

Institutional Working definition of Corruption¹

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1. Introduction

This paper proposes a distinctive institutional working definition of corruption for use by the Anti-Corruption Trust of Southern Africa. The authors propose that corruption be defined as **the abuse or complicity in the abuse of private or public power, office or resources for personal gain**

It is essential to note from the outset that there is no single, comprehensive and universally accepted definition of corruption. It would be a long and cumbersome process to come up with a universally shared definition. To come up with such a definition, one would in any event require a functional democracy that involves consultation and consensus by relevant stakeholders. The United Nations Office on Drugs and Crime in the Global Programme against Corruption- UN Anti-Corruption Toolkit² succinctly states that the difficulties encountered in formulating a common definition are due to legal, criminological and political problems³.

Senior (2006:24) attributes the problems of coming up with a convincing definition to the shades of corruption found in Heidenheimer (1989). Authors such as Heidenheimer (1989) attribute the definitional problems adverted to above the many shades that corruption takes and the complex processes of decision making. Heidenheimer is cited by Kalchheim (2004) as having classified corruption into three categories which are black corruption⁴, grey corruption⁵ and white corruption⁶.

In view of the difficulties surrounding definition, it is often even more difficult to agree on the necessary punishment of the act itself. There are acts that authorities and everyone else condemn and agree to punish, but there are also other acts that those in position of authority may want punish but that public opinion would not agree to censure. Lastly there are corrupt acts that both the authorities and the public opinion regard as tolerable. This scenario makes decision-making long, conflicting and cumbersome.

Though there are technical hitches in agreeing on a common universal definition, it is extremely important to define it so that the actions of individuals and institutions can be judged as corrupt or uncorrupt. To this end, this paper explores the definitions given by different authors and then a draft working definition for use by the Anti-Corruption Trust of Southern Africa is proposed.

2. Defining Corruption

¹ The definition is made for the Anti-Corruption Trust of Southern Africa (ACT-Southern Africa)

² http://km.undp.sk/uploads/public/File/AC_Practitioners_Network/corruption_un_anti_corruption_toolkit_sep04.pdf (Accessed on 27 July 2007)

³ 'There is no single, comprehensive, universally accepted definition of corruption. Attempts to develop such a definition invariably encounter legal, criminological and, in many countries, political problems. When the negotiations of the United Nations Convention against Corruption began in early 2002, one option under consideration was not to define corruption at all but to list specific types or acts of corruption'

(http://km.undp.sk/uploads/public/File/AC_Practitioners_Network/corruption_un_anti_corruption_toolkit_sep04.pdf (Accessed on 27 July 2007))

⁴ 'It indicates that a particular action is one that a majority consensus of both elite and mass opinion would condemn and would want to see punished on grounds of principle' (Senior 2006:24)

⁵ 'Indicates that some elements, usually elites, may want to see the action punished, others not, and the majority may well be ambiguous'. (Senior 2006:24)

⁶ 'signifies that the majority of both elite and mass opinion probably would not vigorously support an attempt to punish a form of corruption that they regard tolerable' (Senior 2006:24)

The most effective approach in coming up with an acceptable definition is to look at what various authorities have written or said about it. As adverted to already, the definitions of corruption are many and have been widely contested. There is a proliferation of literature on corruption. A number of authors devote their time and energy to this subject (Heidenheimer, Johnston and Levine, 1989; Gardiner, 1993; Dolan, McKeown & Carlson, 1988 are a few examples). However, there is little accord about what constitutes a reasonably comprehensive and widely shared definition of corruption.

Johnston (1996) provides an important typology for the definition of corruption. He identifies two different groups in the literature on the subject. The first group (Nye, 1967; Friedrich, 1966; Van Klaveren, 1989; Heidenheimer, 1989) focuses on the behavioral aspects of corruption. These behavior-orientated researchers hold the opinion that corruption is the abuse of public office, power or authority for private gain. The second group defines corruption by roping in the relationship between and among the principal-agent-client relationships (Rose-Akerman, 1978; Klitgaard, 1988). These researchers pay more attention to the interactions between and among the parties involved: a principal⁷, an agent⁸ and a client⁹.

