Surrey Law Working Papers - 01/2008

Indira Carr

‘The Principal Agent-Client Model and the Southern African Development Community Anti-Corruption Protocol’
THE PRINCIPAL-AGENT -CLIENT MODEL
AND THE SOUTHERN AFRICAN
DEVELOPMENT COMMUNITY ANTI-
CORRUPTION PROTOCOL
Indira Carr*

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.

* Professor of Law, University of Surrey; Honorary Visiting Professor, University of Exeter; Honorary
Visiting Professor, University of Kent; Faculty Fellow, TRACC, American University, Washington DC. I
would like to thank the British Academy for their research grant, Chr Michelsen Institute and TRACC
(American University) for hosting me and giving access to their libraries.
TABLE OF CONTENTS

Introduction
I. The Theoretical Model Informing Legislative Initiatives 10
II. Corruption – The Parameters 17
II.1. The SADC Protocol 21
III. Preventative Mechanisms 27
Conclusion 36

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 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 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 Plato⁵ and

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 Mwana of Tanzania in 1999 found low salaries and poor conditions of service were the reasons for corruption in the public services (The National Integrity System Workshop in Tanzania, Parliamentarians Workshop Corruption Survey, Dodoma, Tanzania, August 10, 1996, Dar es Salaam: CIET International, 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 Mwinja Care & Desiat (a firm) and Orr (2007) EWHC 953 (Ch). The High Court ordered that Dr Chiluba repay the treasury around US$ 1 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 Zambia’s 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-Bissau, Lesotho, Liberia, Madagascar, Malawi, Mali, Mozambique, Namibia, Niger, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, Somalia, Sudan, Togo, Uganda, United Republic of Tanzania, Zambia, Les derived from UNCTAD/LOD/Misc/2005/13 (2005) Statistical Profiles of Least Developed Countries New York and Geneva: United Nations. 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 falling to some out of poverty.”
Aristotle indicates. 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 men are always wanting more and more since it is the nature of desire to be dissatisfied. 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 the service seeker, coupled with economic inequality (e.g. low wages in the public sector), 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. As the outgoing president of the World Bank, Paul Wolfowitz, has stated "corruption is a disease that drains resources and discourages investment. It benefits the privileged and deprives the poor. Today, there are more than 1 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." 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 20th 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 to criminalise corrupt behaviour by US corporations in foreign jurisdictions. The US expected 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 and its negative effects on developing countries and its close connection to poverty. Politicians and leading institutions such as development banks (e.g. World Bank (WB)), 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 corrupt] not as a political issue but as something social and economic." (See James D Wolfensohn 'Remarks at a Global Forum on Fighting Corruption' February 24, 1999 available at <http://web.worldbank.org>.)

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 if any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article 1.
African Development Bank (ADB) and national aid agencies (e.g. US Agency for International Development (USAID))(14), 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 donor countries to ratify the anti-corruption conventions and 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. As part of this global drive to fight corruption the Southern African Development Community (SADC)(15) adopted its Protocol on Corruption in 2000 (SADC Protocol).(16) Requiring signatures from two thirds of the member states it sits alongside other regional(17) and international conventions(18) and is an indicator of the apparent seriousness with which policy makers intend to conform with the global demands and standards to further the anti-corruption strategies.

This article, consisting of three sections, in 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 on anti-corruption matters in donor 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(19) 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. Since the 1990s it has been a major recipient of loans from national and international donor agencies;
4. Since the Wariba Report of 1996(20) commissioned by the then President Mwamba 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 carrying out other anti-corruption strategies such as empowerment of citizens; and

15 Admittedly civil strife and border disputes also contribute to poverty. Part of the civil strife in resource rich countries is attributable to 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.
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 Mauritius, Seychelles, South Africa, Swaziland and Tanzania the other countries are regarded as LDCs in the UN List (see fn 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:
- Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on 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). Still in the process of receiving ratifications. See also Council Framework Decision 2003/586/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 required in its entirety upon those to whom it is addressed.
(5) It provides a 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 policy setting economic analysis of corruption and the legislative framework of not only the SADC Protocol but of most of the other regional and international anti-corruption conventions. According to this widely accepted model (principal-agent-client model 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. \(^{21}\) 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 lends itself easily 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, that he makes no separation between the public and the private spheres and uses his public position for private gain. \(^{22}\)

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 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:

