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Corruption, the Southern African Development Community Anti-corruption Protocol and the principal–agent–client model

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Abstract

Since the 1990s, a number of anti-corruption conventions have been adopted due to pressure from international financial institutions, donor countries and governments of major industrialised nations. One of these conventions is the Anti-corruption Protocol adopted by the Southern African Development Community. This article examines this Convention against the backdrop of the principal–agent–client (PAC) model which influences much of the current anti-corruption measures ranging from legal and civil service reform through to privatisation of the public sector. In focusing on the efforts to fight and prevent corruption through legal and public sector reform, this paper highlights the limitations of externally imposed solutions largely driven by donors. Using Tanzania, a country that has seen extensive technical input from donor agencies in reforming the law and bureaucratic structures, as an illustration, this article argues that the limited success of such donor-driven anti-corruption strategies is attributable to a number of reasons ranging from reform policies of donors and paternalistic attitudes to political shifts and antipathy towards external demands for reforms that are fuelled by the colonial past. This paper recommends that for a recipient country to take ownership of the anti-corruption strategies it is important to tailor the PAC model to the cultural, social and political context of the recipient country so that the solutions are seen as an indigenous initiative, thus enabling sustainable change in attitudes and behaviour.

Introduction

Africa is a continent rich in resources and human skills but greatly affected by poverty and human suffering. Part of the reason for poverty is insatiable human greed manifesting itself in the form of corruption at all levels, from politicians and senior civil servants to the humble clerk,[1] that deprives fellow human beings of basic amenities such as access to food, medicine, housing and schooling. Monies aimed at capacity building and infrastructure improvement get lost on the way in the form of bribes and kickbacks to unscrupulous businessmen, civil servants and politicians.[2] Despite the

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1 The motivations for seeking bribes vary, from need to greed. In the case of the clerk who seeks a bribe it is probably need rather than greed that is the guiding motive due to poor prospects. For instance the Service Delivery Survey focusing on corruption in the police, judiciary, revenue and land services commissioned by President Mkapa of Tanzania in 1996 found low salaries and poor conditions of services were the reasons for corruption in the public services; see CIET International (1996a, p. 5).

2 It is often said that members of the ruling elite tend to seek self-satisfaction rather than act in the public good in order to maintain their positions in an unequal society. The incidences of corruption amongst African politicians are well publicised. For a recent instance of corruption in Zambia see *Attorney General of Zambia for and on behalf of the Republic of Zambia v. Meer Care & Desai (a firm) and Ors* [2007] EWHC 952 (Ch). The High

richness of natural resources in Africa, together with efforts to create opportunities for economic growth through free trade, lowering of trade barriers and preferential treatment, aid from international financial institutions and foreign direct investment, it continues to stay at the top in the poverty scales with many of the African countries figuring in the list of least developed countries (LDCs).[3]

Corruption is not a phenomenon unique to modern times.[4] It was prevalent and recognised in ancient times, as the writings of political philosophers such as Plato[5] and Aristotle[6] indicate. According to Plato and Aristotle, inequality in its various guises, be it political, juridical or economic, combined with human propensity towards selfishness, create the conditions for corruption. For both these philosophers avarice is a dangerous element of the human soul. Aristotle states that men are always wanting more and more since it is the nature of desire to be dissatisfied.[7] These views are as true now as they were then and can easily apply to corrupt practices found in today's world. Inequality of power between the civil servant as service provider and the client as service seeker, coupled with economic inequality (e.g. low wages in the public sector),[8] are reasons why, like the Hydra, corruption rears its ugly head in a variety of guises in many countries.

There is sufficient evidence to indicate that corruption does contribute to lack of economic growth and hence poverty.[9] As the ex-president of the World Bank,[10] Paul

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Court ordered that Dr Chiluba repay the treasury around US$ 51 million. The implementation of the UK High Court ruling has been challenged in Lusaka by Dr Chiluba on the basis that it would be contrary to Zambian public policy.

3 Thirty-four countries in Africa figure as LDCs: Angola, Benin, Burkina Faso, Burundi, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Niger, Rwanda, São Tomé and Principe, Senegal, Sierra Leone, Somalia, Sudan, Togo, Uganda, United Republic of Tanzania and Zambia. List derived from UNCTAD/LDC/Misc/2005/3 (2005). According to the UN, LDCs refer to states that are 'deemed highly disadvantaged in their development process . . . and facing more than other countries the risk of failing to come out of poverty'.

4 For an excellent multi-disciplinary theoretical framework of corruption, see Dobel (1978).

5 See, for instance, Plato (1955) 421d–422b, 547– 553e.

6 Aristotle (1962, Book 2 chapter 7, Book 5 chapter 2). According to Machiavelli (1965), even the best of individuals can become corrupted through a little ambition and greed.

7 1962, Book 2 chapters 7, 8.

8 According to a study conducted by Quah (2001), one of the causes of corruption in colonial Singapore was low salaries in civil service. Singapore's anti-corruption strategy consisted of increasing the salaries of those in the public sector which, along with other measures, seems to have paid off. Singapore figures as one of the least corrupt countries in Transparency International's corruption index.

9 See for example, Alatas (1990), Bergsten and Elliott (1997), Mbaku (1994), Gould and Mukendi (1989) and Rose-Ackerman (1975).

10 The World Bank comprises two development institutions – the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA) – and three affiliate agencies – the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA) and the International Centre for the Settlement of Investment Disputes (ICSID). The WB was initially not concerned with corruption since it was seen as a political matter. The exclusion of politics is clearly stated in Art III(5)(b) and Art IV(10) of the IBRD Articles of Agreement which read:

Art III, Sec. 5 (b)

The Bank shall make arrangements to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.

Art IV, Sec. 10

The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall

Wolfowitz,[11] stated '[c]orruption is a disease that drains resources and discourages investment. It benefits the privileged and deprives the poor. Today, there are more than one billion people worldwide surviving from one day to the next on [US]$1 a day. Corruption threatens their hope for a better quality of life and a more promising future.'[12] Policymakers, economists and politicians from both the developed and developing countries have been aware of the high levels of corruption in many of the former colonies. However, during much of the twentieth century corruption was a taboo subject and it was generally regarded as a normal practice that one needed to engage in in order to do business. Of course, this apathy to take action, both at the national and international level, by developed countries could be viewed with an air of cynicism. After all, lucrative contracts abroad were important for generating growth at home, especially at a time when former colonisers such as France and the UK were slowly finding their feet by rebuilding their tattered economies after the Second World War. Alternatively, it can be explained in slightly nobler terms – a respect for sovereignty and a reluctance to interfere in the internal matters of a foreign country. It was only in the 1970s, as a result of a survey by the US Securities Exchange Commission, that attention was openly drawn to the high levels of corrupt engagement by US corporations in the form of bribes and kickbacks. This led to the US passing legislation[13] to criminalise corrupt behaviour by US corporations in foreign jurisdictions. The US expected that other developed countries with substantial overseas business interests such as the UK would follow suit, but it took another two decades for the problem of corruption to be widely acknowledged as a global problem that required immediate international attention and intervention. Since the 1990s, international attention has been drawn to the global phenomenon of corruption, with its negative effects on developing countries and its close connection to poverty. Politicians and leading institutions such as development banks (e.g. the World Bank (WB), the African Development Bank (AfDB)) and national aid agencies (e.g. the US Agency for International Development (USAID)[14], the UK Department for International Development (DFID)) involved in providing project finance for infrastructural development, have also become involved in the fight against corruption by requiring donee countries to ratify the anti-corruption conventions and to undertake extensive domestic law reforms. Fighting corruption is no longer a localised phenomenon but an international one, and the aim is to eliminate poverty and improve the quality of life of millions around the world.[15] As part of this global drive to fight

be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article 1.

However the World Bank's apathy towards corruption changed with the arrival of James D. Wolfensohn as its President. Instead of focusing on whether the World Bank should engage or not engage with politics he decided to redefine 'the "C" word [being corruption] not as a political issue but as something social and economic'; see Wolfensohn (1999).

11 He resigned from the World Bank in June 2007 for ethical lapses. He was having a relationship with an employee. There were also questions in respect of his management style. For more on the background regarding conflict of interest see The World Bank Ethics Committee (2007).

12 See World Bank (2006).

13 Foreign Corrupt Practices Act 1977.

14 For an in-depth discussion of US development policy in the battle against global poverty see Patrick, Birdsall and Vaishnav (2006).

15 Admittedly civil strife and border disputes also contribute to poverty. Part of the civil strife in resource-rich countries is attributable to the unequal treatment of tribes and groups who populate these resource-rich lands and whose rights, economic and otherwise, are overlooked in the process of their land's exploitation by the multinational corporations and the ruling governments.

corruption, the Southern African Development Community (SADC)[16] adopted its Protocol on Corruption in 2000 (SADC Protocol).[17] Requiring signatures from two-thirds of the member states, it sits alongside other regional[18] and international conventions[19] and is an indicator of the apparent seriousness with which policy-makers intend to conform with the global demands and standards to further anti-corruption strategies.

This article consists of three sections. Section I considers the model used by economists for analysing corruption, which informs much of the legal framework, including that of the SADC Protocol and donor-led initiatives in respect of corruption and governance of anti-corruption matters in donee countries. Section II engages with the difficulties of drawing the parameters of corruption, and in this process examines the approach adopted by the SADC Protocol and considers whether the list of offences is adequate to combat commonly acknowledged forms of corruption. Section III focuses on how far the SADC Protocol goes towards advocating preventative mechanisms that reflect the PAC model and explores the kinds of issues that need to be tackled if preventative mechanisms are to play a vital role in reducing corruption in developing countries. Tanzania[20] is used as an illustration for these purposes for a number of reasons:

(1) It is a member of SADC and the African Union (AU);
(2) It has ratified anti-corruption conventions adopted by both these organisations;
(3) It has been a major recipient of loans from national and international donor agencies;[21]

16 The member countries are Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. With the exception of Botswana, Mauritius, Seychelles, South Africa, Swaziland and Zimbabwe, the other countries are regarded as LDCs in the UN List (see ftn 3 above).

