

FACULTY OF LAW, UNIVERSITY OF THE WESTERN CAPE (UWC)

SOUTH AFRICA

**ANTI-CORRUPTION AGENCIES IN AFRICA: A COMPARATIVE ANALYSIS
OF RWANDA, SIERRA LEONE AND MALAWI**



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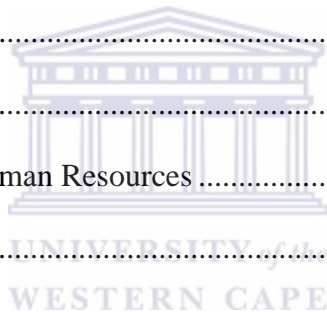
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(*Magister Legum*) in Transnational Criminal Justice and Crime Prevention**

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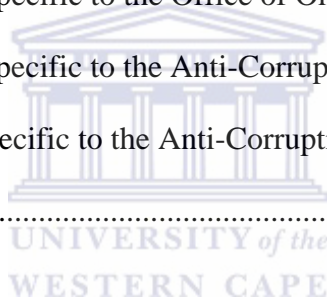


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Abstract

Corruption is a serious problem which has many negative impacts on sustainable economic development globally. The clandestine nature of corruption makes it difficult to detect. Hence, efforts to combat corruption successfully demand comprehensive anti-corruption legislation, strong powers, as well as special investigative techniques and strategies.

An effective anti-corruption regime requires a comprehensive anti-corruption legal framework which not only punishes all forms of corruption but also capacitates anti-corruption institutions. A strong anti-corruption agency is a crucial requirement and a necessary part of a country's anti-corruption strategy. The failure or the success of an anti-corruption agency depends on a variety of factors, such as powers and means to detect, investigate and prosecute corruption and related offences. The lack of trained staff, as well as the lack of adequate material resources, also affects the effectiveness of an anti-corruption agency.

The anti-corruption agencies covered by this research are not empowered or resourced sufficiently, which may result in their ineffectiveness. This paper provides a set of

recommendations in respect of the powers and strategies needed for a successful anti-corruption agency.



Key Words

Anti-Corruption Agencies

Anti-Corruption Bureau of Malawi

Anti-Corruption Commission of Sierra Leone

Corruption

Combating corruption

Declaration of assets

Investigative Techniques

Office of the Ombudsman of Rwanda

Powers

Strategies



Declaration

I, **Jeanne Pauline GASHUMBA**, declare that the work presented in this paper entitled “Anti-Corruption Agencies in Africa: A Comparative Analysis of Rwanda, Sierra Leone and Malawi” is my work and has not been submitted for any other examination.

All sources referred to have been acknowledged.

Signature:



Date: 19 October 2010

List of Abbreviations and Acronyms

ACB : Anti-Corruption Bureau

ACC : Anti-Corruption Commission

ADB : Asian Development Bank

AU : African Union

DPP : Director of Public Prosecutions

ECOWAS : Economic Community of West African States

MK : Malawian Kwacha

NGOs : Non-Governmental Organizations

OECD : Organization for Economic Co-operation and Development

SADC : Southern African Development Community

TI : Transparency International

UN : United Nations

UNCAC : United Nations Convention Against Corruption

UNODC : United Nations Office on Drugs and Crime



Dedication

To my God, and my beloved family for endless love and encouragement.



Acknowledgement

I would like to express my unreserved gratefulness to my supervisor, Doctor R Koen, of the University of the Western Cape, Faculty of Law for his knowledge and guidance during the preparation of this research. His extensive advice and comments have been of enormous value to me. His intellectual inspiration and encouraging words made me work hard and in an efficient way. I am also indebted to the lecturers of the Transnational Criminal Justice and Crimes Prevention Masters Programme at the University of the Western Cape for their useful lectures. Your experiences have improved my knowledge.



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Many thanks go to my immediate and extended family for their unflagging care and encouragement throughout my academic life. Your efforts, prayers and moral support

are acknowledged. It is impossible to mention everybody who helped me in one way or another but to all my friends in Rwanda, I am really thankful.

Finally, I would like to express my sincere appreciation to my friends in Cape Town and my classmates for their support during my studies.

May God bless and reward all of you abundantly.

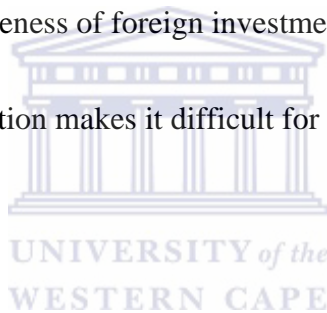


CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

Corruption is a complex problem which exists in all countries, regardless of whether they are developed or not, and it has a negative impact on the economic and social development of those countries. Corruption undermines good governance, the quality of public infrastructure, education and health services, and affects negatively capital growth. It reduces the effectiveness of foreign investment and increases inequality and poverty in the society. Corruption makes it difficult for poor people to obtain good public services.¹



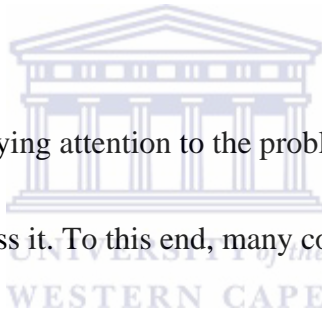
In general, corruption is a crime which affects the international community.

Therefore, effort from every state is needed in order to fight it. In this regard, the United Nations Convention Against Corruption (UNCAC) requires states parties to establish and maintain an anti-corruption body or bodies designed to combat corruption.²

¹ Parliamentary Centre and World Bank Institute (2000: 29).

² Article 6 of UNCAC.

In Africa, corruption has been recognised as a systemic phenomenon which affects all sectors of society, including individuals, parties, public administration and private economy.³ In African states, corruption is ranked among the three top national problems, besides poverty and unemployment, which undermine economic development.⁴ Corruption is secret and of widespread effect. It is not easy to detect. Hence, efforts to combat corruption, in order to be victorious, demand strong powers, as well as special investigative techniques and strategies.



Most African countries are paying attention to the problem of corruption and looking for the best measures to address it. To this end, many countries have established anti-corruption agencies. Some examples are the Kenyan Anti-Corruption Commission, the Independent Commission against Corruption in Mauritius, the Directorate on Corruption and Economic Crime in Botswana, the Office of the Ombudsman of Rwanda, the Anti-Corruption Bureau in Malawi, and the Anti-Corruption Commission in Sierra Leone. This work will focus on the anti-corruption agencies in Rwanda, Sierra Leone and Malawi.

³ Eser and Kubiciel (2005: 13).

⁴ UN Economic Commission for Africa (2009: 1).

Before 1994, the government of Rwanda had been characterised by corrupt practices, such as embezzlement of public funds and fraud in the procurement process, despite the existence of the penal code of 1977 which punished the crime of corruption.

However, since 1994, when the new government took power, the political will to combat corruption has prevailed. As a result, an anti-corruption law was adopted and an anti-corruption agency was established. The Rwandan parliament adopted the Law on Prevention and Suppression of Corruption in 2003, and in 2004 the Office of the Ombudsman of Rwanda was established with the mandate to prevent and curb injustice, corruption and related offences in both public and private institutions.



Correspondingly, in Sierra Leone, after the return to democracy in 1996, corruption was seen as a barrier to the economic development of the country and therefore an Anti-Corruption Commission was established with the promulgation of the Anti-Corruption Act of 2000, which gave the commission its legal existence. The Act was amended in 2008. Under this act, the Commission has been tasked to investigate and prosecute corrupt practices in the public and private sectors.

In Malawi, with the commitment of the state to combat corruption, the Malawian Anti-Corruption Bureau was established under an act of parliament called the Corrupt Practices Act of 1995. The Act was amended in 2004. The Bureau was established as the lead institution in promoting accountability and transparency in the conduct of government business and fighting corrupt practices in the public sector.

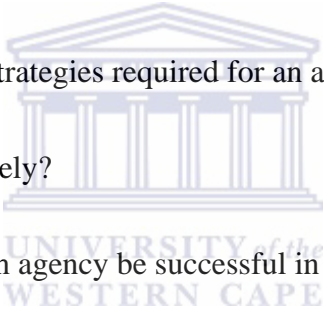
In those three countries, anti-corruption laws and agencies have been established in order to curb corruption and to reduce opportunities for corruption in the public and private sectors. This research focuses on the different strategies and powers of these anti-corruption agencies in order to identify the requirements of a successful anti-corruption programme.

1.2 Statement of the Research Problem

As noted above, the anti-corruption agencies in question use different strategies and are empowered differently. For instance, the Sierra Leonean Anti-Corruption Commission can arrest without a warrant, whereas the agencies in the other two countries cannot. Unlike Malawi and Sierra Leone, the Rwandan anti-corruption agency does not have prosecutorial powers. As a way of preventing corruption, the

agencies in Rwanda and Sierra Leone rely upon the declaration of assets, but the Malawian Anti-Corruption Bureau does not use it. Moreover, unlike Malawi and Sierra Leone, the Rwandan anti-corruption agency does not have enforcement powers and powers to take legally binding decisions (during the period of seeking information and of implementing recommendations).

Therefore, the questions to be examined in this research paper include the following:

- 
- What are the powers and strategies required for an anti-corruption agency to combat corruption effectively?
 - How can an anti-corruption agency be successful in the absence of enforcement powers?
 - Is the declaration of assets a useful weapon in preventing corruption?

This research paper will also compare and contrast the anti-corruption strategies and investigative techniques in the three countries in an effort to identify which methods can be effective to combat corruption in African society.

1.3 Objectives of the Research

The main objectives of this research paper are:

- to identify the powers, techniques and strategies needed to make anti-corruption agencies effective in the fight against corruption in Africa ;
- to provide recommendations for strengthening the fight against corruption in Africa.

1.4 Significance of the Research

Africa, like the rest of the world, is confronting difficulties in combating corruption. It is hoped that this study will be helpful in establishing policy guidelines for effective anti-corruption agencies. This research paper, in its comparative aspect, may contribute to the enhanced functioning of the anti-corruption agencies in Rwanda, Sierra Leone and Malawi. It may also contribute to the modification of laws governing those institutions, with a view to strengthening their effectiveness.

1.5 Literature Review

Many countries have criminal laws penalising and punishing corruption. Several articles and books have been written on corruption, its causes, types, and

consequences and on strategies which can be used to prevent corruption. However, there has not been enough literature on the anti-corruption agencies in Africa.

The following are some examples of literature on corruption in Rwanda, Sierra Leone and Malawi. Mustafa's article focuses on the role of the Anti-Corruption Bureau in Malawi and evaluates the major structures and measures put in place to combat corruption.⁵ Nampota's paper on the Malawi anti-corruption agency concentrates on the four strategies that the agency uses in combating corruption, namely, investigation, prosecution, prevention and public education.⁶ The article by Anders, on civil servants and corruption in Malawi, focuses on corruption in the public office and the private sphere in different regions of the country.⁷

Transparency International has produced an overview of corruption in Rwanda which focuses on the extent and types of corruption in Rwanda and the efforts of government to combat corruption.⁸

⁵ Mustafa (2005).

⁶ Nampota (2008).

⁷ Anders (2002).

⁸ Transparency International (2008).

The Government of Sierra Leone established a National Anti-Corruption Strategy in 2005, which examined corruption and its causes, and provided a comprehensive national programme to combat corruption.

Although these works are generally useful, they are all specific to one country and lack a comparative dimension.

Melissa discusses anti-corruption commissions with a focus on their important role in promoting citizen participation in the fight against corruption, and in this manner serving as an important means of regaining public confidence in government, and changing cultural perceptions towards corruption and towards the rule of law.⁹

Melissa wrote a second paper which identifies the various models and factors that may make anti-corruption commissions effective in African society.¹⁰ Those papers address anti-corruption commissions in general, but they do not compare their powers and strategies in combating corruption.

⁹ Melissa (2009a).

¹⁰ Melissa (2009b).

Spector deals with fighting corruption in developing countries.¹¹ However, the book is limited to strategies of combating corruption in different sectors of society. It does not contain any significant material on the anti-corruption agencies. The global effort to combat corruption in Africa is discussed by Mbaku, but he does not examine any anti-corruption agency.¹²

The anti-corruption agencies are new and, as is evident, there is little literature on them. To date, there has not been a comparative study of the anti-corruption agencies in Rwanda, Sierra Leone and Malawi. This research paper is a useful complement to the existing publications, especially on strategies and powers needed to combat corruption in Africa.

1.6 Scope of the Research

This research paper is limited to a comparative analysis of the laws, the strategies and powers being used by the anti-corruption agencies of Rwanda, Sierra Leone and Malawi.

¹¹ Spector (2005).

¹² Mbaku (2007).

1.7 Research Methodology

This study focuses on the analysis of relevant primary and secondary materials. It adopts a conventional 'law library' research methodology. It includes legislation on the subject from the countries of study, as well as books, articles, academic papers and reports on corruption. Internet sources have been consulted frequently.

1.8 Chapter Outlines

This paper contains three further chapters:

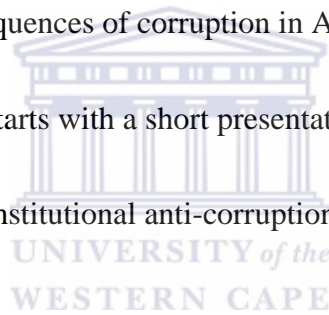
- The second chapter focuses on the legislative and institutional anti-corruption framework in Rwanda, Sierra Leone and Malawi. In this chapter, the concept of corruption is explored in relation to laws being used by the aforementioned countries;
- The third chapter analyses critically the powers and strategies employed to combat corruption in those three countries;
- The fourth and last chapter makes recommendations and concludes the research.

