

ANTI-BRIBERY & CORRUPTION **GUIDE**

ALGERIA

ETHIOPIA

GUINEA

KENYA

MADAGASCAR

MALAWI

MAURITIUS

MOROCCO

MOZAMBIQUE

NIGERIA

RWANDA

SUDAN

TANZANIA

UGANDA

ZAMBIA

• • •

UAE



Introduction

ALN is a close-knit alliance of independent top-tier law firms in fifteen countries across Africa, including the continent's major commercial and investment gateways: Kenya, Ethiopia, Nigeria, South Africa, Mauritius and Morocco.

Across Africa, the fight against bribery and corruption is a priority for national governments as well as international investors. Increasingly, corruption is viewed as a cross-border issue and countries are cooperating via mutual legal assistance.

Foreign investors and companies operating in Africa have to comply with laws governing bribery and corruption or risk criminal sanctions and reputational damage. In this guide, ALN provides an overview of the bribery laws in several of the continent's key jurisdictions.

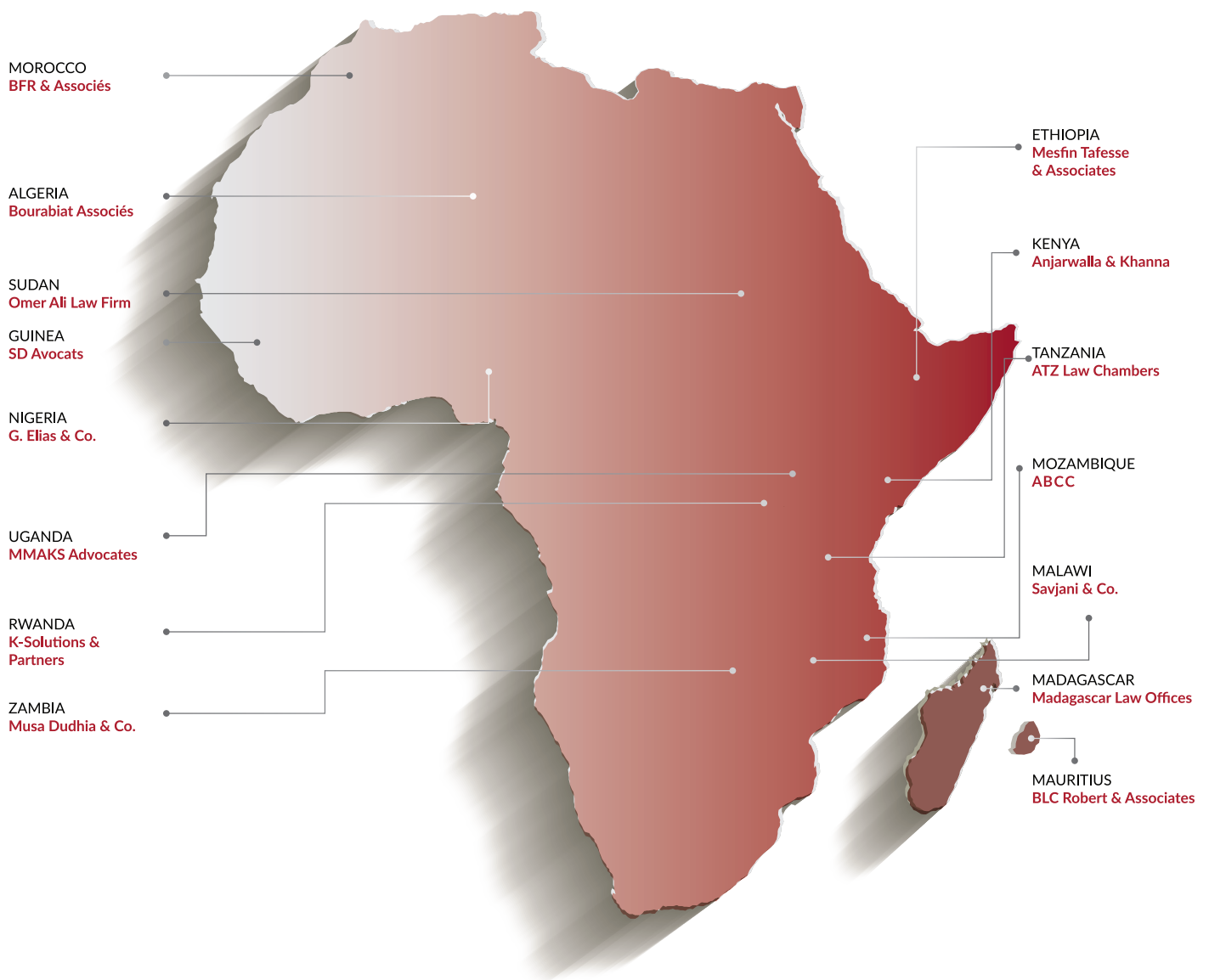
The legal framework governing corruption in Africa is changing across the continent. It is therefore important to understand the differences between jurisdictions and to keep up to date with new initiatives and legislation. Notably, there is increasing focus on the private sector and on the 'supply side'.

This guide is designed to highlight similarities and differences between some key countries across Africa enabling a quick comparison. The format used is standardised and addresses common questions. We hope that the reader will find it useful.

For more information about ABC laws across Africa, contact ALN at ALNinfo@africalegalnetwork.com

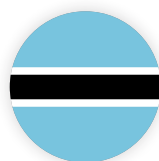
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“ALN is a distinguished legal network covering an expansive and growing number of jurisdictions in Africa. It has a broad coverage of the Sub-Saharan region and continues to expand its reach with the addition of member firms in francophone and North Africa. The network offers clients engaging in pan-African cross-border matters a single integrated service with deep local knowledge.”

– Chambers Global 2019



Botswana



Ethiopia

Perceived level of
corruption



Duty to report instances of
bribery and corruption



Time line for reporting
instances of bribery and
corruption

NO DEFINITIVE TIMELINE

NO DEFINITIVE TIMELINE

Apart from protection
for informers, are there
any incentives to report
instances of bribery and
corruption, e.g., financial
rewards or leniency?



Are private-to-private
business transactions
covered?



Extra-territorial
Application





Kenya



Mauritius

Perceived level of corruption



HIGH



MEDIUM

Duty to report instances of bribery and corruption



YES



NO

Time line for reporting instances of bribery and corruption

24 HOURS

N/A

Apart from protection for informers, are there any incentives to report instances of bribery and corruption, e.g., financial rewards or leniency?¹



NO



NO

Are private-to-private business transactions covered?



YES



YES

Extra-territorial Application



YES



YES

¹ The legal framework governing corruption in Kenya previously focused on the public sector. This changed with the enactment of the Bribery Act, 2016, which we expect authorities to enforce with regard to private to private transactions.



Nigeria



Rwanda



Zambia

Perceived level of corruption



HIGH



LOW



HIGH

Duty to report instances of bribery and corruption



YES



YES



YES

Time line for reporting instances of bribery and corruption

NO DEFINITIVE TIMELINE

15 DAYS

24 HOURS

Apart from protection for informers, are there any incentives to report instances of bribery and corruption, e.g., financial rewards or leniency?



Financial rewards of amounts between 2.5% and 5% of the recovered funds.



NO



NO

Are private-to-private business transactions covered?



YES



YES



YES

Extra-territorial Application



YES

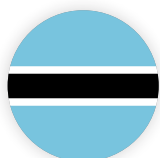


YES



NO

Notable Sanctions



Botswana

Imprisonment for a term not exceeding ten years or a fine equivalent to approximately BWP 500,000 (approximately USD 47,000), or both.

Confiscation and forfeiture of assets and other proceeds of crime.

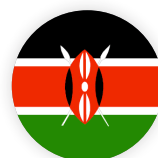


Ethiopia

Imprisonment ranging from a period of one year to life.

Confiscation of a proportionate amount of property acquired as a result of the offence.

Disqualification of licences.



Kenya

Imprisonment for a term not exceeding ten years.

Mandatory fine equal to the total of five times the sum of the amount of the benefit and the amount of the loss (where

Confiscation of any property acquired as a result of the advantage received by the convicted person or private entity.

Ten-year disqualification from holding the position of director in the entity and any other entity in Kenya.

Ten-year ban from holding the position of a partner in the entity and any other entity in Kenya.

Ten-year disqualification from being elected or appointed to hold a state office or a public office disqualification from transacting business with the national or county government for ten years after such conviction.

Notable Sanctions



Mauritius

Imprisonment for a term not exceeding ten years.

Attachment of all of a person's assets even those held on behalf of the suspect.

Prohibition from transferring, pledging or otherwise disposing of any money or other property.



Nigeria

Imprisonment for terms ranging from two to seven years.

Payment of fines of not less than five times the sum of the value of the gratification which is the subject-matter of the offence or NGN 10,000 (approximately USD 27.80), whichever is higher.

A financial penalty may also be imposed in a sum which is equivalent to the amount or value of the gratification where the offence is proved against the accused, or the property has been disposed of, or cannot be traced.

Ten-year disqualification from holding the position of director in corporate entities and from public office.