17 The Convention is not yet in force. It has been ratified so far by Botswana, Lesotho, Malawi, Mauritius, South Africa, Tanzania, Zambia, and Zimbabwe.

18 The other regional conventions are:
(1) Organisation of American States Inter-American Convention Against Corruption 1996 (OAS Convention). Came into force on 6 March 1997.
(2) Organisation for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997 (OECD Convention). Came into force on 15 February 1999.
(3) Convention drawn up on the basis of Article K.3(2)(c) of the Treaty of European Union on the Fight Against Corruption involving Officials of the European Union Communities or Officials of Member States of the European Union 1999 (EU Convention), which is still in the process of receiving ratifications. See also Council Framework Decision 2003.568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192 of 31.07.2003). According to Art 249 of the EC Treaty as amended by the Treaty of Amsterdam, a decision is binding in its entirety upon those to whom it is addressed.
(4) Council of Europe Criminal Law Convention on Corruption 1999 (COE Convention). Came into force on 1 July 2002.
(5) Economic Community of West African States Protocol on the Fight Against Corruption 2001 (ECOWAS Convention). Not yet in force.
(6) African Union Convention of Preventing and Combating Corruption 2003 (AU Conversion). Came into force on 5 August 2006; see Carr (2007).

19 United Nations Convention Against Corruption 2003 (UN Convention). Came into force on 14 December 2005; see Carr (2006).

20 For developments in some of the other African countries, see Kututwa (2005).

21 During 2004 the Official Development Assistance (ODA) net inflows stood at US $1,746 million, according to the statistical profiles prepared by UNCTAD (2005). ODA consists of both technical co-operation (grants for education, training and payments to consultants) and financial aid consisting of loans at concessional rates and grants. In most cases the grant element will be around 25 percent. For more on aid to Tanzania see Bigsten, Mutalemwa, Tsikata and Wangwe (1999). According to this study, since independence in 1961 Tanzania has received aid from fifty bilateral sources. Among them the Nordic countries, consisting of Sweden, Norway, Denmark and Finland, alongside Germany, the Netherlands, Canada, the US and the UK figure as major donors. For further on the sectors targetted see Bigsten *et al.* (1999, pp. 3–5). It must, of course,

(4) Since the Warioba Report of 1996,[22] commissioned by the then President Mkapa, it has received support and continues to receive support for reforms in public service provision reflecting the PAC model (discussed in Section I below) and for carrying out other anti-corruption strategies such as empowerment of citizens; and
(5) It provides fertile ground for assessing whether the superimposition of the PAC model brings about the intended outcomes.

I The theoretical model informing legislative initiatives

Before engaging in an examination of the SADC Protocol, I draw attention to the theoretical model that underpins much of the economic analysis of corruption in order to show the link between the policy-setting economic analysis of corruption and the legislative framework of not only the SADC Protocol but also of most of the other regional and international anti-corruption conventions. According to this widely accepted model (the principal–agent–client or PAC model), corruption occurs when an agent betrays the principal's interest in pursuit of his own by accepting or seeking a benefit from the service seeker, the client (C). The conditions for corruption present themselves when the principal (P) is in a powerful position and the agent (A), whom P has entrusted to carry out the services, has an element of discretion in administering the services, and there is a lack or near lack of accountability.[23] If P is in a monopolistic position, for instance in the telecommunications sector, and the decision of how, when, where and to whom connections are to be allocated is left to A's judgement with no clear and accessible procedures and checks in respect of the decision-making process, the situation easily lends itself to corruption. Opacity and high discretion levels in an organisation that holds a powerful position create the right conditions for corrupt behaviour. The proposition here is that A may be or is likely to be self-seeking (behaving in his own interest), rather than acting in the interests of P, his employer. In other words, A does not have the level of integrity or overlooks the level of integrity expected of him, in that he makes no separation between the public and the private spheres and uses his public position for private gain.[24]

While much of the discourse relating to the PAC model has taken place in the context of the public sector, it can equally apply to the private sector, even where the condition of monopolistic status may not be entirely met. Corrupt practices within a company's (P) purchasing department provide a good illustration of where a high level of discretion accorded to the purchasing manager (A), coupled with lack of accountability, could result in A coming to an arrangement (monetary or otherwise) with the supplier that promotes A's rather than P's interests. In adopting the PAC model, improvements to three areas are needed to see a reduction in corruption:

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be said that grants for technical co-operation seem to have been easily allocated and tended to be managed in a relaxed manner. In many instances donors competed with each other and provided grants for similar projects resulting in duplication which reduced any incentives there might have been for their implementation. For further on this see Berg (1993). An important question in respect of aid generally is the motivation of the donors. While it may be expressed in sentimental terms such as solidarity and the development of the disadvantaged states nonetheless as White (1974) observes, some donors saw it as a means of influencing the donee to adopt a particular ideology (e.g. the US) or as a means of consolidating its relationship with its ex-colonies while some (e.g. Germany, Japan) saw it as a means of forging commercial and political relationships.

22 The United Republic of Tanzania (1996). It is difficult to trace a copy of the full report. This author was able to find one at the Chr. Michelsen Institute in Bergen, Norway.

23 Klitgaard (1988).

24 Often called the Weberian rational-legal model of administration. According to this model the public and private sphere of officials are separate and this separation has to be maintained; see Weber (1947). Until recently (the nineteenth century) in much of Europe the rule was of a patrimonial type and did not follow the Weberian rational-legal model. The transition to the Weberian model was a gradual one. For more on this gradual evolution from patrimony where all assets, personal and public, are owned by the leader to the modern Weberian model, see North and Thomas (1996).

1) reducing the monopolistic power;
2) improving the environment within which discretion is exercised that would infuse confidence in the exercise of that discretion; and
3) improving accountability and transparency.

Discretion, accountability and transparency or openness are closely connected and, as such, improvements in one are likely to contribute towards improvements in the others.

Introducing competition is seen as essentially the route to reduce monopolistic power. Within the public sector, where this position is more difficult, competition could be introduced by enabling a number of government departments or institutions to deal with the provision of the same service, be it permits, export licences and so on.[25] Studies suggest that infusion of competition sees a reduction in corruption.[26] Adopting such a measure would see, for instance, both the Ministries of Agriculture and of Trade giving export licences for exporting agricultural products, or the Departments of Agricultural Products and of Licences within the same ministry providing export licences. There are, however, a number of limitations to this approach, in the current climate of national and global security concerns. First, it may not suit the provision of all types of public services, for instance ID cards and passports. Second, allowing multiple institutions or multiple departments within the same institution to deal with the provision of the same service has the potential to create excessive bureaucracy and public confusion. It thus creates opportunities for the harassment of members of the public unless the procedures for obtaining the services through different avenues are transparent and well publicised. While this may work in a country with high literacy rates and a robust civil service, it might not work, for instance, in developing countries where the population is largely illiterate or an overworked civil service is entrenched in bureaucratic practices. Third, there is the danger that rules may be interpreted variously in different sections of the government sector, thus leaving the door open for unequal treatment. Finally, the involvement of a number of departments or institutions in providing the same service may result in information breakdown or bottlenecks that may hinder effective investigations in the event of reports of an offence. So measures undertaken to introduce competition will have to be carefully crafted to suit local conditions rather than simply adopting a 'one size fits all' approach.[27]

The recommendations for breaking down the monopolistic character of state-owned enterprises are liberalisation, de-regulation (less interventionism), private–public partnership and privatisation.[28] Such measures are often closely associated with capitalism and the question of whether creating an environment that lends itself easily to infusing competition[29] is largely dependent on the

25 Rose-Ackerman (1978).

26 See Persson, Roland and Tabellini (1997); Lederman, Loayza and Soares (2001).

27 There are debates surrounding the issue of the effect of constitutional arrangements on corruption; see Fisman and Gatti (2002), Kunicova and Rose-Ackerman (2005); Tavits (2007).

28 Whether privatisation of public sector entities results in lower corruption is highly debatable due to varying views: see e.g. Duckett (2001), Clarke and Xu (2002). The World Bank has been an active voice for the privatisation of utilities since the 1990s due to a perception of the state as an inefficient provider of services in the utilities sector. The World Bank has played a major role in the privatisation of the water sector in developing countries with disastrous consequences; see World Bank (1993; 1997). In Tanzania, the water privatisation programme supported by the World Bank has not been a success. It resulted in increased water prices with little improvement in supply, resulting in the termination of the contract with Biwater, a company based in the UK. Biwater brought an action against Tanzania in the ICSID (International Court for Settlement of Investment Disputes) for compensation, which was unsuccessful (*Biwater Grauff (Tanzania) v. United Republic of Tanzania* (ICSID Case No. ARB/05/22). For other countries' experiences with water privatisation, see, for instance, Olleta (2007) and Dagdeviren (2008).