CHAPTER TWO

THE LEGISLATIVE AND INSTITUTIONAL ANTI-CORRUPTION

FRAMEWORK

This chapter focuses on the legislative and the institutional anti-corruption framework in Rwanda, Sierra Leone and Malawi. Although corruption is not the substantive part of this work, anti-corruption agencies in Rwanda, Sierra Leone and in Malawi cannot be discussed without analysing the concept of corruption in relation to laws in force in those countries and the consequences of corruption in African society. Therefore, it is appropriate that this chapter starts with a short presentation on corruption and continues with the legal and institutional anti-corruption frameworks.

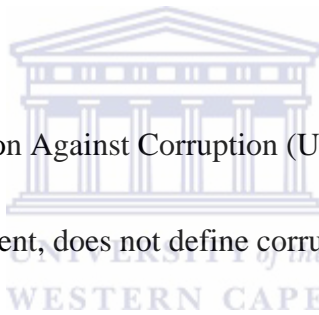


2.1 The Concept of Corruption

In order to be able to analyse the powers and strategies of anti-corruption agencies, it is necessary to understand the concept of corruption, its forms, causes and costs in African society.

2.1.1 Definition of Corruption

Corruption is a multifaceted phenomenon that is difficult to define. The difficulty of finding a single comprehensive definition of corruption derives from the complexity of the concept itself.¹³ Corruption has been interpreted by many scholars, and has been given different meanings. However, those scholars have not yet reached a universally accepted definition of corruption. Its definition varies from country to country and remains largely contextual.¹⁴



The United Nations Convention Against Corruption (UNCAC), which is the one global anti-corruption instrument, does not define corruption. It adopts a descriptive approach, encompassing a variety of forms of corruption. It includes bribery in public sector, embezzlement, misappropriation or other diversion of property by a public official, trading in influence, abuse of function, illicit enrichment, bribery in the private sector, embezzlement of property in the private sector, laundering of proceeds of crime, concealment and obstruction of justice.¹⁵ Anti-corruption laws in all the

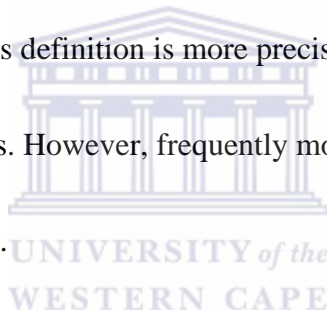
¹³ World Bank (1997: 8).

¹⁴ Gould (1991: 467).

¹⁵ Articles 14-25 of UNCAC.

countries under discussion do not define corruption. They have adopted a similar approach to UNCAC, specifying various forms of corruption.

Even if it may be hard to define corruption precisely, it is generally easy to recognise it. The World Bank defines corruption as ‘the abuse of public office for private gain’. This definition was chosen because it includes most types of corruption that the Bank encounters.¹⁶ Transparency International defines corruption as ‘the abuse of entrusted power for private gain’.¹⁷ This definition is more precise and covers corruption in both public and private sectors. However, frequently more attention is given to corruption in the public sector.



2.1.2 Forms of Corruption

Corruption can take a variety of forms. Different classifications have been made.

They include corruption that may occur when a bribe is paid to or sought by public officials for performing their legal duties or for committing illegal acts. Moreover, the difference has been established between corruption at the national level and those

¹⁶ World Bank (1997: 8).

¹⁷ Transparency International, available at

http://www.transparency.org/news_room/faq/corruption_faq#faqcorr1 [accessed on 6 May 2010].

forms of corruption with international dimensions. Distinctions are made also between petty corruption and grand corruption.¹⁸ In addition, passive and active corruption, embezzlement and fraud, extortion, favouritism and nepotism are considered to be the most commonly known forms of corruption highlighted by the United Nations Office on Drugs and Crime (UNODC).¹⁹

All these forms of corruption, as well as the corresponding penalties, are detailed in the Rwandan, Sierra Leonean and Malawian anti-corruption laws.²⁰ However, in Rwanda, favouritism and nepotism are considered as offences related to corruption, not as corruption itself.²¹



2.1.3 Causes of Corruption

There is no agreement on the causes of corruption. They vary from country to country. The World Bank states that the causes of corruption ‘are always contextual, rooted in a country’s policies, bureaucratic traditions, political development, and

¹⁸ Parliament Centre and World Bank Institute (2000: 21).

¹⁹ UNODC (2004: 10-15).

²⁰ See sections 26-52 of the Sierra Leonean Anti-Corruption Act of 2008; sections 24-36 of Corrupt Practices Act of Malawi of 2004; articles 10-16 of Rwandan Anti-Corruption Law no. 23/2003.

²¹ Article 22 of the Rwandan Anti-Corruption Law no. 23/2003.

social history'.²² Usually, opportunities for corruption exist where public officials have a monopoly of power and wide discretion in performing their functions, and are not accountable for their actions.²³ This idea is emphasised by Klitgaard in the following equation: $C = R + D - A$, where C refers to Corruption, R to Economic Rent, D to Discretionary Power and A to Accountability.²⁴

Moreover, corruption arises where there are no effective mechanisms of detecting and punishing it. It also arises whenever the salaries of and incentives for public officials are low.²⁵ However, corruption occurs even among officials who are well paid. Such officials usually resort to corruption as a means of maintaining their status and mode of life.²⁶ In many societies, there are cultural practices that are conducive to corruption, such as the culture of appreciation for help given.²⁷

²² World Bank (1997: 12).

²³ Morgan (1998: 13).

²⁴ Klitgaard (1998: 75) cited in Myint (2000: 39).

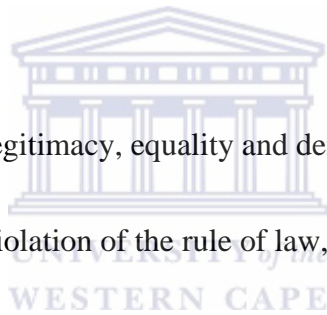
²⁵ Center for Democracy and Governance (1999: 7).

²⁶ Mustafa (2005: 94).

²⁷ In Sierra Leone, for instance, the culture of collective contribution to entertain important guests can be used to charge illegal taxes by the local leaders. Also, the culture of 'shaking hands' or the 'token gifts' during the meeting may lead to misuse. See National Anti-Corruption Strategy of Sierra Leone (2005: 13). In Malawi, the culture of rendering service to a relative and gift giving as an expression of kindness contribute towards nepotism and favoritism. See Mustafa (2005: 95).

2.1.4 Consequences of Corruption

Corruption has many severe negative effects on economic growth, service delivery, investment and sustainable development. It weakens the delivery of basic public services, resulting in fundamental human rights, usually of the poor (such as the right to fair treatment), being infringed.²⁸ Due to their powerlessness and inability to pay the price of corruption, poor people cannot obtain the services they need and thus their rights are violated.



Corruption also undermines legitimacy, equality and democratic values. It encourages bad governance through the violation of the rule of law, accountability and transparency.²⁹

Moreover, corruption increases the cost of doing business, undermines public resources, and thus radically reduces revenues accumulated by the state. Corruption also expands poverty and makes it difficult for ordinary people to get ahead on their

²⁸ Bryan, p8. Available at www.tearfund.org/webdocs, accessed on 10 May 2010.

²⁹ Abubakar (2006: 8).

own efforts.³⁰ Particularly, corruption undermines the economic growth of a country. For instance, it has been estimated that Malawi loses one third of its annual revenues, and in the last 15 years it lost MK 10 billion, through corrupt practices.³¹ Corruption also leads to high expenses for government. In a corrupt country, the quality of public infrastructure usually is low, requiring continuous repair, and this may result in adverse budgetary and monetary consequences.³²

In sum, corruption is a serious problem which has many adverse effects on the economic growth of a country and the well-being of society. If not curbed, corruption can lead to the collapse of the state. The sections which follow address the laws and institutions set up in order to deal with corruption in Rwanda, Sierra Leone and Malawi.

³⁰ Gbeng (2007: 4). As an example, Sierra Leone is a country rich in diamonds and gold but due to the culture of systematic corruption of the former governments, the economic growth of the country has been undermined and thus the country is placed among the poorest countries of the world. For more information see Bryan (10-11) available at www.tearfund.org/webdocs, accessed on 10 May 2010.

³¹ Mustafa (2005: 93).

³² Parliamentary Centre and World Bank Institute (2000: 28). See also Vito and Hamid (1997: 8).

2.2 Anti-Corruption Legal Framework

In this section a number of international and regional anti-corruption instruments and the anti-corruption laws of Rwanda, Sierra Leone and Malawi are discussed.

2.2.1 International and Regional Anti-Corruption Instruments

UNCAC is the first global anti-corruption document which helps countries to fight corruption in the private and public sectors. It was adopted formally in 2003.³³ The Convention entered into force in 2005. Its objectives are to prevent and combat corruption by promoting and strengthening international co-operation, integrity, accountability and good management of public property.³⁴ The Convention rests on four main pillars: prevention, criminalisation, international co-operation and technical assistance, and asset recovery. The Convention covers both the private and public sectors. In its preventive measures, it requires states parties to develop anti-corruption policies and to ensure the existence of an agency or agencies, independent and specialised, to implement those policies.³⁵ Moreover, every state party to the Convention is required to take the necessary measures, including legislative and

³³ UN General Assembly Resolution 58/4 of 31 October 2003.

³⁴ Article 1 of UNCAC.

³⁵ Articles 5 and 6 of UNCAC.

administrative measures, to ensure the implementation of its obligations under the Convention.³⁶

The African Union Convention on Preventing and Combating Corruption (AU Convention) is a regional instrument which was adopted in 2003 and which entered into force in 2006. Like UNCAC, the AU Convention aims at preventing, punishing, and detecting corruption in both the public and private sectors, and promoting international cooperation.³⁷ The states parties undertake to combat corruption by ensuring transparency and accountability in public affairs. Under this Convention, the states parties are obliged to adopt legislative measures to establish national anti-corruption authorities or agencies.³⁸

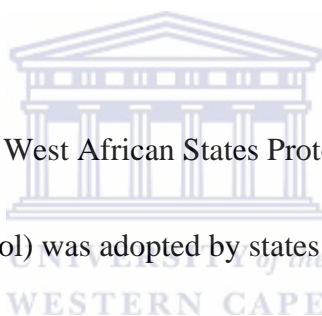
The Southern African Development Community Protocol against Corruption (SADC Protocol) is the regional anti-corruption instrument which was adopted by the heads

³⁶ Article 65(1) of UNCAC.

³⁷ Article 2 of the AU Convention.

³⁸ Article 5 of the AU Convention.

of states and government members of SADC in 2001.³⁹ It became operational in July 2005. The SADC Protocol is structured similarly to the other anti-corruption instruments discussed above. It has the same objectives. It contains many provisions which mainly focus on preventive measures, criminal offences, international co-operation, proceeds of crime and monitoring. Signatories to the SADC Protocol undertake to create institutions responsible for preventing, detecting, punishing and eradicating corruption.⁴⁰



The Economic Community of West African States Protocol on the Fight against Corruption (ECOWAS Protocol) was adopted by states parties in 2001.⁴¹ However, the Protocol has not yet entered into force because the required number of ratifications has not yet been reached.⁴² Its objectives include promoting the development of effective anti-corruption mechanisms, increasing co-operation between states and promoting the harmonisation and co-ordination of national

³⁹ The SADC Protocol was signed by all members of SADC: Angola, Botswana, the Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

⁴⁰ Article 4(1)(g) of the SADC Protocol.

⁴¹ ECOWAS members are Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo.

⁴² The entry into force of the Protocol depends on its ratification by at least 9 member states (Article 22 of the ECOWAS Protocol).

anti-corruption laws and policies.⁴³ The ECOWAS Protocol, like the instruments mentioned above, requires states parties to establish independent and specialised anti-corruption agencies.⁴⁴

All the anti-corruption instruments noted above require states parties to establish anti-corruption preventive measures, including the adoption of anti-corruption laws and the establishment of independent anti-corruption agencies. This requirement emphasises the crucial role of anti-corruption agencies in preventing and combating corruption. The following sections focus on the national anti-corruption legislation of Rwanda, Sierra Leone and Malawi.



2.2.2 National Anti-Corruption Legal Framework of Rwanda

The fight against corruption in Rwanda is a governmental priority. The political will to combat corruption has been demonstrated by a number of anti-corruption policies and measures focusing on the establishment and strengthening of an anti-corruption legal framework.⁴⁵ Moreover, in 2004 the government of Rwanda ratified the AU

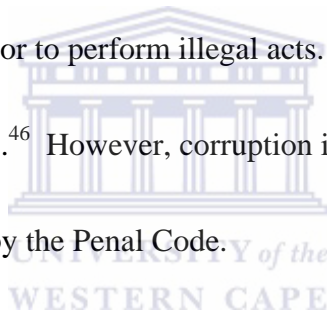
⁴³ Article 2 of the ECOWAS Protocol.

⁴⁴ Articles 5-15 of the ECOWAS Protocol.

⁴⁵ Marie (2008: 4).

Convention, and in 2006 it ratified UNCAC. In order to combat corruption effectively in the country, several laws and regulations have been put in place.

Rwanda adopted a Penal Code in 1977, which, *inter alia*, punishes the crime of corruption. In its provisions, only passive corruption committed by public officials and magistrates or judges is punishable. It includes the practices of soliciting, receiving and accepting any profit by public officials in order to carry out their duties, to refuse to do their functions or to perform illegal acts. It punishes also the embezzlement of public funds.⁴⁶ However, corruption in the private sector and active corruption are not addressed by the Penal Code.



To complement the provisions of the 1977 Penal Code, in 2003 the Parliament of Rwanda enacted Law no. 23/2003 of 15 August 2003, aimed at preventing, suppressing and punishing corruption and related offences in the private and public sectors. This law does not define corruption but it identifies preventive measures, corrupt practices which are grouped into passive and active corruption, offences related to corruption and corresponding penalties.

⁴⁶ Articles 220-227 of Penal Code of Rwanda of 1977.

