

Introduction

Corruption is as old as humanity, yet international recognition of its corrosive nature is relatively recent. The fight against corruption is now an important aspect of contemporary international law. The last three decades have witnessed steady and even remarkable advances in recognising corruption as an international problem that precipitates poverty and threatens both the rule of law and the foundation of a law-based state. An impressive array of international conventions, declarations, guidelines, national laws, and institutions exist to combat corruption and to establish a framework for international cooperation and assistance, in particular in the area of asset recovery. Intergovernmental organisations are constantly engaged in the fight against corruption and are issuing recommendations, directives, and codes of conduct, or more significantly, drafting legally binding international conventions.¹ These commitments have naturally grown a desire by states to address corruption within their jurisdiction, and in other territories. Furthermore, various non-state actors, such as civil society organisations, continue to insist on accountability for the crime of corruption, and the need to sensitise people as to its destructive effects.² There is hardly a region in the world in which there are no anti-corruption agencies, instruments, or laws in place. Post-independent Africa is one region that has actively participated in the growing trend to curb corruption,³ and African states have overwhelmingly endorsed several United Nations anticorruption initiatives and decisions.⁴ The

¹ Key intergovernmental organisations in the field include the: United Nations (UN), Organisation for Economic Cooperation and Development (OECD), African Union (AU), Organization of American States (OAS), Council of Europe, European Union (EU), Arab League, and Financial Action Task Force (FATF). International financial institutions (such as the World Bank and the International Monetary Fund), agencies, and bilateral donors are also engaged in the fight against corruption.

² The two most prominent and influential international non-governmental organisations are Transparency International and Global Witness. There are also several regional and national NGOs and bar associations engaged in the fight against corruption.

³ See, for example, the Dakar Declaration on the Prevention and Control of Organised Transnational Crime and Corruption, adopted by the African Regional Ministerial Workshop on Organised Transnational Crime and Corruption, held in Dakar in July 1997, E/CN.15/1998/6/Add 1, sect I.

⁴ As of February 2014, 169 countries had ratified the UN Convention against Corruption. Of these, 43 out of 54 African Union member states had ratified the Convention, the highest number of ratifications of any region, even though the African group complained of a lack of funds to facilitate and ensure full participation of all developing countries in the negotiation of the Convention. Nonetheless, while many African states have ratified this treaty and other similar instruments, not many have revised their laws to bring them into conformity with the requirements of the treaties.

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proliferation of criminal law instruments against corruption shows the importance the international community has consistently attached to such measures as a way to end the problem.

Despite several years of universal consensus, cooperation, and apparent belief in the ability and effectiveness of legal rules and institutions to fight corruption, it continues to flourish in many parts of Africa, with deleterious effects on human rights, in particular of the most economically and socially disadvantaged. The question that then arises is whether criminal law instruments against corruption can provide an adequate remedy, and satisfactory sense of justice for victims. The book aims to examine the effectiveness of the criminal law instruments against corruption, and if they are unsatisfactory, to consider the role human rights law might play to address any deficiencies. It provides a framework for complementarity between promoting and protecting human rights and combating corruption. The book probes into three major aspects of human rights in practice – the importance of governing structures in the implementation and enjoyment of human rights, the relationship between corruption, poverty and underdevelopment, and the threat that systemic poverty poses to the entire human rights edifice.

Although there is widespread awareness of the adverse effects of corruption within political, economic, and social spheres, the extent of corruption in several African states is well illustrated by their constant low rankings and scores on Transparency International's (TI) Corruption Perceptions Index (CPI), published annually since 1995. Indeed the CPI 2013 shows the worsening problem of corruption in regions like Africa, with Somalia recorded as one of the three most corrupt countries in the world.⁵ There is a multitude of anti-corruption indexes measuring corruption in African states, but the CPI is probably the most widely acceptable tool at the moment because it is frequently used and relied upon by academics, economists, journalists, international organisations, and civil society groups to challenge governments' record on their fight against corruption.⁶ The CPI gives 177 countries a score from zero to 100, with

⁵ The other two countries are Afghanistan and North Korea. Because corruption takes place in secret, it is difficult to know exactly the level of corruption in any given country. However, important anticorruption indexes like the CPI have created reliable measurements of the magnitude of corruption in various sectors and countries. Many governments worry about how they fare on the CPI. Other important anticorruption indices include the World Bank Control of Corruption Index (WBCCI) and the Global Integrity Report. These indices adopt broadly similar methodologies and are the most widely recognised and frequently cited indices in corruption research. For example, both the CPI and the WBCCI attempt to qualitatively measure the pervasiveness of corruption in a country.

⁶ Many of the criticisms of the CPI have focused on the fact that it only documents *perception*, rather than real evidence of corruption as adjudged by a select few of individuals. The CPI may not be perfect, and in fact no index is. The difficulties in obtaining real evidence of corruption may be put down to the secretive (and complex) nature of corrupt acts (and the fact that those who perpetrate corruption rarely admit to doing so). Even so, while the CPI's

zero indicating high levels of corruption, and 100, low levels (that is, 'very clean'). For 2013, the CPI showed that with the exceptions of Botswana, Cape Verde, Mauritius, and Rwanda, all other African states are considered significantly corrupt. Even though some African states scored comparatively better than others, the CPI showed that public sector corruption remains embedded in the region. Moreover, the CPI also showed clear links between corruption and the weak political and administrative institutions that have resulted from prolonged periods of conflict and violence.

Moreover, whereas some early scholars⁷ in the field argued that corruption in poor economies like Africa can be 'welfare enhancing', empirical evidence suggests that corruption invariably impedes sustainable development, and thus disproportionately affects the economically and socially vulnerable, weakens the rule of law, erodes public trust in government, and permeates (and undermines) critical institutions of state.⁸ Corruption can be harmful across national borders – regionally and internationally – and has been stated to undermine 'economic development and political stability [of countries, while also being] a threat to international peace and prosperity, as well as facilitating drug-trafficking, money laundering, and other international criminal activity'.⁹ In the light of globalisation and advanced technology, the consequences of corruption in one country are now easily felt continentally and even beyond. Underdevelopment, lack of opportunities, violence, and insecurity in one country can bring about forced migration (including economic migrants) and consequently inflows of refugees and mercenaries to other parts of the region. Economic and social migrants may for instance impose a strain on the resources of poor neighbouring countries, and lead sometimes to rivalry with local populations, resentment, violent competition for resources, and ultimately, insecurity. Furthermore, corrupt immigration and custom officials make countries' borders porous and easily accessible by, for example, drug traffickers and 'terrorists', thereby not only endangering the security and

accuracy and methodology may be debated, it has arguably been effective in building political pressure on governments to address corruption. The mere existence of perception of corruption has normative value – helping to shape public morality and sentiment against corruption – regardless of the 'real evidence'. Even perceptions may provide a pointer as to the real evidence, and if they are well publicised can generate public outrage which in turn might help to promote positive change and enhance accountability of governments. In any case, while real evidence of corruption may be difficult to obtain, its devastating effects are too glaring to ignore.