Rwanda

Imprisonment of not more than seven years.

A fine of two to ten times the value of the illegal benefit demanded. Confiscation of proceeds from corruption and other related offences.

Seizure of goods when a leader acquires goods in a manner inconsistent with the law.

A fine of two to ten times the value of the property the legal source of which the person is not able to justify.

Bar to participation in public procurement for four years.



Zambia

Imprisonment for a term not exceeding fourteen years

Disqualification for a period of five years from the date of conviction, from being elected or appointed to, or from holding or continuing to hold, any office or position in any public body.

Forfeiture of property to the state. Where the property cannot be traced, payment of the value of the property to the state.

Sale of the movable and immovable property of the convicted person.

Botswana



Rizwan Desai
Managing Partner
Desai Law Group
rizwan@desailawgroup.co.bw

1. What is the anecdotal perception of the level of corruption in the country?

- 1.1 The general perception is that corruption is on the rise in Botswana. This is mainly due to the number of cases, which have been reported in the last couple of years, involving senior and prominent people in the country, such as government officials, politicians, police officers and management of state owned enterprises.
- 1.2 Government continues to review existing laws and policies, but generally has confidence in the adequacy of the measures which have been put in place to tackle corruption in the country.

2. What is the level of corruption in the country as seen by monitoring bodies (e.g. Transparency International)?

- 2.1 Botswana is ranked 34 out of 180 countries, according to the 2018 Corruption Perceptions Index reported by Transparency International. Botswana scored 61 out of 100.² Notably, the country has been ranked among the top 40 least corrupt countries in the world during the last 10 years, being the best ranked country in Africa in at least 5 of the 10 years. At present, Botswana is the second least corrupt country in Africa after Seychelles.

3. What are the anti-bribery law enforcement organisations recognised by law?

- 3.1 The primary anti-bribery law enforcement organisations in the country are the Botswana Police Service and the Directorate on Corruption and Economic Crime (the DCEC).
- 3.2 The Police Service was established through the Police Act (CAP: 21:01), and enforces anti-corruption laws by virtue of its mandate of detecting and preventing crime as well as bringing offenders to justice. The Directorate on Corruption and Economic Crime, on the other hand, was established through the Corruption and Economic Crime Act (CAP 08:05), and conferred with powers to investigate suspected cases of corruption and economic crime in the country.
- 3.3 Law enforcement agencies in Botswana generally collaborate in their crime prevention efforts and, therefore, the Directorate on Intelligence Services and the Financial Intelligence Agency also play a pivotal role in the fight against corruption and bribery.
- 3.4 In 2014, the Government enacted the Proceeds and Instruments of Crime Act, which among other things introduced the civil forfeiture regime, which aims to secure property suspected of being the proceed or instrument of crime using a lesser burden of

² A score of 0 means highly corrupt whereas a score of 100 means a country is clean from corruption

proof, based on a balance of probabilities. The Act amended the Proceeds of Crime Act of (Cap 08:03). The Act also introduced the Office of Receiver, which works in collaboration with law enforcement agencies to confiscate and manage assets obtained through proceeds of crime, including corruption.

4. To what extent does the law command, or give incentives to make disclosure of crimes?

- 4.1 Members of the public are compelled by law to report crimes in relation to corruption. Part of the mandate of the DCEC entails carrying out public education to sensitise people about the dangers of corruption to the economy of Botswana, with the hope that once they are conversant with such issues, members of the public will be more forthcoming with information.
- 4.2 In relation to incentives, Section 45 of the Corruption and Economic Crime Act provides for the protection of informers. Furthermore, the Whistle Blowing Act was enacted by Parliament in 2016, the objective of which is 'to provide for the manner in which a person may, in the public interest, disclose information adverse to the public interest, to provide for the manner of reporting and investigation of disclosures of impropriety and the protection against victimisation of persons who make the disclosures'.

5. What are the bribery offences in your country?

- 5.1 Part II of the Penal Code outlines several offences, which are mainly intended to prohibit corrupt activities and abuse of office. Activities which are criminalised under the Act include official corruption, offering a bribe to or extortion of a bribe by public officers, false claims by public officers and abuse of office.
- 5.2 The Corruption and Economic Crime Act broadens the scope of the offences outlined in the Penal

Code, and includes a definition of the offence of corruption to include corruption by a public officer, acceptance of a bribe by or a promise of a bribe to a public officer, bribery for giving assistance in regard to a contract, bribery for withdrawal of a tender, conflict of interest, bribery in relation to auctions, cheating of public revenue, as well as possession of unexplained property (living beyond one's means).

6. To what extent is the law in section 5 above:

6.1 Unclear or ambiguous

The law is unclear or ambiguous in a number of areas, and every situation is evaluated based on its own peculiar circumstances. Government is still considering enacting other supporting legislation such as freedom of information and declaration of assets, which are considered to be instrumental in supporting the fight against corruption.

6.2 Extra-territorial in application

The Corruption and Economic Crime Act applies in relation to citizens of Botswana who are outside of the country as much as it applies to those within Botswana.

Where a citizen of Botswana commits an offence relating to corruption outside the country, he may be dealt with in respect of such offence as if it had been committed within Botswana.

6.3 Discriminatory among foreigners or between foreigners and locals

The law applies to both citizens and non-citizens equally in relation to offences committed in Botswana.

7. What sanctions does the law impose in respect of assets (e.g. fines, forfeiture, freezing)?

- 7.1 The Proceeds and Instruments of Crime Act provides for confiscation and forfeiture of assets and other proceeds of crime by the state. The law repealed the Proceeds of Serious Crime Act (CAP 08:03).

8. What sanctions does the law impose in respect of persons (e.g. imprisonment, loss of permits or licences, disqualification)?

The Penal Code provides that a public official who is convicted of corruption be imprisoned for a term not exceeding three years. In terms of the Corruption and Economic Crime Act, a person who is found guilty of corruption or fraud may be liable on conviction to imprisonment for a term not exceeding ten years or a fine equivalent to approximately BWP 500,000 (approximately USD 47,000) or both.

DCEC faces serious financial constraints, which makes it difficult for the organisation to perform its mandate effectively

The Botswana ALN Anti-Bribery & Corruption Guide has been contributed by Desai Law Group. The firm is not a member of the ALN alliance.

9. Who is caught by the law (e.g. companies, individuals, relatives, agents and other fiduciaries, aiders and abettors, both givers and takers)?

Corruption laws are applicable to everyone, including companies, individuals, relatives, agents, accessories, accomplices, aiders and abettors, as well as the party giving or receiving a bribe.

10. What are the most topical issues in your country on anti-bribery and corruption law?

10.1 One of the most topical issues on anti-bribery and corruption law is that the Directorate on Corruption and Economic Crime is not effective in investigating corruption committed by senior government officials and politicians. This is mainly attributed to the fact that the organisation does not have complete autonomy as it is established as a government department, under the direct control of the Minister of Justice and Security, and its director is appointed by the President.

10.2 Budgetary constraints are also a factor in relation to the fight against corruption or enforcement of anti-corruption laws. The Directorate of Corruption and Economic Crime has adopted a strategy underpinned by prevention and education. Like most other government departments however, the

Ethiopia



Mesfin Tafesse
Principal Attorney
Mesfin Tafesse & Associates
mtafesse@mtalawoffice.com



Wossenyeleh Tigu
Consultant, Attorney-At-Law
Mesfin Tafesse & Associates
wtigu@mtalawoffice.com

1. What is the anecdotal perception of the level of corruption in the country?

- 1.1 The anecdotal perception is that there is a high-level of corruption among high ranking public officials and that the problem is growing very fast in other levels. This problem is not only prevalent in government offices but also in government owned public enterprises. This problem has been perceived mainly in government offices and enterprises that move large amounts of capital and funds.

2. What is the level of corruption in the country as seen by monitoring bodies (e.g. Transparency International)?

- 2.1 Ethiopia was ranked 114 out of 180 on the Corruption Perceptions Index reported by Transparency International.³

3. What are the anti-bribery law enforcement organisations recognised by law?

- a. The Federal Attorney General Office;
- b. The Federal and Regional Police;
- c. The Federal Ethics and Anti-Corruption Commission; and
- d. The regional Ethics and Anti-Corruption Commission branch offices.

4. To what extent does the law command, or give incentives to make, disclosure of crimes?

- 4.1 According to Article 11 of the Criminal Procedure Code of Ethiopia, any person has the right to report any offence, whether or not he has witnessed the commission of the offence, with a view to criminal proceedings being instituted.
- 4.2 Every person has a duty to report a crime in the case of crimes related to the armed forces or military personnel. In addition to this, where the crime is punishable with death or rigorous imprisonment for life, or where a person is by law or by the rules of their profession obliged to notify the competent authorities in the interest of public security or public order of certain offences or certain grave facts, and such a person fails to do so, the person commits an offence punishable by fine and imprisonment.
- 4.3 Public offices, public officials, public employees and public enterprises shall, without prejudice to administrative or disciplinary measures, report to the commission or other bodies serious ethical violations and corruption offences forthwith.⁴
- 4.4 There are some protections for the whistleblowers of corruption crime. Any reprisal taken against a whistleblower or witness for making or attempting

³ A score of 0 means highly corrupt whereas a score of 100 means a country is clean from corruption.