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

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

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. \(^{23}\) Studies suggest infusion of competition sees a reduction in corruption. \(^{24}\) 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. Firstly, it may not suit the provision of all types of public services, for instance, ID card and passports. Secondly, allowing multiple institutions or


\(^{22}\) 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 M Weber (1947) The Theory of Social and Economic Organisation New York: Free Press. Until recently (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


multiple departments within the same institution to deal with provision of the same service has the potential to create excessive bureaucracy and public confusion. It thus creates opportunities for 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. Thirdly, 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, involvement of a number of departments or institutions for 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.\(^2\)

The recommendations for breaking down the monopolistic character of state-owned enterprises are liberalisation, de-regulation (less interventionism), private-public partnership and privatisation.\(^2\) Such measures are often closely associated with capitalism and the question of whether creating an environment that lends itself easily to infusing competition\(^3\) is largely dependent on the 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 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 to reducing corruption is taken seriously by the WB and other development agencies and is often one of the conditions imposed on donor states. As a result many developing countries have undergone a rapid privatisation programme. For instance, in Tanzania during 1994-1999 around 150 of 386 public enterprises were divested. 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 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 privatization 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. Privatization 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 it was


\(^3\) Competition is closely related to its potential to bringing 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 McAu, P. (1997) ‘Law, Governance and the Development of the Market’ in Faundez, J. (ed.) Good Government and Law: Legal and Institutional Reform in Developing Countries London: Macmillan.
controlled and subsidized by the public sector. In this context Private Public Partnership (PPP) is often said to provide a better option. The UK government went down the PPP route with regard to improving the London Underground services but it has not produced the expected results, and this in a developed country with a history and understanding of the benefits of competition. It also does not necessarily follow that opportunities for corruption are reduced when a public sector turns into a private sector. Indeed it creates new opportunities for corruption, for instance during the sale of assets. It also has the potential to import hitherto unfamiliar corrupt practices found within the private sector.

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, needs of the community and 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 dependant. 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 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 unfeathered 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. Accountability also has an internal and external dimension and this implies being accountable to those within the institutions and those outside of 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

---


27 According to Leslie Holmes (2006) rotten states: Corruption, Post-Communism and Neoliberalism NC: Duke University Press, the level of corruption in post-communist states is high due to neo-liberalist policies that recommend a minimal role for the state. The reason for this is that privatization has taken place with no thought given to ethical guidelines or appropriate regulatory mechanisms.


public sector. The end result is that the government, its institutions and the civil service are subject to close scrutiny, 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;
- Codes of conduct for civil servants and educating them in the importance of maintaining integrity;
- Civil service reform – for instance, recruitment through open competition, 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;
- Creation of Independent Pro-accountability Agencies in specific sectors such as Human Rights Ombudsman and 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 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 on preventive 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 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."

84 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 tend 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 an interesting account see Eisemuth, E.N. (1973) Traditional Patron-clientism and Modern Neopatrimonialism London: Sage; Lyons, C. (1965) "What is the Problem About Corruption?" The Journal of Modern African Studies 13(3): 215-30 or 226-7.

The variety of definitions reflect the varieties of behaviour we tend to classify as corrupt; some focusing on individual behaviour, some on group and political behaviour, some on immoral and some on the lack of distinction between the public and private spheres. The instances of behaviour (not all involving mutual exchange) 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 religious faction.\textsuperscript{32}

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,

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,

6) Lack of civic virtue – behaviour that is totally motivated by self-interestedness and total disregard of the common good, and

7) Decay of political order.\textsuperscript{36}

And when the view that there are variations between cultures\textsuperscript{37} (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 misappropriation of public funds and bribery.

Before going on to considering 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 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 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.\textsuperscript{38}

\textsuperscript{32} 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, J.C. (1969) 'The Analysis of Corruption in Developing Nations' Comparative Studies in Society and History 11(2): 315-41 at 330.

\textsuperscript{33} On this subject see Dobel, J. Patrick (1978) 'The Corruption of a State' American Political Science Review 72(3): 208-22.


According to a study by Chang and Chu, 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 cognizant 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 world-wide. This is attributable to a number of factors: the legacy, the legal system and the machinery of government left behind by colonial powers; harmonisation of markets through free trade and the resulting globalisation, information flow between countries as a result of the Information Technology revolution; and greater democratization.