29 Competition is closely related to its potential to bring welfare to its citizens, at least in European dialogue. But as to whether competition has this effect in developing countries is questionable; see, for example, McAuslan (1997).

political structure of a country and its economic policies. However, with the ever-increasing number of countries joining the World Trade Organisation, founded on the principles of free trade, there is every reason to say that the market economy has taken root in most countries and along with it the greater participation of the private sector in a country's economic growth. Even China, despite a different political ideology, has adapted itself to this mode of engaging in trade and economic growth. That changes to the economic infrastructure are essential in reducing corruption is taken seriously by the WB and other development agencies and is often one of the conditions imposed on donee states.[30] As a result, many developing countries have undergone a rapid privatisation programme. For instance, in Tanzania between 1994 and 1999, around 150 out of 386 public enterprises were divested.[31] And this process is not unique to Tanzania or Africa. Developing countries in other continents have had to adopt similar methods. For instance, in India the utilities sector has seen greater participation from the private sector. The telecommunications sector in India is a good illustration of where the entry of the private sector has seen spectacular results. Equally, the monopolistic roles of state enterprises have also been eroded through a mix of relaxation of exchange controls, licences and permits. State trading corporations that virtually held a monopolistic position in most post-colonial states in the import/export trade due to shortage of hard currency have seen their role diminish gradually.

The need for competition is often supported by the welfare argument. But one needs to be aware that privatisation does not necessarily bring with it the envisaged benefits. Instead of providing welfare it has the potential to take welfare away from the public, as has happened in a number of countries. Privatisation of basic utilities such as water and electricity has seen the costs of obtaining these services spiral, with the result that the poor can no longer afford these services whereas they could when they were controlled and subsidised by the public sector.[32] In this context, Private Public Partnership (PPP) is often said to provide a better option.[33] It does not necessarily follow that opportunities for corruption are reduced when a public sector turns into a private sector, since it creates new opportunities for corruption, for instance during the sale of assets.[34] It also has the potential to import hitherto unfamiliar corrupt practices found within the private sector.[35]

Discretion, the freedom to exercise judgement with authority as one sees fit, is a factor built into the dealings of most public bodies for a number of reasons: efficiency, expediency, fairness, equality, justice, adaptability and flexibility among others. The degree of discretion will vary from context to context and is linked to goals in the provision of a particular service to the public. It is normally embedded in the rules, norms and adopted practices that guide the decision-making process of A. In the provision of land development and planning, for instance, ensuring fairness, equality, justice, the needs of the community and the protection of the public at large are likely to be the goals, and these might justify a greater degree of discretion. The latitude allowed is, however, likely to be context dependent. There may be greater laxity for low-level tasks, such as granting a building permit for extending a garage into the garden as opposed to granting a building permit for converting a school

30 US General Accounting Office (2004).

31 For more figures on privatisation in other sub-Saharan countries, see World Bank (2003).

32 See von Weizsäcker, Young and Finger (2006) for some case studies, including water privatisation in Tanzania.

33 See UN/ECE (2000); Ghobadian, O'Regan, Gallear and Viney, (2004).

34 According to Holmes (2006), the level of corruption in post-communist states is high due to neoliberalist policies that recommend a minimal role for the state. The reason for this is that privatisation has taken place with no thought given to ethical guidelines or appropriate regulatory mechanisms.

35 See Huther and Shah (2001); Duckett (2001).

building into a prison block in a high-density area, since the consequences flowing from the granting of the latter might raise significant issues for the local community and the public at large.

According to the PAC model, unfettered discretion combined with a lack of accountability has the potential to cause corruption. One way to resolve this issue would be to get rid of discretion altogether. Attractive though it might be, it is an unwise choice since discretion has an important role to play in the pursuit of goals such as efficient and expedient dealing in public services, fair treatment and equality that a state sets for itself. A better option would be to make the public sector more accountable and open and to introduce professionalism in the civil services.

Before going on to highlight how accountability is to be introduced, it is important to establish what is meant by accountability. As with most concepts, it seems to be variously interpreted. In its simplest form it is construed as a counting exercise such that a government department is required to indicate, for instance, the number of new school teachers appointed during a particular period and the numbers of desks and chairs bought for accommodating these appointments. This simplistic approach does not give any information on the quality of the desks and chairs or indeed why these new appointments were made. In good-governance-speak, accountability goes beyond this simple notion to include responsibility, answerability and responsiveness so that providing explanations and justifications are central to the notion of accountability alongside any sanctions for behaving irresponsibly.[36] Accountability also has an internal and external dimension and this implies being accountable to those within the institutions and those outside the institutions, such as the citizens and civil society organisations. It thus brings with it a social side where there is an opportunity for engagement and a meaningful two-way dialogue between civil society and government institutions, thereby making an important contribution to the provision of services and confidence in the public sector. The end result is that the government, its institutions and the civil service are subject to close scrutiny, both internal and external.

In order to meet the above good governance criteria, various mechanisms that strengthen the integrity and accountability of the civil service need to be put in place. These include:

- Clear indication of line of responsibility within institutions and government;
- Clear indication of rules, regulations and procedures followed in the decision-making process;
- Public access to rules and procedures;
- Promotion of greater integrity and accountability within the legal services sector, including the judiciary;[37]
- Codes of conduct for civil servants and education in the importance of maintaining integrity;
- Civil service reform – for instance recruitment through open competition, and training in the provision of services;
- Regular rotation of civil servants between departments;
- Complaints mechanisms so that citizens can complain in respect of public services;
- A regular forum for institutions and civil society to engage in dialogue with a view to improving the services provided; and
- Creation of independent pro-accountability agencies in specific sectors such as a Human Rights Ombudsman and an Anti-Corruption Commission that can hold a government accountable.

The donor community has pressed on with requiring donee states to put in place mechanisms that will infuse integrity, transparency and accountability as part of the public sector reform agenda. Using Tanzania as an illustration, Section III highlights the changes that have been introduced with

36 For a variety of definitions of accountability, see Schedler, Diamond and Plattner (1999); Mulgan (2000); Behn (2001); Ackerman (2003).

37 For more on corruption in the judiciary, see Transparency International (2007); CIET International (1996b); UNODC (2001).

extensive help from national and international financial institutions since the Warioba Report on corruption in 1996. Equally, the anti-corruption conventions have also introduced various measures related to increasing integrity and accountability. These measures will be considered in Section III below as part of the examination of preventative measures with the aim of showing that legal and institutional reforms do not always result in the intended effects and that an approach that is cognisant of the specifics of a country is required to make serious inroads to tackle corruption.

II Corruption – the parameters

It is common for most legislation to provide extensive definitions of the terms used within that convention. By way of illustration, Art 2 of the United Nations Convention on Corruption 2003 (UN Convention) contains a list of terms and definitions for the purposes of that convention. However, nowhere in Art 2 is there a definition of corruption. Providing a generic definition of corruption[38] is perhaps one of the most difficult tasks and there is much truth when R.J. Williams says that:

> '[t]he study of corruption is like a jungle and, if we are unable to bring it to a state of orderly cultivation, we at least require a guide to the flora and fauna. This need has impelled many writers to find a precise definition which will accurately characterise the phenomenon . . . it is important to note that there are nearly as many definitions as there are species of tropical plants and they vary as much in their appearance, character and resilience. The point is that the search for the true definition of corruption is, like the pursuit of the Holy Grail, endless, exhausting and ultimately futile.'[39]

The variety of definitions reflects the varieties of behaviour we tend to classify in everyday discourse as corrupt; some focusing on individual behaviour, some on group and political behaviour, some on immorality and some on the lack of distinction between the public and private spheres. The instances of behaviour (not all involving mutual exchange) that we normally tend to perceive as corrupt include:

(1) Patronage – bestowal of a benefit to an individual, individuals or a group by virtue of a relationship regardless of merit. In agrarian societies this may involve the bestowal of a cottage by a landlord to a peasant. In more complex circumstances this may involve benefits, for instance, to a relative, a friend, members of a group, a club, a school, caste or a religious faction;[40]
(2) Bribery – where there is an immediate or delayed mutual exchange of a benefit in return for a benefit, be it monetary or otherwise;
(3) Misappropriation – illegal appropriation of funds for private use;

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38 It must be said that the perception and hence the classification of human behaviour as corrupt also changes over time and are attributable to political shifts, economic development and shifting social mores. For instance, in a patrimonial society no distinction is drawn between the private and public assets of a leader (where the leader's authority is derived from tradition), so the use of public assets for private needs is acceptable. One of the problems about African leaders is that they largely seem to operate within this patrimonial framework despite structures left by the colonials. Since they do not derive their authority through tradition they resort to purchasing power through patronage. For accounts of neopatrimonialism, see, for example, Eisenstadt (1973); Leys (1965, pp. 226–27). For some more recent literature, see Fatton (1992); Bratton and van de Walle (1997, especially chapter 2; van de Walle (2001). According to Bratton and van de Walle (1997), the political institutions that play important roles in African neopatrimonial regimes are the concentration of political power in a single individual (the President), and clientilism, where jobs, contracts, licences, etc are awarded as personal favours and state resources are used for political legitimation.

39 Williams 1976, p. 41.

40 Often referred to as parochial corruption (where ties of kinship, group, etc. determine access to favours) as opposed to market corruption, where the process is an impersonal one and is dependent on who can pay the most; see Scott (1969, p. 330).

(4) Disloyalty – illegal use of confidential/sensitive information;
(5) Societal corruption – behaviour that is morally questionable, such as the adoption of aesthetic values by the younger generation that are alien to the older generation, or the show of wealth by an individual in total disregard of widespread poverty within a nation;[41]
(6) Lack of civic virtue – behaviour that is totally motivated by self-interest and total disregard of the common good;[42] and
(7) Decay of the political order.[43]

And when the view that there are variations between cultures[44] (relativism) is taken within the epistemological framework, the task of drawing the exact parameters of corruption for legislative purposes, that is the activities that are to be regarded as illegal, becomes more daunting. It comes as no surprise then that any talk of anti-corruption legislation, be it in an academic context or otherwise, always raises amongst others the following kinds of responses:

(a) That it is culture specific, that bribery is the norm in some societies and that it is perfectly moral and acceptable in those societies, and that any attempt to arrive at a common understanding of corruption is indeed difficult if not impossible;
(b) That it is largely a moral issue and is linguistically understood as referring to morally reprehensible behaviour;
(c) That existing legislation within a country against fraud or false accounting may perhaps be sufficient to deal with corrupt practices such as the misappropriation of public funds and bribery.