Senior (2006) also cites authors (Waterbury, 1973; Nye, 1967; Alam, 1989) who supports Johnson (1996)'s typology. Waterbury (1973) defines corruption as 'the abuse of public power and influence for private ends'. Nye (1967) defines it as 'behaviour which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence'. The two authors are categorized under Johnson (1996)'s behavior orientated typology. On the other hand Senior (2006) also cites Alam (1989)'s definition which represents Johnston (1996)'s second strand of definitions showing the relationships between principals and their agents. According to Alam (1989) corruption is defined as '.... (1) the sacrifice of the principal's interest for the agent's, or (2) the violation of norms defining the agent's behaviour'. Alam (1989) pays attention to the interactions between and among the parties involved.

Readers who turn to The Oxford Advanced Learners Dictionary for a definition will find "dishonest or illegal behaviour, especially of people in authority:"¹⁰ Those who turn to The Concise Oxford Dictionary will find 'decomposition; moral deterioration, use of corrupt practices (bribery etc); perversion (of language etc) from its original state'. *The Oxford Unabridged Dictionary* defines it as "perversion or destruction of integrity in the discharge of public duties by bribery or favor." The *Merriam Webster's Collegiate Dictionary* defines corruption as "inducement to wrong by improper or unlawful means (as bribery)." Curzon (1997:90) defines corruption as "... an inducement by means of an improper consideration to violate some duty". Garner (2004:370) defines corruption as "The act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others, a fiduciary's official's use of a station or office to procure some benefit either personally or for someone else contrary to the rights of others". The 'Lectric Law Library's Lexicon defines it as "An act done with an intent to give some advantage inconsistent with the official duty and the rights of others. It includes bribery, but is more comprehensive; because an act may be corruptly done, though the advantage to be derived from it be not offered by another."¹¹ Another author Neild (2002) defines corruption as "the breaking public persons, for the sake of private financial or political gain,

⁷ An individual or institution that is in charge of carrying out a function

⁸ An individual or institution that actually performs the operation of the agency

⁹ A private individual or institution with whom the agent interacts

¹⁰ P.261

¹¹ <http://www.lectlaw.com/def/c314.htm> (Accessed on 27 July 2007)

of the rules of conduct in public affairs prevailing in a society in the period under consideration". The definitions are useful since they avoid one of the weaknesses of Nye (1967); Friedrich (1966); Van Klaveren (1989) and Heidenheimer (1989) of confining corruption to the public sector. However, the definitions are too broad to make sense to anyone interested in understanding what corruption is.

The Southern African Development Community in the Protocol against Corruption defines corruption as "any act referred to in Article 3¹² and includes bribery or any other behaviour in relation to persons entrusted with responsibilities in the public and private sectors which violates their duties as public officials, private employees, independent agents or other relationships of that kind and aimed at obtaining undue advantage of any kind for themselves or others". The definition is more detailed as compared to Johnston (1996)'s list of the first group (Nye, 1967; Friedrich, 1966; Van Klaveren, 1989; Heidenheimer, 1989) since it recognises that corruption also takes place in the private sector and other settings.

What is also significant about the SADC definition is that it gives the leeway to include acts of corruption that are hidden in the contemporary democratic processes. For instance, cases of rigging of elections, putting in place biased electoral institutions and processes, abusing national resources for political gains, hijacking of law enforcement agents, vote buying, . There is however, need for such acts to be clearly spelt out in the list of acts of corruption, which the SADC did not do.

Transparency International (TI) defines corruption as "the misuse of entrusted power for private gain"¹³ According to TI (2007:xxi) in its *Global Corruption Report 2007: Corruption in Judicial systems*, private gain means "both financial or material gain and non-material gain, such as the furtherance of political or professional ambitions". This is similar to the definition by United States Agency for International Development (USAID) in its Anti-Corruption Strategy it also defines Corruption as "... the abuse of entrusted authority for

¹² Article 3- Acts of corruption

1. This Protocol is applicable to the following acts of corruption:

- a) the solicitation or acceptance, directly or indirectly, by a public official, of any article of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
- b) the offering or granting, directly or indirectly, by a public official, of any article of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
- c) any act or omission in the discharge of his or her duties by a public official for the purpose of illicitly obtaining benefits for himself or herself or for a third party;
- d) the diversion by a public official, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party of any movable or immovable property, monies or securities belonging to the State, to an independent agency, or to an individual, that such official received by virtue of his or her position for purposes of administration, custody or for other reasons.
- e) the offering or giving, promising, solicitation or acceptance, directly or indirectly, of any undue advantage to or by any person who directs or works for, in any capacity, a private sector entity, for himself or herself or for anyone else, for him or her to act, or refrain from acting, in breach of his or her duties;
- f) the offering, giving, solicitation or acceptance directly or indirectly, or promising of any undue advantage to or by any person who asserts or confirms that he or she is able to exert any improper influence over the decision making of any person performing functions in the public or private sector in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of the influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result;
- g) the fraudulent use or concealment of property derived from any of the acts referred to in this Article; and
- h) participation as a principal, co-principal, agent, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, in any collaboration or conspiracy to commit, any of the acts referred to in this Article.