⁴ Article 26 of the Revised Federal Ethics and Anti-Corruption Commission Establishment Proclamation No. 433/2005.

to make a disclosure or a testimony is illegal and subject to punishment.⁵

5. What are the bribery offences in your country?

In Ethiopia the crime of bribery is considered to have been committed both by the party giving the bribe and the party receiving it. Abuse of power, acceptance of undue advantage, corruption committed by conciliators, arbitrators and other similar persons, maladministration of governmental or public work, unlawful disposal of objects a civil servant or employee of a public organisation is in charge of, appropriation and misappropriation in the discharge of duties, undue delay in matters, taking things of value such person is entrusted with, granting or approving licenses inappropriately and many other offenses done in an official capacity are considered corruption crimes (Arts. 9-32 Proclamation. 881/2015).

- 5.1 Any public servant or employee of a public organisation who, with intent to obtain for himself or to procure for another an undue advantage or to injure the right of another, directly or indirectly, accepts or solicits an undue advantage by performing his responsibility or duty improperly, or who, in any other way, misuses the responsibility or public trust vested in him to procure an undue advantage for himself or another, or any person who, with intent to obtain for himself or to procure for another an undue advantage or to injure the right of another, promises, offers, gives or agrees to give an undue advantage to a public servant or employee of public organisation; or
- 5.2 Any person who gives, or any public servant or employee of public organisation who accepts, an undue advantage in consideration of an act of public office, public enterprise or public organisation properly performed or to be performed, shall be deemed to have committed crimes of corruption and be liable to punishment. (Article 4 (2) Corruption Crimes Proclamation, Proc. No. 881/2015).

5.3 Therefore, pursuant to this article whether the bribe is committed as a customary gift, or a gift is given to friends and relations, whether the gift is made after or before the outcome, whether it is given with the pretext of accelerating performance, whether it is small or big, it will be considered as corruption if it is intended to secure an undue advantage. Therefore, the state of mind (i.e. intention) is very important.

5.4 Generally, any gift is a bribe if it is intended to obtain undue advantage.

6. To what extent is the law in section 5 above:

6.1 Unclear or ambiguous

It is unclear what constitutes undue advantage.

6.2 Extra-territorial in application

Nothing is provided on the scope of application of the Proclamation. Therefore, it seems the Proclamation is meant to be applied only in the territory of the country.

Article 6 of the Proclamation states that whosoever becomes a fugitive with full knowledge that he is being sought by justice organs, or after issuance of a notice, or after his release on bail in connection with crimes of corruption, or disappears with full knowledge of an impending arrest or issuance of summons by a police officer, investigator or disappears after arrest or detention, without prejudice to bringing him to court when found or the enforcement of the imprisonment or the sequestration of the property on grounds of corruption imposed in his absence, is punishable with a fine of not less than ETB 20,000 (approximately USD 697) and not exceeding ETB 70,000 (approximately USD 2,439) for each penalty year imposed. The fine imposed will be collected from the property of the convict even if he is not found.

6.3 Discriminatory among foreigners or between foreigners and locals

There is no discrimination based on the nationality of the person.

⁵ Article 48 of the Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation No. 434/2005.

7. What sanctions does the law impose in respect of assets (e.g. fines, forfeiture, freezing)?

A court may issue a restraining order against any property acquired by the commission of the corruption offence and fruits thereof.⁶

The court shall issue a confiscation order proportionate to the property acquired by the corruption offence, where the accused is found guilty.⁷

8. What sanctions does the law impose in respect of persons (e.g. imprisonment, loss of permits or licenses, disqualification)?

8.1 The punishments for the crime of corruption are the following: forfeiture of the property acquired by corruption, payment of compensation for the damages caused, and fines that range from ETB 1,000 up to ETB 400,000 (approximately USD 35 up to USD 13,935). Imprisonment as a form of sanction for corruption crimes also ranges from a simple imprisonment to twenty years of rigorous imprisonment which is the longest imprisonment in Ethiopian Criminal Law.

9. Who is caught by the law (e.g. companies, individuals, relatives, agents and other fiduciaries, aiders and abettors, both givers and takers)?

- 9.1 Only individual persons involved in the crime (both givers and takers) will be imprisoned if the prosecutor provides sufficient evidence to secure a conviction. Companies are subject to a fine or disqualification of license, as the case may be when they are convicted of being involved in the crimes.
- 9.2 Since the crime of corruption by nature is done by a network of people (officials, individual clients and brokers, as the case may be) all of those who take

part in the actual corruption will be prosecuted together.

10. What are the most topical issues in your country on anti-bribery and corruption law?

10.1 Whistleblowing and witness protection

The Anti-Corruption Special Procedure and Rules of Evidence Proclamation (Proc. No 434/2005) provides no definition for whistleblowers, but it grants certain protections to whistle blowers.

Any reprisal taken against a whistleblower or witness for making or attempting to make a disclosure or a testimony is illegal (Articles 48-53 of the revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation (Proc. No 434/2005)).

The law (Art. 406 of the Criminal Code and Art. 8 of Proclamation No. 881/2015) provides that a person who has taken part in a corruption crime but supplies vital information on the commission of the crime may be exempted from prosecution.

10.2 Plea bargaining

There is no plea bargaining in the Ethiopian legal system.

⁶ Article 5 of Anti-Corruption Special Procedure Rules of Evidence (Amendment) Proclamation No. 882/2015.

⁷ Article 29 of The Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation No. 434/2005.

Kenya



Aisha Abdallah
Partner
Anjarwalla & Khanna
aa@africalegalnetwork.com

1. What is the anecdotal perception of the level of corruption in the country?

- 1.1 Corruption in Kenya is perceived to be endemic, rampant and deeply entrenched. President Uhuru Kenyatta declared it a national security threat in 2015.⁸
- 1.2 The findings of the National Ethics and Corruption Survey, 2017 conducted by the Ethics and Anti-Corruption Commission (the EACC) indicate that over 70 per cent of the survey respondents perceive the level of corruption in Kenya to be very high.

2. What is the level of corruption in the country as seen by monitoring bodies (e.g. Transparency International)?

The Transparency International, Corruption Perception Index 2018 ranks Kenya at position 144 out of 180 countries. Kenya scored 27/100 which is below the global average score of 43.⁹

3. What are the anti-bribery law enforcement organisations recognised by law?

- 3.1 The main corruption regulator is the EACC, which was established pursuant to article 79 of the Constitution of Kenya, 2010 by the Ethics and Anti-Corruption Commission Act (Act No. 22 of 2011). Its primary objective was to enforce ethical standards in the public sector. This remit has been expanded by the new Bribery Act, 2016 to cover the private sector.
- 3.2 The provisions of the Anti-Corruption and Economic Crimes Act No. 3 of 2003 (the ACECA) on investigations and prosecution of offences apply to investigation and prosecution of offences under the Bribery Act, 2016 (the BA).
- 3.3 Under Section 23 of the ACECA, the Secretary of the EACC (the Secretary) or a person authorised by the Secretary may conduct an investigation on behalf of the EACC.
- 3.4 Police officers also have wide powers to conduct investigations under the National Police Service Act,¹⁰ including requiring any person whom they reasonably believe has information to assist in the investigation of an alleged offence by attending before them at a police station or police office in

⁸ Kenya President Says Corruption a National Security Threat, Helen Nyambura-Mwaura, <https://www.bloomberg.com/news/articles/2015-11-23/kenyan-president-declares-corruption-a-national-security-threat> <accessed on 18 April 2017>

⁹ A score of 0 means highly corrupt whereas a score of 100 means a country is clean from corruption.

¹⁰ Section 51 (1) (j) of the NPS Act

the county where that person resides or is present for the time being.¹¹ The Directorate of Criminal Investigations (the DCI), which is part of the National Police Service is the department principally responsible for criminal investigations.

- 3.5 Section 35 of the ACECA provides that the EACC is to report to the Director of Public Prosecutions (the DPP) the results of its investigation. Notably, the DPP is an independent constitutional office. The report by the EACC shall include, if necessary, a recommendation that a person be prosecuted for corruption or economic crime.
- 3.6 It is important to note that pursuant to Gazette Notice No. 10263 published on 9 December 2016, the High Court of Kenya has an Anti-Corruption and Economic Crimes division specifically tasked to deal with cases pertaining to corruption and economic crimes.
- 3.7 There are a number of other organisations such as the Asset Recovery Agency (the ARA) established under the Proceeds of Crime and Anti-Money Laundering Act (Act. No. 9 of 2009). The ARA is tasked with assisting, among others, in criminal and civil forfeiture of property.
- 3.8 Therefore, although the main anti-bribery law enforcement organisations recognised are the EACC, DCI and the DPP, there are other bodies such as the ARA that have a role in anti-bribery law enforcement.