Before going on to consider the parameters of corruption, the above responses need to be addressed. In response to (a) there is no doubt that culture specificity is relevant. Types of human conduct that are frowned upon in one culture and attract the label of corruption may be common practice and accepted (or tolerated)[45] as such in other cultures. Nepotism, where members of the family are preferred to outsiders in an employment context, is an example where cultural differences could explain the acceptance or tolerance of such a practice. For instance, Confucian values that advocate the importance of family and familial ties are often blamed for this commonplace practice in Chinese societies. It does not follow from a practice found in a society that the philosophical foundations on which that society is founded endorse such a value. Even a cursory study of Confucianism indicates the contrary, since one of the golden rules is not to cause harm to others. If viewed against this golden rule it is indeed difficult to rationally justify nepotism from a Confucian viewpoint.

Empirical studies also strongly indicate that there is no difference between Asian and Western countries when it comes to the impact of corruption on lack of trust.[46] According to a study by

41 The meanings given to corruption in (5) and in (6) below are not relevant for drawing the parameters of corruption for legal purposes. They are included here nonetheless since as Wittgenstein (1953, paras 65–69) says, words in ordinary language have a wide variety of meanings manifesting family resemblances.

42 See comment in footnote above.

43 On this subject, see Dobel (1978).

44 See Tasioulas, 1998.

45 To outsiders, unquestioning participation by citizens in bribe giving may come across as acceptance of corruption within a particular culture. However, a distinction needs to drawn between that which is accepted and that which is tolerated. Personal circumstances might drive actors to tolerate a practice (for instance, where the father of a sick child bribes the hospital receptionist to obtain an appointment with a consultant), but it does not mean that the practice is accepted where the payment would be seen by the giver and the taker as the norm. The difference between accepted cultural practices and tolerance is not a simply a semantic issue. As Carney (1998) correctly notes, a high tolerance of corruption must not be confused with genuine cultural practices derived from cultural identity. The former is simply bad (wrong) habit that has come to be regarded as socially acceptable and justifiable; see also Hauk and Saez-Marti (2002).

46 Anderson and Tverdova (2003); see also Bardhan (1997).

Chang and Chu,[47] attitudes in Asian countries are no different from those found in Western countries when it comes to the negative impact of political corruption on public trust in political institutions. If the view that corruption is acceptable in Asian countries is correct, then political corruption should have no impact on public trust whatsoever. But this is not so.

While I am cognisant and appreciative of the fact that a universally acceptable definition is not possible, since what is held as morally reprehensible may vary across cultures, nonetheless there is a high degree of convergence of the standards expected of behaviour in the affairs of business, public sector administration and decision-making worldwide. This is attributable to a number of factors: the legacy, the legal system and the machinery of government left behind by colonial powers;[48] the harmonisation of markets through free trade and the resulting globalisation; the transplantation of economic and legal systems brought about by international financial institutions such as the World Bank and the International Monetary Fund;[49] the information flow between countries as a result of the information technology revolution; and greater democratisation.

In response to (b), corruption does have a moral dimension. But because an act is immoral it does not follow that that act does not fall within the legal realm. One of the goals of law is to regulate behaviour where it is harmful to society, even if it falls within the moral domain. There is no doubt about the countless harmful effects of corruption on society, its strong link to poverty, and the breakdown of the social fabric and structure. It is only right in these circumstances for the law to take a lead in guiding human behaviour through a combination of civil and criminal law provisions, sanctions and remedies to bring about a reduction in acts that are socially undesirable.

As for (c), many states are likely to have legislation on bribery, fraud and secret profit that would fall squarely within what is perceived as corrupt behaviour. If corruption were geographically contained within one state then there would be no problem in just relying on existing legislation. But donors want donees to adopt their standards on the use or distribution of funds provided. Given corruption's cross-jurisdictional character, it is important that a harmonised approach is adopted if we are to increase the chances of successfully combating and preventing corruption. The criminal laws of different states are unlikely to be uniform since they are founded on different legal traditions, thus creating variations and uncertainty. Hence there is a need for conventions, since they have the effect of harmonising the laws across states through consensus and the guidance of a common policy and framework. The expectation is that states will be willing to co-operate more readily and easily on procedural issues such as exchange of information for investigation and evidential purposes and extradition, all necessary tools required for the enforcement of anti-corruption legislation.

Given the difficulties in formulating a generic definition, it comes as no surprise that regional and international legal instruments have simply listed the types of behaviour for the purposes of criminalisation. Where a definition is provided it is narrow in scope and does not attempt to encompass the varieties of behaviour that could be classified as corrupt in everyday discourse listed above.

II.i The SADC Protocol

The PAC model, as stated earlier, has greatly influenced the policy initiatives in good governance advanced by donor agencies such as the WB. While the model does not offer any specific suggestions in respect of offences, it has as its foundation power and its abuse in specific circumstances. When it

47 Chang and Chu, 2006.

48 For instance, in India there was an extensive legal framework including laws on corruption in place when the British left; see Santhanam (1964).

49 See Fine, Lapavitsas and Pincus (2001) for an interesting account of the interrelationship between state institutions and the markets.

comes to corruption, the WB follows the theme set by the PAC model and defines it as the abuse or misuse by a public official in a position of power of that position in the execution of his duties for private gain.[50] Of the adopted conventions, regional and international, the SADC Protocol is the only convention that provides a definition of corruption in Art 1 which reads:

> '"Corruption" means any act referred to in Article 3 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.'

It reflects the influence of the WB approach, but goes a bit further in also bringing private-sector corruption within its fold. Article 3 then goes on to list the specific acts of corruption and covers more or less the same ground that other regional and international conventions do.[51]

Bribery[52] is widely understood in most cultures to be the commonest form of corruption and this is the first offence to be addressed by the SADC Protocol. In its simplest form it involves a minimum of two actors, the bribe taker (X) and the bribe giver (Y), and envisages a contemporaneous or a near contemporaneous exchange of money for a favour, be it an act or an omission, as, for instance, where X accepts money from Y to destroy an application for an export licence from Y's competitor. Not all cases of bribery are so straightforward. X and Y may wish to distance themselves from direct contact intentionally in order to minimise the risk of leaving a trail (an important element for successful investigation) by involving a number of agents for the purposes of communication and the transference of funds.[53] It is also possible that corrupt dealings are not necessarily restricted to money. It may include gifts of various kinds such as expensive holidays, houses or sexual favours.[54] It could also involve an understanding that spans time and generations. For instance, X's descendants could be treated in an advantageous manner by Y's descendants on the basis of the past relationship and tacit understanding between X and Y. Of course, the more complex the mutual undertakings and exchanges become through the involvement of a multitude of third parties spread over time and across space, the more difficult the task of establishing connections and associated intentions between the giver and taker.

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50 See Ofusu-Amah, Soopramanien and Uprety, 1999. Transparency International adopts a slightly wider approach by defining it as 'the misuse of entrusted power for private gain' (see 'Frequently Asked Questions' at www.transparency.org). Both of these definitions are rather restrictive in that the focus of the World Bank definition is on the public sector and the second is on the private gain. It is possible that the gain is not always private but may include a non-private gain such as the funding of a political party.

51 Other anti-corruption conventions, e.g. the AU Convention and the UN Convention, adopt a similar approach in focusing on the abuse, by a person in a position of power, of that position for personal gain, but do not provide a definition of corruption. They simply list the acts that are regarded as offences for the purposes of the convention.

52 In some countries a distinction is drawn between 'bribes' and 'facilitation payments'. The latter, likened to tips, mean that MNCs (multinational corporations) continue to offer facilitation payments and explain them away as conforming to local practices and as a way of doing business by following the local norms; see Bayart (1993). The distinction between bribes and facilitation payments is indeed very thin but it is difficult to see how the latter can be justified as a legal payment, especially if the payment is a large one. But calling a 'bribe' a 'facilitation payment' does not change the nature of the act in any way. It depends on the value of the facilitation payments and the expectations from those payments. Facilitation payments are often likened to the practice of gift-giving in China. Whether the gift is bribery or not depends on the value of the gift; see Tian (2004) for an interesting discussion of gift-giving in China.

53 For an interesting account of the number of people involved in corrupt deals, see *Attorney General of Zambia for and on behalf of the Republic of Zambia v. Meer Care & Desai (a firm) and Ors* [2007] EWHC 952 (Ch).

54 For instance, in Tanzania sexual favours are a common form of corruption in the education sector.

The parameters of bribery as drawn by the SADC Protocol in Art 3 bring within it active[55] and passive[56] bribery of a public official[57] and envisage the use of third parties for conducting or for receiving the benefits of a transaction as well as exchanges of promises, gifts and the like besides money.[58] It also extends to the active bribery of a foreign public official[59] and also to bribery within the private sector.[60]

Other than bribery, the SADC Protocol criminalises illicit gain (Art 3(1)(c)), embezzlement (Art 3(1)(d)), trading in influence (Art 3(1)(f)) and concealing or fraudulent use of property derived from criminal acts as listed in Art 3 (Art 3(1)(g)). Articles 3(1)(a) and (b) involve a minimum of two actors and reciprocity in that a benefit given is rewarded with a benefit obtained from a public official. The offence created by Art 3(1)(c) moves away from the concept of exchange. According to Art 3(1)(c), 'any act or omission in the discharge of his or her duties by a public official or any other person for the purpose of illicitly obtaining benefits for himself or for a third party' is an offence. The focus of this provision seems to be on the quality of the conduct of the official and illicit benefits that flow from that conduct. An illustration is perhaps the best way of understanding the kind of activity this provision is likely to encompass. Where a public official sitting on a panel with authority to peruse confidential science funding council documents uses the information to help his friend, a university vice-chancellor, in drafting a good bid for research development to the research council, an offence under Art 3(1)(c) would have been committed. While the access to information is authorised it is the misuse of information for obtaining illicit benefits for himself or another that is the subject of scrutiny under this offence.