⁷ These scholars include Joseph Nye, Samuel Huntington, and Nathaniel Leff. There is a detailed discussion of their views on 'cost-benefit analysis' of corruption in Ch 1.

⁸ See UNDP/Global Financial Integrity, 2013, 'Illicit Financial Flows from the Least Developed Countries: 2002–2011', www://iff.gfintegrity.org/iff2013/2013report.html. The report is an annual update of the one published in 2011, which states that 'Weak governance spawns public corruption and encourages corporate malfeasance' *ibid* 18.

⁹ Kimberly Ann Elliot, 'The Problem of Corruption: A Tale of Two Countries' (1998) 18 *Northwestern Journal of International Law & Business* 524.

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well-being of individual countries in the region, but of foreign countries abroad and potentially international peace.

Yet, it is almost impossible to determine exactly how deep corruption flows (in part, because of the notorious secrecy within which corruption takes place). Even so, few will doubt its negative consequences in the forms of poverty and inequality, which are a common phenomenon in several African states. While it is true that the causes of poverty and underdevelopment in those states are complex (and no single factor causes poverty), the longstanding problem of corruption is arguably one explanation for deficits in the rule of law, a drain on public treasury, and exacerbation of existing vulnerabilities and inequalities. Inevitably, the challenge posed by corruption to the rule of law and enjoyment of human rights has raised important questions about the coherence, adequacy, and effectiveness of a criminal law response on its own to drive the legal and social changes necessary to combat corruption (and corrupt behaviour) and its increasing effects – directly or indirectly – on the rights guaranteed under the African Charter on Human and Peoples' Rights.¹⁰

Despite the complexities and the recognition of the harms that corruption inflicts on individuals, communities, society, and institutions of governance, especially in poor regions, each corrupt act is treated as an isolated incident. The fight against these individual acts is nearly always approached from a criminal and law enforcement dimension, presumably because this is the common approach in developed countries that have mostly effective legal and judicial systems to treat corruption solely as a crime. However, the universal application of such a restrictive approach tends to ignore the serious human (and social) consequences of corruption in several parts of Africa, a region generally lacking sound institutional and justice systems. This leaves both communities and individual victims powerless and without effective remedies.¹¹ While a criminal and law enforcement approach to corruption clearly has the incentive of deterring would-be corrupt officials in states where the criminal justice systems themselves are corruption-free (which is not usually the case in many African states), a 'one size fits all' approach has proved counter-productive, thus making durable and sustainable solutions to the problem elusive.

¹⁰ African Charter on Human and Peoples' Rights, adopted 26 June 1981, OAU Doc CAB/LEG/67/3 Rev 5 (entered into force 21 Oct 1986) (1982) 21 *International Legal Materials* 58. 53 of the 54 member states of the AU have ratified the Charter.

¹¹ Remedies are measures (substantive reliefs or the procedures of obtaining such reliefs) that may be taken in response to an actual or threatened violation of human rights. Remedies include 'an award of damages, declaratory relief, injunctions or orders'. See Dinah Shelton, *Remedies in International Human Rights Law*, 2nd edn (Oxford: Oxford University Press, 2005), 4.

In addition, the relationship between corruption and human rights law is one of the most fundamental and yet least studied questions in the field of international law.¹² This book attempts to throw more light on the relationship. The main purposes of the book are to examine the extent to which the criminal and law enforcement framework can effectively address corruption and its effects on human rights, and to explore the potential of human rights law as a complementary legal framework to combat corruption. This book therefore aims to advance and to contribute to a comprehensive and multidisciplinary approach to corruption, and to increase awareness of the legal protections of human and peoples' rights in Africa. The book demonstrates that the effects of corruption on human rights can be debilitating. It puts forward a theoretical foundation for addressing the absence of effective legal remedies for victims of corruption in African states. The book relies heavily on the framework of the African Charter on Human and Peoples' Rights (the principal African regional human rights treaty) to analyse the effects of corruption on human rights in Africa. While arguing for the creative use and dynamic and evolutionary interpretation of the African Charter in order to achieve its 'full effects' in combating corruption, the book also proposes operational, legal, and policy frameworks to combat effectively and satisfactorily the problem.

As noted, a criminal law response, while necessary, is only a small deterrent to corruption (as for example, prosecution for corruption in practice hardly helps to remove any threat of re-offending),¹³ because the absence of accountability institutions makes engaging in acts of corruption a risk worth taking. The criminal law solution to corruption is generally reactive. It is also the case that corrupt officials are mostly not deterred either by imprisonment or society's condemnation of their acts, and are instead frequently celebrated. Those who possess economic influence or strong political connections are also less likely to be deterred. The implementation and enforcement of a legal framework to combat corruption in several African states is unfortunately dependent on weak governments and corrupt public officials, leading to predictable effects in political, economic, and social spheres. One such result is the lack of full and effective enjoyment of human rights and peoples' rights.

¹² On the other hand, literature on corruption generally (and its effects on socio-economic and political development) has flourished over the years.

¹³ In developed countries with limited incidents of corruption and where the justice systems are largely corruption-free, criminal law generally serves other purposes, such as prevention, punishment or retribution, which arguably can deter potential offenders. See generally, A Ashworth, *Principles of Criminal Law*, 3rd edn (Oxford: Oxford University Press, 1999) 36. Furthermore, a criminal law approach to corruption may be warranted, especially given the central values that are promoted by criminal prohibition, and the significant harms that corruption causes. The prohibition of corruption can also normatively serve to condemn and stigmatise corrupt officials. Yet, lack of effective enforcement of any such prohibition will inevitably make the purposes of criminal law completely ineffectual.