4. To what extent does the law command, or give incentives to make, disclosure of crimes?

- 4.1 Section 14 of the BA commands every state officer, public officer or any other person holding a position of authority in a public or private entity to report within 24 hours any knowledge or suspicion of instances of corruption to the EACC.

- 4.2 The words 'knowledge' and 'suspicion' have not been defined in the BA. The threshold for suspicion appears low as it does not have to be reasonably grounded.
- 4.3 The BA does not define who a person holding a position of authority is, but we have taken it to mean directors, officers and senior management in a company.

5. What are the bribery offences in your country?

- 5.1 The word 'bribery' is not expressly defined in the BA, but its meaning can generally be deduced from the provisions of Part II thereof, which sets out the main bribery offences. Under Part II, bribery is broken down into giving a bribe (section 5) and receiving a bribe (section 6).
- 5.2 It is important to note that bribery of foreign public officials is now a bribery offence in Kenya.
- 5.3 There are also ancillary offences such as failure to prevent bribery by an associated person (corporate offence) and failure to prevent harassment of a whistleblower.

Giving a bribe

- 5.4 The offence of giving a bribe is committed once a person offers, promises or gives a financial or any advantage to another person who knows or believes that the acceptance of the financial or other advantage would itself constitute the improper performance of the relevant function or activity. The offence of giving a bribe is committed irrespective of whether the person to whom the advantage is offered, promised or given is the same person who is to perform, or has performed the function or activity concerned, or whether the advantage is offered, promised or given by a person directly or through a third party.¹²

¹¹ Section 51 (1) of the NPS Act

¹² Section 5 of the BA

- 5.5 It is notable that the offence of giving a bribe depends on the state of mind of the recipient rather than of the giver. That means that there is *no mens rea* required on the part of the giver of the advantage, as would be normal in criminal law.
- 5.6 The term 'advantage' is widely defined under Section 2 of the BA to include any favour, or advantage of any description whatsoever, including money, gift, reward, loan, any office, employment or contract. Accordingly, the definition of giving or receiving a bribe (detailed in paragraph 5.4 of this memo) is extensive and transcends the giving or receiving of money.

Receiving a bribe

- 5.7 The offence of receiving a bribe is committed when:

- 5.7.1 A person requests, agrees to receive or receives a financial advantage intending that, in consequence, a relevant function or activity should be performed improperly whether by the person receiving the bribe or by any other person; or
- 5.7.2 The recipient of the bribe requests for, agrees to receive or accepts a financial or other advantage and the request, agreement or acceptance itself constitutes the improper performance by the recipient of a bribe of a relevant function or activity; or
- 5.7.3 In anticipation of or as a consequence of a person requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly by that person, or by another person at the recipient's request, assent or acquiescence.¹³

- 5.8 The BA defines 'advantage' to include:

- 5.8.1 Money or any gift, loan, fee, reward, commission, valuable security or other property or interest in property of any description, whether movable or immovable;

- 5.8.2 Any office, employment or contract;

- 5.8.3 Any payment, release, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part;

- 5.8.4 Any other service, favour or advantage of any description whatsoever, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary or penal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty;

- 5.8.5 Any offer, undertaking or promise of any gratification within the meaning of the foregoing paragraphs; and

- 5.8.6 Any facilitation payment made to expedite or secure performance by another person.

- 5.9 The definition of 'advantage' is not exhaustive given the use of the word 'include'. This therefore leaves the same to be widely interpreted to include any benefit of whatever nature.

- 5.10 The BA does not expressly define the word 'improper'. However, the meaning can be discerned from the definition of the offences of giving and receiving a bribe to mean offering or receiving an advantage, and such offering or receiving does not constitute the usual way of carrying out the relevant function. It also includes the performance of a relevant function in a manner that does not constitute the usual way pursuant to receiving a bribe.

Bribery enabling activities

- 5.11 It is also an offence for a person to perform activities intended to enable bribery. For example knowingly assisting another person or a private entity to give or receive a bribe by:

- 5.11.1 Obtaining property intended for use in bribery;

¹³Section 6(1) of the BA

5.11.2 Using, having possession of or transferring property which was obtained as a result of or in connection with bribery;

5.11.3 Property which was obtained as a result of or in connection with bribery; or

5.11.4 Recording property which was obtained as result of or in connection with bribery in the accounting records of any private entity.¹⁴

5.12 The offence of recording property would include false accounting and applies to persons involved in keeping the records of a company e.g. finance team, internal auditor and external auditor.

6. To what extent is the law in section 5 above:

6.1 Unclear or ambiguous

The BA is relatively new and many of the sections will need to be tested in court.

6.2 Extra-territorial in application

Conduct by a citizen of Kenya which takes place outside Kenya shall constitute an offence under the BA if the conduct would constitute an offence under the BA if it took place in Kenya.

6.3 Discriminatory among foreigners or between foreigners and locals

6.3.1 The BA applies to any citizen, or resident in Kenya, a body incorporated under the laws of Kenya and which carries on business within or outside Kenya and any other body corporate that carries on business, or part of business in Kenya.

6.3.2 The only notable distinction between foreigners and locals is under section 15 of the BA, which provides for the extra-territorial application of the BA with regard to conduct by Kenyan citizens.

7. What sanctions does the law impose in respect of assets (e.g. fines, forfeiture, freezing)?

7.1 Fines not exceeding KES 10 million (approximately USD 10,000).

7.2 Mandatory fine equal to five times the sum of the amount of the benefit and the amount of the loss (where applicable).

7.3 Confiscation of any property acquired as a result of the advantage received by the convicted person or private entity.

7.4 Pay back of the amount or value of any advantage received to the Government.

8. What sanctions does the law impose in respect of persons (e.g. imprisonment, loss of permits or licences, disqualification)?

8.1 Imprisonment for a term not exceeding ten years.

8.2 Bar from holding public office for convicted state officers or public officers.

8.3 Ten year disqualification from holding the position of director in the entity and any other entity in Kenya.

8.4 Ten year ban from holding the position of a partner in the entity and any other entity in Kenya.

8.5 Ten year disqualification from being elected or appointed to hold a state office or a public office.

8.6 Ten year disqualification from transacting business with the National or County Government after such conviction.

¹⁴Section 13(1) of the BA.

9. Who is caught by the law (e.g. companies, individuals, relatives, agents and other fiduciaries, aiders and abettors, both givers and takers)?

9.1 The scope of the BA is extremely wide. The BA applies to both public and private entities. The definition of private entity under the BA is not exhaustive and includes:

- a. Voluntary organisations;
- b. Charitable organisations;
- c. Faith based organisations;
- d. Community based organisations;
- e. Religious based organisations;
- f. Companies;
- g. Partnerships;
- h. Clubs;
- i. Any other body or organisation howsoever constituted, including a body incorporated under the laws of Kenya and which carries on business within or outside Kenya; and
- j. Any other body corporate however established which carries on business, or part of business in Kenya. The BA applies to any person or resident in Kenya.

9.2 The BA also applies to givers and takers of bribes as provided under Sections 5 and 6 of the BA.

9.3 Associated persons (including agents) of a private entity are covered under Section 10 of the BA, which provides that a private entity is deemed to have committed an offence if a person associated with it bribes another person intending to obtain or retain business for the private entity or advantage in the conduct of business by the private entity.

9.4 The BA provides that an associated person is a person who performs services for or on behalf of the private entity as an agent, employee, or in any other capacity. However, reference will also be made to the circumstances of the case and not just the official description of the relationship.

9.5 The senior officers of private entities are also captured in the scope of the BA. Under Section 9 of the BA, public and private entities are required to put in place procedures for the prevention of bribery and corruption appropriate to their size, scale and nature of their operation. A director, senior officer or other person is deemed to have committed an offence if a private entity fails to put in place procedures for the prevention of bribery and corruption, and where that failure is proved to have been committed with the consent or connivance of a director or senior officer of the private entity, or a person purporting to act in such a capacity, or occupying such a position, by whatever name called.

9.6 Section 14(1) of the BA creates a mandatory obligation for a person in a position of authority to report to the EACC within a period of twenty-four hours any knowledge or suspicion of instances of bribery. It is an offence under section 14(2) for a state officer, a public officer or 'any other person' to fail to report an offence under the BA to the EACC despite being aware of or suspicious of the commission of the same.

9.7 People who aid or abet the commission of bribery offences are also captured under Section 13 of the BA.

10. What are the most topical issues in your country on anti-bribery and corruption law?

10.1 Training and budget for enforcers

10.1.1 We are aware that the EACC budget has been significantly increased to KES 4 billion (approximately USD 40 million). The EACC has taken on more than 500 additional staff, mainly investigators, with plans to take on an additional 1,500 people. The increased budgetary allocation is meant to expand the EACC's resources, including training and equipment for enforcers. The EACC appears over-stretched. We consider that the scale

of corruption in Kenya requires additional resources to be committed by the national government.

10.2 Whistleblowing and witness protection

10.2.1 A 'whistleblower' is defined by Section 2 of the BA to mean a person who makes a report to the EACC or law enforcement agencies on acts of bribery or other forms of bribery.