Embezzlement, the misappropriation of property or funds entrusted legally to a person in their formal capacity, is included within its list of offences. Art 3(1)(d) makes 'the diversion by a public official or any other, for purposes unrelated to those for which they were intended, for his or her own

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55 Active bribery refers to the acts of offering or granting a bribe – the act of a bribe giver.

56 Commonly understood as the solicitation or acceptance of a bribe – the act of a bribe taker.

57 Art 1 defines 'public official' as:

> '*Any person in the employment of the State, its agencies, local authorities or parastatals and includes any person holding office in the legislative, executive or judicial branch of a State or exercising a public function or duty in any of its agencies or enterprises.*'

58 Art 3(1) reads:

> '*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 advantages 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.'

59 Art 6(1) states:

> '*Subject to its domestic law, each State Party shall prohibit and punish the offering or granting, directly or indirectly, by its own nationals, persons having their habitual residence in its territory, and businesses domiciled there, to an official of a foreign State of any article of monetary value, or other benefit such as a gift, favour, promise or advantage, in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official's public functions.*'

60 Art 3(1) reads:

> '*This Protocol is applicable to the following acts of corruption:*
> (a) – (d) . . .
> (e) the offering or giving, solicitation or acceptance directly or indirectly, or promising of any undue advantage to or by any person who directs or works for, in any capacity, a private sector entity, for himself or for anyone else, or for him or her to act, or refrain from acting, in breach of his or her duties.'

benefit or that of a third party, of any property, monies or securities belonging to the State, to an independent agency, or to an individual, that such official has received by virtue of his or her position for purposes of administration, custody or otherwise' an offence. So where a postmaster (A) uses money given to him by a client (C) for depositing in C's account to pay his (A's) son's university fees, A would be committing an offence under this provision. It is interesting that embezzlement is included as a separate offence. According to Akere Muna, Chairman of Transparency International Cameroon, who was commenting on its inclusion in the context of the AU Convention in many of the civil law countries, embezzlement is regarded as distinct from corruption, the latter normally referring to bribery.[61] Hence its inclusion as a separate offence.

Corridors of power, be it government departments, national or international organisations, are full of lobbyists putting forward the views of various interests such as the companies or non-governmental organisations that they represent. While lobbying in the corridors of power in itself is not an offence, Art 3(1)(f) makes the offer, solicitation or acceptance by a person to affect or influence the decision-making of a person performing functions within the public or private sector in return for an undue advantage for himself or anyone else an offence. So, where X offers his services to Z, saying that he is able to influence Y, the dean of the medical school, to offer a research post to Z in return for a luxury holiday in Europe for X's parents, X would have committed an offence under Art 3(1)(f). It is immaterial whether the supposed influence leads to the intended result.

An omission that stands out in the list of offences is that of illicit enrichment – the significant increase in the assets of a public official or any other person which he or she cannot reasonably explain in relation to his or her income. In much of Africa it is well-known that politicians and public servants live beyond their means while the rest of the population live in extreme poverty. The offence of illicit enrichment is to be found in the OAS Convention, the AU Convention, the ECOWAS Convention and the UN Convention. According to this offence, the onus is on the suspect to show how the assets were obtained. In most cases of corruption it is not always possible to obtain documentation or other incriminating evidence to establish an exchange of a benefit for a benefit or misuse of authority, and in such cases the offence of illicit enrichment provides an easier way of establishing corruption on the basis of circumstantial evidence. The passage of the offence of illicit enrichment in conventions that include it has raised substantial criticism, since it reduces the burden of proof on the part of the prosecution considerably and goes against the normal expectation of the State having the burden to prove beyond reasonable doubt. In countries where corruption is widespread and carried out with impunity the introduction of such a provision could be said to be justifiable since it has the potential to act as a powerful deterrent. However, there seems to be a serious undermining of the rights imparted by human rights instruments in respect of a fair trial. A number of the South American states (such as Argentina, Colombia, Brazil and Peru) include illicit enrichment as a crime in their criminal codes. By way of explanation, it has been suggested that this is partly due to the inability of investigation authorities in Latin American countries to conduct complex investigations.[62] The US ratified the OAS Convention but has not adopted Art IX on illicit enrichment on the basis that it would not be consistent with the principles of the US legal system, the reference being to due process.[63] Maybe it is these criticisms in respect of the erosion of human rights obligations that have persuaded the framers of the SADC Protocol to exclude it from their offences. To some extent it is difficult to understand the issue, since the situation where an individual with access to and in possession of wealth far beyond his capacity is comparable to an individual with a blood-stained knife standing over a dead body with stab wounds on the street. In

61 See Muna, 2004, p. 116.

62 Gantz, 1998.

63 On burden of proof, see *Re Winship* 3972 US 358 (1970).

the latter case we do not seem to have a major issue about placing the onus on the individual to displace the presumption that he was the killer. So why should the presumption be different when it comes to an individual with untold wealth which is difficult to explain on the basis of his job status or his family background?

A related issue that concerns corruption are activities undertaken by the recipient to conceal the proceeds of corruption. In instances of grand corruption, some form of laundering activity[64] is likely to take place in an attempt to disguise the illegitimate source of wealth. Many of the countries in Africa are cash economies, and against such a background it would be easy to filter money through the banking system. Money laundering is by no means a localised phenomenon, it has a transnational dimension, which means that SADC countries will be perceived a low-risk area for money laundering purposes due to lack of a legal infrastructure. And, according to various sources,[65] Tanzania sits squarely within the money laundering routes. Other anti-corruption conventions (e.g. the AU Convention[66]) have sought to strengthen the preventative mechanism by including provisions relating to money laundering (Art 6, AU Convention). The SADC Protocol is, however, silent on this issue. Fortunately, some of the signatories to the SADC Protocol are also signatories to the AU Convention, which means that member states should have money laundering legislation in place due to the mandatory nature of the language used in Art 6.

Funding of political parties from illicitly obtained funds is another topic that has been left out of the SADC Protocol. It is not surprising that it has done so, since it is a highly controversial area and even with developed countries the funding of political parties has remained a thorny issue.[67] What has to be remembered is that the drafting of a multilateral instrument is a diplomatic process given to compromises in the interests of reaching consensus, acceptance, ratification and implementation. In these circumstances, arriving at a comprehensive instrument that successfully includes what may be regarded as sensitive provisions is indeed a gargantuan task.

As regional conventions go, the SADC Protocol is sound and tackles some of the common acts of corruption. In doing this it reflects the foundations of the PAC model – the abuse of power by a person in a position of authority and responsibility for private gain.

III Preventative mechanisms

The influence of the PAC model is further reflected in the preventative measures that the SADC Protocol expects of the contracting states in Art 4. These measures, listed in Table 1, are primarily

64 This is not unique to corruption. It is associated with other types of crimes such as drug trafficking, illegal arms trade and human trafficking. Layering is one of the most common ways to launder money, where money in small amounts is deposited in a number of accounts and may be held in different names and in different countries. The monies may also be converted into various items such as jewelry which may be subsequently sold at auctions. For more on the topic of money laundering, see Alldridge (2003); Gilmore (2004).

65 See Bagenda, 2003.

66 Art 6 of the AU Convention reads:

> *'State Parties shall adopt such legislative and other measures as may be necessary to establish as criminal offences:*
> (a) The conversion, transfer or disposal of property, knowing that such property is the proceeds of corruption or related offences for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the offence to evade the legal consequences of his or her action.
> (b) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property which is the proceeds of corruption or related offences;
> (c) The acquisition, possession or use of property with the knowledge at the time of receipt, that such property is the proceeds of corruption or related offences.'

67 See, for instance, Gay, White and Kelly, 2007.

Table 1 Preventative measures (accountability, openness, integrity and participation) in SADC Protocol

Accountability and openness measures	Integrity measures	Participation and education	Deterrence and enforcement
Creation, maintenance and strengthening of systems in the hiring and procurement of goods and services that ensure transparency, equity and efficiency of such systems (Art 4(1)(b)).	Creation, maintenance and strengthening of codes of conduct for the correct, honourable and proper fulfilment of public functions (Art 4(1)(a)).	Mechanisms to encourage participation of media, civil society and non-governmental organisations (Art 4(1)(i)).	Introduction of mechanism for enforcing standards of conduct expected in the fulfilment of public functions (Art 4(1)(a)).
Mechanisms to promote access to information to facilitate eradication and elimination of opportunities for corruption (Art 4(1)(d)).		Mechanism for promoting public education and awareness in the fight against corruption (Art 4(1)(j)).	Strengthen revenue collection and control systems that deter corruption (Art 4(1)(c)).
			Protection of informants/witnesses (Art 4(1)(e)) and introduction of laws for punishing those who make malicious reports against innocent persons (Art 4(10(f)).
			Creation of institutions responsible for implementing mechanisms for preventing, detecting, punishing and eradicating corruption (Art 4(1)(g)).
			Tax law reforms that deny favourable tax treatment for individual or corporation for expenditures made in violation of anti-corruption laws (Art 4(1)(c)).