¹³ http://www.transparency.org/news_room/faq/corruption_faq (Accessed on 27 July 2007)

private gain”¹⁴ The succinct definition of the World Bank is “the abuse of public office for private gain.”¹⁵

The above definitions are short and precise. However there has been a tendency to generalize and take for granted the fact that the power that individuals and institutions misuse is ‘entrusted power’ yet there are other types of power such as referent¹⁶ and coercive¹⁷ power that are abused which are not necessarily entrusted to those who have ‘authority’. The words ‘entrusted power’ imply that one does not own that power but its owned by the people and they can take it away if they feel that it is not being used to their satisfaction. The contemporary world is awash with ugly faces of dictators who impose themselves to the people through coups and other means. There are also cases in whereby people hold power because of their association to high offices. There are many cases that can be quoted to substantiate this view.

According to the United Nations Development Programme (UNDP) in its Anti-Corruption Practice Note, corruption is defined as “the misuse of public power, office or authority for private benefit – through bribery, extortion, influence peddling, nepotism, fraud, speed money or embezzlement”.¹⁸ According to the Report of the Common Wealth Expert Group on Good Governance and the Elimination of Corruption, in the book Fighting Corruption – promoting Good Governance, produced by the Common Wealth Secretariat 2000¹⁹, Corruption is generally defined as the abuse of public office for private gain. The United States Agency for International Development (USAID) defines corruption as “the misuse of public office for private gain. It encompasses abuses by government officials such as embezzlement and nepotism, as well as abuses linking public and private actors such as bribery, extortion, influence peddling, and fraud”.²⁰ The definitions do not include corruption in the private sector which is also worth mentioning. In the same Anti-Corruption Practice Note, UNDP acknowledged that corruption is also prevalent in the private sector but this should be incorporated in the definition.

As has been spelt out above, corruption should not be confined to the public sector. The definitions should be ranked at the same level as those of Nye (1967); Friedrich (1966); Van Klaveren (1989) and Heidenheimer (1989). All these definitions are incomplete since corruption also takes place in the private sector, non-governmental organisations and other sectors that can not be represented in UNDP and USAID’s label of ‘public power and office’.

The Swedish International Development Cooperation Agency (SIDA) states that corruption occurs when ‘...organisations or individuals profit improperly through their position in an activity, and thereby cause damage or loss’. SIDA further states that corruption is widespread in states where ‘the legal system, mass media and the public administration are weak and undeveloped. Three levels of corruption are usually referred to: petty corruption (bureaucratic corruption), grand corruption (political corruption) and state

¹⁴ http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/ac_strategy_final.pdf (Accessed on 27 July 2007)

¹⁵ <http://www.urban-renaissance.org/urbanren/publications/corruption.pdf>

¹⁶ Referent power is individual power based on a high level of identification with, admiration of, or respect for the power holder. http://en.wikipedia.org/wiki/Referent_power (Accessed on 19 August 2007)

¹⁷ Coercive power exists when the use of or the threat of force is made to extract compliance from another. Force is not limited to physical means; social, emotional, political, or economic force is also included. (<http://www.umpi.maine.edu/~petress/power.pdf> - (Accessed on 19 August 2007)

¹⁸ http://km.undp.sk/uploads/public/File/AC_Practitioners_Network/Anti_corruption_practice_note.pdf (Accessed on 27 July 2007)

¹⁹ Fighting Corruption: Promoting Good Governance, Commonwealth Secretariat, 2000 London.

²⁰ http://www.usaid.gov/our_work/democracy_and_governance/technical_areas/anti-corruption/ (Accessed on 27 July 2007)

capture (corruption which affects the entire state apparatus)²¹ This definition is very important in this debate because it is elaborate.

The above notwithstanding, it is important to take note that there are some forms of corruption that do not necessarily cause damage or loss. In this regard, there are some laws that have been made and amended to give an advantage to some politicians so that they can retain power. In Zimbabwe, the Constitution and laws such as the Public Order and Security Act (POSA) and Access to Information and Protection of Privacy Act (AIPPA) have been crafted in such a way that it will be difficult for the opposition political parties to effectively participate in politics and meet their constituencies. This has helped to keep ZANU PF in power since 1980. It is not clear whether the 'damage and loss' referred to includes such cases.