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Notably, former UN Secretary General Kofi Annan aptly captured the growing international community's concern with corruption and its negative impact on human rights during the 2003 adoption by the General Assembly of the United Nations Convention against Corruption (UNCAC), stating that corruption: '[H]as a wide range of corrosive effects on societies; undermines democracy and the rule of law; *leads to violations of human rights*; erodes the quality of life, and allows organised crime, terrorism and other threats to human security to flourish; hurts the poor disproportionately by diverting funds intended for development, and undermines a state's ability to provide basic services.'¹⁴ This viewpoint contrasted sharply to the predominant attention paid to the effects of corruption on economies and development, and triggered a remarkable tendency among human rights institutions to mention 'corruption' in their work or make a case for it to be considered a human right issue,¹⁵ and as recently as March 2013, the UN Human Rights Council, at its 23rd Session, organised a panel discussion on the negative impact of corruption on the enjoyment of human rights (and commissioned a study on the matter).

Despite the increasing global recognition of the connection between corruption and human rights, these two concepts are still largely considered discrete and, as such, are treated separately. While the AU Convention on Preventing and Combating Corruption refers to the African Charter on Human and Peoples' Rights, it makes only passing reference to human rights and to the rule of law. It also does not articulate how exactly this notion will be operationalised in a coherent manner within the charter's provisions, nor contain any idea of justiciability. In addition, the interpretation and implementation of a legal framework for corruption and human rights law (in particular the African Charter on Human and Peoples' Rights) rarely take into account the human rights dimension of the problem. On the one hand, despite the complexities of corruption, the reactive and limited criminalisation and prosecution solutions remain the conceptual foundation of any anticorruption legal response. On the other hand, human rights law does not explicitly prohibit corruption, and

¹⁴ Secretary-General Lauds Adoption by General Assembly of United Nations Convention against Corruption, SG/SM/8977, GA/10200, SOC/CP/271 (3 November 2003).

¹⁵ See for example, similar statement made by UN Secretary General Ban Ki-moon during his launch of the Stolen Asset Recovery Initiative (StAR). More recently, the UN High Commissioner for Human Rights, Ms Navi Pillay, stated (at the 'panel discussion on the negative impact of corruption on human rights', held in March 2013 during the 22nd session of the Human Rights Council) pointedly: 'Let us be clear. Corruption kills . . . Corruption hits the poor first and hardest, breeds impunity of perpetrators; exacerbates inequality, weakens governance and institutions, erodes public trust, undermines the rule of law; and denies victims the right to effective redress, thus creating "a vicious cycle of crime".' See Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, available at www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.26_EN.pdf, paras 3, 4.

human rights institutions and tribunals rarely apply rigorous human rights analysis to the problem,¹⁶ and human rights defenders and anti-corruption activists rarely engage or work together on issues of common interests.

Sanji Mmasenono Monageng, former chairperson of the African Commission on Human and Peoples' Rights and now a judge (and vice president) at the International Criminal Court (ICC), stated on a questionnaire sent out by this author: 'I never used the word "corruption" throughout my time on the commission – perhaps because complainants do not raise issues of corruption.'¹⁷ Modupe Atoki, also a former chairperson of the Commission, agrees:

I don't use the word 'corruption' that much in my work as commissioner, although I personally believe that certain corrupt practices like large-scale corruption may violate the human rights under the African Charter. However, the closest we have come is interpreting Article 21 to mean that the resources of the state should be used to the exclusive benefit of the citizens. Corruption may very well be implied but the Commission has not ruled that this is the case. It would be interesting for a complainant to bring a case under this rubric and see how the Commission interprets large-scale corruption.¹⁸

The relatively recent history of the international anticorruption movement may account for the discrete treatment of the two concepts of human rights and corruption. While human rights law emerged following World War II, the anticorruption movement grew out of the 1977 Watergate scandal in the United States. Furthermore, several years after the development and expansion of human rights law as a 'fundamental aim of modern international law',¹⁹ the use of the word corruption was still considered taboo. While human rights law has diluted the concept of state sovereignty to the point that a state's treatment of its own citizens is no longer considered a matter of only domestic concern, combating corruption is generally seen as an improper intrusion into the domestic affairs of sovereign states.

Although the legal frameworks for corruption and human rights law emerged at different times in history, and there may be some conceptual

¹⁶ It is far less common to find detailed human rights analysis of corruption in the reports of the Office of the UN High Commissioner for Human Rights or the African Commission on Human and Peoples' Rights. For instance, former UN Special Rapporteur Christy Mbonu prepared working papers and reports on corruption and its impact on the enjoyment of human rights, but they lacked a rigorous human rights analysis and most of her recommendations were based on criminal and law enforcement solutions. While she stated that individuals, communities, and societies are often victims of corruption, she did not articulate any remedies within the framework of human rights law.

¹⁷ This is the first of two remarks (among the responses received from former and current members of the Commission). The responses were based on questionnaires and telephone interviews conducted between April 2012 and June 2012 for the preparation of this book.

¹⁸ This is the second remark. See 'Responses to Questionnaire', on file with the author.

¹⁹ Shelton, *Remedies* (n 11) 1.

differences between them, there are also several common areas and complementarities. First, they both converge around a body of identifiable common principles. Several human rights obligations and principles, such as the obligations of vigilance and diligence, and the principles of accountability and participation, are central to the fight against corruption and, in fact, are deemed critical to its long-term success and sustainability. Second, the fight against corruption aims to enthrone both good governance and the rule of law, which relate directly to several foundational objectives of human rights law. Both are important to the realisation of systems that respect human rights, because political stability and sound economic management, intrinsic to the fabric of human rights law, cannot be realised without them. In many cases, violations of human rights are consequences of weak governance and a lack of the rule of law. Third, an effective fight against corruption is crucial to the realisation of human rights, because it unquestionably leads to the sound management of public resources and subsequently improves citizens' access to justice and vital public services.

Nonetheless, a coherent and consistent framework has not yet been developed to reflect and build on the relationship between corruption and human rights law. Standards and laws relating to corruption are still narrowly conceived as an infringement against the state, and not the individual victims. This is true even given the emphasis on a comprehensive and multidisciplinary approach to corruption. While the legal framework for corruption requires states to take specific measures to combat it, it does not indicate any legal responsibility or accountability on the part of states that either encourage (or condone) it or fail to effectively fight it within their territories. This lack of accountability has resulted in the sporadic and lax prosecution and punishment of officials responsible for large-scale corruption, while, conversely, imposing severe sanctions for petty corruption, so as to give the impression of justice. These behaviours clearly violate the underlying legal and moral assumptions that a government will treat all persons equally, fairly, and with respect.

