Press Release*, UNIS/INF/98 of August 2005, "Roundtable Spotlights African Initiative in Fight against Crime and Corruption," available at <http://www.unis.unvienna.org/unis/pressrels/2005/unisinf98.html>, last visited 30.11.05.

86. The Anti-Corruption Conferences grew out of the need to exchange information and ideas between the increasing number of institutions that came up in the last twenty years or so to devote time and resources to combat the "social evil." The aim was to discuss different strategies for counteracting the malaise in different contexts. The idea for such

conventions. Africa and Asia did not. In 1998, the Southern African Development Community held a regional roundtable on anti-corruption strategies, which was soon followed by a second one just a month before the Durban conference.⁸⁹ In February 1999, representatives of eleven African countries⁹⁰ met in Washington under the auspices of the Global Coalition for Africa and adopted a set of principles to combat corruption in Africa.⁹¹ It was in the light of initiatives such as the above, that the atmosphere became ripe for an African Convention on Corruption.

The African Union Convention on Preventing and Combating Corruption was opened for signature on 11 July, 2003, after its adoption by the 2nd Ordinary Session of the Assembly of the African Union in Maputo, Mozambique. The objectives of the Convention among other things are to: promote and strengthen the development in Africa by each State Party of mechanisms required to prevent, detect, punish and eradicate corruption and

a conference first arose from among a number of anti-corruption law enforcement agencies which include: Hong Kong's Independent Commission against Corruption; the Inspector General for the District of Columbia (Washington D.C.); and the New York City Department of Investigation. The initial focus of the conference was on law enforcement issues; today however, the scope of the conference has grown to embrace the whole spectrum of stakeholders in the fight against corruption and fraud throughout the world. The conferences are held bi-annually. To date, eleven conferences have been held since 1983 after the first one was held in Washington. The next one to be held in Guatemala and Antigua between 15 and 18 of November 2006, is titled "Towards a Fairer World: Why is Corruption still Blocking the Way?" see *Anti-Corruption Conference History*, available at <http://www.transparency.org/iacc/pastiacc.html>, last visited 26.11.05, and for information on the next conference, see <http://www.transparency.org/iacc/infocus.html>, last visited 26.11.05.

87. See The European Union Criminal Law on Corruption, *European Treaty Series No. 173*, Council of Europe, February 2000.

88. See the Inter-American Convention against Corruption, at <http://www.oas.org/juridico/english/Treaties/b-58.html> last visited 17.11.05.

89. On 14 August, 2001, the Community opened its Protocol, the Southern African Development Community (SADC) Protocol against Corruption, for signature. As at the time of preparing this paper, Botswana, Lesotho, Malawi, Mauritius, South Africa, Tanzania, Zambia and Zimbabwe had ratified the Protocol. See the Community's web page at <http://www.sadc.int/index.php?action=a1001&pageid=protocolsstatus>, last visited 01.12.05. Meanwhile, by virtue of the provision of Article 18 thereof, the Protocol needs 9 ratifications to enter into force.

90. These were Benin, Botswana, Ethiopia, Ghana, Malawi, Mali, Mozambique, Senegal, South Africa, Tanzania and Uganda.

91. See "Principles to Combat Corruption in African Countries," available at the *Global Coalition for Africa (GCA)* web page <http://www.gcacma.org/CorruptionPrinciplesCombat.htm>, last visited 01.12.05.

related offences in the public and private sectors,⁹² promote, facilitate and regulate cooperation among State Parties to ensure the effectiveness of measures taken in furtherance of the aforementioned objective, coordinate and harmonize the policies and legislation between State Parties for the purposes of prevention, detection, punishment and eradication of corruption on the continent and establish the necessary conditions to foster transparency and accountability in the management of public affairs.

The Convention also listed various acts which constitute corruption. These include: solicitation or acceptance, either directly or indirectly, by a public officer or any person, of any goods of monetary value, or other benefit in the performance of his public function, the offering or granting of same to a public officer, unauthorised or illegal diversion of funds or property belonging to the State or any of its agencies, by a public officer; and illicit enrichment among others.⁹³

The Convention enjoins State Parties to adopt such legislative and other measures as may be necessary to establish as criminal offences acts tailored towards the perpetuation of laundering property or the proceeds of corruption.⁹⁴ In order to combat corruption in the public service, State Parties should commit themselves to requiring all public officers to declare their assets during and after their term in office and establish a code of conduct by which such public officers must abide.

