Book Reviews

Kolawole Olaniyan

Corruption in the public sector is pervasive and systematic in several States yet preventive measures are largely ineffective and prosecuted cases of corruption are limited, particularly concerning those persons at higher levels of the administration. This timely and fascinating book on corruption and human rights in Africa represents scholarship that responds to an urgent human rights issue of corruption in Africa. The book is a provocative endeavour that casts a different light on the understanding of corruption. It provides an ingenious exposé that elevates corruption to an existential threat to human rights in Africa. The ability of author to weave this compelling narrative is both profound and commendable.

Each year, International Anti-Corruption Day precedes Human Rights Day, but in all other ways, the developing struggle against corruption in Africa follows the path laid by the human rights movement. In his seminal work, Corruption and Human Rights Law in Africa, Kolawole Olaniyan argues convincingly that anti-corruption efforts would be more effective by relying not only on the shoulders of national (and international) criminal law systems, but also thorough recognition by and integration into global and regional human rights law, norms and practice.

The book painstakingly considers the many perspectives of corruption including the theoretical bases for applying the normative human rights framework to corruption. This includes a review of existing treatment of grand corruption schemes in domestic criminal law settings and an analysis of national and international laws against corruption. Olaniyan also provides a consideration of the effects of corruption on human rights protected by the African Charter on Human and Peoples’ Rights and other human rights treaties and the measures to combat corruption in Africa.

Olaniyan conclusions will undoubtedly provoke thoughtful debate in the years to come. The conceptualisation is that of a two-way anti-corruption movement which will rely upon the strengths provided by the human rights
law framework. Answering the question, why look to human rights law to address grand corruption, Olaniyan highlights several key points from moral to legalistic. In the early chapters of the book, he discusses the potential of depoliticising and internationalising the problem and attaching an appropriate level of moral imperative. The author in this discussion asserts that the victims are largely neutralised (and virtually anonymous) in the criminal process with no access to human rights remedies.

Where can we, the people, the ‘victims of corruption’ go for redress? Who will hear our cries for help when we know all too well that our treasuries are being pillaged while public services – from physical infrastructure to fair criminal justice systems and humane, equal treatment of our populaces – are routinely denied? Compellingly Olaniyan discusses three key developments in human rights law that start to unlock the blockages currently encountered in attempts to seek adequate redress for corruption: the limitations on the concept of state sovereignty, expanded notions of standing of complainants and rejection of strict rules of causation which dominate national criminal legal systems.

Instances of grand corruption continue to be treated solely as particular criminal acts of individuals, various immunities will protect wrongdoers from sanctions and the argument of state sovereignty will politicise instantly international efforts at accountability. The human rights normative framework, however, has succeeded in limiting otherwise unchecked State power by imposing the duties to respect, protect and fulfil human rights, in effect, realising a concept of public trust. The State is entrusted to operate for the benefit and security of the people, not to take what it will from the people's national coffers. The human rights discourse concludes that law protects human beings, not States as the power of the State is not absolute and cannot be used as a veil for abuse by its agents, but rather is responsible for their acts.

The application of this framework to grand corruption is clear, as is Olaniyan’s clear advice that sticking with a strict adherence to traditional norms of State and sovereign immunity of national criminal law systems will always keep us from touching the ‘lifeblood’ of corruption. He spends considerable space on Article 21 of the African Charter on Human and Peoples’ Rights, which evinces a clear intent to protect the peoples’ exclusive right to ‘freely dispose of their wealth and natural resources’. While he discusses many Articles in the African Charter which are violated by acts of corruption, Article 21 stands out as uniquely positioned to address massive theft of public assets and money-laundering plaguing much of the continent. This raises the question can individuals and groups access the protection of Article 21 and the spectrum of human rights provisions, especially when ‘spoliation’ or wasting away of what naturally belongs to them is indigenous?