In addition, although rhetoric about corruption constantly fills political speeches and the media, comparatively few high-ranking state officials are prosecuted, and corruption cases that are taken to court proceed at a snail's pace and serve no more than a symbolic purpose. Prosecutorial agencies regularly abuse their wide discretionary power, and many anti-corruption laws rarely provide for independent prosecution or counsel; where they do, as in Nigeria,²⁰ they are almost always paper tigers, as they have a very limited mandate, and, as such, are rarely effective in practice. In most countries the consent and approval of the attorney general or

²⁰ See s 52 of the Corrupt Practices and Other Related Offences Act, 2000 (commonly known as ICPC Act). There is a discussion of the ICPC Act in Ch 3.

minister of justice, who are usually political appointees, is required to bring charges of corruption (and to file *nolle prosequi*, translated as ‘we shall no longer prosecute’), but political realities mean this discretionary power is regularly abused or exercised in such a manner as to achieve a political or unfair objective.²¹ Yet, sometimes, public demands for government to act against corruption may also result in unjustified and unlawful exercise of prosecutorial discretion.

Corruption charges are levelled against opposition leaders (often without justification) to achieve a political end. Potential witnesses are often silenced, while corrupt officials use stolen wealth to buy access to political and economic opportunities. Witnesses are likely concerned about retaliation (from threats or harassment, to violent retribution) if they file a report. Corruption suspects continue to benefit from banking secrecy laws and the lack of whistle-blower protection laws that would encourage reporting. And financial documents, which are a primary source of evidence, are often protected by law, and therefore are difficult to obtain without resources and technical know-how that prosecutors may lack. Perpetrators have the influence and (stolen) wealth to hire the best lawyers, accountants, and so on, to help distort or hide evidence of their misconduct, take advantage of the holes in legal frameworks, and/or launder the proceeds of their crimes. Most perpetrators also often have unparalleled access to the media, and some invest heavily in the industry, presumably to influence public opinion in particular directions.

Moreover, where prosecution of corruption does take place, it is an enormous expenditure of the resources of the criminal justice system. And regardless of the legal outcome, corrupt state officials are often allowed to keep their ill-gotten wealth (through for example, the questionable procedure of plea bargaining, because agreeing ‘to bargain’ suggests an admission of guilt and breach of public trust on the part of corrupt suspects, as people who truly work for their wealth will hardly agree to such a procedure). Presumably, apart from causing a minimal amount of disgrace, creating the inconvenience of legal battles, and occasionally imposing short jail sentences, criminal prosecution and punishment alone would seem unsatisfactory and ineffective ways of combating corruption and its effects on human rights. The level of prosecution and punishment for corruption involving high-ranking state officials is simply not commensurate with the gravity of the problem, particularly when combined with the lack of effective remedies for victims, and that corrupt officials can benefit from their crimes, including keeping the stolen assets.

Furthermore, cooperation among states in anticorruption matters, while

²¹ Art 139 of the Angolan constitution, for example, is a good illustration of political control of the office of the attorney general. It provides that: ‘The Vice-President, Ministers of State and Ministers [including the attorney general] shall be politically and institutionally responsible to the President of the Republic.’ This is discussed in detail in Ch 3.

mandatory in criminal cases, is optional in civil and administrative matters,²² and as such obligations relating to asset recovery, for example, imposed by anticorruption treaties, have not been fully embraced by states. A victim state can be awarded damages only if the requesting state recognises such damages, therefore it is a victimised government, not its victimised people and communities, that has the 'legal standing' to bring an action to recover damages. Recovered financial assets may be returned through civil recovery to a victim state that can prove ownership, but these assets are often quickly re-stolen and laundered by the senior officials of the corrupt state that encouraged or facilitated the acts in the first place.

In addition, although states have an obligation to respond to the consequences of corruption, this is limited to making it a relevant factor in legal proceedings: to rescind contracts and the contractual rights of third parties acquired in good faith. Similarly, while states are required to ensure the legal right to compensation for entities or persons who have suffered damage as a result of an act of corruption, this is limited to private sector corruption and to foreign states and governments. Any such obligation is also subject to the fundamental principles of states' domestic law.²³ In the case of African states, while there have been marginal improvements in cooperation to trace, freeze, seize, forfeit, or return stolen wealth, no consistent or coherent pattern has developed because much still depends on the vagaries of economic and political considerations and interests of the states. Sovereignty, technicalities, and a lack of adherence to the 'small details' are frequently put forward as justifications by both the victim state and the receiving state to refuse requests for mutual cooperation and assistance in cases of corruption involving high-ranking state officials.²⁴

²² See, eg, Arts 34, 43(1), and 53 of the UN Convention against Corruption, UN General Assembly, United Nations Convention against Corruption: Resolution adopted by the General Assembly, 21 November 2003, A/RES/58/4, www.unhcr.org/refworld/docid/3fdc4d3e7.html.

²³ The phrase 'where appropriate and in accordance with the fundamental principles of its legal system', appears 33 times in the UNCAC. This apparently was a compromise to allow many states to subscribe to the idea of the convention. Yet such provisions clearly fly in the face of Art 27 of the Vienna Convention on the Law of Treaties, which provides that: 'a party may not invoke the provisions of its internal law [not even its constitution] as justification for its failure to perform a treaty'. To allow states to breach this core international law principle would be to provide them with 'an escape route' from their voluntary obligations. See Vienna Convention on the Law of Treaties, 1155 UNTS 331.

²⁴ For example, Nigeria's former Attorney General of the Federation and Minister of Justice Michael Kaase Aodoakka refused, on the ground of sovereignty, to entertain the request of the UK Metropolitan Police (instead of the UK Home Office) and made under bilateral mutual assistance to Nigeria. The request was to question a former Nigerian governor involved in corruption and money laundering that had occurred in the United Kingdom. Aodoakka said: 'I think Nigeria, as a sovereign nation, deserves some respect. They [the Metropolitan Police] knew they were wrong, otherwise why did they now write through the Home Office requesting mutual assistance to quiz a prominent Nigerian . . . I cannot compromise the sovereignty of this country, if they make incompetent requests I will turn them down 20 times. Any request from Metropolitan Police would be refused by this office,

Whether or not a victim state will pursue stolen assets is entirely discretionary, and depends largely on political considerations and the closeness (or influence) of the corrupt suspects to political authorities. Importantly, if the victim state refuses to take action in this direction, individual victims of corruption cannot directly pursue the assets under existing criminal law instruments against corruption. Each state reserves the right to determine the circumstances under which it will make its courts available. Resorting to civil law, or administrative law – assuming they even exist – is difficult and costly in many parts of Africa.