10.2.2 A whistleblower or a witness in a complaint or a case of bribery is not to be intimidated or harassed on account of providing information to law enforcement institutions or giving testimony in a court of law.

10.2.3 Law enforcement agencies are required to put in place reasonable mechanisms for the protection of identities of informants and witnesses.

10.2.4 Kenya has the Witness Protection Act (Act No. 16 of 2006) that provides for the protection of witnesses in criminal cases and other proceedings.

10.3 Plea bargaining

Section 137 A of the Criminal Procedure Code (Chapter 75, Laws of Kenya), which applies to corruption and economic crimes, allows a prosecutor and an accused person or their legal representative to enter into a plea agreement.

10.4 Foreign and international anti-corruption statutes

Under Article 2 (6) of the Constitution of Kenya, 2010 any treaty or convention ratified by Kenya shall form part of the law of Kenya. Accordingly, the United Nations Convention Against Corruption and the African Union Convention on Preventing and Combating Corruption both apply. These international conventions, however, implore the state parties to pass laws on corruption, which Kenya has now done.

10.5 Application of the BA to private-to-private transactions

We expect the Kenyan authorities to enforce the BA in relation to private to private transactions as they are expressly covered by the BA.

10.6 Whether there are guidelines on the procedures for prevention of bribery

There are no guidelines under the BA at present and the timelines for developing the same are unclear.

10.7 When private entities are required to put in place anti-bribery procedures

The BA has not imposed a timeline within which private entities should put in place anti-bribery and corruption policies and procedures. We, however, advise entities to put the policies and procedures expediently. Under section 9(2) of the BA it is an offence for a private entity to fail to put in place the said policies and procedures, but it is not a defence to state that the guidelines have not been published.

Mauritius



Ammar Oozeer
Senior Associate
BLC Robert & Associates
ammar.Oozeer@blc.mu

1. What is the anecdotal perception of the level of corruption in the country?

- 1.1 The findings of the National Survey on Corruption 2014, commissioned by the Independent Commission Against Corruption (ICAC), indicate that the people of Mauritius do not consider corruption as the most important problem of Mauritius. It only ranks 4th in the list of their concerns.

2. What is the level of corruption in the country as seen by monitoring bodies (e.g. Transparency International)?

- 2.1 The Transparency International, Corruption Perception Index 2018 ranks Mauritius at position 56 out of 180 countries. Mauritius scored 51/100 which is a better score than the global average score of 43.¹⁵

3. What are the anti-bribery law enforcement organisations recognised by law?

- 3.1 The Prevention of Corruption Act¹⁶ (POCA) creates the Independent Commission Against Corruption. The ICAC is vested with the power to investigate acts of corruption. It also monitors, in such manner as it considers appropriate, the implementation

of contracts awarded by a public body in order to ensure that no irregularity or impropriety is involved. It further educates the public regarding the problem of corruption.

- 3.2 Under the Constitution of Mauritius, the Director of Public Prosecutions (DPP) has the power in any case he considers it desirable so to do, to institute criminal proceedings. A prosecution for an offence under the POCA is instituted by, or with the consent of, the Director of Public Prosecutions. It is to be noted that the Chief Legal Adviser, or any officer of the Legal Division of the ICAC designated by him, may conduct a prosecution under the POCA.
- 3.3 The Police Force is responsible for preventing and detecting offences as well as apprehending persons who have committed, or who are reasonably suspected of having committed, offences. If in the course of a police enquiry it is suspected that an act of corruption has been committed, and the Commissioner of Police is of the opinion that the matter must be investigated by the ICAC, the matter is referred to the ICAC for investigation.

¹⁵ A score of 0 means highly corrupt whereas a score of 100 means a country is clean from corruption.

¹⁶ Act No. 18 of 2002, as amended.

4. To what extent does the law command, or give incentives to make, disclosure of crimes?

- 4.1 Under the POCA, an officer of a public body has a duty to forthwith report in writing to the ICAC where he suspects that an act of corruption has been committed within or in relation to that public body.
- 4.2 Information received in confidence by the ICAC that an act of corruption has been committed is kept secret and is privileged. The identity of the informer is kept secret and the confidential information and the identity of the informer cannot be disclosed in any proceedings before any court, tribunal or other authority.
- 4.3 The law also affords protection to witnesses. A person who discloses to an officer of the ICAC that a 'person, public official, body corporate or public body' is or has been involved in an act of corruption, and at the time of such disclosure he had reasonable grounds to believe that the information he disclosed may be true or is of such a nature to warrant an investigation under the POCA, does not incur civil or criminal liability as a result of such disclosure. A false disclosure is, however, criminally sanctioned.

5. What are the bribery offences in your country?

The following acts are considered 'acts of corruption' and are criminalised:

5.1 Bribery by public official

A public official¹⁷ who solicits, accepts or obtains

from another person, for himself, or for any other person a gratification¹⁸ for:

- a. Doing or abstaining from doing, or having done or abstained from doing, an act in the execution of his functions or duties;
- b. Doing or abstaining from doing, or having done or abstained from doing, an act which is facilitated by his functions or duties;
- c. Expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented the performance of an act in the execution of his functions or duties;
- d. Expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act by another public official in the execution of the latter's functions or duties; and
- e. Assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed another person in the transaction of a business with a public body.¹⁹

5.2 Bribery of public official

A person who gives, agrees to give, or offers a gratification to a public official for:

- a. Doing, or for abstaining from doing, or having done or abstained from doing an act in the execution of his functions or duties;
- b. Doing or abstaining from doing, or for having done or abstained from doing an act which is facilitated by his functions or duties;
- c. Expediting, delaying, hindering or preventing,

¹⁷ A 'public official' (a) means a Minister, a member of the National Assembly, a public officer, a local government officer, an employee or member of a local authority, a member of a Commission set up under the Constitution, an employee or member of a statutory corporation, or an employee or director of any Government company; and includes (b) a judge, an arbitrator, an assessor or a member of a jury, and (c) an official of the International Criminal Court referred to in the International Criminal Court Act.

¹⁸ A 'gratification' (a) means a gift, reward, discount, premium or other advantage, other than lawful remuneration; and (b) includes (i) a loan, fee or commission consisting of money or of any valuable security or of other property or interest in property of any description, (ii) the offer of an office, employment or other contract, (iii) the payment, release or discharge of a loan, obligation or other liability, (iv) the payment of inadequate consideration for goods or services, and (b) the offer or promise, whether conditional or unconditional, of a gratification.

¹⁹ A 'public body' means (a) a Ministry or Government department, a Commission set up under the Constitution or under the authority of any other law, a local authority, or a statutory corporation; and (b) includes a Government company.

or having expedited, delayed, hindered or prevented the performance of an act in the execution of his functions or duties;

- d. Expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented the performance of an act by another public official in the execution of the latter's functions or duties; and
- e. Assisting, favouring, hindering or delaying or having assisted, favoured, hindered or delayed another person in the transaction of a business with a public body.

5.3 Taking gratification to screen an offender from punishment

A person who accepts or obtains, or agrees to accept, or attempts to obtain a gratification for himself or for any other person in consideration of:

- a. His concealing an offence;
- b. His screening any other person from legal proceedings for an offence;
- c. His not proceeding against any other person in relation to an alleged offence;
- d. His abandoning or withdrawing, or his obtaining or endeavouring to obtain the withdrawal of a prosecution against any other person.

5.4 A public official using his office for gratification

A public official who makes use of his office or position for a gratification for himself or another person.²⁰

5.5 Bribery of public official to influence the decision of a public body

A person who gives, or agrees to give, or offers to a public official a gratification for:

- a. Voting or abstaining from voting, or having voted or abstained from voting at a meeting of a public body of which he is a member, director or

employee in favour of or against any measure, resolution or question submitted to the public body;

- b. Performing or abstaining from performing, or aiding in procuring, expediting, delaying, hindering or preventing, or having performed or abstained from performing, or having aided in procuring, expediting, delaying, hindering or preventing the performance of an act of a public body of which he is a member, director or employee; and
- c. Aiding in procuring, or preventing, or having aided in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any other person.

5.6 Bribery by a public official to influence the decision of a public body

A public official who solicits or accepts a gratification for:

- a. Voting or abstaining from voting, or having voted or abstained from voting at a meeting of a public body of which he is a member, director or employee, in favour of or against any measure, resolution or question submitted to the public body;
- b. Performing or abstaining from performing, or aiding in procuring, expediting, delaying, hindering or preventing the performance of an act of a public body of which he is a member, director or employee; and
- c. Aiding in procuring or preventing, or having aided in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person.

5.7 Influencing a public official

A person who exercises any form of violence, or pressure by means of threat upon a public official with a view to the performance by that public

²⁰ The section creating this offence does not apply to a public official who (a) holds office in a public body as a representative of a body corporate which holds shares or interests in that public body, and (b) acts in that capacity in the interest of that body corporate.

official of any act in the execution of his functions or duties, or the non-performance, by that public official, of any such act.

5.8 'Trafic d'influence'

A person who gives or agrees to give or offers a gratification to another person:

- a. To cause a public official to use his influence, real or fictitious, to obtain any work, employment, contract or other benefit from a public body;
- b. To obtain work, employment, contract or other benefit from a public body.