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 social fabric and structure. It is only right in these circumstances for 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 donors to adopt their standards on the use or distribution of what is donated. 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. Criminal laws of different states are unlikely to be uniform since they are founded on different legal traditions thus creating variations uncertainty. Hence there is a need for conventions since they have the effect of harmonising the laws across states through consensus and 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 enforcement of anti-corruption legislation.

Given the difficulties in formulating a generic definition it comes as no surprise that the 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 listed above.

III. The SADC Protocol

The PAC model as stated earlier has influenced greatly 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 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. Of the adopted conventions, regional and international, the SADC Protocol is the only convention that provides a definition of corruption in Art I which reads:

---

40 For instance, in India there was an extensive legal framework including laws on corruption in place when the British left. See Rathanam.K. (1964) Report of the Committee on Prevention of Corruption Delhi: Govt of India, Ministry of Home Affairs.
“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 violate 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.43

Bribery44 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 transference of funds.45 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.46 It could also involve an understanding that spans time and over 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.

The parameters of bribery as drawn by the SADC Protocol in Art 3 bring within it active46 and passive47 bribery of a public official48 and envisage the use of third parties for conducting or for receiving the benefits of a transaction as well as exchange of promises, gifts and the like besides money.49 It also extends to active bribery of a foreign public official50 and also bribery within the private sector.51

43 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.

44 In some countries a distinction is drawn between ‘bribes’ and ‘facilitation payments’. The latter likened to tips means that MNCs continue to offer facilitation payments and explain them away as conforming to local practices and a way of doing business by following the local norms. (see Bayart, J. F. (1993)The State in Africa: The Politics of the Belly London: Longman.) 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. By 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. As to whether the gift is bribery or not depends on the value of the gift. See Tin, Q. (2004) A Transnational Study of Ethical Perceptions and Judgments between Chinese and German Business Managers Münche: Martin Mehlebrer Verlagshandelung GmbH & Co KG for an interesting discussion of gift-giving in China.

45 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 & Dexel (a firm) & Ors [2007] EWCH 952 (Ch).

46 For instance in Tanzania sexual favours are a common form of corruption in the education sector (Haki Elimu (2005) What the Papers are Saying about Corruption News Clippings August 2003 – February 2005 minnow, Dar es Salaam. See also the various news items in the recent BAE allegations in Britain (The Sunday Times April 1, 2007.)

47 Active bribery refers to the acts of offering or granting of a bribe - the act of a bribe giver.

48 Commonly understood as the solicitation or acceptance of a bribe - the act of a bribe taker.

49 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.

50 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 advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;

(b) the offering or granting, directly or indirectly, by a public official, of any article of monetary value, or other benefit such as a gift, favour, promise or advantage for himself or herself or for another person or entity in exchange for any act or omission in the performance of his or her public functions.

51 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,
Other than bribery the SADC Protocol criminalises illicit gain (Art 3(1)(o)), 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) & (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 perhaps is 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 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". 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 provisions. 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.\(^1\) Hence its inclusion as a separate offence.

Corridors of power be it government departments, national or international organisations are full of lobbyists putting forward views of various interests such as 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, 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

---

\(^1\) Art 3(1) reads:
This Protocol is applicable to the following acts of corruption:
(a) - (d) . . .
(c) 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.

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. 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. 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.

A surprise omission from the SADC Protocol are provisions on money laundering. 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, Tanzania sits squarely within the money laundering routes. Fortunately some of the signatories 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 by the SADC Protocol. It is not surprising that it has done so since it is a highly controversial area and even with developed countries funding of political parties has remained a thorny issue. What has to be remembered is that the process of multilateral instrument is a diplomatic process given to compromises in the interest 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 preventive measures that the SADC Protocol expects of the contracting states in Art 4. These measures listed below in Table 1 are primarily aimed at public sector reform through the introduction of accountability and openness and the raising of integrity within the civil service while

---

54 On burden of proof see Re Wilshir 3972 1 S 535 (1970).

56 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.
building in mechanisms for participation by civil society and the media,\textsuperscript{57} education of the public and the adoption of suitable deterrents and enforcement mechanisms. In adopting these measures the approach of the SADC Protocol converges with those found for instance in the UN Convention\textsuperscript{58} and the AU Convention.\textsuperscript{59}