The Convention also requires States to make laws to prevent and combat acts of corruption and related offences in the private sector, including taking measures to prevent companies from paying bribes to win tenders.⁹⁵ They are also enjoined to, as much as possible, involve the media and civil society in the fight against the malaise and in order to educate the public.

The Convention guarantees fair trial for any person alleged to have committed any of the acts of corruption defined therein, subject to Parties' domestic legislation. Thus, Article 14 provides that:

Subject to domestic law, any person alleged to have committed acts of corruption and related offences shall receive a fair trial in criminal proceedings in accordance with the minimum guarantees contained in the African Charter on Human and Peoples' Rights and any other relevant

92. Article 2 (1).

93. See Article 4 of the Convention generally.

94. See Article 6 of the Convention.

95. See Article 11.

international human rights instrument recognized by the concerned State Parties.⁹⁶

Parties to the treaty also undertake to, in conformity with their domestic laws, any applicable extradition treaties, or extradition agreements or arrangements existing between them,⁹⁷ extradite any person charged with, or convicted of corruption and related offences as defined in the treaty, carried out on the territory of one another, and whose extradition is requested by a State Party. The Convention requires Parties to adopt legislative measures to ensure the confiscation and seizure of the proceeds of corruption⁹⁸ and cooperate with each other and with international bodies in the fight against the malaise.⁹⁹

As noted earlier, the Convention was opened for signatures and ratification in July, 2003. It requires 15 ratifications to enter into force. Article 23 (2) provides that:

The Convention shall enter into force thirty (30) days after the date of the deposit of the fifteenth instrument of ratification or accession.

To date, out of the 53 members of the Union, 36 members have signed the Convention, while only 10 have ratified.¹⁰⁰ It has been more than three years since it was opened for signatures and ratifications.

In comparison to the UN Convention, this writer observes that the attitude of African countries when it comes to their own regional convention

96. On this, Olaniyan has argued that subjecting the operation of the provision of Article 14, and indeed other Articles (e.g. Article 8) of the Convention to 'domestic laws' of Member States, provides an escape for a State wishing to restrict its treaty obligations. Besides, he also observed: "By granting supremacy to national laws, the clauses also could seriously emasculate the effectiveness of the Convention as well as its uniform application by member states. If not properly construed, the clauses could defeat, frustrate, or annul the fundamental objectives of the Convention..." K. Olaniyan: "The African Union Convention on Preventing and Combating Corruption: A critical Appraisal," (2004) 4 *African Human Rights Law Journal*, 74 at 85-86.

97. Article 15.

98. Article 16.

99. Articles 18 and 19.

100. See African Union web page, "List of Countries which have Signed, Ratified/acceded to the African Convention on Preventing and Combating Corruption," available at http://www.africa-union.org/Officialdocuments/TreatiesConventionsProtocols/List/African_Convention_on_Combating_Corruption.pdf, last visited 01.12.05.

is very poor. Charity, they say begins at home. Out of the 17 countries that have ratified the UN Convention, only 6 of them have equally ratified the African Union Convention.¹⁰¹ This, to one's mind does not show good faith or enough commitment to adopting a continental approach to eradicating the malaise, i.e. apart from amounting to paying lip service to the fight against the malaise. When cognisance is taken of the fact that the African Union Convention was opened for signatures and ratification five months before the UN Convention, the lack of sincerity of African Countries becomes even more striking.

The only conclusion to be drawn from this is that the commitment of most of these African countries to their international obligations in this regard is prompted only by pressure from international donor agencies, with threats of withholding aid and grants in the event of their not stamping out the malaise from their countries.¹⁰² But should this be the case?

As responsible governments, the threats of aid withdrawal, or promises of debt forgiveness should be the last thing to prompt action towards eradicating what we all know, and consider to be bad in our society. We can concede that there may be some reservations about certain areas of the Convention; but fail to see how a never-ending delay in ratifying the convention can possibly constitute a solution to that problem,¹⁰³ especially as the Assembly of the Union duly adopted the Convention before it was opened for signatures and ratifications.