Maintenance of books, records in reasonable detail to reflect accurately the acquisition and disposal of assets on the part of publicly held companies and other associations, and sufficient internal accounting controls to enable detection of corruption (Art 4(1)(h)).	

aimed at public sector reform through the introduction of accountability and openness and the raising of integrity within the civil service while building in mechanisms for participation by civil society and the media,[68] the education of the public and the adoption of suitable deterrent and enforcement mechanisms. In adopting these measures, the approach of the SADC Protocol converges with those found, for instance, in the UN Convention[69] and the AU Convention.[70]

Many of the SADC member countries are also parties to other conventions, the AU Convention and the UN Convention, that are guided by the PAC model. As a result, they have been reforming the public sector[71] to increase accountability, transparency and integrity and have taken measures to spread the word about the evil effects of corruption and to empower citizens and NGOs[72] to take action through awareness-raising programmes. Tanzania is one of these, and in the carrying out of this process it has received extensive help from donor agencies such as the WB, the DFID, the DANIDA (Danish International Development Agency), the SIDA (Swedish International Development Agency)[73] and NORAD (Norwegian Agency for Development). Tanzania is perceived favourably by these agencies[74] and since the 1990s has emerged as one of the biggest recipients of funding within sub-Saharan Africa.[75] The donor agencies have taken on an active role (often describing themselves as partners) in providing advice and know-how for effecting such changes.

68 The media in the form of newspapers have always been a powerful way of canvassing public opinion; see Boissier (1906). For an account of the political role of newspapers in Africa, see Campbell (2003).

69 See e.g. Arts 7, 12.

70 See e.g. Arts 5, 6.

71 In 1996, the high levels of corruption in Tanzania was exposed in the Warioba Report (The United Republic of Tanzania (2004)).

72 See Robinson, 1998.

73 The Scandinavian countries have traditionally been major donors to Tanzania since the 1970s; see Helleiner, Killick, Lipumba, Ndulu and Svendsen (1995). See also Mukandala (1999); Falck (1997).

74 For more on how donors decide their recipients, see Collier and Hoeffler (2004). See also Mans (1994).

75 Other countries within the 'good' list include Uganda and Mozambique.

III.i Reforms in Tanzania

Before considering the changes introduced in Tanzania as a result of the various initiatives driven by these agencies, a brief background leading up to these changes is provided in order to better understand the context against which these changes were instituted and adopted.

Not long after gaining independence in 1961, Tanzania adopted the Arusha Declaration[76] in 1967, which outlined the country's policy of self-reliance and socialism. Central to this policy was nationalisation (public ownership) and the creation of *Ujamaa* villages, socialist organisations that would be run by those who lived and worked in the village. The policy of *Ujamaa* (co-operation or family-hood) was to develop the people and its objective was 'threefold: the delivery of services; the creation of a more productive, modern agriculture; and the encouragement of communal, socialist forms of co-operation'.[77] Despite this commendable ideological focus on the welfare and development of the community at large, the country in the 1970s faced a huge economic crisis which saw tax increases, parastatal (state) trading corporations monopolising the distribution of basic commodities such as food and oil, the introduction of lengthy bureaucratic processes, restrictions on the movement of grain across districts, and the adoption of other austerity measures including the loss of employment tenure for state employees and curbs on the movements of people in private transport on public holidays. The cost of living spiralled upwards out of control and petty corruption became commonplace since huge numbers of state employees sought to supplement their official wages through bribes. The aid that was coming in from the Nordic countries was insufficient to ward off the failing economy.

The *Ujamaa* programme itself was under scrutiny since vast numbers of people, resettled in areas where the ecological and climatic patterns were different, found that they could not apply their traditional agricultural knowledge to the land they had been provided with. They also reacted vociferously to the demands to grow crops that were labour intensive. Protests were swiftly dealt with by TANU (the African National Union) who had no hesitation is using violence when needed. What had started off as a voluntary programme ended up becoming coercive.[78]

The economic crisis did not take a turn for the better in the 1980s. The IMF proposed programmes of economic liberalisation to enable improvements in the economy met with stubborn resistance from President Nyerere, since they offended the socialist vision for Tanzania. The country managed to struggle through this difficult period due to the trickle of aid from the Scandinavian donors. Amidst growing economic crisis Nyerere stepped down and in 1985 Ali Hassan Mwinyi became president.[79] Soon after Tanzania reached an agreement with the IMF which included the devaluation of the Tanzanian currency. Aid from the IMF and other donors started flowing, though antipathy towards the liberalisation policies remained amongst the staunch supporters of the socialist policies.

Liberalisation brought with it its own problems, rampant corruption being one of them. Bribes from businesses to the political elite and senior civil servants in order to facilitate trade in the form of the import of goods and foreign investments became commonplace. Tanzania had sought to modernise its anti-corruption laws in the 1970s with its Prevention of Corruption Act 1971,[80] but this proved to be largely ineffective due to lack of enforcement. The early 1990s was a watershed for

76 Often called the blueprint for African socialism.

77 Scott, 1998.

78 See Scott (1998) for an interesting account of villagisation in Tanzania.

79 Collier, 1991.

80 Act No 16 of 1971. This legislation underwent periodic amendments. Part II of the Act sets out the functions of the Prevention of Corruption Bureau and imparts various powers to its members, which include powers of arrest and the seizing of assets.

corruption with a number of high-profile cases involving tax abuse and customs duties exemptions, which had been set up for encouraging foreign investment, and the Chavda scandal.[81] These large corruption scandals in the public sector caused a huge outcry, both at home and abroad,[82] regarding the government's level of commitment to curbing corruption and upholding the cornerstones of good governance (e.g. transparency and accountability) in the public sector.

The eradication of corruption and the introduction of good governance therefore emerged as important issues in the elections, and Benjamin Mkapa made these the core issues in his election campaign. Upon becoming president he set up in 1996 the Presidential Commission, under the chairmanship of the Honourable Joseph S. Warioba, to look into the causes of corruption.

The Report of this Commission (often called the Warioba Commission) was published in November 1996. The Warioba Report found that those who receive and solicit bribes fell within two groups: (1) low-income employees who engage in petty corruption; and (2) the political elite and public servants who, despite earnings adequate to meet their needs, engage in grand corruption. According to this Report, the high incidence of corruption during the 1970s and early part of 1980s was more of the petty kind, for example bribes for expediting the issue of a driving permit, the opening of a new file by a court clerk, the issuing of a trading licence, and gaining access to the basic necessities of life such as water or electricity connections. It permeated all government departments from education, health, home affairs, finance, judiciary, trade, employment, land, natural resources and labour to local governments.[83] The mid 1980s, however, saw a new form of corruption develop as a result of trade liberalisation, with opportunities for bribes in business-related transactions (for example in the setting up of factories and licences for foreign investment), thus opening the doors for grand corruption. It permeated the upper rungs of society, including the decision-making ruling elite, thus resulting in a marked growth in the incidence of high-level scandals confirming many of the widely held views about the state of governance and corruption in Tanzania.

The Warioba Report made a number of recommendations aimed at the leaders, public servants, businesses and the people. These included:

(1) cleaning up existing leadership and developing ethical standards for future leaders;
(2) clear demarcation of responsibilities between the executive officer of ministries, departments and parastatals and ministers and members of boards of directors in order to enable accountability;
(3) vetting officers employed in sensitive areas such as home affairs,
(4) employment based on merit;
(5) declaration of assets and gifts received by leaders and public officials;
(6) severe punishment in the form of nationalisation and forfeiture of property of 'big givers of bribes' (i.e. persons involved in grand corruption);
(7) adopting programmes that raise awareness in the public of their rights; and
(8) a role for the media in exposing corruption and in educating the public.

After the publication of the Warioba Report a National Anti-Corruption Strategy and Action Plan (NACSAP) was approved by Parliament in 1999,[84] which identified seven priority areas of strategy as follows:

81 For more on this see, for instance, 'Chavda's Scandal: CRDB to Lose 900m', *Business Times* 15–21 October 1993.

82 Mwinyi was widely referred to as '*Mzee Ruksa*' in Kiswahili, translated as 'With my permission', due to the rampant corruption, both petty and grand; see Kiley (1994).

83 The United Republic of Tanzania, 1996, pp. 1–15.

84 President's Office, 1999.

(1) Rule of law and legal framework 'intended to facilitate sectoral laws review and create conditions necessary for the restoration of confidence in the judiciary and law enforcement agencies';
(2) Financial discipline and management in order to 'reduce and eradicate siphoning of public finds by unfaithful officials and increase revenue collection';
(3) Transparency in procurement administration and procedures;
(4) Education of public to harmful effects of corruption on the economy and social values and creation of awareness of rights;
(5) Public service reform that recognises the accountability of public officers and fair remuneration package for their services;
(6) Protection of informers in order 'to encourage citizens to co-operate'; and
(7) Support of the media so that they can report the 'corrupt elements without fear or favour and to publicise the harm they do to the innocent, the poor and the weak in Tanzania'.[85]

The NACSAP recognised that the judiciary and the legal system was a central pillar in ensuring equality and the fair treatment of its citizens and that existing outdated, cumbersome and non-transparent laws needed to be reviewed and updated so that the resulting framework reflected 'the government's policy of transparent, equal, fair and effective treatment and provision of services to the public'.[86] Equally it recognised that the law enforcement agencies needed to be strengthened along with improving the interface between civil society and the government in order to combat corruption.

The co-ordination of the anti-corruption strategy was to rest with the Minister of State, Good Governance in the President's Office. The Permanent Secretaries or Chief Executive Officers in the various ministries and other state agencies and institutions were to have responsibility for implementing the various anti-corruption policies, including the adoption of codes of conduct.