This law requires public and private institutions and international organisations operating in Rwanda to set up mechanisms for preventing corruption and related offences. They must have a procedural manual, a code of conduct, an internal audit department and ensure equal treatment of those who seek services. Furthermore, the press is under obligation to become involved in the prevention of corruption by publicising any act of corruption and related offences.⁴⁷

The law distinguishes between active and passive corruption. Passive corruption includes any act by any person who has explicitly or implicitly solicited, indirectly or directly received a gift or any other profit for himself/herself or for others, or who has accepted the gift as a promise in order to render a service within his or her functions. It also includes any act committed by any person in order to accomplish an illegal act or to omit performing his or her duties.⁴⁸

Active corruption occurs when a person 'has explicitly or implicitly offered, indirectly or directly proposed a gift or any other illicit profit, to a person in charge of a

⁴⁷ Articles 3-9 of the Rwandan Anti-Corruption Law no. 23/2003.

⁴⁸ Articles 10-13 of the Rwandan Anti-Corruption Law no. 23/2003.

function, mission or mandate or has promised the gift or any illegal benefit in order to provide him or her or somebody else a service within his or her functions'.⁴⁹ That gift or unlawful profit may be offered also in order for the targeted person to deliver an illegitimate service or to omit carrying out his or her usual duties.

From the above, it is clear that passive corruption is committed by the person in charge of a function, whereas active corruption is committed by anybody else.

The acts of demanding, receiving in excess of what is provided by the law, exempting from tax or non-taxation, giving away public property for free or at a very low price by a public agent, trading in influence, laundering the proceed of corruption, favouritism and nepotism, illicit enrichment, and seeking of benefits by employees from activities outside their responsibilities are considered all to be and are punishable as offences related to corruption under the Rwandan Anti-Corruption Law.⁵⁰

The law contains also a provision on the collection of evidence, protection of witnesses and the liability of legal entities. It provides penalties for each corrupt

⁴⁹ Articles 14-16 of the Rwandan Anti-Corruption Law no. 23/2003.

⁵⁰ Articles 17-27 of the Rwandan Anti-Corruption Law no. 23/2003.

practice and related offence. An accomplice to corruption is also punishable in principle.⁵¹

Compared to other anti-corruption laws that will be analysed below (Malawi and Sierra Leone), the Rwandan Anti-Corruption Law is not detailed and does not include certain corrupt acts, such as embezzlement and conflict of interest. The law also does not have provisions concerning co-operation in corruption matters and asset recovery.

This law needs to be amended.



In addition to the Penal Code and the Anti-Corruption Law, the government of

Rwanda has adopted laws and regulations aimed at preventing corruption in public affairs. For instance, Law no. 12/2007 of 27 March 2007 on public procurement was passed in order to limit opportunities for corruption in procurement procedures.

Rwanda also adopted Organic Law no. 61/2008 of 10 September 2008 on Leadership Code of Conduct which specifies the conduct prohibited for a leader; and Law no. 12

⁵¹ Chapters III-V of the Rwandan Anti-Corruption Law no. 23/2003.

bis of 23 March 2009 on the prevention and penalisation of the crime of money laundering and financing terrorism.⁵²

2.2.3 National Anti-Corruption Legal Framework of Sierra Leone

The government of Sierra Leone manifested its will to combat corruption by signing and ratifying UNCAC and the AU Convention. It also adopted national laws to deal with the prevention and punishment of corruption in the public and private sectors.



In 2000, the Sierra Leonean Government enacted the Anti-Corruption Act. This Act provided for the establishment of an Anti-Corruption Commission, its investigative powers and composition, and the punishable corrupt practices.⁵³ In 2008, this Act was amended by an Act which contains many detailed provisions on the functions and powers of the Commission, corruption offences, the declaration of assets, and co-operation and mutual assistance in combating corruption.⁵⁴

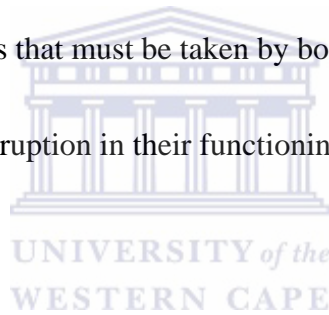
⁵² For more details consult <http://www.amategeko.net/> or <http://www.ombudsman.gov.rw/en/legislation.php>.

⁵³ The Sierra Leonean Anti-Corruption Act of 2000.

⁵⁴ The Sierra Leonean Anti-Corruption Act of 2008.

Unlike the Rwandan Anti-Corruption Law, the Sierra Leonean Anti-Corruption Act identifies and explains clearly many corrupt practices, such as corrupt acquisition of wealth, use of influence to obtain contracts, bid rigging, the misappropriation of public or donor property or funds, impeding investment, the abuse of office and position, and conflict of interest.⁵⁵

Contrary to the Rwandan Anti-Corruption Law, the Sierra Leonean Anti-Corruption Act does not contain measures that must be taken by both the private and public sectors in order to prevent corruption in their functioning.



In addition to the Anti-Corruption Act, in 2004 the government of Sierra Leone enacted the Public Procurement Act with the aim of regulating and harmonizing the public procurement processes in the public service. Moreover, the Sierra Leonean Government adopted a National Anti-Corruption Strategy in 2005.

⁵⁵ For more details see sections 25 and 26 of the Sierra Leonean Anti-Corruption Act of 2008.

2.2.4 National Anti-Corruption Legal Framework of Malawi

After the advent of multi-party democracy in 1994, Malawi has demonstrated the will to combat corruption by declaring a total war on it. Thus, a number of mechanisms and measures have been introduced to combat corruption and to promote public accountability and transparency.⁵⁶

The Malawian Constitution, adopted in 1994, requires the government to promote the welfare and development of the people by adopting and implementing policies and legislation aimed at achieving, among other issues, public trust and good governance. This requirement necessitated the introduction of measures to guarantee accountability and transparency in public institutions.⁵⁷

In this regard, Malawi has ratified UNCAC, the AU Convention and the SADC Protocol. In 1995, the Malawian Parliament adopted a statute called the Corrupt Practices Act, which was amended in 2004. Also, in 2003 the Public Procurement Act was passed under which the Office of the Director of Public Procurement was created

⁵⁶ Mustafa (2005: 92).

⁵⁷ Article 13 of the Constitution of the Republic of Malawi of 1994.

to promote efficiency and transparency in the public procurement system. Malawi established also a National Anti-Corruption Strategy in 2008. Furthermore, a Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act, which was passed in 2006, criminalises money laundering and provides for the establishment of a Financial Intelligence Unit.

The Malawian Penal Code criminalises active and passive corruption. It criminalises also extortion by public officers.⁵⁸ Likewise, the Corrupt Practices Act criminalises a range of corrupt practices including extortion, active and passive corruption, influence peddling, conflict of interest and misuse of public office.⁵⁹ The Corrupt Practices Act contains also provisions on the Anti-Corruption Bureau, its composition, powers and functions.⁶⁰

⁵⁸ Articles 90-92 of the Malawian Penal Code of 1974. These articles penalise passive and active corruption by punishing a public servant or any other person charged with performance of any duty who solicits, receives, or obtains, or agrees or attempts to receive or obtain any property or benefit for private gain; and any person who corruptly gives, confers or procures, or promises or offers to give or confer, or to procure or attempt to procure, to any person employed in the public service.

⁵⁹ Part 4 of the Malawian Corrupt Practices Act of 1995. The Act was amended in 2004.

⁶⁰ Parts 2 and 3 of the Malawian Corrupt Practice Act of 2004.

A major factor that demonstrates the political will to combat corruption is the existence of effective anti-corruption laws.⁶¹ The governments of Rwanda, Sierra Leone and Malawi have shown that will by adopting a number of anti-corruption laws, as discussed above, which criminalise corruption and related offences. They have also ratified international, regional and sub-regional conventions and protocols aimed at combating corruption.

A comprehensive set of anti-corruption laws is, indeed, a requirement for any country committed to address corruption effectively. The national anti-corruption laws analysed in the previous part still have gaps to be filled. Unlike Rwanda, the anti-corruption laws of Sierra Leone and Malawi do not contain preventive measures.

The Rwandan Anti-Corruption Law does not include all forms of corruption. It is limited to active and passive corruption and to other practices which are considered as offences related to corruption, whereas the anti-corruption laws of Malawi and Sierra Leone are more detailed and include a large number of corrupt practices.

⁶¹ Parliament Centre and World Bank Institute (2000: 23).

UNCAC and the AU Convention make specific reference to the establishment of a body or bodies specialised in anti-corruption work.⁶² As members of these conventions, the governments of Rwanda, Sierra Leone and Malawi have created the prescribed anti-corruption agencies. Those agencies are the focus of the following section.

2.3 Anti-Corruption Institutional Framework

Under article 6 of UNCAC, countries are required to guarantee the existence of an anti-corruption agency or agencies. Moreover, in article 36, UNCAC obliges states parties to establish specialised bodies or persons to combat corruption. These two articles, although separate, create a clear obligation for states parties to ensure the existence of a specialised agency or agencies to prevent and combat corruption.

Countries may choose to establish one or many specialised institutions. The African effort to implement anti-corruption policies and to address corruption forcefully has been marked by the creation of specialised agencies charged with the fight against corruption. They are named differently, but commonly they are dedicated to preventing, detecting and punishing corruption.

⁶² Articles 6-36 of UNCAC and article 20 of the AU Convention. Article 5(h) of the ECOWAS Protocol and article 4(1)(g) of the SADC Protocol also call for the creation of anti-corruption agencies.

An anti-corruption agency generally means ‘a publicly funded body of a lasting nature with a specific mission to fight corruption and reduce opportunities for corruption by means of prevention and repression strategies’.⁶³ This concept is wide and includes anti-corruption agencies with repressive and preventive authority, as well as those with only preventive or repressive powers. It may be deduced from this definition that an anti-corruption agency is a public and permanent institution.

The main functions that may be attributed to an anti-corruption agency, as stated in article 6 of UNCAC include the following: implementation of anti-corruption policies, oversight⁶⁴ and co-ordination of implementation of anti-corruption policies, and increasing public awareness of corruption and disseminating knowledge about the prevention of corruption.

According to their main functions, anti-corruption agencies may be classified into three models:

- Multi-purpose agencies with law enforcement powers and preventive functions:
-

⁶³ De Sousa (2008: 3).

⁶⁴ There are different types of oversight: intra-institutional, cross institutional, and national. For more details see U4 ISSUE (2009: 8).

This model represents anti-corruption agencies which perform preventive, education and investigative functions. The adoption of anti-corruption policies, their analysis and technical assistance are the preventive methods, which, in addition to monitoring and investigation, are conducted by this type of anti-corruption agency.

- Law enforcement departments: This model is based on forms of specialisation in investigations or prosecutions or in both fields. Thus, the functions of this model of anti-corruption agency can be executed separately in detection and investigation bodies or in prosecution bodies, or can be performed by one body.
- Exclusive preventive institutions: This model is limited to institutions that have one or several corruption prevention functions. These institutions do not have law enforcement powers.⁶⁵

The implementation of anti-corruption policies involves a number of public institutions whose overall functions are wider than corruption issues, for example, those in charge of public procurement, management of public finance and auditing. Those institutions deal partially with corruption. This section will discuss

⁶⁵ OECD (2007: 7).

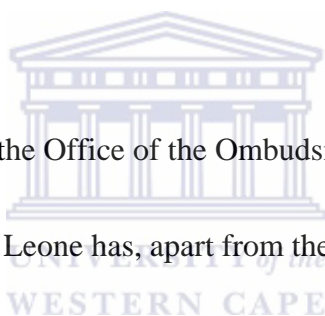
anti-corruption institutions, with the focus on specialised anti-corruption agencies in Rwanda, Sierra Leone and Malawi.

The government of Rwanda has established many public institutions to promote accountability and to reduce opportunities for corruption and related offences. Those institutions include the Office of the Ombudsman; the Auditor-General with task of monitoring whether the revenues, finance and the expenditures of the government are in conformity with the law and regulations in place; the Rwanda Revenue Authority Anti-smuggling Department aiming at minimising revenue losses by deterring, detecting and preventing smuggling and tax evasion; and the Rwanda Public Procurement Authority tasked with combating corruption by ensuring transparency in public tenders. Unlike the Office of the Ombudsman, which functions as the principal actor and supervisor in combating corruption in the country as a whole, the other institutions have different primary tasks.⁶⁶

Correspondingly, the Sierra Leonean and Malawian governments have created multiple institutions charged with the fight against corruption. Thus, in order to build

⁶⁶ For further information consult www.rra.gov.rw; www.oag.gov.rw and www.rppa.gov.rw.

and maintain transparency and trust in the public procurement system, in tax collection, in public finance and in administration, the government of Sierra Leone established the National Public Procurement Authority, the National Revenue Authority, the Office of Auditor-General, and the Office of the Ombudsman. In the same way, the government of Malawi has created the National Audit Office, the Malawian Revenue Authority, the Office of Director of Public Procurement, and the Office of the Ombudsman.



In contrast to Rwanda, where the Office of the Ombudsman is considered as an anti-corruption agency, Sierra Leone has, apart from the Office of the Ombudsman, an Anti-Corruption Commission which is the leading institution in curbing corruption, and Malawi has an Anti-Corruption Bureau. In Rwanda, the Office of the Ombudsman is a hybrid institution empowered to combat injustice and corruption, whereas in Malawi and in Sierra Leone, the Office of the Ombudsman deals only with injustice and maladministration.

The remainder of this section focuses on the Office of the Ombudsman of Rwanda, the Sierra Leonean Anti-Corruption Commission and the Malawian Anti-Corruption

Bureau as anti-corruption agencies. It examines their legal functions, the appointment of their members, their independence, their mandates, their human resources and their reporting obligations.

