CHAPTER 31

Rethinking Anti-Corruption Strategies in Africa: Constitutional Entrenchment as Basis for Credible and Effective Anti-Corruption Clean-Ups

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1 Introduction

Corruption is probably one of the biggest threats to peace and stability in Africa today. Worse still, it casts an ominous dark shadow over the future political, economic, and social progress of the continent given the deleterious effects it is having on the faltering efforts to establish a culture of constitutionalism, democracy, respect for the rule of law and good governance. The debilitating effects of corruption are sparing no African country. For example, in a letter of 3 May 2012, President Salva Kiir of South Sudan, Africa’s youngest state (which barely celebrated the first year of its hard-earned independence from the Republic of Sudan in July 2012), wrote to 75 former and current government officials to return an estimated US$ 4 billion which had been stolen from the country which was now almost bankrupt. In it, he said:

We fought for freedom, justice and equality. Yet, once we got to power, we forgot what we fought for and began to enrich ourselves at the expense of our people.¹

South Sudan in many respects epitomises the African paradox; how African leaders have fought hard to liberate their people from exploitative, alien, cruel, despotic and undemocratic foreign powers but within a few years of getting

to power, they become worse than these foreign oppressors. The cancer of corrup-
tion appears to have eroded the sense of fairness, rationality, compassion,
patriotism and humanity in the ruling class in Africa. The gravity of the cor-
ruption problem in Africa was succinctly summarised by Moseneke DJP and
Cameron J in the South African case of Glenister v. The State President of South
Africa and others thus:

There can be no gainsaying that corruption threatens to fell at the knees
virtually everything we hold dear and precious in our hard-won constitutional order. It blatantly undermines the democratic ethos, the institutions of democracy, the rule of law and the foundational values of our nascent constitutional project. It fuels maladministration and public fraudulence, imperils the capacity of the state to fulfil its obligations to respect, protect, promote and fulfil all the rights enshrined in the Bill of Rights. When corruption and organised crime flourish, sustainable development and economic growth are stunted. And in turn, the stability and security of society is put at risk.

Corruption is neither a new phenomenon nor is it unique to Africa. As Transparency International’s (TI) annual Corruption Perception Index (CPI) shows, it is a feature of all countries both developed and underdeveloped. It is, however, the scale of corruption in Africa and the debilitating effect it is having on the continent that makes it different. Not only does it undermine economic

2 For example, how else can one explain the fact that the first major decision taken by the South African government soon after defeating apartheid was to devote billions of Rand to buying warships and warplanes when there was no conceivable foreign military threat to the country and when the real threat to the consolidation of democracy is poverty. Instead of building houses, schools and hospitals or seriously tackling the issue of HIV and AIDS the government preferred to enter into a huge arms deal that has been described as a betrayal of the struggle against apartheid, because, as we shall see later, of the huge kickbacks that many of the politicians made from the deal. See further, Terry Crawford-Browne, “The Arms Deal Scandal,” 31(100) Review of African Political Economy (2004), pp. 329–342.

3 2011 (3) SA 347 (CC) at para. 166.


5 According to Edeard Hoseah, Chairman of the AU Advisory Board on Anti-Corruption (AU-ABC), and citing a recent report from the African Development Bank, Africa losses about USD 148billion a year through corruption. It also says that over 50% of tax revenue and USD 30 billion of foreign aid is lost through corruption. See, “Hoseah: Foreign banks fuel graft” http://dailynews.co.tz/archive/index.php/local-news/6393-hoseah-foreign-banks-fuel-graft, http://sabahionline.com/en_GB/articles/hoa/articles/newsbriefs/2012/06/20/newsbrief-06 Also see,