A person who solicits, accepts or obtains a gratification from any other person for himself or for any other person in order to make use of his influence, real or fictitious, to obtain any work, employment, contract or other benefit from a public body.

A public official who solicits, accepts or obtains a gratification from any other person for himself or for any other person in order to make use of his influence, real or fictitious, to obtain any work, employment, contract or other benefit from a public body.

5.9 Public official taking gratification

A public official who accepts or receives a gratification for himself or for any other person:

- a. For doing or having done an act which he alleges, or induces any person to believe, he is empowered to do in the exercise of his functions or duties, although as a fact such act does not form part of his functions or duties;
- b. For abstaining from doing or having abstained from doing an act which he alleges, or induces any person to believe, he is empowered not to do or bound to do in the ordinary course of his function or duty, although as a fact such act does not form part of his functions or duties.

5.10 Bribery for procuring contracts

A person who gives or agrees to give or offers a gratification to a public official in consideration of that public official giving assistance or using influence in:

- a. Promoting, executing, or procuring a contract with a public body for the performance of a work, the supply of a service, or the procurement of supplies;
- b. The payment of the price provided for in a contract with a public body; and
- c. Obtaining for that person or for any other person an advantage under a contract for work or procurement.

A public official who solicits, accepts or obtains from any other person, for himself or for any other person, a gratification for giving assistance or using influence in:

- a. Promoting, executing, or procuring a contract with a public body for the performance of a work, the supply of a service, or the procurement of supplies;
- b. The payment of the price provided for in a contract with a public body;
- c. Obtaining for that person or for any other person an advantage under a contract for work or procurement.

5.11 Conflict of interests

A public official who is a member, director or employee of a public body which proposes to deal with a company, partnership or other undertaking in which that public official or a relative²¹ or associate of his has a direct or indirect interest, and that public official and/or his relative or associate hold more than 10 percent of the total issued share capital or of the total equity participation in such company, partnership or other undertaking, fails to forthwith disclose, in writing, to that public body the nature of such interest.

²¹ A 'relative' in relation to a person means (a) a spouse or conjugal partner of that person, (b) a brother or sister of that person, (c) a brother or sister of the spouse of that person, (d) any lineal ascendant or descendant of that person.

A public official who votes or takes part in any proceedings of a public body in which the public official or a relative or associate of his has a personal interest in the decision which the public body is to take.

5.12 Treating of public official

A person who, while having dealings with a public body, offers a gratification to a public official who is a member, director or employee of that public body.

5.13 Receiving gift for a corrupt purpose

A public official who solicits, accepts or obtains a gratification for himself or for any other person:

- a. From a person, who he knows to have been, to be, or likely to be, concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with his functions or those of any public official to whom he is subordinate or of whom he is the superior;
- b. From a person whom he knows to be interested in or related to the person so concerned.

There is a general prohibition on the acceptance or offer of gifts and hospitality by public officials. In its publication '*Guidelines on Gifts and Gratifications for Public Officials*'²², the ICAC recognised that a gift may be intended as a token of appreciation but it may also be offered to influence the decision a public official is, or will be making. Hence, according to the ICAC, the intent behind the action or activity is a key consideration.²³

i. Customary gift

If a customary gift is given as a token of appreciation with no intent to influence a

decision, the giving of such gift would arguably be permissible. According to the Guidelines, the offer and acceptance of gifts during conferences and other official events may be permissible as long as:

- a. The participation in the event is considered as a customary and necessary part of the public official's duties, and
- b. The gifts offered or received are not meant to have any bearing or influence on the decision-making process regarding any dealing or future dealings with the organisation.

ii. Gifts to close friends and relations

The Guidelines provide that a public official may be allowed to accept gifts from friends and family members in situations where these gifts would be expected, such as birthdays, anniversaries or weddings.

However, if a gift is received outside the regular gift-giving pattern of one's relationship (for instance in terms of value), the public official must be wary of the intention behind the gift.

iii. Gifts (a) made after the outcome is known and (b) not promised in advance

The POCA provides that offences of corruption concern the past, present and future conduct of public officials, including their omission as well as their acts. Thus, even a gift given in appreciation for the expedited or considerate manner in which a public official had accomplished their duties and accepted by the latter may be punishable as an act of corruption.

²² 13 December 2016

²³ The Guidelines provide for a 'Zero Influence Test' to be upheld by the public official in accepting any gift or hospitality. The 'Zero Influence Test' has the following two conditions:

- The offeror giving the gift or hospitality has no intent to influence a decision or start a 'sweetening process' with the ultimate aim of influencing a decision-making process. The gift should be solely offered out of mere appreciation; and
- The gift or hospitality offered should be available to others such as other public officials or members of the public. The more widely it is available to others, the safer it is.

iv. *Incentives to do what the receiver was bound by law to do*

A person who gives, agrees to give, or offers a gratification to a public official for expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented the performance of an act in the execution of his functions or duties commits an act of corruption.

v. *Gifts not able to influence the outcome in question*

The gift must not be made with a corrupt intention. To find the required intent, there must be an expectation of a favourable official act in return for the gift or favour. Hence, the corrupt intent should be determined from the facts and circumstances under which there is a gift or gratification.

vi. *Very small gifts*

The test is whether they are given with a corrupt intention.

vii. *Incentives to do what the receiver was bound by law to do in any event*

The POCA creates a presumption that at the time a gratification was received, the recipient knew that such gratification was made for a corrupt purpose.

viii. *Incentives disclosed in advance*

These incentives will be caught by the definition of the word 'gratification' which also includes the offer or promise, whether conditional or unconditional, of a gratification.

ix. *Incentives conferred in ignorance of law or fact*

Ignorance of law is no excuse.

x. *Gifts to cover losses or expenses incurred by the recipient*

If such gifts are made with a corrupt purpose, they would be sanctioned.

xi. *Gifts to compensate for injury or death*

If the gift is given for a corrupt purpose by or to a public official, this could constitute a corruption offence.

5.14 Corruption of agent

- An agent who, without the consent of his principal, solicits, accepts or obtains from any other person for himself or for any other person a gratification for doing or abstaining from doing an act in the execution of his functions or duties or in relation to his principal's affairs or business, or for having done or abstained from doing such act commits a criminal offence.
- A person who gives or agrees to give or offer a gratification to an agent for doing or abstaining from doing an act in the execution of his functions or duties or in relation to his principal's affairs or business or for having done or abstained from doing such act commits a criminal offence.
- An agent has been defined as any person employed by or acting for another person and includes a member or an officer of a public body, a trustee, a sub-contractor, and any person employed by or acting for such trustee or sub-contractor. A principal has been defined as including an employer, a beneficiary under a trust, a person beneficially interested in the succession of a person, and, in the case of a person serving in or under a public body, the public body.
- The offence of corruption of an agent is a type of offence which has also been used to prosecute private to private business transactions although these have thus far been rare.

5.15 Corruption to provoke a serious offence

A person who commits an offence under the POCA with the object of committing or facilitating the commission of a crime.²⁴

6.3 Discriminatory among foreigners or between foreigners and locals

There is no discrimination.

6. To what extent is the law in section 5 above:**6.1 Unclear or ambiguous**

The POCA was introduced in 2002 and all the provisions of the law have not been fully tested before the Courts. It is to be noted that the Privy Council will soon be called upon to pronounce itself on the offence of 'conflict of interest' under the POCA.

6.2 Extra-territorial in application

If the act alleged to constitute an offence under the POCA occurred outside Mauritius, the Mauritian Court shall have jurisdiction in respect of the offence if the person charged (i) is a citizen of Mauritius; (ii) is ordinarily resident in Mauritius; (iii) was arrested in Mauritius or in its territorial waters or on board a ship or aircraft registered or required to be registered in Mauritius at the time the offence was committed; (iv) is a company incorporated or registered as such under any law in Mauritius; or (v) is a body of persons incorporated in Mauritius, or an incorporated body operating in Mauritius.

In addition, any act alleged to constitute an offence under the POCA and which is committed outside Mauritius by a person, other than by a person referred to at (i) to (v) in the preceding paragraph, are, regardless of whether or not the act constitutes an offence or not at the place of its commission, deemed to have been committed also in Mauritius if that (a) act affects or is intended to affect a public body, a business or any other person in Mauritius; (b) the person is found to be in Mauritius; or (c) the person is, for any reason, not extradited by Mauritius, or if there is no application to extradite that person.

7. What sanctions does the law impose in respect of assets (e.g. fines, forfeiture, freezing)?

7.1 Attachment: If the ICAC has reasonable ground to suspect that a person has committed an offence under the POCA, it may apply for an attachment order from a judge to attach in the hands of any person named in the order, whether that person is himself the suspect or not, all money or other property due or owing or belonging to or held on behalf of the suspect (for instance a debtor, a trustee, a custodian, an agent, a proxy or any other person except the suspect himself).

7.2 The POCA may also require the person named in the order to declare in writing to the ICAC, within 48 hours of the service of the order, the nature and source of all moneys and other property so attached.