The ability and performance of anticorruption mechanisms is often imperilled by a lack of independence and autonomy, and by undue influence. There is also the lack of effective enforcement mechanisms. The anticorruption treaties applicable within several African states establish only monitoring mechanisms with a limited and narrowed mandate, and there are no sanctions for non-compliance by states with their treaty obligations or domestic legislation. Foreign corporations which bribe high-ranking state officials pay settlements and compensation to the home government (that is, the state that serves as the headquarters of the corporation), but they rarely make payment to the victim state (that is, the state where the corporation operates and commits acts of corruption), and where they do it is significantly lower. This point is well illustrated by a recent report showing that only 3 per cent of government settlements in hundreds of bribery cases (\$185m, out of \$6.4bn in penalties) went to compensate states affected by the corruption, and in the majority of settlements, the states were neither directly or indirectly involved in the negotiations of the terms of the settlements.²⁵ Added to this, only a fraction of the hundreds of billions stolen in the past decades from African states has been identified and recovered, much less repatriated to the victim states.

A criminal law response to corruption is technical, onerous, and problematic, given the secrecy with which corruption is usually undertaken. No wonder then that the investment of resources to procure convictions for high-ranking officials has arguably not provided good value for the money. Strict adherence to the technical rules of evidence is necessary to achieve justice in individual cases, though this adherence can sometimes lead a corrupt state official to being 'let off the hook'. Also, as noted, corruption is still primarily treated only as a national crime, though it has regional and international consequences. However, without the cooperation, assistance, and support of other states in whose jurisdictions corrupt funds are stashed, corruption cannot be effectively prevented or combatted. Unfortunately, such cooperation is rarely forthcoming, in part

period'. 'Nigeria: UK Wants to Quiz Adenuga, Says AG', www.allafrica.com/stories/200712040005.html.

²⁵ See IACC, 'LEFT OUT OF THE BARGAIN – Settlements in foreign bribery cases and their effects on asset recovery', www.15iacc.org/agenda/agenda-day-2/left-out-of-the-bargain/.

because of lack of political will and especially given that states are generally not under any pressure from their citizens to offer such assistance to affected states. Adding corruption as a human rights issue might help to improve the level of cooperation, assistance and support a state gives, as citizens of Western countries, in particular, might be more sympathetic to efforts that address and bring to light the harmful consequences of corruption in poor states and regions. Public attitudes can change quickly, and have far-reaching effects; thus, the greater the public pressure, the more likely it is that states will find it difficult to justify not returning stolen assets to victim states. At any rate, exposing the effects of corruption on human rights might catch the public imagination in a way that a criminal law response alone has not been able to do.

Theoretically, corruption has implications for a state's human rights obligations in at least three ways. First, corruption, *per se*, is a human rights violation, insofar as it interferes with the right of the people to dispose of their natural wealth and resources, and thereby increases poverty and frustrates socio-economic development. Second, corruption can lead to a multitude of human rights violations. Third, corruption is a violation of the obligations to respect, protect, promote, and fulfil human and peoples' rights. These presumably will include a state's failure to create conditions to achieve human rights (and access to effective remedies in cases of violations) or to establish effective and independent anticorruption mechanisms to combat corruption.

There are many examples of corrupt practices that would directly or indirectly contravene human rights, but under current legal instruments against corruption the victims would not receive effective remedies. These practices include, for example, the siphoning-off of public funds (whether the funds are derived from illicit enrichment, embezzlement, abuse of office, trading in influence or even the proceeds of bribery) into private bank accounts of senior state officials. Understanding the effects of corruption on human rights, the theoretical and conceptual connections between the two issues, and how human rights law might apply as a complementary legal framework are therefore important not only as academic or philosophical matters but also as factual matters, in that it is individual victims who are injured when human rights violations stem from corruption, and it is rare for these individuals to obtain effective redress via the legal instruments against corruption for the harms done. It is the thrust of this book that as a matter of justice and fairness, victims of corruption should ideally be entitled to an effective remedy through the anticorruption legal framework or human rights law (or more appropriately, a combination of the two legal regimes) for the harms done. The book makes a strong case for reconceptualising corruption in order to better understand its ever-changing nature and its worsening effects – directly and indirectly – on human rights in African states.

Applying human rights law as a complementary legal framework is vital for improving the fight against corruption and for increasing international attention on its effects on human rights. Human rights norms and institutions that are established to implement them arguably offer well-established, robust, and independent verification processes. States in fact periodically appear before human rights treaties' bodies to defend their human rights record,²⁶ and nationally, courts and human rights commissions act as important watchdogs against abuse of human rights. Yet, the appropriateness of criminal law to fight corruption cannot be questioned. But as noted, while it remains a useful tool, a criminal law response, by itself, is unavoidably rigid, and limited to adequately address deep-seated human and social problems like corruption. As Susan Rose-Ackerman correctly put it, 'Corruption cannot be fought solely through criminal law. The criminal law can play a role as a backstop lying behind the needed structural changes.'²⁷ The utility value of criminal law is limited, in countries where the criminal justice system itself is overridden by corruption. A corruption-free judiciary for example may not be enough to make headway against corruption (or prevent a state's prosecutorial discretionary power from being politically, selectively, or unreasonably exercised) if the problem is (as it is often the case) enmeshed in other critical institutions of governance and the rule of law.

In sum, while criminal law can provide some short-term enforcement benefits, human rights law establishes both significant accountability mechanisms and normative standards for implementing long-term, durable, sustainable, and broad legal and institutional reforms against corruption. Human rights have long been recognised as 'the foundation of freedom, justice, and peace in the world.' Human rights 'reflect the value of inviolability',²⁸ and 'they hold that to violate a person's human rights is to fail to show them respect that they are owed'.²⁹ States also generally respect adverse judgments and decisions of human rights courts and institutions, and carry out important reforms under the terms of these judgments and decisions, as well as pay compensation to victims. This demonstrates that human rights law can be crucially effective in addressing some of the most sensitive areas previously considered to be within

²⁶ The process is part of the human rights enforcement structure: each of the major universal treaties is reviewed by an expert body that comments on the compliance reports that states must periodically submit.

²⁷ See Susan Rose-Ackerman, 'Corruption and the Criminal Law' (2002) 2 *Focus on Crime & Society*, UN Sales No E03IV2, 3. It has also been stated that, 'In order to effectively combat corruption, it is necessary to focus on the workings of institutions, not individuals. Penal law is therefore of less importance than one might think.' Claes Sandgren, 'Combating Corruption: The Misunderstood Role of Law' (2005) 39 *International Lawyer* 717, 728.