Since the publication of the NACSAP[87] a number of reforms (institutional and management processes) have been undertaken. A Good Governance Co-ordination Unit (GGCU) was established in 2001 to implement the NACSAP, with a reporting system enabling the different Ministries and Independent Departments and Agencies (MDAs) to provide details of registered complaints on corruption and unethical behaviour, self-assessment of performance and outputs achieved (e.g. improvement in public service delivery, transparency and accountability mechanisms, adoption of a code of ethics) on a periodic basis with a quarterly report and target setting for the next quarter. A summary of these reports is regularly published as the Quarterly Monitoring Reports. An Ethics Inspectorate Department was also set up with the Public Service Management Department with responsibility to enforce the Leadership Code of Ethics.[88]

Alongside these institutions, Tanzania further strengthened its existing anti-corruption enforcement authority, the Anti-Corruption Squad, which had been established by the Prevention of Corruption Act 1971 and Government Notice No. 17 of 1975 to deal with the growth of corruption in the 1970s. In 1991, the Ministry of Home Affairs took over responsibility for this squad and renamed it the Prevention of Corruption Bureau (PCB). The PCB assumed both investigative and preventative roles and in this capacity investigated allegations of corruption, prosecuted directly or referred alleged corruption cases to the Director of Public Prosecutions, educated members of the

85 President's Office, 1999, pp. 10–11.

86 President's Office, 1999, p. 15.

87 A further version of the NACSAP (known as NACSAP II) was adopted in 2006, and expands the scope of governance to include local government authorities, civil society and the private sector.

88 The UNDP (United Nations Development Programme) has been providing a great deal of assistance to Tanzania on setting up schemes for good governance; see 'UNDP Case Studies in Anti-Corruption Tanzania', available at www.undp.org.

public about the effects of corruption and trained government departments and state-owned organisations on both the detection and prevention of corruption. It also has a research division that plays an important role in identifying corruption-prone areas. After the Warioba Report, the Bureau received a massive injection of funds along with offices being opened in a number of regions and since then has seen a gradual expansion of staff.

The Bureau underwent further changes as a result of the Prevention and Combating of Corruption Act 2007 (PCA 2007).[89] The newly adopted Prevention of Corruption Act set out in detail the role of the Bureau, now renamed the Prevention and Combating of Corruption Bureau (PCCB)[90] and the powers of the Director General in Part II of the Act, and Part III deals with the establishment of the Prevention and Combating of Corruption Board[91] (PCCBd), whose function is to advise the PCCB on any matter relating to corruption and to review matters such as staffing and administrative policies as well as to consider the annual reports of the PCCB. Though it is too early to form any opinions of the effectiveness of establishing the Board, what is interesting is its constituency. Its membership is to include a representative from civil society[92] and from the private sector.

III.ii Reforms – a success?

On paper all the recipes for good governance based on the rational-legal model and advanced by the World Bank and donor agencies are present in Tanzania.[93] In spite of all these commendable efforts in updating legislation and introducing changes within the public sector, seen by many as an 'excellent example',[94] a reference to data sent by the PCB to the GGCU indicates that despite a high number of corruption cases being reported there are hardly any prosecutions. Even the Second Quarterly Monitoring Report, for instance from 2005, presents a bleak picture when it notes:

> 'The number of cases going through the PCB system is in the thousands. For instance, the number of cases carried over plus those reported/detected during the quarter by the PCB stands at 8586 . . . Investigation files formally opened were 219, cases sent to court were 18 . . .
>
> It is worth noting that in spite of the many cases being brought to the attention of PCB, only a few (in absolute terms) are finding their way to the end of the cycle.'[95]

The picture that emerges from corruption surveys is no different. According to Transparency International (TI), Tanzania is highly corrupt. A comparison of the scores for Tanzania on its corruption perceptions indices for the past five years, set out in Table 2, show no marked improvement despite the major incursions into public reform based on expertise from the various donor agencies.[96]

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89 Act No 1 of 2007.

90 Act No 1 of 2007, s.5.

91 S.15 PCA 2007.

92 Most of the civil society organisations in Tanzania were established during the colonial period but there has been a gradual growth in the number of civil society organisations. According to the Tanzania Chapter of APNAC (African Parliamentarians Network Against Corruption), there are now well over 6,000 NGOs in Tanzania; see APNAC Tanzania (2006)

93 See United Republic of Tanzania, 2004, pp. 11–62; Mutahaba, 2005; Office of the Controller and Auditor General Tanzania, 1999; Anti-Corruption Bureau and the Presidential Inquiry Commission Against Corruption, 1996; Good Governance Coordination Unit, 2002.

94 According to a recent news item the UK International Development Secretary Hilary Benn hailed Tanzania's progress and announced that the UK would provide £105 million of direct budget to support Tanzania during 2007–2008. Tanzania is DFID's biggest recipient of funding; see News Item (2007a).

95 GGCU, 2005, pp. 20–21. A similar picture also emerges in other quarterly reports.

96 Transparency International (TI) is an NGO devoted to fighting corruption, and since the 1990s has been publishing a corruption perceptions index on an annual basis. It uses a score ranging from 1 (high corruption) to 10 (low corruption); for more on TI visit www.transparency.org.

Table 2 TI scores for Tanzania 2004–2009

Year	2004	2005	2006	2007	2008
TI Score	2.8	2.9	2.9	3.2	3.0

Other surveys also do not show in overall terms any major improvements in Tanzania. For instance the Afro Barometer survey also indicates that while the government may have dealt with petty corruption to some extent in a positive manner, corruption at the upper level (that is, grand corruption) still continues with judges, police, tax officials, health officials and government officials perceived as highly corrupt.[97]

This failure to bring about a major shift for the better in the perception of corruption inevitably raises the questions, 'Why despite all the assistance are we not seeing a marked improvement in Tanzania? Why are the expectations not being met?' One way this question can be fruitfully explored is in the following terms: 'Why is there no sense of ownership on the part of Tanzanians?' This lack of ownership, I believe, is attributable to a number of reasons ranging from donor policies and donor–donee dynamics to the colonial past.

Since the collapse of communism, the development agenda has taken on a new hue, resulting in a vigorous push on the part of the international financial institutions (IFIs) and other donor agencies to superimpose a structure whose tone is largely driven by neoliberal capitalist ideology. While the motivations and objectives of Western donors may vary, their views in respect of how to bring about economic reforms, and through that poverty alleviation, converge.[98] These economic reforms include, besides the removal of trade barriers, reform in the public sector, namely transparency, integrity, accountability, the privatisation of public services and greater competition. The model that is transplanted onto the donee is essentially a Western one and there is an undisguised 'tendency toward the universalising of Western norms and values'.[99] There is no attempt on the part of the donors to fit the model to the historical, social, political and cultural ethos that underpins a donee state, thus contributing to a lack of indigenous ownership. Some have gone on to say that this is a modern form of colonialism or neo-colonialism. For instance, William De Maria rightly questions the assumptions made by the donor community and their failure to even engage in exploring or understanding 'corruption' in its indigenous context, which can be extremely complex. As he aptly observes:

> 'Western anti-corruption engagements in Africa too often appear oblivious to this argument, preferring to intervene through a portal that proclaims "corruption" a universally nasty issue. "Corruption," through Western eyes, is HIV-like, a trans-cultural "disease" that must be surgically removed from all sovereign states.'[100]

Further evidence for the view that the donors are the primary drivers of policy-making within Tanzania is provided by Graham Harrison's empirical study on donors and public-sector reform. According to Harrison, donor sub-groups have meetings with the permanent secretaries of various ministries on a regular basis 'to discuss policy progress, the disbursement of funds and consider further funding options. These meetings have become a routine part of the way the government works, and the higher echelons of the civil service regularly produce information for donors – both

97 REPOA, 2006. The survey results are based on a representative random sample of 1,304 Tanzanian adults of voting age, 650 men and 654 women; see also ERSF and FACEIT (2002).

98 See, for instance, Naim, 1995; Marquette, 1999.

99 Brown and Cloke, 2004.

100 De Maria, 2005, p. 5.

within the sub-group meetings and in response to the donors' desire to maintain a closer monitoring of their money.'[101] Such intimate involvement strongly supports the view that there is no partnership between the donor and the donee state and that the policy-making is entirely driven by the donors[102] in heavily aid-dependent states such as Tanzania, thus raising serious doubts about the usefulness in real terms of the various anti-corruption strategies adopted. Harrison's field study also makes some disturbing observations about the failure of the donors to report cases of corruption for a number of reasons ranging from failure of donor governance policies in countries that have been cherrypicked as showcases[103] to the deterioration of mutually dependent relations between donors and donee states. He writes:

> 'Other donors, enjoying close and routinized working relations with debtor states, also fight shy of the sensitive issue of corruption. More candid interviewees said that donors know about corrupt practices – such as officials with a row of luxury apartments which they could have never paid for from the public servant's salary – but demur from acting on these cases because of the repercussion this would have on the overall donor–state relationship.
>
> . . . But the anti-corruption agenda is made more complex by the mutual (albeit still unequal) dependence between donors and debtor state: to identify serious corruption at the highest echelons of the state would be to disrupt the post-conditionality regime, with its image of partnership, progress and claims of show case status.'[104]

Unwittingly, the donor agencies, in their enthusiastic drive towards economic liberalisation and deregulation, may have also created new opportunities for corruption. The privatisation of the state sector, for instance, has been an important source of illicit enrichment, and as Williams correctly observes, 'in many cases, privatisation amounted to no more than the licensed theft of state property',[105] thus entrenching rather than solving the already corrupt focus of the political elite.

It should also come as no surprise in a heavily aid-dependent country such as Tanzania that the World Bank and other institutions in their capacity as donors are seen as lucrative sources for illicit enrichment by the political and business elite groups within the country, with the result that the state often makes reform proposals to attract donor funding.[106]

The shift in political ideology in Tanzania, as we saw earlier, was not brought about by the domestic economic crisis or through international pressure. It is no accident that donor-led reforms, legal or otherwise, came to be widely seen as an imposed alien construct to further Western

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101 See Harrison, 2001.