7.3 In addition, the person named in the order may also be prohibited from transferring, pledging or otherwise disposing of any money or other property so attached except in such manner as may be specified in the order.

7.4 Seizure: If in the course of an investigation under the POCA, the Director-General is satisfied that movable property is the subject-matter of or relates to an offence under the POCA, the Director-General may seize that property. If the movable property seized is under the custody of a third party, the Director-General may direct that third party not to dispose of the property without his consent in writing.

7.5 Where a person is convicted of an offence under the POCA, the Court may, in addition to any penalty imposed, order the forfeiture of the property that is the subject-matter of the offence.

²⁴ A crime is an offence punishable by penal servitude or a fine exceeding 5,000 rupees and for the purposes of the POCA includes (a) an activity carried out outside Mauritius and which, had it taken place in Mauritius, would have constituted a crime, (b) any act of omission occurring outside Mauritius, but which, had it taken place in Mauritius would have constituted a crime.

8. What sanctions does the law impose in respect of persons (e.g. imprisonment, loss of permits or licences, disqualification)?

Offence	Sanction
Bribery by public official	Penal servitude for a term not exceeding ten years.
Bribery of public official	Penal servitude for a term not exceeding ten years.
Taking gratification to screen offender from punishment	<p>Where the offence is a crime i.e. punishable by penal servitude (minimum of three years) and/or a fine exceeding MUR 5,000 (approximately USD 146), for example causing death by dangerous driving, imprisonment for a term not exceeding five years.</p> <p>Where the offence is a misdemeanour i.e. punishable by imprisonment exceeding ten days and/or a fine not exceeding MUR 5,000 (approximately USD 146), for example driving an uninsured vehicle, imprisonment for a term not exceeding one year.</p> <p>Where the offence is a contravention i.e. punishable by imprisonment of a maximum of ten days and/or a fine not exceeding MUR 5,000 (approximately USD 146), for example speeding, imprisonment for a term not exceeding six months.</p>
Public official using his office for gratification	Penal servitude for a term not exceeding ten years.
Bribery of or by public official to influence the decision of a public body	Penal servitude for a term not exceeding ten years.
Solicits or accepts a gratification	Penal servitude for a term not exceeding ten years.
Influencing a public official	Penal servitude for a term not exceeding ten years.
'Trafic d'influence'	Penal servitude for a term not exceeding ten years.
Public official taking a gratification	Penal servitude for a term not exceeding ten years.
Conflict of interests	Penal servitude for a term not exceeding ten years.
Treating of public official	Penal servitude for a term not exceeding ten years.
Receiving gift for a corrupt purpose	Penal servitude for a term not exceeding ten years.
Corruption of agent	Penal servitude for a term not exceeding ten years.
Corruption to provoke a serious offence	Penal servitude.

9. Who is caught by the law (e.g. companies, individuals, relatives, agents and other fiduciaries, aiders and abettors, both givers and takers)?

The provisions of the POCA apply to companies, individuals, relatives, agents and other fiduciaries. Aiders and abettors are liable by virtue of section 45 of the Interpretation and General Clauses Act which provides that every accomplice and any person who attempts to commit an offence shall commit an offence and shall, on conviction, be liable to the penalty for the principal or completed offence, as the case may be. Both givers and takers commit an offence under the POCA.

10. What are the most topical issues in your country on anti-bribery and corruption law?

According to the 2014 National Survey on Corruption, the perception of Mauritians is that corruption is widespread and has ramifications in all the sectors of the economy and society in general.

10.1 Whistle-blowing and witness protection

See paragraph 4.2 above.

Nigeria



Gbolahan Elias
Principal Partner
G.Elias & Co.
gbolahan.elias@gelias.com

1. What is the anecdotal perception of the level of corruption in the country?

Corruption has long been perceived as a major social problem in Nigeria. The fight against corruption gained momentum in 2000 when the Corrupt Practices and Other Related Offences Act, 2000 (the ICPC Act) was enacted and the Independent Corrupt Practices and Other Related Offences Commission (ICPC) (a federal agency) was established. In fact, one of the foremost points in the electoral manifesto of the current administration was its promise to fight corruption vigorously. It has been announced that at least USD 300 million has been recovered in the fight against corruption since 2015.

2. What is the level of bribery and corruption in the country as seen by monitoring bodies (e.g. Transparency International)?

The level of corruption in Nigeria is widely perceived to be high. Nigeria is ranked 144 out of 180 countries, according to the 2018 Corruption Perceptions Index reported by Transparency International. Nigeria scored 27 out of 100.²⁵ This is below the global average score of 43 and indicates endemic corruption in the country's public sector. It is a slight improvement over 2017 when Nigeria scored 27 out of 100 but was still ranked 148 out of 180.

3. What are the ABC law enforcement organisations recognised by law?

- 3.1 There are two principal anti-corruption agencies in Nigeria: the ICPC and the Economic and Financial Crimes Commission (EFCC).
- 3.2 The ICPC was established pursuant to Section 3 of the ICPC Act. The ICPC has the responsibility to receive complaints, investigate and prosecute offenders who have attempted to commit or committed an offence under the ICPC Act or under any law prohibiting corruption. It is also the duty of the ICPC to examine the practices, systems and procedures of public bodies and ensure that such systems do not facilitate fraud or corruption. Further, the ICPC advises officers, agencies, and parastatals on ways that fraud may be eliminated or minimised (Section 6, ICPC Act).
- 3.3 The EFCC was established pursuant to Section 1 of the Economic and Financial Crimes Commission (Establishment) Act, 2004 (EFCC Act). The EFCC is charged with the responsibility of coordinating the various agencies involved in the fight against money laundering and the enforcement of all laws dealing with economic and financial crimes in Nigeria. 'Economic and financial crimes' include fraud, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices (Section 46, EFCC Act). A number of other institutions have powers to fight corruption. Among these are the Central Bank of Nigeria, the Securities and Exchange Commission, the Code of Conduct Bureau and Tribunal for public officers (Code of Conduct Bureau and Tribunal Act

²⁵ A score of 0 means highly corrupt whereas 100 means a country is clean from corruption

(Cap c.15, LFN, 2004) (the CCBT Act), the Attorneys General of the Federation and States (there are 36 states) and the Nigerian Police Force (Section 150, 195 and 214 of the 1999 Constitution).

4. To what extent does the law command, or give incentives to make disclosure of bribery and corruption?

- 4.1 Any person who discloses information or produces an account or document or article to an authorised officer of ICPC whether by himself or through any agent shall not, on account of such disclosure or production, be liable to any prosecution.
- 4.2 There are also offences of failing to disclose corruption. Every public officer is required to report any gratification given, promised, or offered to him/her in contravention of the ICPC Act to the nearest officer of the ICPC or police officer. (Public officer includes employees, officers and directors of private companies in which governmental bodies have invested.) In addition, any person from whom any gratification has been solicited or obtained, or from whom an attempt to obtain has been made in contravention of the ICPC Act, is required to report the same to an officer of the ICPC or a police officer. Failure to report such an incident without reasonable excuse is a crime (Section 23, ICPC Act). There are other laws that encourage the reporting of corrupt practices.
- 4.3 Recently, the Federal Government of Nigeria initiated a whistleblowing programme with the aim of encouraging the disclosure of hidden proceeds of corrupt practices. The economic capital of the country, Lagos State, is also promoting the enactment of a whistleblower statute, the Disclosure of Impropriety Bill, 2016. (ALN Nigeria Partner, Gbolahan Elias, was the Chairman of the committee that drew up this Bill.)
- 4.4 Up until the enactment of the Freedom of Information Act, 2011, (the FOI Act) there was no specific law providing for access to public records

and information. The FOI Act makes provision for the disclosure of information held by public authorities and institutions. The Act is innovative as it enables transparency in the activities of those in public offices. This makes it possible for citizens to hold the Government accountable and also facilitates the investigation of cases by law enforcement agencies. Thus, any person can apply for the public records of Government officials, and the same can be granted or denied. Where the application is denied, the applicant is notified of the reasons for denial in writing (Section 4, FOI Act). Where a case of wrongful denial is established, the defaulting officer or institution is liable to a fine of NGN 500,000 (approximately, USD 1,380). It is a criminal offence punishable by a minimum of one year imprisonment for any public officer to destroy public records or alter the same before they are released to any person or entity requesting them (Section 10, FOI Act).

5. What are the bribery offences in your country?

- 5.1 The ICPC Act (Sections 8-26) creates offences of (1) accepting gratification, (2) giving or accepting gratification, (3) bribery of public officers, (4) use of office or position for gratification, (5) bribery in relation to auctions, and (6) bribery in regard to contracts.
- 5.2 'Gratification' is the key legal term here. It is defined in the ICPC Act and includes 'money, donations, gifts, loan fees, rewards, valuable securities, property or interest in property whether movable or immovable given or promised to any person with intent to influence such a person in the performance of his duties' (Section 2, ICPC Act).
- 5.3 We address in this guide only true corruption and bribery involving 'gratification' as defined in the ICPC Act or comparable conduct. Conduct that involves fraud but with nothing akin to 'gratification' is not the subject of this guide whether or not a statute for its own purposes or convenience chooses to

label such conduct as 'bribery' or 'corruption'. Thus, we say nothing about, for example, Section 2 of the ICPC Act which also defines 'corruption' under the Act to include 'fraud'. 'Fraud' in its nature is neither inherently 'bribery' nor 'corruption' whether the ICPC Act says so or not.