²⁸ See Simon Caney, 'Climate Change, Human Rights and Moral Threshold', in Stephen Humphreys (ed), *Human Rights and Climate Change* (Cambridge: Cambridge University Press, 2010), 74.

²⁹ *ibid.*

the exclusive domain of national sovereignty. Human rights thus represent 'moral thresholds below which people should not fall'.³⁰

There may be exceptional circumstances when certain rights can be suspended; even so, any suspension of human rights must be temporary, and not lead to violations of other legal obligations. Characterising human rights as 'nonsense upon stilts' seems a figment and off the mark. Sceptics about human rights law might also, for example, point to the fact that the carefully crafted norms of the UN Charter have not helped to prevent wars or threats to international peace and security despite several decades of existence of the charter. It is true that human rights law continues to face implementation and enforcement challenges across the globe, and there remain some differences of opinions in terms of its conceptual interpretation, scope or philosophical foundation. Yet to use these grounds as justifications to minimise the potential role for human rights law to combat corruption is to fail to recognise the significant improvements that have taken place in this field over the years, and the law's remarkable achievements. As noted, the fact that the world community has historically and consistently underscored the importance of human rights law shows the tremendous moral, legal, political, and institutional potential of this branch of international law for combating corruption. These include:

- providing legal and normative baseline for developing, strengthening, and improving the effective functioning of critical institutions of state, and increasing implementation of international obligations;
- enhancing the rule of law and reducing the impunity of perpetrators;
- ensuring that the legal responses against corruption keep pace with its changing nature and effects, and the public expectation to effectively address these problems;
- bringing a great moral force to the discussion about corruption, and arguably providing a better and more widely accepted language to capture the human consequences of corruption, and educating the public on this;
- establishing a 'human face' of corruption, and providing a powerful argument with potential to exert pressure on states to combat corruption and end violations of human rights;
- reducing the problems of selective application and enforcement of anticorruption laws and standards, and thus providing important safeguards against arbitrary treatment of those accused of corruption;
- empowering and placing the victims at the heart of the fight against corruption, in particular the economically and socially vulnerable; and ensuring their experience is not minimised or put aside; and

³⁰ *ibid.*

- allowing victims and civil society to demand accountability and seek effective remedies.³¹

Furthermore, the involvement of human rights defenders and groups potentially can ensure that valuable litigation and advocacy experiences gained over the last five decades are at the forefront of the fight against corruption, from a human rights perspective. At the same time, the anti-corruption movement and its mechanisms can benefit immensely from the rich experiences of the human rights law and movement, and its intrinsically empowering nature. As C Raj Kumar pointedly stated, 'Corruption being a law enforcement and public policy issue, and which only invites official response will start to receive a wider community and civil society response due to its human rights consequences.'³² This complementary role for human rights law in the fight against corruption is consistent with the international community's oft-stated commitment to a comprehensive and multidisciplinary approach to corruption. Yet, human rights law on its own may not provide the whole solution to the corruption problem. Nonetheless, human rights law can ensure a measure of justice, fairness and effective remedies to victims of corruption and can serve as a strong deterrent, and incentive for action. The structural and sustainable reforms of a state's legal and political institutions to comprehensively tackle the root causes of corruption are brighter when built on a human rights law framework.

This book focuses on Africa, and it analyses the effects of corruption on the human rights and peoples' rights guaranteed under the African Charter on Human and Peoples' Rights. Specifically, the book evaluates the extent to which the AU Convention on Preventing and Combating Corruption, the Economic Community of West African States (ECOWAS) Protocol on the Fight against Corruption, the Southern African Development Community (SADC) Protocol against Corruption, and the UN Convention against Corruption can contribute to the fight against corruption in terms of their influence and ability to encourage states to prevent and combat corruption, and more importantly, provide effective remedies to victims. It argues that corruption cannot be effectively combated without a thorough and deeper understanding of its nature, and effects on human rights. Given the high costs of corruption on human rights, it is important to develop a comprehensive and complementary legal framework that addresses the criminal law dimension of

³¹ In sum, 'A state that fails to protect fully individuals against human rights violations or that otherwise violates remedial rights commits an independent, further violation of internationally-recognized human rights.' Shelton, *Remedies* (n 11) 37.

³² C Raj Kumar, 'Human Rights Approaches of Corruption Mechanisms – Enhancing the Hong Kong Experience of Corruption Prevention Strategies' (2004) 5 *San Diego International Law Journal* 349.

the problem and contributes to holding states accountable for the human rights violations that stem from corruption.

This book goes on to argue that a criminal law response alone is inadequate and insufficient if it includes institutional structures that facilitate or encourage corruption. Accordingly, the book argues for the deconstruction of a legal doctrine that allows only a state to be considered a victim of corruption, not its people. The book argues that allowing victims of human rights violations to bring cases against the state (or party or institution) for these violations would contribute significantly to the global efforts to combat the problem. While the emphasis of the book is to examine how human rights law can serve as a complementary framework to combat corruption, some consideration is given to both human rights and due process issues raised by the fight against corruption.

Chapter 1 details the context – historical and conceptual – of the arguments concerning the connections between corruption and human rights. Foundational issues include a discussion on the evolution and contested concepts of corruption and the fight for human rights, the ‘justifications’ (or excuses) often given for corruption, and the normative and moral stance against corruption, and whether there is even a human rights obligation to combat corruption. The chapter also discusses the Foreign Corrupt Practices Act (FCPA), the Organisation for Economic Cooperation and Development (OECD) Convention, and other relevant international and regional instruments in order to place the evaluation and assessment of the African-related treaties into the wider context of global anticorruption movements and developments. The chapter highlights the political and other difficulties that seem to have obstructed a firm, internationally accepted legal agreement on the meaning of corruption, and then makes the case for an expanded and unambiguous definition of corruption that incorporates human rights. A working definition of corruption that could plausibly remove the confusion surrounding the concept, minimise its opportunistic appropriation and ensure effective remedies for victims, is proposed.

Chapter 2 discusses the international dimensions of corruption and examines important contemporary issues, in particular the relationship between corruption, money laundering, and poverty. The chapter details the roles financial and other institutions play in the fight against money laundering, underscores the international and transnational nature of corruption, and explains why any effective response to corruption must necessarily combine strong actions (both domestically and internationally) built on human rights principles and criminal law.