Senior (2006) states that corruption takes place when "... a corruptor covertly gives a favour to a corruptee or to a nominee to influence action(s) that may benefit the corruptor or a nominee and for which the corruptee has authority" The Asian Bank defines Corruption as '..... behavior on the part of officials in the public and private sectors, in which they improperly and unlawfully enrich themselves and/or those close to them, or induce others to do so, by misusing the position in which they are placed'²² The definitions by Senior (2006) and The Asian Bank recognize that corruption takes place in both private and public sectors.

3. Proposed Working Definition

Before giving an institutional working definition, it is important to make some observations on the many definitions given above:

- a) Defining corruption as 'the abuse of public office for private gain' is too narrow because there are many more phenomena that deserve the label "corruption" than those that involve the abuse of public office for private gain²³ This idea is supported by Warren (2004) who pointed out that the definition does not fit well in corruption of the democratic processes.
- b) Some of the definitions are too broad and are subject to misinterpretation.
- c) most definitions given above take for granted that corruption takes place in the public sector yet it is also rampant in the private sector. This applies to all individuals who define corruption as the abuse, use or misuse of entrusted public power, office and authority for private benefit.²⁴
- d) The definitions do not hold responsible all those who fail or neglect to take measures or fail or neglect to exercise sufficient oversight In as far as preventing and combating corruption is concerned.²⁵

²¹ http://sida.se/sida/jsp/sida.jsp?d=439&a=1443&language=en_US (Accessed on 1 August 2007)

²² <http://www.urban-renaissance.org/urbanren/publications/corruption.pdf>

²³ Reeds (2007) gave an example of major corruption scandals in the western Europe that involved the illicit party funding than individual gain. The Flick Scandal (Irving and Paterson 1987) and Kohl-gate (Esser and Hartung 2004) in Germany and the Urban Scandal in France (Knapp 2002) are all good examples. In the United States the Watergate Scandal was primarily a matter of subverting the electoral process rather than money making. There are also other elections in Africa (Zimbabwe and Uganda) whose results were allegedly subverted.

²⁴ This view of also shared by Senior (2006) in his book, Corruption- the World's Big C : Cases, Causes, Consequences, Cures. 'The main weakness of the Nye-type definitions is that they restrict corruption to the abuse of public power for private ends' The Asian Development Bank also said that the definitions are useful but, in the Bank's judgment, they do not give adequate attention to the problem of corruption in the private sector or to the role of the private sector in fostering corruption in the public sector. <http://www.urban-renaissance.org/urbanren/publications/corruption.pdf>

²⁵ Complicity in corruption offences lies at the heart of third party responsibility (and thus third party liability). Both failure to exercise oversight and failure to engage in a sufficient amount of detection effort can make a superior an accomplice to a corruption crime. Other civil servants who share bribes or businessmen who change middle-men fees may

- e) It is also important to take note that not all power, office and authority is entrusted.
- f) Not all acts of corruption result in damage or loss²⁶.

After putting into consideration all of the above issues, the following definition is proposed;

Corruption is the abuse or complicity in the abuse of private or public power, office or resources for personal gain.

The definition has the following characteristics;

- a) It recognizes that corruption takes place in the both the private and public sectors.
- b) It holds individuals and institutions that are involved in the abuse of power, office and authority vicariously responsible for corruption.²⁷

4. Conclusion

The proposed definition recognizes that corruption takes place in both the private and public sectors and also holds individuals and institutions involved in corruption vicariously liable. It remains a draft proposed working definition until the Board of Trustees of the Anti-Corruption Trust of Southern Africa revises and approves it.

5. References

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also be complicit in corruption through aiding and abetting a criminal offence. The failure to denounce corruption may also be considered as complicity-... (Michael 2007:13)

²⁶ Refer to SIDA definition '.... when organisations or individuals profit improperly through their position in an activity, and thereby cause damage or loss'. http://sida.se/sida/jsp/sida.jsp?d=439&a=1443&language=en_US (Accessed on 1 August 2007)

²⁷ They are responsible for the abuse of power, office and authority if they neglect preventing and combating corruption when they are in a position to do so. Executive agencies that employ a passive system of risk detection waiting for complaints to be made about corruption are also held responsible. Complicity in corruption should be extended to the three arms of government (the Executive, the Judiciary and the Legislature), political parties, the law enforcement agents, the private sector (businesses etc) and the general populace. Impunity should also be seen as complicity in corruption.

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