\begin{table}[h]
\centering
\begin{tabular}{|l|l|l|l|}
\hline
\textbf{Accountability and Openness Measure} & \textbf{Integrity Measures} & \textbf{Participation and Education} & \textbf{Deterrence and Enforcement} \\
\hline
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)(a)). & Creation, maintenance and strengthening of codes of conduct for the conduct, accountability and proper fulfillment of public functions (Art 4(1)(b)). & Mechanisms to encourage participation of media, civil society and non-governmental organizations (Art 4(1)(c)). & Introduction of mechanisms for enforcing standards of conduct expected in the fulfillment of public functions (Art 4(1)(d)). \\
\hline
Mechanisms to promote access to information to facilitate evaluation and elimination of opportunities for corruption (Art 4 (1)(d)). & Mechanisms for promoting public education and awareness in the fight against participation (Art 4(1)(e)). & Strengthen, revise collection and control systems that detect corruption (Art 4(1)(f)). & \\
\hline
Promotion of information/witnesses (Art 4(1)(g)) and introduction of laws for punishing those who make malicious reports against honest persons (Art 4(1)(h)). & \\
\hline
Creation of institutions responsible for implementing mechanisms for preventing, detecting, punishing and eradicating corruption (Art 4(1)(i)). & \\
\hline
Tax laws, reform that deny favorable tax treatments for individual or corporations for expenditures made in violation of anti-corruption laws (Art 4(1)(j)). & \\
\hline
Maintenance of books, records in reasonable detail to reflect accurately the acquisition and disposal of assets on the part of public held companies and other associations, and insufficient internal accounting controls to enable detection of corruption (Art 4(1)(k)). & \\
\hline
\end{tabular}
\caption{Preventative Measures (Accountability, Openness, Integrity and Participation) in SADC Protocol}
\end{table}

\textsuperscript{57} The media in the form of newspapers have always been a powerful conveyers of conveying public opinion. See Boisier, G. (1995) \\
\textit{Tactions and Other Roman Studies trs. Hutchinson, W.G. New York: Putman's. For an account of the political role of newspapers in African see Campbell, W. J. \\

\textsuperscript{58} See e.g. Arts 7, 12.

\textsuperscript{59} See e.g. Arts 2, 6.
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 to increase accountability, transparency and integrity and have taken measures to spread the word about the evil effects of corruption and empowering citizens and NGOs 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, DFID, DANIDA (Danish International Development Agency), SIDA (Swedish International Development Agency) and NORAD (Norwegian Agency for Development). Tanzania is perceived favourably by these agencies and since the 1990s has emerged as one of the biggest recipients of funding within sub-Saharan Africa. The donor agencies have taken on a participatory role (often describing themselves as partners) in providing advice and know-how for effecting such changes. The various government reports make impressive reading and it seems that all the steps for good governance ranging from 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, codes of conduct for civil servants and educating them in the importance of maintaining integrity, recruitment of civil servants through open competition, training in the provision of services, regular rotation of civil servants between departments, complaints mechanisms, and a free press to the setting up of a Prevention of Corruption Bureau are in place.

In spite of all these commendable efforts in introducing changes within the public sector seen by many as an 'excellent example' and anti-corruption legislation, Tanzania still figures as highly corrupt according to Transparency International indices. It may be perceived as having improved slightly but so have others who have not received that much help by way of funding and external participation from donor agencies in drawing up public sector reform and anti-corruption strategies. For instance in the 2006 TI index Tanzania sits alongside Eritrea in 93rd place with a score of 2.9 whereas in 2005 Tanzania was in 96th place with a score of 2.9 and Eritrea in 107th place with a score of 2.6. 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.

This failure to bring about a major shift for the better in the perception of corruption inevitably raises the question “Why despite all the help are we not seeing a marked improvement in Tanzania?” This question can be fruitfully explored 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:

Donor Policies

According to a recent news item the UK International Development Secretary Mr Hilary Benn hailed Tanzania’s progress and announced that the UK will provide £105 million of direct budget to support Tanzania during 2007-2008. Tanzania is DFID’s biggest recipient of funding. News item 'International Development Hails Tanzania’s Excellent Progress, Unveils Budget Support' dated 1/6/2007 available at <http://www.britainunited.com>.


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 and other donor agencies to superimpose a structure whose tone is largely driven by neoliberal capitalist ideology. While the motivations of Western donors and objectives may vary, their views in respect of how to bring about economic reforms and through that poverty alleviation converge. These economic reforms include, besides removal of trade barriers, reform in the public sector, namely transparency, integrity, accountability, privatisation of public services and greater competition. The model that is transplanted on the donor is essentially a Western one. There is no attempt on the part of the donors to fit the model to the historical, social, political and cultural ethos that underpin a donee state thus contributing to a lack of indigenous ownership.