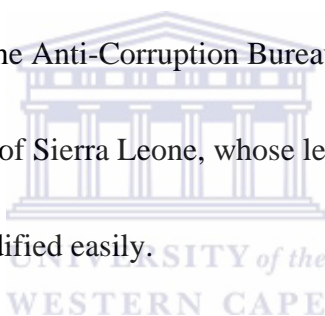
2.3.1 Legal Functions

The establishment of the Office of the Ombudsman is provided for in article 182 of the Constitution of the Republic of Rwanda of 2003. Its composition and functioning are provided for by Law no. 25/2003 of 15 August 2003 (as amended and completed by Law no. 17/2005 of 18 August 2005), establishing the organisation and the functioning of the Office of the Ombudsman. This law contains details of the functions and powers of the Office of the Ombudsman. The institution was initiated by the Constitution but established by a specific law. The Office became operational in 2004.

The Malawian Anti-Corruption Bureau was created by the Corrupt Practices Act of 1995, which was amended by the Corrupt Practices Act of 2004. There is no a specific provision in the Constitution introducing its establishment. The same is true of the Sierra Leonean Anti-Corruption Commission, which was established by the

Anti-Corruption Act of 2000, as amended by the Anti-Corruption Act of 2008. These Acts lay down the organisation and the functions of anti-corruption agencies in Malawi and Sierra Leone. The Malawian Anti-Corruption Bureau started its operations in 1996, while the Sierra Leonean Anti-Corruption Commission began its operations in 2000.

Being constitutionally based, the Office of the Ombudsman of Rwanda enjoys more legitimacy and stability than the Anti-Corruption Bureau of Malawi and the Anti-Corruption Commission of Sierra Leone, whose legal bases are the ordinary laws which can be amended or modified easily.

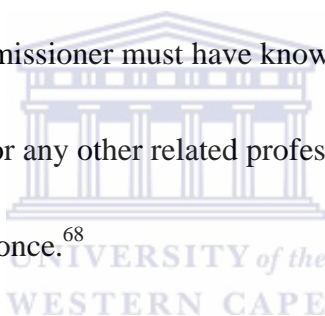


2.3.2 Composition and Appointment

The Office of the Ombudsman of Rwanda is composed of the Chief Ombudsman and two Assistant Ombudsmen. The candidates are chosen by the Cabinet and the choices are submitted to the Senate for approval. After being approved, the candidates are appointed by Presidential order. The Chief Ombudsman serves a term of four years, while the Assistant Ombudsmen serve a term of three years each, renewable once. To

be eligible, the candidates are required to be honest, wise and capable.⁶⁷ However, unlike the Sierra Leonean Anti-Corruption Act, the Ombudsman Law of Rwanda does not present clear and practical criteria of wisdom, capability and honesty.

The Sierra Leonean Anti-Corruption Commission is made up of a Commissioner and a Deputy Commissioner, both of whom are appointed by the President and approved by the Parliament. The Commissioner has to be a legal practitioner with ten years' experience. The Deputy Commissioner must have knowledge and experience of ten years in accounting, banking or any other related profession. Both of them have a term of five years, renewable once.⁶⁸



The Malawian Anti-Corruption Bureau consists of a Director and a Deputy Director. They are appointed by the President on terms and conditions he or she thinks fit.⁶⁹ It is fair to say that they serve for an indeterminate period and the conditions for eligibility are not clearly predetermined by the law.

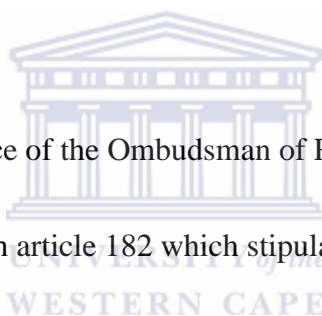
⁶⁷ Article 1 of the Ombudsman Law no. 17/2005.

⁶⁸ Sections 3-4 of the Sierra Leonean Anti-Corruption Act of 2008.

⁶⁹ Sections 4, 5 and 7 of the Corrupt Practices Act of Malawi of 2004.

2.3.3 Independence

To be independent, the anti-corruption agencies should be protected from political interference. The level of independence can vary according to specific conditions. Thus, the independence of an anti-corruption agency can be measured through its structural and operational autonomy, as well as its clear legal basis. The procedures for the appointment and removal of members of an agency can also ensure its independence.⁷⁰



The independence of the Office of the Ombudsman of Rwanda is guaranteed by the Constitution of the Republic in article 182 which stipulates that ‘the Office of the Ombudsman shall be an independent public Institution’. This is emphasised by article 3 of Law no. 25/2003, in terms of which the Office is shielded from any directive from any other institution. Correspondingly, the Sierra Leonean Anti-Corruption Commission and Malawian Anti-Corruption Bureau enjoy autonomy and independence as provided for by the laws establishing them.⁷¹

⁷⁰ OECD (2007: 6).

⁷¹ Section 9 of the Sierra Leonean Anti-Corruption Act of 2008 states that the Anti-Corruption Commission shall act independently, impartially and in the public interest; section 4(3) of the Corrupt Practices Act of Malawi of 2004 says that the Bureau exercises its functions independently of direction or interference of any other person or authority.

The independence of these agencies is governed by the way in which their members are appointed. As mentioned above, the Chief Ombudsman and Assistant Ombudsmen of Rwanda are approved by the Senate and appointed by Presidential order. Similarly, in Sierra Leone, the Commissioner and Deputy Commissioner are appointed by the President and approved by the Parliament, and in Malawi the Director and Deputy Director are appointed by the President and approved by the Public Appointment Committee of Parliament. Their independence may be affected also by the way in which members of agencies may be removed from office. In Rwanda, the Ombudsman and Assistant Ombudsmen can be removed from office by the Senate when requested by the Cabinet or by one third of the members of the Senate. In Sierra Leone and in Malawi, members of the anti-corruption agencies can be removed from office by the President but all removals must be confirmed by Parliament.⁷² These procedures of appointment and removal, if respected, may promote transparency, and the independence of an anti-corruption agency may be secured. The removal procedures ensure that the representatives of these institutions have security of tenure. They cannot be removed from office by an executive decision, without such decision being analysed and approved by a legislative organ.

⁷² Article 2 of the Ombudsman Law no. 17/2005, sections 3-4 of the Sierra Leonean Anti-Corruption Act of 2008, and sections 5-6 of the Corrupt Practices Act of Malawi of 2004.

Their independence is ensured also by the fact that their representatives, such as Chief Ombudsman and Assistant Ombudsmen, Commissioner and Deputy Commissioner, Director and Deputy Director and other officers, may not be sued for any decision taken or any act done in good faith in the fulfilment of their functions.⁷³

Generally speaking, the agencies are shielded from political interference by the fact that the procedures for the appointment and removal of their chief representatives involve different power-holders. The wording of the statutory provisions pertaining to their appointment and removal also provide for checks and balances. Moreover, the anti-corruption agencies under discussion are well placed, in the sense that they are permanent, separate institutions with specific mandates. Hence, the protection of their independence in the exercise of their duties seems to be guaranteed. However, the appointment by a single politician, for instance by the President without any determinant conditions, as it is for the Director and the Deputy Director of the Anti-Corruption Bureau in Malawi, would raise questions about the independence of that agency. Such a practice may be considered to be an opportunity for abuse where

⁷³ Article 12 of the Ombudsman Law no. 17/2005, section 20 of the Sierra Leonean Anti-Corruption Act of 2008, and section 22 of the Corrupt Practices Act of Malawi of 2004.

the politician may appoint a person for his own interests, that is, an appointment without integrity.

2.3.4 Mandates

An independent anti-corruption agency should be vested with a clear mandate. The Office of the Ombudsman of Rwanda is mandated to prevent and fight against injustice, corruption and related offences in both public and private institutions.

Hence, the Office is required to act as a connection between those institutions and citizens, receive citizen's complaints and provide possible solutions, receive annually the declarations of assets of high-ranking and other officials, and provide advice to the Cabinet and other institutions as regards reinforcement and improvement of anti-corruption policies. Furthermore, the Office is under an obligation to sensitise people about corruption, to promote good governance and to ensure the implementation of the leadership code of conduct.⁷⁴

The mandate of the Anti-Corruption Commission of Sierra Leone is to take all measures necessary for the prevention, suppression and eradication of corruption and

⁷⁴ Article 3 of the Ombudsman Law no. 17/2005.

corrupt practices in the country. Further, the Commission has a duty to investigate suspected corruption and corrupt practices and to prosecute them. Like the Office of the Ombudsman, the Commission receives complaints on corruption and declarations of assets, advises institutions and any person on anti-corruption procedures, and educates the citizens about the danger of corruption.⁷⁵

The Malawian Anti-Corruption Bureau was established to investigate suspected corrupt practices and to prosecute them, to sensitise the public about the evils of corruption, and to conduct all possible corruption prevention activities in public and private institutions. Like the anti-corruption agencies referred to above, the Bureau examines the practices and functioning of public bodies in order to detect corruption.⁷⁶

Unlike the Office of the Ombudsman of Rwanda, which is mandated to fight injustice and corruption, the Sierra Leonean Anti-Corruption Commission and Malawian Anti-Corruption Bureau are only responsible for combating corruption and related

⁷⁵ Section 7 of the Sierra Leonean Anti-Corruption Act of 2008.

⁷⁶ Section 10 of the Corrupt Practices Act of Malawi of 2004.

offences. However, the Office of the Ombudsman, unlike the Anti-Corruption Commission of Sierra Leone and Anti-Corruption Bureau of Malawi, can investigate corruption and related offences but it cannot prosecute them. The Malawian Anti-Corruption Bureau, contrary to the two other agencies, is not tasked to receive and verify the declarations of assets of public officials.

2.3.5 Organisation and Human Resources

In order to fulfil its mandate, the Anti-Corruption Commission of Sierra Leone has arranged its work into three technical departments. The Systems and Process Review Department is a preventive department tasked with evaluating the practices of public and private institutions and providing training aimed at corruption prevention. In addition, the Commission has a Public Education and Outreach Department in charge of educating people about the dangers of corruption; and an Intelligence, Investigations and Prosecutions Department. Besides the three technical departments, the Commission also has a Department in charge of ensuring the implementation of the National Anti-Corruption Strategy and a Support Services Department. Each department is divided into different but overlapping units.⁷⁷

⁷⁷ The Sierra Leonean Anti-Corruption Commission website, <http://www.anticorruption.gov.sl/>.

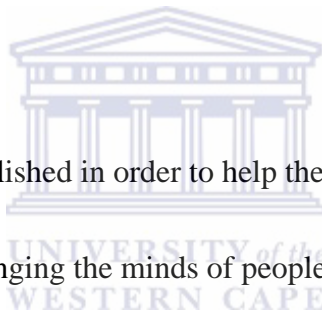
The Office of the Ombudsman of Rwanda operates in different units. It is composed of five operational units, namely, the Declaration of Assets Unit which receives and verifies the declarations of assets; the Fighting Against Corruption Special Unit, in charge of investigating corruption cases; the Monitoring of Interdictions and Incompatibilities of Senior Officials Unit, working to ensure the implementation of the Leadership Code of Conduct; the Preventing and Fighting Injustice Unit, in charge of preventing injustice by receiving and analysing complaints as well as sensitising citizens about their rights; the Preventing and Fighting Corruption and Related Offences Unit, which has the responsibility to prevent corruption by evaluating the functioning of public and private institutions. Besides the operational units, the Office also has a Finance and Administration Unit.⁷⁸

In the fight against corruption, the Malawian Anti-Corruption Bureau opted for four pillars covering prevention, education, investigation and prosecution. Therefore, apart from the Administration and Finance Department, the Bureau comprises four other operational departments. It has the Corruption Prevention Department, the Public Education Department, the Prosecution Department and the Investigations

⁷⁸ The Prime Minister Order no. 18/03 of 08 April 2010 determining the Structure and the Summary of Job Positions for the Office of Ombudsman of Rwanda.

Department.⁷⁹

Unlike the Office of the Ombudsman which is centralised, the Anti-Corruption Bureau of Malawi and Anti-Corruption Commission of Sierra Leone have established branch offices. The Malawian Anti-Corruption Bureau has branch offices in Blantyre and Mzuzu. The Sierra Leonean Anti-Corruption Commission has the Bo regional office and the Makeni regional office.⁸⁰



Those offices have been established in order to help the anti-corruption agencies achieve their mandates of changing the minds of people and raising public awareness about corruption. This is the best way to facilitate the reporting of corrupt practices by minimising the cost and providing for adequate services at grass-roots level.

Concerning staffing, every anti-corruption agency is required to ensure that its staff are specially trained and motivated in order effectively to carry out their duties.⁸¹ In promoting specialisation of their staff, the anti-corruption agencies may co-ordinate

⁷⁹ Nampota (2008: 2).

⁸⁰ ACB, Communications Strategy (2007: 4), ACC website, <http://www.anticorruption.gov.sl/> .

⁸¹ Article 36 of UNCAC and article 20 of the AU Convention.

and provide the appropriate training according to the skills needed. Otherwise an absence of expected skills may result. For example, though their training was programmed, the staff of the Sierra Leone Anti-Corruption Commission lack the required investigative and statement-taking skills because their training was uncoordinated and insufficient.⁸² As mentioned in the annual report of 2008, the Commission tried to provide a number of training sessions in order to increase staff skills, especially for investigators, prosecutors and intelligence officers. However, the Commission is still in need of highly trained and skilled staff.⁸³



The problem that affects the performance of the Malawian Anti-Corruption Bureau is also inadequate and inappropriately trained staff. In 2004, the Bureau lost the lawyers it needed to prosecute corruption cases because of insufficient salary.⁸⁴ In addition, the investigators of the Bureau lack the requisite investigative skills.⁸⁵

⁸² Alan (2007: 256).

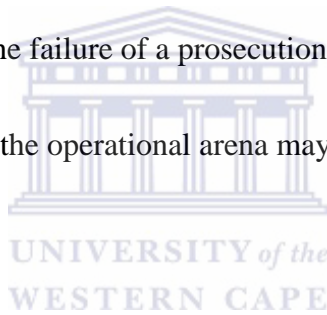
⁸³ The Annual Report of the Anti-Corruption Commission of Sierra Leone (2008: 7 and 34).