101. The six being Lesotho, Libya, Madagascar, Namibia, Uganda and Tanzania.

102. The case of Kenya is a glaring example; international aid to that country was suspended during the last days of Daniel arap Moi in office as a result of rampant corruption in the system. It took Kibaki and his National Rainbow Coalition promising a decisive fight against corruption before assurances came from the World Bank and the IMF that they would restore aid to the country if the President takes credible measures against the malaise. See *BBC News*, "Kenya Targets Corrupt Officials," available at <http://news.bbc.co.uk/go/pr/fr/-/1/hi/business/2956733.stm> last visited 02.11.05.

103. This writer is not unmindful of the comments and observations already highlighted about the Convention by some scholars bordering drawing attention to certain flaws. However, as with all things human, imperfections are bound to sometimes occur; they cannot by themselves block progress in a society that is genuinely determined to lay a solid foundation for its future. This is probably the place to point out that some of the same observations also condemn even the UN Convention as having "serious flaws"; yet that Convention managed to enter into force on December 14th, 2005. See P.W. Schroth: "The Africa Union Convention on Preventing and Combating Corruption," *Journal of African Law*, 49, 1 (2005), 24-38, and also K. Olaniyan, (*Supra*, note 96).

Conclusion

This paper began by examining the word corruption, drawing from the meanings attached to it from international perspectives and using the UN anti-corruption toolkit as a model. It then went on to look at the claim that Africa ranked as the most corrupt continent in 2005, based on available reports and evidence, both past and present. In connection with this latter fact, the paper examined some probable reasons for the entrenchment and spread of the 'virus' on the continent and considered the multiplier effect of corruption on society generally, focusing more attention on developing societies. It thereafter, examined measures and efforts currently being taken/expended at international level to fight the malaise, specially focusing on the UN Global programme and the recently ratified UN Convention against Corruption. The paper also outlines some of the efforts so far initiated by some African countries – Nigeria, Ghana, Kenya, Lesotho, and South Africa – to combat the evil. Finally it examines the African Union Convention on Preventing and Combating Corruption, the concerted effort of African countries to tackle the malaise on a continental basis and the attitude of these countries towards the convention.

The point is made that there is a real need for African leaders to go beyond mere rhetoric and commit to the African Union Convention. The argument is that they need to develop the political will to faithfully, honestly and consistently implement the letter and spirit of whatever programmes and treaties they elected to adopt.

If we consider the fact that as early as 1999, representatives of some African Governments had already formulated '*Principles to Combat Corruption in African Countries*',¹⁰⁴ and been directed/required to work towards convincing their Governments to adopt the relevant principles and incorporate them into their national systems and laws,¹⁰⁵ it becomes rather difficult to decipher why those same countries continue to rank highest among the most corrupt in the world.¹⁰⁶

104. See "Principles to Combat Corruption in African Countries," available at the *Global Coalition for Africa (GCA)* web page <http://www.gcama.org/CorruptionPrinciplesCombat.htm>, last visited 01.12.05.

105. See M. Matembe: "Inclusion of the Principles to Combat Corruption in National Strategies by African Countries," delivered at the 9th International Anti-Corruption Conference (IACC), 10 - 15 October 1999, Durban, South Africa, available at http://www.transparency.org/iacc/9th_iacc/articles/day1/ws1/dnld/d1ws1_hmatembe.pdf, last visited 07.12.05.

106. If those principles were in fact incorporated into countries' national laws and strategies, serious progress would have been made in the fight against the malaise in Africa as they

One conclusion is that the principles were never incorporated as expected, especially as there was no mention or passing reference to those principles in the African Union Convention on Corruption. We can only hope that the African Union Convention on Corruption being a treaty and not just a set of principles will not suffer the fate of its precursor 'Principles'.

Finally, this writer would like to suggest that the United Nations global programme earlier discussed in this paper should be targeted more at small and significantly less developed economies within and outside Africa, i.e. given their vulnerability to factors such as corruption that can negatively impact development and progress. Most of them may not, in any case, even have the budgetary resources to support the required and appropriate anti-Corruption structures.¹⁰⁷

are indeed sound principles. Anyone going through them would have no iota of doubt as to their soundness/viability.

107. A direct and immediate example that comes to mind is the case of Chad ranked highest among the most corrupt countries in the world in 2005.