**Political Tensions**

The political tradition adopted by Tanzania six years after its independence in 1961 was one of a socialist kind. Much of its economic sector was nationalised and agriculture was managed through co-operatives. President Nyere’s idealistic policies seemed on the surface to be working in the 1970s; but the collapse of the commodity market in the mid 1970s brought with it economic crisis and despite strong criticisms and overtures from the IMF and the WB Tanzania resisted offers of economic help since these institutions were perceived as meddling in Tanzania’s affairs. The blame for its problems were laid on factors external to Tanzania. The strong leadership of Nyere ensured the status quo. It was not until the mid to late 1980s that indications for policy changes emerged and new bridges were built with these institutions with the promise of introducing major economic reforms. This saw a major influx of donors in the 1990s and along with it came vociferous demands for legal and institutional reforms. Since the shift in political ideology was not brought about by the will of the people but through international pressure and domestic economic crisis, donor led reforms, legal or otherwise, came to be seen widely as an imposed alien construct to further Western capitalist interests.

**Paternalism**

The demands of the donors for swift reforms are always backed with threats and sanctions. The case of Tanzania illustrates this well. 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, Mr Carsten Pedersen, is reported as having said “(from my perspective it is a contract which has been broken). If Tanzania met this target, they would get the money.” 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 with promises of further funding. There is no doubt that Tanzania’s cooperation 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 the initial rejection of help from the international financial institutions indicates a deep-rooted sense of sovereignty, a sense that still pervades ex-colonies to this day regardless of globalization. The donor’s paternalistic attitude backed by sanctions only rekindles that sense of sovereignty and an unwillingness to take ownership of externally imposed strategies.

**The Colonial Past**

The arrival of the British changed the existing social order and the relationship of the tribal leader to his community. It brought with it the notion of the ruler and subjects

---

69 Arusha Declaration, 1967.
where the ruler, unlike the tribal leader, did not have the interests of the community as his focus. The ruler was divorced from his subjects and there was no attempt to let the subjects participate in the decision making process. 75 The remnants and legacy of the colonial structure are still resented and the actions of the donors in superimposing a public reform model in spite of ‘working in partnership’ speak as no different from those of the colonizers. The carrot and stick approach further reinforces the view held in many donee countries that the IMF, the WB and other donor agencies are simply engines feeding Western interests. Donor agencies constantly refer to working in partnership with the donees and see them as having ownership but these virtuous intentions are not really translated into action, especially when donors suspend or withdraw funding. These coercive tactics certainly do not reflect the noble sentiments of eradication of corruption or poverty alleviation, especially where the donors know that the donee country is dependent on the loans. It simply reinforces the feelings of non-ownership.

Lack of Synergy
The current strategies for the prevention of corruption is the transplantation of the PAC model onto the existing bureaucratic systems within the country. It seems that the donors are simply concerned with arriving at a technically correct solution according to their model and there is no attempt to look for synergies with the existing systems and social and cultural norms within the recipient country and adapt their model to the local conditions. This yet again reinforces the antipathy there is towards the imposition of a model that is perceived to be insensitive to the local socio-political culture.

Improving Current Strategies
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 externally imposed and backed by threats. It is important to remove or temper this feeling of antipathy driven by the colonial past towards externally imposed reforms. 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. It is the way the donor agencies go about imposing this model that is at fault. 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 besides the economic 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. 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.

Finding synergies with the social and cultural norms and showing the commonalities between the PAC model and these norms is not really that difficult. In pre-colonial Tanzania for instance the relation between the tribal leader and the community was one of accountability, transparency and integrity and the abuse of power for private gains was not tolerated. The notions introduced by the PAC model are already present in Tanzanian culture. There is much that is common between Tanzanian social norms and the PAC model. But it is important that these commonalities are exposed to the citizens and integrated when tailoring the PAC model to fit local conditions thus enabling ownership of the solution. The solution then will no longer be perceived as an alien construct but as an indigenous contribution. This is where ‘working in partnership’ takes on a fresh meaning. It does not simply mean technical co-operation which involves the superimposition of a technically correct and rigid PAC model 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 internalize for guiding their behaviour. It also reinforces their pride in their country and feelings of sovereignty. The finding of such synergies is also likely contribute to the successful implementation of the anti-corruption conventions.

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 cooperation 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 will change the picture. This paper 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.