⁸⁴ Mustafa (2005: 97).

⁸⁵ Kamanga (2008: 156).

The Office of the Ombudsman of Rwanda was given investigative powers in 2009, but it does not have prosecutorial powers yet. Its investigators need to be trained adequately in order to improve their skills. Like the Anti-Corruption Bureau of Malawi, the annual report of 2008 of the Office showed that its lack of sufficient staff resulted in ineffectiveness in the accomplishment of its mandate.⁸⁶

The lack of investigative skills and of experience of presenting the corruption cases before the court may lead to the failure of a prosecution. Moreover, the lack of sufficient human resources in the operational arena may result in the malfunction of the anti-corruption agency.

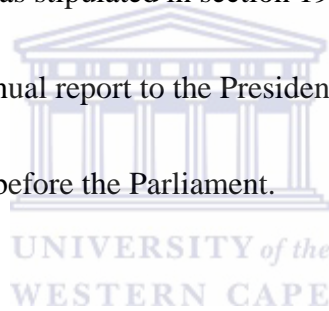


2.3.6 Reporting

An anti-corruption agency has to be accountable for its actions. It is thus crucial for it to be answerable to its supervising organ.

⁸⁶ The Annual Report of the Office of the Ombudsman of Rwanda (2008: 72).

Article 3 of the Ombudsman Law of Rwanda states that the Office of the Ombudsman must submit an annual activities report and plan of action to both the President and Parliament.⁸⁷ Furthermore, article 23 of Law no. 25/2003 of 15 August 2003 provides that a copy of the report has to be addressed to the Supreme Court and the Cabinet. Likewise, under section 21 of the Corrupt Practices Act, the Anti-Corruption Bureau of Malawi is obliged to submit to the National Assembly, the President, and the Cabinet an annual report on its activities. Contrariwise, the Anti-Corruption Commission in Sierra Leone, as stipulated in section 19 of the Anti-Corruption Act, is required only to submit an annual report to the President. It also has to cause the submitted report to be tabled before the Parliament.



The requirement that the anti-corruption agencies submit their reports to the President and other officials ensures accountability and transparency in all their operations. This is the best tool to establish and maintain public trust in the agency and prevent it from becoming corrupt itself.

⁸⁷ The Ombudsman Law no. 17/2005 of 18 August 2005.

The Sierra Leonean Anti-Corruption Commission has established an Anti-Corruption Commission Advisory Board with the mission to advise and assess annually the work of the Commission. This oversight Board, composed of members from different sectors, helps the Commission to achieve its objectives efficiently and in transparency.⁸⁸

In African society, as in any other society in the world, corruption has many negative consequences on sustainable economic development. In order to reduce such effects, the effort to combat it is needed. The governments of Rwanda, Sierra Leone and Malawi have demonstrated that effort by passing anti-corruption laws and establishing independent anti-corruption agencies.

The aforementioned anti-corruption agencies are autonomous institutions, which perform preventive, educational and investigative functions. Therefore, it is fair to say that they are created in form of the multi-purpose agency model⁸⁹ which is normally identified with the Hong Kong Independent Commission against Corruption. This

⁸⁸ Section 22 of the Sierra Leonean Anti-Corruption Act of 2008.

⁸⁹ See Section 2.3 above.

model combines in a single independent institution a multifaceted approach of education, prevention, and investigation.⁹⁰ Anti-corruption agencies under this model perform a range of functions and they are in a good position effectively to combat corruption. As stipulated in the laws creating them, they are given a number of functions aimed at combating and preventing corruption in both public and private institutions.

In addition to specialised skills and an obvious mandate, the anti-corruption agencies must have sufficient powers and use successful strategies in their anti-corruption functions. The powers, the strategies and the investigative techniques being used by anti-corruption agencies covered by this paper, as well as those needed for the effective anti-corruption programmes, are the focus of the next chapter.

⁹⁰ OECD (2007: 7 and 16).

CHAPTER THREE

POWERS AND STRATEGIES IN THE FIGHT AGAINST CORRUPTION

Corruption is a complicated problem and to combat it requires a range of strong strategies and powers. Therefore, it is important to consider a comprehensive set of measures designed to make corrupt behaviours more costly and difficult, with the purpose of reducing it. The main pillars recognised by the anti-corruption instruments referred to in Chapter Two include prevention, criminalisation, international co-operation, asset recovery and effective monitoring procedures. This chapter focuses on the powers and strategies being used by the anti-corruption agencies under discussion.



3.1 Anti-Corruption Strategies

Anti-corruption agencies are created with a mandate to adopt and implement measures to prevent and deter corruption in the country. The agencies use different mechanisms and strategies aimed at reducing the opportunities for corruption, promoting transparency in public and private affairs, and raising public awareness about the dangers of corruption. This section analyses the mechanisms of preventing corruption adopted by the anti-corruption agencies under discussion.

3.1.1 Office of the Ombudsman of Rwanda

The Office of the Ombudsman has, among others, the task of preventing and combating corruption in both public and private institutions. With regard to prevention, several mechanisms have been put in place.

3.1.1.1 Educating the Public About Corruption

Article 3(8) of Law no. 17/2005 of 18 August 2005, modifying and completing Law no. 25/2003 which established the organisation and functioning of the Office of the Ombudsman of Rwanda, stipulates that the Office has to ‘sensitise the population to refrain from corruption and other related crimes in general and to train employees either in public and private institutions or non-governmental organisations’. In carrying out this task, the Office of the Ombudsman sensitises the public through sign-posts and billboards, theatres, public conferences, and the publication and distribution of brochures and magazines. Moreover, the Office provides training for the public, students, journalists and local leaders, as well as opinion makers. The training is meant to educate people about the dangers of corruption, how to resist and report it, and to encourage transparency and good governance in public entities.⁹¹

⁹¹ The Annual Report of the Office of the Ombudsman of Rwanda (2008:11-18).

This has resulted in the creation of anti-corruption clubs in secondary schools and universities. The people also receive information about the Office of the Ombudsman and its functions through its official website and through radio programmes.

However, radio programmes, except during anti-corruption week, are not conducted on regular basis.

3.1.1.2 Auditing the Functioning of Public and Private Institutions

In addition to public education, the Office of the Ombudsman evaluates and controls regularly the functioning of public institutions and bodies. Generally, such evaluations are carried out to audit the procedures and systems of institutions in order to discover the practices that are conducive to corruption and the structural loopholes for corruption. Particularly, the Office examines whether the institutions or bodies have developed good systems of internal control, and whether they operate in accordance with the laws and regulations governing them.⁹² In this regard, the Office of the Ombudsman provides recommendations to improve the functioning of the audited institutions and prevent corruption. Further, the Office evaluates the implementation

⁹² The Annual Report of the Office of the Ombudsman of Rwanda (2008: 19). Under the articles 3(6) and (10) of the Ombudsman Law no.17/2005, the Office is required to conduct a follow-up of how public and private institutions implement the policy of combating and preventing corruption and contribute to good governance.

of the recommendations given. Non-compliance with these recommendations under the existing law is not considered an offence and thus no criminal sanctions are provided. This leads to the conclusion that the Office is acting without enforcement powers, which can be an occasion for authorities not to take seriously the advice and recommendations for the improvement of their services and the prevention of corruption in their systems. Therefore, recommendations made by the Office of the Ombudsman sometimes can be taken as worthless.

3.1.1.3 Assets Declarations



Assets declarations are an important tool in the prevention of corruption by public officials. The Office of the Ombudsman has the legal power and authority to receive and verify the assets declarations of some public officials and high-ranking officials, including the President of the Republic, the Prime Minister, members of Cabinet and members of Parliament.⁹³ That mechanism is used in order to prevent and detect forms of corruption such as embezzlement of public funds and illicit enrichment of government officials. It is also a good way of establishing transparency and good management in public finance.

⁹³ Article 3(4) of the Ombudsman Law no. 17/2005.

All concerned government officials are required to declare their property every year to the Office of Ombudsman by not later than 31 June. A person who takes up office has to declare his or her property within one month after the beginning of such office. A person who leaves office has to declare his or her property within 15 days of leaving.

The declared assets must include the property of the spouse and children below 18 years, and their sources.⁹⁴ The assets declared are kept confidential and their contents are known only to the professionals in charge of receiving the declarations. They may be disclosed only upon a request by the President of the Supreme Court or Prosecutor-General, in writing, for investigative purposes.



The activity of declaring assets to the Office has been successful, as shown by the reports of five previous years, in the sense that more than 80% of the declaration forms issued were completed and returned to the Office. For instance, in 2006 the assets were declared at 89%, in 2007 at 88% and at 91% in 2008. After receiving a declaration, the Office is supposed to verify whether the information contained in it corresponds to reality. However, in relation to verification of the declaration, the Office is not effective because the percentage of verifications conducted compared to

⁹⁴ Article 4 of the Ombudsman Law no. 17/2005.

declarations received is too low. In 2006, verification was made at a level of only 9%, in 2007 at 4% and at 5% in 2008.⁹⁵ This can cause the Office of the Ombudsman to lose its credibility, and it can be an opportunity for corrupt officials to embezzle public funds because they know that the verification process will take a long time.

The effective declaration of assets and their verification are considered to be good preventive strategies and can contribute to detection of illicit enrichment or other forms of corruption. During the verification stage, the staff meets the owner of the assets declared for explanations concerning the declaration made. The person who fails to prove the licit origin of his or her property immediately becomes a suspect of illicit enrichment or of embezzlement. In such a situation, criminal proceedings have to be undertaken.

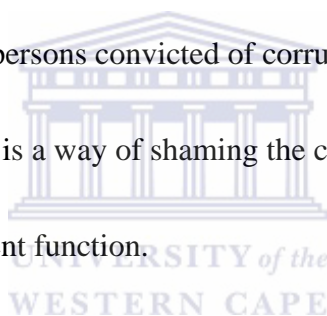
3.1.1.4 Advising on Corruption Prevention

As noted earlier, the Office of Ombudsman also has the task of advising public and private institutions on measures to prevent and combat corruption. This is performed through its recommendations on how to change the practices and systems that are

⁹⁵ The Annual Report of the Office of Ombudsman of Rwanda (2008: 60).

conducive to corruption and related offences. Mostly, the Office provides advice to the Cabinet as regards the strengthening and improvement of anti-corruption policies.⁹⁶

Moreover, the Office of the Ombudsman has been given the wide mandate of doing the follow-up in respect of laws relating to the conduct of politicians and other leaders in order to prevent them from becoming involved in corrupt behaviour. It also identifies and makes a list of persons convicted of corruption or related offences, and publicises it. This mechanism is a way of shaming the corrupt person and serves a preventive as well as a deterrent function.

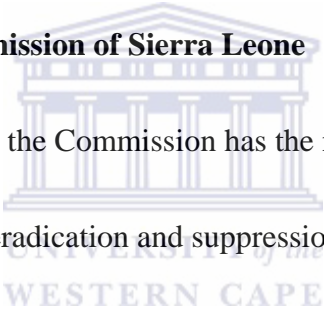


In summary, the law regulating the functioning of the Office of the Ombudsman contains strong wording on the preventive mechanisms that the Office is entitled to use in the fight against corruption. Its preventive mechanisms principally focus on educating the public about the dangers of corruption and encouraging the population to resist and report it. They also include the auditing of the functioning of public and private institutions, and the provision of corresponding recommendations. However,

⁹⁶ Article 3(5) of the Ombudsman Law no. 17/2005.

as indicated earlier, the Office does not have the power to impose sanctions in cases of non-compliance, without reasonable explanation, with its recommendations. In addition, the Office uses the declarations of assets as a strategy for preventing and detecting corruption. But the verification of the submitted declarations, which can be a means of identifying corrupt officials, is not being carried out effectively. Not more than 20% of all the declarations are verified.

3.1.2 Anti-Corruption Commission of Sierra Leone



In the fight against corruption, the Commission has the mandate to take all measures necessary for the prevention, eradication and suppression of corruption and related offences. The Commission has arranged its mandate into three approaches: prevention, education and prosecution. In order to fulfil these functions, the Commission, operating in three departments as mentioned earlier,⁹⁷ uses different strategies and mechanisms. Like the Office of the Ombudsman of Rwanda, the preventive measures that the Commission utilises include educating the public about the dangers of corruption, examining the practices of public bodies, receiving and examining declarations of assets, and advising any person, authority, public or private

⁹⁷ See Section 2.3.5 above.

institution on changes and practices needed to prevent corruption. Unlike the Office of Ombudsman of Rwanda, the Commission prevents corruption by monitoring the implementation of the contracts awarded by public bodies.

3.1.2.1 Public Education and Outreach

Section 7(2)(o) of the Anti-Corruption Act of 2008 mandates the Commission ‘to educate the public on the dangers of corruption and the benefits of its eradication; and to enlist and foster public support in combating corruption’. The Commission carries out this mandate by educating the public and institutions on the evils of corruption and the benefits of a corruption-free country. It also informs the public about its own attributes and encourages society to support the fight against corrupt activities.

For effective implementation of public education, the Commission adopts the institutional and community-based approaches. In relation to the institutional approach, the Commission educates public officials on accountability, transparency and good practices for the reduction of corruption. It also educates students with the intention of fostering in them the values of integrity, accountability and transparency. As a result, there has been created twenty-seven integrity clubs in secondary schools.

With regard to the community-based approach, the Commission organises community education meetings to sensitise the public and civil society to its work and the evils of corruption, and to encourage public support in the fight against corruption.⁹⁸

Moreover, in educating the public, the Commission utilises the radio, television programmes (such as documentaries, music and drama), and newspapers.

3.1.2.2 Systems and Processes Review

The Commission is mandated also to examine the practices and procedures of public bodies.⁹⁹ The Commission conducts a comprehensive systems and processes review in ministries, bodies and agencies in order to discover the structural loopholes for corruption and related offences, and then makes recommendations for the improvement of functions and the development of good practices.¹⁰⁰ The recommendations have to be complied with by the institution concerned.