Building on this, Chapter 3 assesses and analyses constitutional provisions and national legislation, and mechanisms for fighting corruption, and considers their adequacy and effectiveness in reducing or eliminating corruption, and its effects on human rights. It is clearly impracticable to

discuss every legal system established to fight corruption occurring in many African states, especially given the multiplicity of anticorruption laws and institutions across these states. Also, many legal systems and approaches are quite similar substantively, and any variation depends to a large extent on whether it is a common law or civil law country. Therefore, in addition to the author's own country, Nigeria, the chapter discusses, through a thematic lens, the main legal instruments to fight corruption in Angola, and Equatorial Guinea. The major considerations that influenced the choice of countries are the comprehensive nature of the legal rules (substantive and procedural) and mechanisms that have been established to fight corruption in these countries, and their persistent low ranking in the TI's Corruption Perception Index. In addition, Angola, Equatorial Guinea, and Nigeria were chosen because many of the international investigations of corruption in African states have centred on these countries. The countries discussed also arguably best illustrate the integrated problems of corruption, money laundering, poverty and lack of respect for human rights in several African states. Similar considerations also justified the focus on these countries in Chapter 2.

Chapter 4 examines the international and regional legal frameworks against corruption, as well as the institutions and agencies that they establish. It discusses the four anticorruption conventions applicable to African states (that is, the AU Convention, the ECOWAS Protocol on the Fight against Corruption, the SADC Protocol against Corruption, and the UNCAC), and where necessary, their *travaux préparatoires*. The chapter also discusses whether these instruments add anything to domestic laws against corruption. A comparative approach is adopted using the UNCAC as the central instrument because of its comprehensive and international nature. The focus is on the four core components articulated in these instruments: prevention, criminalisation, international cooperation and assistance, and asset recovery. The chapter considers whether any of the provisions of these treaties can serve as useful framework for dealing with human rights violations caused by corruption, and then explores the potential of human rights law for addressing any deficiencies. Where appropriate, references are made as to how anticorruption institutions and other bodies have interpreted the provisions of the UNCAC (and other relevant anticorruption treaties and standards).

Chapter 5 considers the effects of corruption on human rights – civil, political, economic, social, and cultural, guaranteed by the African Charter and other similar treaties. Irrespective of the contested nature of the concepts of corruption, its contemporary effects on human rights can no longer be ignored as merely of academic interest. Concretely establishing the theoretical and conceptual connections between corruption and human rights requires a thorough understanding of the specific rights that might be affected by corruption, which in turn would help to develop

a more effective legal response to corruption. In addition, while many of the cases discussed in detail here may at first blush appear to be only marginally relevant to an examination of the human rights dimensions of corruption, such jurisprudence (hardly fully explored in literature on human rights system), in fact provides important normative framework for the examination of effects of corruption on specific human rights, and helps to avoid a simplistic generalisation of issues. The cases elaborated can also provide important regional human rights jurisprudence upon which lawyers and activists alike might rely to make their claims on remedies for victims of corruption in the coming years.

Chapter 6 complements and builds on the extensive discussion of the substantive human and peoples' rights in Chapter 5, as it explores the potential contribution of human rights law to address the corruption that occurs in many African states, and makes the case for a comprehensive and complementary legal framework that includes human rights law. The chapter discusses the opportunities under human rights law for effective remedies for victims of corruption. It also highlights the procedural, substantive, and legal advantages for using human rights law to combat corruption. Specifically, the chapter evaluates article 21 of the African Charter, and explores the potential of this provision to provide a human rights basis for preventing and combating corruption. It should be pointed out that while the African Charter as a whole offers appropriate normative framework for addressing corruption, article 21 is more directly relevant to the issue. Crucially, article 21 underscores the reality that no human rights can be achieved without the availability of resources, and the transparent and accountable use of the resources, as well as development of the necessary societal structures to allow for the full and effective enjoyment of human rights. Similar provisions under Common Article 1 of the International Covenant on Economic, Social, and Cultural Rights and International Covenant on Civil and Political Rights are considered. The chapter then discusses the legal, procedural, and practical challenges that can arise when corruption is addressed through human rights law. Issues such as causation and legal standing, and the questions of whether remedies can be measureable, compensable, manageable, or reasonable, are discussed.

The concluding chapter provides an overview of the themes and central arguments canvassed throughout the book, and offers some recommendations.

For clarity, it is important to define the concept of 'corruption' as used in this book. Corruption is a generic term for a variety of misconduct of different but often overlapping forms, and it can be classified myriad ways, according to the type of power that is abused, and in relation to its nature, scale, effects, and further sub-classified according to its frequency, and spread. With respect to the first component – in relation to the type of

power that may be abused – corruption can be classified as either public (governmental) sector corruption or private sector corruption. The definition of public corruption is much broader than private corruption, and it can be further sub-classified as ‘large-scale’ (so-called ‘grand corruption’) or ‘petty’.³³ With respect to the second component – in relation to its frequency and spread – corruption (whether committed in the public or private sector) can also further be sub-classified as either ‘systemic’ or ‘isolated’.

The primary focus of this book is public sector large-scale (also called political) corruption, which occurs when high-ranking state officials abuse their entrusted positions to convert public treasuries into private gain. As noted, this kind of corruption can be either systemic or isolated but experience has shown that whenever large-scale corruption occurs it is more often entrenched in the systems of governance, as high-ranking government officials take advantage of their state’s weak and dysfunctional institutions of the rule of law to massively steal public funds (and often including international aid funds, either for themselves, their relations, or their friends or for all three), with impunity. Examples include outright embezzlement of public funds such as salaries (and pensions) of civil servants, or abusing entrusted position to negotiate and/or receive substantial bribes, in particular, from foreign companies.³⁴

Petty (also called bureaucratic, street-level, or survival) corruption takes place nearly on a daily basis and is committed when junior or mid-level officials in agencies and parastatals meet the public directly. It usually involves the exchange of small amounts of money or favours. This level of corruption is virtually universal and can be found in all societies and nations. Examples include but are not limited to such actions as judicial or court clerk demanding bribes in return for adjournments, to ‘facilitate’ bail applications, or to make court files ‘disappear’. It is important to point out that in this scenario, the court clerk may not be the only one involved, as others across the judiciary hierarchy may be indirectly implicated.³⁵ Reasons for petty corruption may include low salaries and poor conditions of service and lack of opportunity for professional growth and

³³ These classifications broadly mirror those used generally in anticorruption treaties, standards, and laws. In particular, the classifications used by the UN Convention against Corruption are: bribery, embezzlement, abuse of office, trading in influence, and illicit enrichment. Differences between these classifications are in general merely a matter of emphasis. For a discussion on this, see Ch 4.