102 According to Therkildsen (2000, p. 66), in many instances the State may request the help of the donor agencies for technical assistance in drafting the policy, which explains 'the observation that many senior officials and ministers do not take an active part in the policy making process. As principals assessing the quality of the policy work, they need only ascertain that their subordinate agents help to produce policy papers that attract donor funding. This is a key indicator of a job well done.'

103 According to Raikes and Gibbon (1996), donors have played down corruption in Tanzania due to its showcase status.

104 Harrison, 2001, p. 673.

105 Williams, 2000, p. xii; see also Hall, 1999. In a similar vein Holmes (2006), in his comparative study (focusing on Bulgaria, Hungary, Poland, Russia and China) states that neoliberalism is a primary factor in the rise of corruption. In his reasoning the post-communist countries lacked cultural norms, the necessary regulatory mechanisms and the ethical guidelines required for decision-making. At times, the international financial institutions have used low proceeds from privatisation as a reason for suspending aid. The IMF stopped aid to Kenya on this basis and imposed a number of conditions for resuming aid. These included increased privatisation and establishing an anti-corruption authority; see Kamau (2001); Human Rights Watch (2002).

106 For more on the complex dynamics and examples from various African countries, see Therkildsen (2000; 2001).

capitalistic interests in a young independent country. The paternalistic approach, by backing demands for reform with threats and sanctions, does not do much to dispel any doubts one may have about the ownership of the reform programme in Tanzania. Loans were suspended in the mid 1990s when Tanzania did not meet the demands to discontinue tax exemption to people of influence in politics. This mechanism of stopping payments continues to this day, in spite of the 'working in partnership' speak adopted by the donor agencies. In 2006, Denmark cut US$3.16 million in aid to Tanzania because of the slow pace of the Anti-Corruption Bill. Denmark's envoy, Carsten Pedersen, is reported as having said, '[f]rom my perspective it is a contract which has been broken. If Tanzania met this target, they would get the money.'[107] Tanzania passed the Anti-Corruption Bill in 2007 and since then Tanzanian anti-corruption efforts have been feted by donor agencies as a great success,[108] with promises of further funding.[109] There is no doubt that Tanzania's co-operation in undertaking reforms is largely donor driven. The donors' message, which smacks of paternalism, is 'If you act upon what we require you to do we will lend monies to you. If not, then we will not. If you do not perform as per the terms we will cut the funding.' What the donors have overlooked is that Tanzania's initial rejection of help from IFIs indicated a deep-rooted sense of sovereignty, a sense that still pervades ex-colonies to this day regardless of globalisation. The donor's paternalistic attitude, backed by sanctions, only rekindles that sense of sovereignty and an unwillingness to take ownership of strategies thrust upon them by others.[110] The carrot and stick approach simply reinforces the view held in many donee countries that the IMF, the WB and other donor agencies are simply engines feeding Western interests. Against this, the dynamics between the donors and recipients can hardly be said to be collegial in character where there is free and fair collaboration on an equal footing.

The intimate involvement of the donor agencies in policy-making, where indigenous voices of the state institutions are geared to reflect donor policies, simply reawakens in the donee state the recent colonial past where the ruler was divorced from his subjects and no attempt was made to let the subjects participate in the decision-making process.[111] Hence De Maria's observation that fighting corruption in Africa is yet another neocolonial adventure.

The above reasons provide food for thought. How should we go about introducing the reforms in donee countries so that they take ownership and see it as their strategy and not as one that is imposed and backed by threats? The answer lies in how we situate the problem and the solution. There is no doubt that the PAC model provides a feasible strategy for preventing corruption. Mere semantics, e.g. partnership speak, alone will not resolve the issue and impart that sense of ownership, as we have seen. The problem and the strategies need to be placed against the country's culture, historical, political and social, and the economics and the knowledge gathered from this exercise needs to be built into the model to provide a solution that is tailor-made for that country. A return to the pre-colonial past of the country may provide some clues as to how acting in the interests of the community at large is a core principle if anti-corruption strategies are to become an integral part in the ethos of a country. There are ample studies which indicate that corrupt practices and notions of personal property came with the colonisers and were introduced via the tax-collection system set up

107 See Obulutsa, 2006.

108 See News Item, 2007b.

109 What, however, is overlooked is that Tanzania is simply increasing its debts by drawing upon funding from donor agencies. Even though the term 'aid' is commonly used by donor agencies it is not aid as commonly understood, that is support or help where there is no expectation of receiving anything in return. Much of the aid provided are loans where the recipient is expected to pay interest (at perhaps less than market rates) and the capital. Other types of aid come in the form of technical assistance and grants.

110 See Baaz (2005) for an interesting account of identities.

111 Heilman, Kamata and Ndumbaro, 2000; Rodney, 1972.

by the British, for instance, in Tanzania in order to meet administration costs and the costs of employing African labour. The British used intermediaries, normally the chiefs and tribal leaders (who had hitherto acted for the good of the community and acted as custodians of public property),[112] for the collection of taxes.[113] They were allowed to retain a percentage of the tax collected, a practice no different from kickbacks, thus sowing the seeds of corrupt practices within a country and continent that a few centuries later the Western nations would be fighting to eradicate. According to Heilman, Kamata and Ndumbaro:

> Colonialism broke the organic link between the society and their leaders and replaced it with a state that lorded over its subject. Where the colonial state used existing chiefs, they were accountable to European officials rather than their own communities . . . The British introduced indirect rule, whereby chiefs and *jumbes* [administrators] were used to help in administration and collection of taxes. Tax collectors, including chiefs, used to retain a certain amount of tax money . . . Thus, the colonial state reoriented methods traditionally used by the society to hold its leaders accountable and set the stage for unaccountable public officials.'[114]

It seems that to impart ownership of the reform programmes we need to revisit and rekindle the organic link that existed between the leader and his community and revise it to suit a modern nation where boundaries are not on tribal and clan lines. Somehow the citizens of the nation, whatever their tribal affiliation, and their democratically elected leaders need to perceive this organic link and the need to act for the good of the community. One possible way of achieving this is to involve civil society in this quest for indigenising the reform structures put in place for combating corruption. The donors' engagement must involve the various stakeholders, including the participation of civil society, in the process of introducing changes. Otherwise the donor agencies are doing no more than reflecting the structures present in the colonial past.

The solution then will no longer be perceived as an alien construct but as an indigenous contribution coming from within the community. This is where 'working in partnership' takes on a fresh meaning. It does not simply mean technical co-operation and direct intervention with policy-making by foreigners but a true engagement with the political, historical and social antecedents of a country and the participation of the intellectuals, the ruling elite and the people of that State to arrive at a truly tailor-made solution that that State and its people can come to accept as their own and hence internalise for guiding their behaviour. It also reinforces their pride in their country and

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112 For more on this aspect, see Rodney (1980).

113 See Collier and Lal, 1986. According to Tlou and Campbell (1984), in Botswana (previously known as Bechuanaland) the *digkosi* (chief) retained 10 percent of the tax collected, thus introducing the practice of accumulating private property and acting as an incentive to ignore the needs of their community. Similar views emerge from writers such as Mulengi and Lesetedi (1998, pp. 21–22) who state:

> 'the administrative culture inherited from . . . Africa's colonial past has facilitated and entrenched corrupt practices especially amongst the higher echelons of politicians and administrative bureaucracies. Of particular significance is the adherence by Africa's new political elites to what we call the "African chief model" of administration which dates back to the colonial period . . . [P]re-colonial chiefs had limited and controlled powers but colonialism reinforced the chief's powers by giving them new powers and occasional payment that translated the chiefs into agents of colonialism.
>
> The attainment of independence by African countries did not end this "colonial chief" model of administration. The leadership style adopted by African political and administrative elites after independence reveals a strong resemblance to this model . . . Like the colonial chief, these leaders have been associated with authoritarianism and, most important, an almost total lack of respect for the law and due process. In addition they have used their positions of power to amass illegal wealth just like the colonial chief.'

See also Nabudere (1981); Nkrumah (1980); Osaba (1996).

114 Heilman, Kamata and Ndumbaro, 2000, p. 500.

feelings of sovereignty. The finding of such synergies is also likely to contribute to the successful implementation of the anti-corruption conventions.

Grass-roots activism is likely to take a greater part in helping to build a better future in the African continent with the recently formed Economic, Social and Cultural Council (ECOSOCC) of the African Union (AU) which is meant to be the 'people powered arm' of the AU. And according to Akere Muna (the incoming presiding officer and vice-chair of TI) the work of pushing the issues will start now.[115]

Conclusion

The PAC model has influenced: (1) the perception of corruption as the abuse or misuse of power by a public official in the execution of his duties for private gain in the anti-corruption conventions; (2) the preventative mechanisms advocated by the conventions, namely the infusion of accountability, integrity and transparency in the public sector; and (3) the international financial institutions and donor agencies to transpose the PAC model in donee countries as part of the good governance agenda.

What emerges from a study of Tanzania, a signatory to the SADC Protocol, the AU Convention and the UN Convention, and a major recipient of loans and technical co-operation from donor agencies in introducing public-sector reform as part of its anti-corruption strategy, is that corruption as yet continues at the grand level. It remains to be seen how the 2007 Act and the recently adopted NACSAP II will change the picture. This paper has argued that the problem lies in the dogmatic assertion and transposition of a Western construct by donors and a failure to build a bespoke solution with the ingredients of the PAC model against the historical, political and social backdrop of the country in question. It is in tackling that issue head on that the hope of progress lies.

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115 See News Item, 2008.

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