Furthermore, as mentioned in its annual report of 2008, the Commission undertakes the rigorous monitoring of public funds, including donor funds, in order to ensure

⁹⁸ The Annual Report of the Anti-Corruption Commission of Sierra Leone (2008: 18-25).

⁹⁹ Section 7(f) of the Sierra Leonean Anti-Corruption Act of 2008.

¹⁰⁰ The Sierra Leonean ACC website, <http://www.anticorruption.gov.sl/>.

compliance with prescribed procedures and principles. This will promote accountability and transparency. It also monitors the implementation of contracts awarded to individuals or companies by public bodies to ensure that there are no irregularities involved, and suggests ways of instituting standards of integrity which would promote resistance to corruption.

3.1.2.3. Advising on Corruption Prevention

As far as prevention is concerned, the Commission conducts studies in order to discover the causes and consequences of corruption. Further, it reviews laws, policies and codes of conduct in order to identify any loopholes for corruption or to assess whether they are conducive to corruption. Thus, the Commission advises the Government on such legislative reform that it considers necessary to eliminate corruption. It also advises the state on the ratification of the international anti-corruption instruments. The Commission provides useful advice to any person and private institutions, and instructs public bodies on changes in practices and procedures needed to eliminate corruption. The head of a public body which fails to comply with the instructions given commits an offence and he or she is liable.¹⁰¹ The

¹⁰¹ Section 7 of the Sierra Leonean Anti-Corruption Act of 2008; the ACC website <http://www.anticorruption.gov.sl>.

advises and reviews of laws and codes of conduct promote the elimination of corrupt practices and encourage honest behaviour.

3.1.2.4 Assets Declarations

With the enactment of the Anti-Corruption Act of 2008, the Commission adopted a further strategy of preventing corruption by making it compulsory for all public officials to declare their assets to the Commission every year by no later than 31 March. The person who becomes a public official has to declare his or her assets within three months of taking office. The person who ceases to be a public official has to declare his or her assets on the first anniversary of the date on which he or she left office. The declaration must include all earnings and debts of the declarant himself or herself, and of his or her spouse and children.¹⁰²

As in Rwanda, the assets declared are kept confidential except when the particular declaration is required for the purposes of court proceedings. However, after

¹⁰² Section 119 of the Sierra Leonean Anti-corruption Act of 2008.

examining the declaration received and being satisfied by the information provided in it, the Commission publicises a certificate in the Gazette.¹⁰³

In contrast to the Office of the Ombudsman of Rwanda, where the declarations of assets are reserved for a number of public officials enumerated in the anti-corruption law, the Anti-Corruption Act of Sierra Leone requires all public officials to declare their assets. The approach adopted by Sierra Leone may be better, but the feasibility of examining the declarations of all public officials is questionable.



3.1.3 Anti-Corruption Bureau of Malawi

The functions of the Bureau include, among others, taking all necessary measures for the prevention of corrupt practices in the public and private sectors. To fulfil this function, the Bureau, like the Office of the Ombudsman of Rwanda and the Anti-Corruption Commission of Sierra Leone, employs different strategies, such as the public education, examining the practices and procedures of public and private institutions and advising them on ways of preventing corruption. However, the

¹⁰³ Section 119 of the Sierra Leonean Anti-corruption Act of 2008.

Bureau does not use declarations of assets as a tool for preventing and detecting corrupt practices of public officials, such as embezzlement and illicit enrichment.

3.1.3.1 Public Education

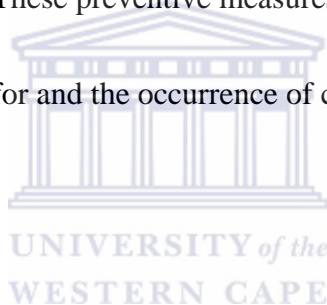
The Bureau is mandated to spread information on the dangers of corrupt practices for society, and to enlist and encourage public support against corrupt practices.¹⁰⁴ To this end, the Bureau has established and maintains extensive programmes, and a number of educational activities targeting all sectors of society have been executed in order to raise public awareness of the evils of corruption and to encourage the public to report, resist and reject corruption. These activities include billboards in strategic places in urban areas, public campaign meetings, radio and television programmes, workshops targeting NGOs, Community-Based Organisations and other groups, and the creation of anti-corruption clubs in secondary schools and universities.¹⁰⁵

¹⁰⁴ Section 10 of the Corrupt Practices Act of Malawi of 2004.

¹⁰⁵ Mustafa (2005: 96). See also Nampota (2008: 2-3).

3.1.3.2 Examining the Practices and Procedures of Institutions

In its effort to prevent of corruption in public and private institutions, the Bureau examines their practices and procedures in order to discover those that are conducive to corruption and then revises them. Moreover, the Bureau reviews methods, systems and draft legislation or proposals for new legislation that might have corruption as an area of concern. It also analyses the procedures that institutions follow in delivering services in order to identify any loopholes for corruption, and implements anti-corruption strategies.¹⁰⁶ These preventive measures are undertaken with a view to reducing the opportunities for and the occurrence of corrupt practices in both private and public sectors.



Like the two other anti-corruption agencies discussed above, after examining or reviewing the systems and procedures, the Bureau provides recommendations to change or replace them and conducts follow-up assessments to monitor their implementation. As with the Sierra Leonean Commission, non-compliance with the directions and orders of the Bureau is an offence and is punishable.¹⁰⁷

¹⁰⁶ Nampota (2008: 3).

¹⁰⁷ Section 49 of the Corrupt Practices Act of Malawi of 2004.

3.1.3.3 Advising on Corruption Prevention

Under section 10 of the Corrupt Practices Act of 2004, the Bureau, like the Office of the Ombudsman of Rwanda and the Anti-Corruption Commission of Sierra Leone, is mandated to advise public and private bodies on ways and means of preventing corruption and on procedural changes that the Bureau considers necessary to reduce corruption. In this regard, the Bureau has implemented a programme ‘to assist institutions develop and implement a Corruption Prevention Policy framework as a way of mainstreaming anti-corruption initiatives into their functioning’.¹⁰⁸



WESTERN CAPE

It is fair to say that the Anti-Corruption Bureau has developed strategies of preventing corruption by educating the public about corruption, and about ways to resist and report it. It also prevents corruption by examining the procedures of public and private bodies. However, the shortage of human and financial resources limits the effectiveness of its preventive measures and public education, which require frequent travelling outside its offices. For instance, the vehicles that are available to the Bureau are inadequate for its operations in different areas of the country, and as a result, most

¹⁰⁸ Nampota (2008: 4).

often Bureau professionals travel by bus, the most common means of public transport.¹⁰⁹

3.1.4 General Remarks

The three anti-corruption agencies being discussed use similar strategies in fighting corruption, most frequently reviewing the practices and procedures of institutions and giving recommendations accordingly, educating the public, advising on corruption prevention, and declaring assets. To ensure the credibility of the recommendations provided by the anti-corruption agency, non-compliance is considered as an offence and is punishable. However, this enforcement power is not available to the Office of the Ombudsman of Rwanda, which may result in the futility of its recommendations.

Unlike the Office of the Ombudsman of Rwanda and the Sierra Leonean

Anti-Corruption Commission, declarations of assets, which is an efficient weapon to prevent and detect corruption of public officials, is not being used by the Malawian Anti-Corruption Bureau in preventing corruption.

¹⁰⁹ Mustafa (2005: 96).

After analysing their corruption prevention strategies and mechanisms, it is clear that the anti-corruption agencies are government advisory organs and play a great role in the establishment of laws preventing corruption. They are also the agencies which help public and private institutions to accomplish effectively their functions by providing them with advice through recommendations. Moreover, they train the public in all sectors about corruption.

It seems that anti-corruption agencies commonly perform the following functions: receiving and examining complaints, educating the public about corruption, examining the functioning of public institutions and providing suitable recommendations for improvement, and receiving and examining declarations of assets. These responsibilities are very strong and their accomplishment necessitates special skills and sufficient resources. However, as already intimated, the anti-corruption agencies under discussion do not have the skilled staff they require and sometimes their material resources are inadequate also.

Despite the numerous mechanisms used by the anti-corruption agencies in preventing corruption, it is still possible for corrupt practices to be committed in one way or

another. Therefore, in addition to preventive strategies, the anti-corruption agencies provide for *ex post facto* mechanisms to combat corruption.

Corruption cannot be overcome if preventive measures are not accompanied by effective deterrent mechanisms. To this end, not only corruption and related offences have to be criminalised, but also the anti-corruption agencies must be given sufficient powers to detect, investigate and prosecute corruption. The next section concentrates on the powers vested in the aforementioned anti-corruption agencies and on the investigative techniques required for making the fight against corruption effective.



3.2 Investigative Powers

The fight against corruption cannot be effective if the anti-corruption agencies are not entrusted with strong investigative powers, operational means and instruments for gathering evidence.¹¹⁰ The Office of the Ombudsman of Rwanda, the Anti-Corruption Commission of Sierra Leone and the Anti-Corruption Bureau of Malawi are equipped with the authority to investigate corruption and related offences. Under this section, the methods of obtaining information on corruption cases, as well

¹¹⁰ Eser and Kubiciel (2005: 61).

as the methods of obtaining evidence currently used by anti-corruption agencies are analysed.

3.2.1 Methods of Obtaining Information

Due to the difficulty of detecting corruption, information plays an important role. The anti-corruption agencies may find information on corrupt practices when examining the practices, procedures and systems of institutions. They often receive information from whistleblowers on allegedly corrupt practices through reporting in person, by e-mail, by anonymous letters or by telephone.¹¹¹ Through popular education, the public is informed about the agency and the place at which reports may be lodged.

After receiving information on corruption, the agency analyses it. If there is adequate justification for an investigation, the appointment of an investigator or investigators has to be made. Depending on the seriousness of the case, the agency may decide to appoint one or more investigators with knowledge in different fields.

¹¹¹ The anti-corruption agencies under discussion have developed the system of receiving information on corruption. They all have websites, e-mail addresses and free hotlines.

During investigations, any anti-corruption agency may face a problem of obtaining information and evidence. In many cases corruption does not have a clear victim who can complain or no overt occurrence to be reported by a third person. That is the reason why corruption is considered wrongly as a 'victimless' crime. However, as noted by James, 'the crime is not victimless in the sense that society as a whole is a victim, and on occasion there may be an individual victim who is perhaps deprived of a benefit which he or she would have received had not the other person obtained the benefit as the result of a bribe'.¹¹² Nevertheless, even if corrupt practices are not in fact victimless, usually the victims are not aware that corruption has been committed and has affected them negatively. In most cases, the only persons with express knowledge of the corruption are the people who involved in its commission, such as the offeror and receiver of the bribe or the person who embezzled the funds.¹¹³ The secretive nature of corruption makes it difficult to obtain relevant information. Those involved in corruption will not easily report it because they generally profit in some way.

¹¹² James (2010: 4).

¹¹³ James (2010: 4).

It is for this reason that often corruption only comes to light when there is a misunderstanding between the individuals involved and one of them decides to expose it. Sometimes it may be reported by a person who is working in the place where corruption took or is to take place. However, those who are aware of the commission of corruption may not report it because they fear retaliation by the suspect. To ensure the reporting of corruption, protective measures for whistleblowers and informants, as well as a legal provision making reporting obligatory or providing incentives, must be guaranteed. The anti-corruption laws in the countries under discussion do contain provisions in this regard.



The extent to which reporting corruption is made an obligation differs from one country to another. In Sierra Leonean law, every public official who suspects that corruption has been or is about to be committed within the public institution has a duty to make a written report to the Anti-Corruption Commission; but in Malawian law, only the public official to whom any advantage is corruptly given, promised or

offered has an obligation to make a full report of the circumstances of the case to the appropriate organ.¹¹⁴ The Rwandan Anti-Corruption Law is silent on the issue.

In addition to or in place of the obligation to report corruption, some anti-corruption laws provide for rewards for informants. The Sierra Leonean law states that any person who gives information on corrupt practices that results in a conviction shall be paid ten percent of the proceeds of the property forfeited.¹¹⁵ Similarly, the Rwandan Anti-Corruption Law, which contains no reporting obligation, provides for a bonus for the person who contributed to the denunciation of corruption without taking part in its commission. Further, the Rwandan Anti-Corruption Law provides for mitigatory measures for a person who makes a confession before the transmission of his or her file to the court.¹¹⁶ The monetary or other rewards and the mitigatory measures provided for those who give information or make confessions are attractive mechanisms of getting information and evidence of corruption, in the absence of which the level of reporting corruption could be extremely low.

¹¹⁴ Section 77 of the Sierra Leonean Anti-Corruption Act of 2008; section 36 of the Corrupt Practices Act of Malawi of 2004.

¹¹⁵ Section 81(3) of the Sierra Leonean Anti-Corruption Act of 2008.

¹¹⁶ Article 37-39 of the Rwandan Anti-Corruption Law no. 23/2003.

The fear of retaliation is a serious obstacle to the effective detection of corruption. To overcome this obstacle, whistleblower and witness protection mechanisms have to be put in place. The Sierra Leonean Anti-Corruption Act contains provisions aimed at the protection of whistleblowers and witnesses. That Act provides for the confidentiality of information and of the identity of whistleblowers and witnesses.

Those who provide information are not to be the subject of civil or criminal proceedings as a result of disclosures made. Likewise, the Malawian Corrupt Practices Act ensures the secrecy of the identity of witnesses and whistleblowers.¹¹⁷

In Malawi and Sierra Leone, protection is also ensured by criminalising the victimisation by any person of whistleblowers or witnesses for disclosures made. In relation to Rwanda, the Anti-Corruption Law does not specify any protective measures, but in Article 36 it requires the organ in charge of handling corruption cases to ensure the protection of whistleblowers and witnesses.