³⁴ Other examples are abusing office to inflate procurement contracts and selling state’s policy-making role to political supporters, relations, and friends in return for substantial cash.

³⁵ Other examples can include junior officials demanding payment of bribes from the economically and socially for routine government services, such as electricity, water, motor licence or driving licence; teachers demanding bribes (or other in-kind favours) from their students to write positive report cards; or tax office clerks pocketing cash in exchange for ‘adjusting’ the amount owed.

development (though these may not be compelling grounds for corruption), and more significantly, the corruptive influence of high-ranking public officials.

As noted, in contrast to 'isolated corruption', systemic corruption occurs when the whole machinery, all systems and institutions of a state, are enmeshed in corruption of all forms, but especially at the highest levels of government. This kind of corruption flourishes where the laws and institutions of government and accountability mechanisms are weak and dysfunctional, providing incentives for large-scale corruption to flourish, which in turn provides the environment for other forms of corruption to take place. Large-scale corruption is different from petty corruption in several respects not least in terms of the staggering amount of public funds involved, and the fact that much of the stolen funds are deposited in developed economies (often with complicated and secretive banking systems that tend to inhibit recovery of stolen assets) abroad. Corrupt senior state officials turn the public treasury into a more 'profitable business' for themselves probably than what they might be able to legitimately earn in any private business. Persistent incidents of large-scale corruption also precipitate systemic distortions of critical institutions of governance.

Furthermore, private sector corruption occurs when those with power in business (for instance, chief executive officials), abuse it by promoting their own interests over those of owners or workers. Corruption in the private sector can cause as much harm to the health of the economy as in the public sector. It must also be recognised that the distinction between public sector and private sector corruption is becoming increasingly blurred. Finally, while there may well be other ways to categorise corruption, the categories that have been discussed here probably provides the best analytical tools (especially because of the interrelationship and interconnection that is apparent from the classifications) for looking at the effects of corruption on human rights, and as such, will be relied upon and utilised throughout the book.

In this book, the terms 'large-scale corruption' or 'corruption' are used interchangeably to refer to the deliberate, intentional mass stealing of public wealth and resources by senior state officials entrusted with its fair and honest management for the common good and achievement of human rights, whether carried out individually or collectively, but with the support, encouragement, or acquiescence of the state, combined with a refusal to genuinely, thoroughly and transparently investigate and/or prosecute the mass stealing and recover stolen assets, which violates the human rights of the economically and socially vulnerable. If, as is argued in this book, corruption violates human rights, it seems sensible, reasonable, and appropriate to develop a definition that reflects this dimension. The proposed definition reflects the elements of a human rights law response to corruption canvassed throughout this book. The effects of cor-

ruption on human rights are considered in light of this definition, and also in relation to the 'chilling effects' of large-scale corruption on other forms of corruption. The definition would complement neatly the traditional criminal law instruments against corruption and ensure that the contemporary concepts of corruption, the accountability of states and the harms suffered by victims are appropriately and precisely captured. The rigorous and consistent application of this definition might also help to harmonise national legal responses, improve international cooperation and assistance, remove any political or ideological controversies surrounding the meaning of corruption, and ultimately enhance the effective implementation of human rights law and the legal instruments against corruption. While political consensus over the concept of corruption remains to be achieved, there is no technical or legal difficulty that would prevent an agreement to be reached on the proposed definition.

This book focuses on large-scale corruption for several reasons. In the first place, this kind of corruption fundamentally contrasts with even a minimal notion of the rule of law, and the ideal of government as a public trust. It is especially devastating to the rules of a law-based society, and leads to a loss of confidence by citizens. Large-scale corruption undermines the ability of states to carry out their good-faith human rights obligations and commitments as it diverts critical resources needed to achieve the full enjoyment of human rights. It is difficult to imagine a greater breach of trust than when senior public officials entrusted with the people's wealth and resources then turn around to use their public entrusted position to steal people's resources with impunity (basically turning public treasury into a private 'cashbox'). This creates a vicious cycle of corruption, because corrupt senior officials often use their stolen wealth to finance and sustain their political career and networks. Secondly, large-scale corruption also facilitates other forms of corruption (as it sends a devastating message to the rest of the society that corruption pays, and can taint the entire institutions of governance such as the police, military, schools, and health services), in particular, petty corruption of middle or lower-level public officials in positions of trust, and this is then copied and replicated by citizens who understand that this is how their society runs. Moral commitment compels most people to be law abiding, but large-scale corruption seriously compromises a society's belief in the force of its laws.

Finally, large-scale corruption encourages 'state capture', whereby a company influences the laws of a state, institution, or governmental policy in areas like the environment, taxation, or mining. Ultimately, the rule of law is imperilled because citizens in such circumstances tend to take the law into their hands. As David Bayley pointed out, 'If the elite is believed to be widely and thoroughly corrupt, the man-in-the-street will see little reason why he too should not gather what he can for himself and

his loved ones.³⁶ Thus, junior officials will often resort to seeking bribes from those in need of government services, especially the economically and socially vulnerable. This invariably weakens and jeopardises critical institutions, systems and structures of government, and the entire social fabric of a society. Because corruption in many African states generally begins at the highest level of political authority and survives on a chain of political and economic networks, there tends to be a conspiracy of silence among those involved. If the state and its resources are literally 'owned and controlled' by suspected perpetrators, they are less likely to be motivated to address corruption. The rule of law is thus inevitably substituted with the 'rule by the will' of high-ranking public officials.

As already noted, all categories of corruption are interconnected and have varying degrees of damaging effects especially on the economically and socially vulnerable. While petty corruption affects society less as compared to large-scale corruption, it is the latter that provides the fertile soil for the former to germinate. However, although the roots of petty corruption are not as deep, they are comparably corrosive, and can undermine long-term social order and cohesion. While the focus of this book is on large-scale corruption, it does not suggest that other forms of corruption should be ignored. On the contrary, the discussions throughout the book demonstrate how large-scale corruption can trigger other forms of corruption, and it is argued that effectively combating large-scale corruption will have a spin-off effect on the efforts to prevent and combat all forms of corruption.

³⁶ David Bayley, 'The Effects of Corruption in a Developing Nation' (1966) 19 *Western Political Quarterly* 719, 725.