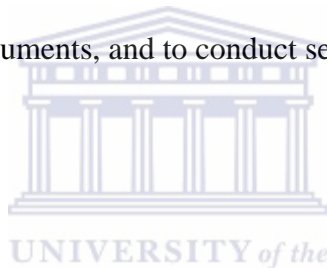
To avoid the abuse of information by informants themselves, false allegations made in bad faith and failure, without relevant reason, to provide information during the investigations period are punishable by both Malawian and Sierra Leonean

¹¹⁷ Section 82 of the Sierra Leone Anti-Corruption Act of 2008; section 51A of the Corrupt Practices Act of Malawi of 2004.

anti-corruption laws.¹¹⁸ The Rwandan Anti-Corruption Law does not address the issue.

3.2.2 Methods of Obtaining Evidence

The normal investigative powers include powers to issue a summons or other order requiring an individual to appear before the agency, to require any person to answer questions during an investigation, to hold public hearings in a formal way, to require the production of relevant documents, and to conduct searches and seizures.¹¹⁹



The staff in the operational units of the Office of the Ombudsman of Rwanda recently have been given the power to investigate all activities relating to the functions of the Office of the Ombudsman. These powers are to be exercised independently and in accordance with the law.¹²⁰ In this regard, the Office has the power to request from public or private institutions and non-governmental organisations any documents, testimonies and explanations necessary for its investigations. Also, it may require any

¹¹⁸ Section 14 of the Malawian Corrupt Practice Act of 2004; Section 86 of the Sierra Leonean Anti-Corruption Act of 2008.

¹¹⁹ Nicholls *et al* (2006: 480).

¹²⁰ Articles 1-3 of the Ministerial Order no. 67 of 05/05/2009 granting judicial powers to the staff of the Office of the Ombudsman of Rwanda.

person to give necessary information.¹²¹ Taking a critical view, it might be said that the powers given to the Office of the Ombudsman with regard to investigations are very vague. The law does not stipulate clearly whether the Office has, for example, the powers to search and seize, or to arrest with or without warrant.

Differing from the Office of the Ombudsman of Rwanda, the Anti-Corruption Commission of Sierra Leone and Anti-Corruption Bureau of Malawi have been given clear and precise investigative powers. The Anti-Corruption Bureau is empowered to investigate all offences under the Corrupt Practices Act and those under any other laws discovered in the course of investigating corrupt practices. During the investigation, the Bureau has authority to require any person to provide information or to order the production of documents. It further has the power, but with a warrant issued by the court, to inspect all books, record, returns, reports and bank accounts, and to search the premises of the suspect.¹²² Under section 23, the Bureau is authorised also, with a warrant, to seize and freeze any document, money, account, asset, property or other interest for the purposes of investigation. If there are serious reasons to believe that corruption has been or is to be committed, the Bureau may

¹²¹ Article 19 of the Ombudsman Law no. 25/2003.

¹²² Sections 10-12 of the Corrupt Practices Act of Malawi of 2004.

arrest the suspected person with a warrant.¹²³

Like the Anti-Corruption Bureau, the Anti-Corruption Commission of Sierra Leone has powers to require any person to provide information or produce documents for the purposes of investigation. The person may also be required to produce the declaration of his or her property. If the person under investigation is about to leave the country, the Commission has the authority to require him or her to surrender all travel documents. Moreover, the Commission is entrusted with the power of search and seizure. In contrast to the Bureau, the Commission has the power to access bank accounts and to arrest the suspect without warrant. It has, as well, the power to finger-print and photograph the arrested person.¹²⁴

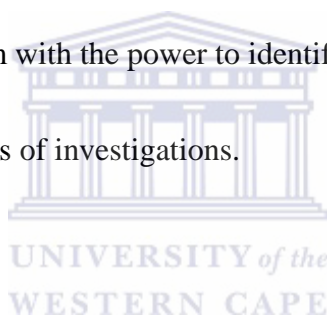
The anti-corruption agencies are equipped with investigative powers and they can require information from or the production of any document by any person. They have also the authority to search and seize, and to arrest the suspect with or without warrant. In the situation where a corrupt person is caught red-handed, the arrest without warrant is considered to be the best means of protecting the evidence.

¹²³ Section 15 of the Corrupt Practices Act of Malawi of 2004.

¹²⁴ For more details of the investigative powers of Anti-Corruption Commission see part 5 of Anti-Corruption Act of 2008.

Moreover, search and seizure without court authorisation have proved to be particularly helpful in obtaining relevant evidence without delay.¹²⁵

Overall, in investigating corruption, reporting is the major means which helps the investigators to discover corruption. The annual declarations of assets by public officials and the regular examination of practices and procedures of institutions are also techniques being used by the anti-corruption agencies in question to detect corruption. They provide them with the power to identify the existence of corrupt practices and serve as the basis of investigations.



3.3 Special Investigative Techniques

As mentioned above the secretive nature of corrupt practices, particularly those involving public officials, makes it difficult to use reactive measures. Usually, the offer or solicitation of corruption exists between two satisfied parties with no independent witnesses. Thus, if there is no desire by one of them to disclose, it will not be easy to detect corruption and to find the necessary evidence. Indeed, a

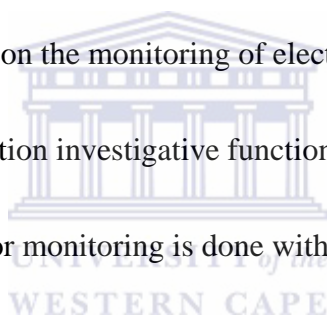
¹²⁵ UNODC (2004: 389).

proactive approach, using special investigative techniques will be the best way to achieve a successful investigation.

3.3.1 Interception of Communications and Surveillance

The interception and the recording of telephone conversations, or telefax messages, e-mails or postal items of a suspect are useful means to detect corruption and can serve as evidence in criminal proceedings. However, in the legal systems of different countries there is a restriction on the monitoring of electronic communications.¹²⁶

With regard to the anti-corruption investigative function, such restriction should not be considered if interception or monitoring is done with legitimate authority.



Surveillance is another proactive technique of investigation that can be undertaken through monitoring or observing the suspect's movements or recording or listening to his or her communications. It can be conducted also with the assistance of surveillance cameras. The surveillance undertaken for the purposes of investigations in corruption cases may result in obtaining private information about an individual. It can be carried out with the assistance of an individual or a surveillance device in order

¹²⁶ UNOCD (2004: 374-375).

to have evidence of a certain act that is taking place during a specific period of time in residential premises or elsewhere.¹²⁷

The surveillance equipment can be installed in order to monitor the activities of an individual or a specific group of individuals on the basis of information received. To be lawful, the surveillance for the purposes of investigations has to be authorised and be completed within a reasonable period of time.



3.3.2 Covert Methodologies

Because corruption is difficult to detect, the use of covert methodologies can be helpful to catch the suspect red-handed. This method usually is based on information received or found. ‘The proactive operation might involve information from a source, intelligence and/or evidence from the deployment of an undercover agent or participating source and surveillance product.’¹²⁸

¹²⁷ Nicholls *et al* (2006: 141-143).

¹²⁸ Nicholls *et al* (2006: 133).

For a successful result, an undercover agent has to be given the means and powers allowing him or her to establish a sufficient relationship with the suspect that he or she can use to obtain or to have access to the relevant information. The use of covert investigative techniques in corruption cases should be regulated and authorised by the domestic law of a country, based on the principle of necessity and proportionality in order to avoid its abuse.

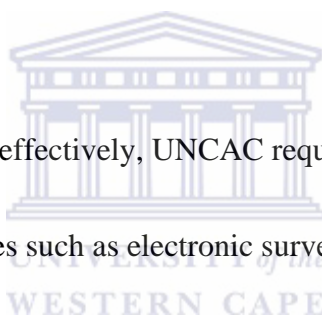
3.3.3 Entrapment and Integrity Testing

In order to detect and gather evidence in relation to corruption and misconduct of public officials in a particular institution, a proactive anti-corruption method can be used by deploying an undercover agent to be solicited for corruption by a suspected corrupt official. In such an operation, the investigator has to ensure that he remains an investigator, not a creator of corruption.¹²⁹ Integrity testing includes ‘the use of decoys and tactics which represent the most powerful means for both detecting and deterring corruption and related offences by the public officials who are targeted on the basis of evidence of a specific suspicion of corruption’.¹³⁰

¹²⁹ Nicholls *et al* (2006: 148).

¹³⁰ UNODC (2004: 396).

The undercover agent must act in order to offer suspicious officials the opportunity to engage in corruption, but nothing more. This operation will provide quick and credible evidence about the resistance of corruption by the official. The feedback must be supported by, for instance, audiotapes, photographs or videotapes. To avoid adverse results, it is important to set up the rules and regulations to be followed during the operation. It is also necessary to provide protective measures for the undercover agent, as well as for informants.



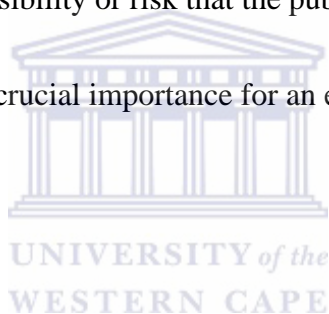
In order to combat corruption effectively, UNCAC requires states parties to use special investigative techniques such as electronic surveillance and the like.¹³¹ The use of special investigative techniques is essential for a successful investigation. In this regard, only the Anti-Corruption Commission of Sierra Leone uses special proactive mechanisms in terms of which its Intelligence Unit collects high quality intelligence on a corrupt person.¹³² However, the techniques it uses are not made known.

¹³¹ Article 50 of UNCAC.

¹³² The Annual Report of the Anti-Corruption Commission of Sierra Leone (2008: 26).

The requirements of all these proactive investigative techniques are professional training, adequate operational support and a comprehensive management system to ensure that they are effective, legal and in compliance with the rules of evidence.¹³³

Each of the anti-corruption techniques listed above has to be authorised and regulated by domestic law and be undertaken on the basis of the information received about corrupt practices in a given institution or of a particular individual. Those techniques not only help with the establishment of evidence of corrupt practices but also prevent corruption by creating the possibility or risk that the public officials may be discovered. Thus, they are of crucial importance for an effective anti-corruption programme.



3.4 Prosecutorial Powers

In some countries, the anti-corruption agencies are mandated not only to prevent and investigate corruption and related offences but also to prosecute them. In this connection, the Anti-Corruption Commission of Sierra Leone possesses prosecutorial powers. Likewise, the Anti-Corruption Bureau of Malawi is empowered to prosecute

¹³³ Tony (2009:143).

any corrupt practice.¹³⁴ In contrast, the Office of the Ombudsman of Rwanda is not empowered to prosecute corruption. After investigations, evidence is forwarded to the Office of Prosecutor-General, which office prosecutes all crimes, including corruption.

On the basis of the investigation results, the Anti-Corruption Commission of Sierra Leone may institute prosecution if it considers it necessary, without any further requirement. However, the Anti-Corruption Bureau of Malawi may not initiate proceedings without the written consent of the Director of Public Prosecutions (DPP). This is emphasised by section 10 of the Corrupt Practices Act which states that the 'Bureau shall, subject to directions of the DPP, prosecute all offences under the Act'.

In the case of withholding of consent, the DPP is required to give written reasons and inform the Legal Affairs Committee of Parliament within 30 days.¹³⁵ Even if the DPP is required to provide reasons in the case of refusal, the requirement of seeking consent before instituting the prosecution not only undermines the independence of the Bureau but also may lead to bias and delays in the prosecution of corrupt persons

¹³⁴ Section 7(1) of the Sierra Leonean Anti-Corruption Act of 2008; section 10 of the Corrupt Practices Act of Malawi of 2004.

¹³⁵ Section 42 of the Corrupt Practices Act of Malawi of 2004.

(for instance, the high-ranking officials). This requirement has been judged also to be 'painful to an anti-corruption institution to see people against whom it has strong evidence of having committed corrupt practices being allowed to go scot-free by the consenting authorities for undisclosed reasons'.¹³⁶

Normally, the prosecutorial services deal with all crimes, which may result in their being snowed under with work. To speed up the criminal proceedings in corruption cases, it is very important to accord independent prosecutorial powers to the anti-corruption agencies.



In prosecuting corruption, the prosecutors generally face the problem of the burden of proof. Normally in criminal matters, the burden of proof is on the prosecutor. When it comes to illicit enrichment, which is defined in article 20 of UNCAC as 'a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income', the burden of proof is reversed and imposed on the suspect. If a person fails to prove the licit origin of his or her wealth, he or she is liable for illicit enrichment. In order to avoid the problem which may be raised by this

¹³⁶ Nsereko and Kebonang (2005: 103).

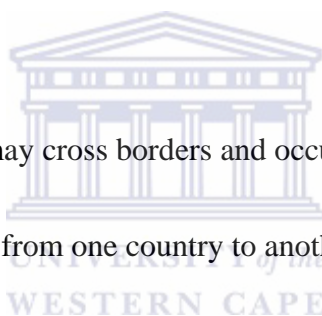
principle, the Sierra Leonean Anti-Corruption Act stipulates that the burden of proof in corruption cases lies on the accused.¹³⁷ The Rwandan and Malawian anti-corruption laws provide for illicit enrichment as a corrupt act, but they do not address the issue of the burden of proof.

The reversal of the burden of proof has been criticised as unconstitutional, in the sense that it undermines the fundamental principle of the presumption of innocence, and violates the right to silence of the accused person.¹³⁸ The criminalisation of illicit enrichment deters officials from embezzling public funds or engaging in corrupt acts. It is submitted that the reversal of the burden of proof in relation to illicit enrichment is to be considered as an exception to the principle and, thus, it ought not to be considered as a violation of the right to a fair trial. In order to avoid possible challenges to the criminalisation of illicit enrichment, the legislative organ should adopt a specific act providing for an exception to the conventional burden of proof in cases of illicit enrichment.

¹³⁷ Section 94 of the Sierra Leonean Anti-Corruption Act of 2008.

¹³⁸ For instance, section 42(2)(f) of the Malawian Constitution recognizes the right to a fair trial including the right to silence, whereas section 32 of the Corrupt Practices Act provides for the offence of ‘the possession unexplained property’, whereby the suspect is obliged to prove the origin of the property. This provision has been criticised as unconstitutional by some courts but for others it has been interpreted to be an exception to the principle. See Kamanga (2008: 157).

Taking a comparative view, it might be said that the Sierra Leonean Anti-Corruption Commission is more empowered than the Office of the Ombudsman of Rwanda, which does not have prosecutorial powers, and the Anti-Corruption Bureau of Malawi which neither can arrest without warrant nor prosecute without the consent of the DPP. Due to the lack of sufficient powers, the anti-corruption agencies face crucial constraints, for example, delays and ineffective criminal proceedings in corruption cases transmitted to judicial authorities, usually the Prosecutor-General.¹³⁹



Corruption is a crime which may cross borders and occur in different territories. Its proceeds often are transferred from one country to another. For instance, the bribe can be committed in Rwanda but its proceeds are deposited into a Sierra Leonean bank. In this regard, most of the conventions discussed above contain provisions on mutual legal assistance and international co-operation to facilitate the fight against corruption. UNCAC includes a variety of provisions detailing co-operation between national institutions themselves; and between national public institutions and the private sector, international co-operation, mutual legal assistance, co-operation

¹³⁹ The constraints that the Office of the Ombudsman faces in the fulfilment of its mission include delays or ineffective follow-up of the cases it forwards to the other judicial authorities for criminal proceeding. See Annual report of the Office of the Ombudsman of Rwanda (2008: 72).

between law enforcement agencies and extradition.¹⁴⁰ The AU Convention, the SADC Protocol and the ECOWAS Protocol contain detailed provisions on mutual legal assistance and international co-operation among state members.¹⁴¹ Under those provisions, the states parties are required to provide one another with mutual legal assistance and international co-operation in order to obtain evidence and to facilitate investigations and prosecutions of corruption cases.

Mutual legal assistance and international co-operation are very important to facilitate investigations, the obtaining of evidence, and the confiscation and return of assets of corruption. The Anti-Corruption Act of Sierra Leone in its part 7, unlike the anti-corruption laws of Rwanda and Malawi, provides for mutual legal assistance and international co-operation in the fight against corruption.

¹⁴⁰ Articles 38, 38, 43, 44, 46 and 48 of UNCAC.

¹⁴¹ Articles 18-19 of the AU Convention, articles 9-10 of the SADC Protocol and article 15 of the ECOWAS Protocol.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

This chapter presents a brief summary of what has been discovered and discussed in the previous chapters. It concludes with recommendations pertaining to the requirements of a successful anti-corruption agency.

4.1 Conclusion

From the above analysis, it appears that corruption is a widespread problem which affects all societies, whether developed or not. It has a corrosive impact on the sustainable economic development of a country and is detrimental to good governance and the well-being of the citizen. This research has ascertained that the governments of Rwanda, Sierra Leone and Malawi are committed to the fight against corruption. Their efforts in the war on corruption have been demonstrated by the ratification of international and regional anti-corruption laws, the criminalisation of corruption and related offences by national laws, and the establishment of anti-corruption institutions capable of enforcing anti-corruption laws.

An effective anti-corruption regime requires a comprehensive anti-corruption legal framework which not only punishes all forms of corruption but also capacitates anti-corruption institutions. In the countries covered by this work, the anti-corruption laws contain detailed provisions on corrupt practices, their punishment, protection of whistle-blowers and informants, false information, asset recovery and co-operation. However, the Rwandan Anti-Corruption Law is very limited and does not provide for certain forms of corruption such as embezzlement, conflict of interest of all public officials, protection for whistleblowers, and asset recovery.



With respect to the anti-corruption agencies in the designated countries, the efforts focused on the establishment of independent and specialised anti-corruption agencies with the sole task of preventing and combating corruption. However, the Office of the Ombudsman of Rwanda has an additional mandate of preventing and combating injustice.

Preventing corruption before its occurrence could be an effective approach in the fight against corruption if it is organised and implemented successfully. This research paper has analysed and discussed fully the mechanisms used by anti-corruption agencies in

preventing corruption. It was found that public education, examining regularly the practices and procedures of institutions, and the declarations of assets are the most helpful preventive instruments. Declarations of assets are not only a preventive mechanism but also a detection tool.

The anti-corruption agencies contribute to the improvement of the functioning of institutions through recommendations. However, due to the lack of enforcement powers, the recommendations of the Office of the Ombudsman of Rwanda risk being trivialised.



This paper also discussed the powers and techniques used by the anti-corruption agencies in investigating and detecting corruption. A strong anti-corruption agency is a crucial requirement and part of a country's strategy for a successful anti-corruption programme. The anti-corruption agencies covered by this study are empowered differently. Unlike the Office of the Ombudsman of Rwanda which has only investigative powers, the Sierra Leonean Anti-Corruption Commission and the Malawian Anti-Corruption Bureau have investigative and prosecutorial powers. While the Anti-Corruption Commission can arrest without warrant and initiate

prosecution without the consent of the public prosecutor, the Malawian

Anti-Corruption Bureau needs a warrant to arrest and the consent of the DPP in order to initiate prosecutions (which may result in delays). From this perspective, it is fair to submit that for an anti-corruption agency to be effective it must be given not only the power to investigate but also the power to initiate independently the prosecution of corruption cases.

It was indicated that the clandestine and complex nature of corruption and the absence of direct witnesses and victims render it difficult to investigate and detect. Therefore, it is important for any anti-corruption agency to be allowed the use of special investigative techniques, such as the deployment of undercover agents, surveillance, interception of communication and entrapment to detect and obtain viable evidence. However, it was noted that the anti-corruption agencies under discussion use normal investigative techniques, and their investigations usually depend on information from and allegations by individuals through reporting.

It might be said that the failure or the success of an anti-corruption agency depends on a variety of factors, such as powers and means to detect, investigate and prosecute

corruption and related offences. The lack of sufficient and trained staff, as well as the lack of adequate material resources, also affects the effectiveness of an anti-corruption agency. Further, collaboration and cooperation with other states, the public, media and civil society play an important role.¹⁴²

To sum up, it is submitted that the establishment of an anti-corruption agency is a requirement in the fight against corruption. Its effectiveness may be ensured by the powers and means at its disposal. The anti-corruption agencies covered by this research paper are not sufficiently empowered or resourced, which may result in their ineffectiveness. For a better functioning of the anti-corruption agencies, the next section provides a set of recommendations in respect of the powers and strategies needed for a successful anti-corruption programme.

¹⁴² OECD (2007: 23-24). This document discusses the 7 reasons, called by Doig (2004) the ‘Seven Deadly Sins’, that may cause the failure of an anti-corruption agency. They are ‘political, economic, legal, performance, organisational, governance and public confidence factors.’

4.2 Recommendations

This section comprises general recommendations which are common to all three anti-corruption agencies, and specific recommendations applicable to each individual agency.

4.2.1 General Recommendations

The independence and the autonomy appropriate to the functions of an anti-corruption agency are crucial requirements for its effectiveness. Basically, the stability and the independence of an anti-corruption agency should be ensured by providing for its establishment in the Constitution, and the appointment of its members should be governed by clear rules and involve different authorities.

In relation to the criminalisation of corruption and all its forms, in general the anti-corruption agencies should continue the adaptation of the anti-corruption legislative framework, in order to avoid gaps which may result from legal development lagging behind social, economic and political changes.

In the fight against corruption, an anti-corruption body cannot fulfil its functions without support from the public, the media and civil society groups. To gain this support, the anti-corruption agency should focus and continue its education programmes through which it informs and encourages those groups to collaborate in the fight against corrupt practices. In this regard, measures should be taken to ensure the involvement of the media in a permanent relationship with those groups combating corruption. Moreover, public education measures on corruption should be improved and the integration of modules on corruption issues into school and university curricula should be required. In order to raise public awareness about the dangers of corruption and the benefits of a corruption-free society, regular radio and television programmes should be organised and maintained.

Given the general difficulty of obtaining evidence in corruption matters, it is usual for an anti-corruption agency to be given effective means of collecting evidence, strong powers, and allowed the use of special investigative techniques. Therefore, the existing legislation in Rwanda, Sierra Leone and Malawi should be modified and complemented so as to give more powers to the anti-corruption agencies and permit the use of the special techniques that they lack at present.

As noted earlier, examination of the practices and systems of institutions and public education are the instruments which are used often in the fight against corruption in most countries. Deterrence (through investigations and prosecutions) is another issue which is considered to be the very important. In most cases, corruption involves senior authorities who have been educated and know the dangers of corruption. Due to the low chance of being discovered, they continue to commit corruption despite the knowledge of its bad effects, because they intend to gain more profits.¹⁴³ The best way to deter them from being corrupt is to raise high the risk of being caught by using sufficiently proactive mechanisms.



The powers vested in an anti-corruption agency play a crucial role in its performance.

A successful anti-corruption agency should be given strong powers such as investigative powers including search, seizure and arrest without warrant, and independent prosecutorial powers. It is also important for an anti-corruption agency to be allowed the use of special investigative techniques like surveillance, entrapment or integrity testing, and interception of communication in order to detect corruption.

¹⁴³ Tony (2009: 140).

The regulation of the use of a proactive approach in investigating corruption must ensure that investigative techniques, such as interception of communications and other forms of surveillance and undercover operations, are consistent with international human rights and in compliance with national laws.

Corruption can be revealed by an individual who is aware of its commission. That individual may be a person working within the corrupt institution or a person who is part of a corruption network. When an allegation is made, the anti-corruption agency ascertains whether there is sufficient reason for an investigation. The allegation should be analysed in order to determine its credibility. The evidence provided should be assessed carefully to determine whether it has been fabricated through frustration, resentment or in pursuit of a reward or any other personal profit.

The whistleblower has been an important source of information on corrupt practices. Sometimes the disclosure of corrupt practices may result in mistreatment, dismissal from office or other discriminatory actions. Hence, laws should be established or provisions inserted into existing laws to protect whistleblowers and informants. They should be protected from retaliation by the suspect and there should be incentive

mechanisms to increase the level of corruption reporting. In addition, the protective measures should be improved and should include protecting a reporting public servant from being sacked or mistreated.

Obligations to report corruption are considered to be the common tool to collect information about alleged crimes.¹⁴⁴ Therefore, the anti-corruption laws should make it mandatory not only for a public official but also for any person, regardless of occupation or professional status, to report to the anti-corruption agency or any other appropriate authority any corrupt practice committed or about to be committed by a public servant or by any other person. Failure to do so has to be considered a criminal offence. This will help anti-corruption agencies to be informed adequately about the occurrence of corruption and thereafter corruption will be reduced.

It is necessary to note that an anti-corruption agency itself needs to be transparent and accountable. Therefore, the existence of an oversight committee is essential to ensure the transparency and effectiveness of an anti-corruption agency. In Sierra Leone, the Advisory Committee controls and assesses the activities of the Anti-Corruption

¹⁴⁴ ADB/OECD (2006: 49).

Commission and advises on the improvement of its functions. This prevents it from being corrupt itself and contributes to its independence and success. In Rwanda and Malawi such a body should be established to monitor the functions of the Office of the Ombudsman of Rwanda and the Malawian Anti-Corruption Bureau.

The success or the failure of an anti-corruption agency may depend on the quantity and the quality of resources at its disposal. Thus, the fulfilment of the specific mission of an anti-corruption agency depends on sufficient material resources and well-trained staff, including specialised skilled staff. Therefore, an anti-corruption agency should be given the necessary material resources (for example, cars), enough staff and regular professional training, especially in legal, financial, accounting, economic, investigative and prosecutorial skills.

Internationally, the states should establish and update the treaties on mutual legal assistance and co-operation in order to facilitate the exchange of information on corruption, including investigations (obtaining of evidence), criminal proceedings and the return of the proceeds of corruption cases.

4.2.2 Recommendations Specific to the Office of Ombudsman of Rwanda

The Rwandan Anti-Corruption Law should be reviewed and amended to include all forms of corruption as provided for by UNCAC. To this end, the Sierra Leonean Anti-Corruption Act may serve as a model. In addition, the law providing for the investigative powers of the Office of Ombudsman should be revised to specify clearly the powers invested in the Office.

The Office of the Ombudsman of Rwanda should be given prosecutorial powers, and the power to take binding decisions. The discretionary power to enforce its recommendations will allow the Office to impose criminal sanctions on any person who fails to implement them.

To facilitate the reporting of corruption, the Office of the Ombudsman of Rwanda should establish branch offices in all areas of the country. These offices must be given the power to conduct investigations and criminal proceedings and thereafter periodically report to the Office of the Ombudsman.

The Office of the Ombudsman of Rwanda should improve the system of checking the assets declared by ensuring the regular verification of all declarations made. This will be possible by increasing the number of staff in the unit in charge of receiving and verifying the declarations.

4.2.3 Recommendations Specific to the Anti-Corruption Bureau of Malawi

Corruption preventive measures in the public administration should be extended and go beyond keeping an eye on public officials at work. In order to prevent corruption, political leaders in all branches of government ought to have transparency in their own financial dealings through assets declarations for themselves and their spouses and children. Therefore, the Corrupt Practices Act of Malawi should contain provisions requiring senior officials, or those occupying sensitive posts, to declare their wealth regularly.

In order to ensure the independence and the effectiveness of the anti-corruption agency, and avoid delays and opportunities for bias, the prosecution of corruption cases should be initiated and conducted by the Bureau, without the need for the consent of the Public Prosecutor.

4.2.4 Recommendation Specific to the Anti-Corruption Commission of Sierra

Leone

The Anti-Corruption Commission of Sierra Leone should carefully assess the feasibility of receiving and examining the declarations of all public officials, considering its financial and human resources capacity.



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