- 5.4 Other statutes that criminalise ABC conduct include the Criminal Code Act 1990 Section 98(1) (punishing any 'public officer who corruptly asks for, receives or obtains property or benefit of any kind for himself or for any other person or agrees or attempts to receive same') and Section 404 (punishing 'any person who being employed in public service compels any person to sell property to him' at a price other than its fair market value).
- 5.5 The Banks and Other Financial Institutions (Amendment) Act, 1991 'prohibits the receipt of any gift, commission, property or thing of value by any staff of any bank for his own personal benefit' (Section 47). The section further provides that such a person will be liable on conviction to a fine of NGN 50,000 (approximately, USD 139) or imprisonment to a term of five years, or both, and in addition forfeit such gift or commission to the Federal Government. The Code of Conduct Bureau and Tribunal (CCBT) Act criminalises the offering of gifts or benefits as inducement or bribe for granting or discharging of favours of the public officer's duty (Section 10, CCBT Act). The Money Laundering (Prohibition) (the MLP) Act 2011 has extensive provisions on the laundering of proceeds 'corruptly' obtained and penalises the conversion or transfer of corrupt proceeds out of Nigeria. The EFCC is responsible for enforcing the provisions of the MLP Act.

6. To what extent is the law in section 5 above:

6.1 Unclear or ambiguous

Key terms such as 'bribery' and 'corruption' feature repeatedly in the legislation but are not clearly defined. The EFCC Act on does not define 'corruption'. To this extent, the law is not as clear as it should be. The legislation does not define 'bribery'

but it describes 'corruption' to include 'bribery' (Section 2, ICPC Act). Presumably 'bribery' means the taking or receiving of 'gratification'.

6.2 Extra-territorial in application

The ICPC Act captures offences committed outside Nigeria. Any person who receives anything which has been obtained by means of an act constituting a felony or misdemeanour outside Nigeria, which, if it had been done in Nigeria, would have constituted a felony or misdemeanour and which is an offence under the laws in force in the place where it was done, is guilty of a felony (Section 13, ICPC Act).

6.3 Discriminatory among foreigners or between foreigners and locals

Any person who commits an offence is guilty of the offence and may be charged for committing it. 'Person' is defined to include a natural person, a juristic person or any body of persons corporate or incorporate (Section 2, ICPC Act). It is not material whether the person is a foreigner or a local.

7. What sanctions does the law impose in respect of assets (e.g. fines, forfeiture, freezing)?

- 7.1 The law imposes a variety of sanctions. The courts may order the forfeiture of any property that is the subject-matter of an offence (Sections 47 and 48, ICPC Act). The fines range between NGN 5,000 (approximately, USD 13) and NGN 1,000,000 (approximately, USD 2,781).
- 7.2 Property that is subject-matter of an offence may also be seized temporarily. (Sections 37 and 45, ICPC Act). Books, documents or other articles evidencing commission of crime too may be seized. Section (36(1) (a) ICPC Act). Further, Section 46 of the ICPC Act empowers the Chairman of the ICPC to apply to the courts for an order prohibiting any person holding property or with whom it is deposited from dealing with the property (held or deposited outside Nigeria) that is the subject-matter of an offence under the ICPC Act.

- 7.3 A basic punishment is the payment of fines, for instance, of not less than five times the sum of the value of the gratification which is the subject-matter of the offence, or NGN 10,000 (approximately USD 28), whichever is higher (Section 20, ICPC Act). A financial penalty may also be imposed in a sum which is equivalent to the amount or value of the gratification where the offence is proved against the accused, or the property has been disposed of, or cannot be traced (Section 46(2), ICPC Act).

8. What sanctions does the law impose in respect of persons (e.g. imprisonment, loss of permits or licences, disqualification)?

- 8.1 There is imprisonment for terms ranging from two to seven years. The law makes provision for temporary detention orders and civil remedies (Sections 47 and 48, ICPC Act). The sanctions also include disqualification for up to ten years from being a director in corporate entities and from public office (Sections 254, 257 and 258, Companies and Allied Matters Act, 1990 and 66(1)(d), 107(1)(d) 137(1)(e) and 182(1)(e) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)). Civil law remedies – damages, rescission, fiduciary accounting for secret profits, tracing and injunctions – are also obtainable where the victim or state files and succeeds in civil claims against the offender.
- 8.2 The CCBT Act also provides for sanctions for any public officer found contravening the provisions of the Act. The sanctions range from vacation of office, disqualification for up to ten years from holding any public office, seizure and forfeiture to the State of any property acquired in abuse or corruption of office (Section 23(2)). The sanctions aforementioned are irrespective of penalties that may be imposed by any other law where the said conduct is held to be a criminal offence (Section 23(3), CCBT Act).

9. Who is caught by the law (e.g. companies, individuals, relatives, agents and other fiduciaries, aiders and abettors, both givers and takers)?

- 9.1 Both juristic entities and human individual perpetrators are held responsible by the law. Several provisions also hold those who support perpetrators responsible (as distinct from the perpetrators themselves). Further, the law applies to accessories who only counselled, instigated, assisted, aided or abetted the acts in question and were not the actual perpetrators (Sections 8(3) and 26, ICPC Act). Section 11 of the ICPC Act provides that in any proceedings for an offence under the ICPC Act, it is not necessary to prove that any public officer counselled the commission of the offence. It is also not a defence that the gratification was received through an agent (Section 17, ICPC Act), or was for the benefit of a third party (Sections 8 – 10, ICPC Act).
- 9.2 The Criminal Code Act (the 'CC Act') provides in Section 7 that 'every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence'; 'every person who aids another person in committing the offence'; and 'any person who counsels or procures any other person to commit the offence' is guilty of the offence and may be charged with actually committing it. It is important to note that the CC Act also punishes an attempt to commit an offence (Section 4, CC Act).
- 9.3 Those who impede the course of justice too are guilty of crimes. Failure to report bribery (Section 23(3), ICPC Act), withholding information (Section 40, ICPC Act), receiving the proceeds of bribery or corruption (Sections 8-10, ICPC Act), making false statements to the ICPC (Section 25, ICPC Act), tampering with evidence and the deliberate frustration of investigation by the ICPC (Section 15, ICPC Act) are all crimes.

10. What are the most topical issues in your country on anti-bribery and corruption law?

10.1 Whistle-blowing: Witness protection

A whistleblowing policy has been introduced by the Federal Ministry of Finance. By this, people are encouraged to provide useful information. A portal for the programme (whistle@finance.gov.ng) was also created. Whistleblowers are protected to a large extent within the law. For instance, (i) the identity of a whistleblower who chooses not to disclose his/her identity will not be recorded. If the whistleblower chooses to disclose his/her identity, the identity will only be disclosed in circumstances required by law; (ii) where it is established that a whistleblower has suffered any adverse treatment in retaliation as a result of a genuine disclosure, the whistleblower will be restituted for any loss suffered and disciplinary action may be taken against the perpetrator under public service rules or other extant rules. The Lagos State Government is also developing a draft statute on whistle-blowing (the Disclosure of Impropriety Bill, 2016).

10.2 Whistleblowing: Reward

Whistleblowers are rewarded with amounts between 2.5 and 5 percent of the recovered funds. On 6 June 2017, the Federal Ministry of Finance announced that so far it had paid NGN 375.8 million (approximately, USD 1 million) to 20 providers of information under its whistleblowing policy. The information provided has so far led to the recovery of NGN 11.6 billion (approximately, USD 32 million).²⁶

10.3 Plea bargaining

Following years of doubt (2005-2013) and denial (2013-2015), plea bargaining is now recognised in Nigerian federal and state law (the Administration of Criminal Justice Law, 2011 (Section 76, ACJL), ACJA (Section 270, ACJA)). Many members of the public also have misgivings about it as it appears to

offer a way for powerful people who are guilty to escape full punishment for their crimes.

10.4 Foreign and international anti-corruption statutes

With a view to strengthening Nigeria's anti-corruption campaign, Nigeria has entered into several treaties with other countries. They include, (i) the Agreement on Mutual Legal Assistance in Criminal Matters with the United Arab Emirates (UAE); (ii) the Extradition Treaty with the UAE; (iii) the treaty between the Government of the United States of America and the Federal Republic of Nigeria on Mutual Legal Assistance in Criminal Matters, (iv) the African Union Convention on Preventing and Combating Corruption; and (v) the United Nations Convention against Corruption.

10.5 Approaches in fighting corruption

There has been a perception that what is being dealt with is the tail of the monster of corruption rather than its head and that a panoply of approaches should be adopted in the fight against corruption. Several approaches have been suggested. There needs to be better coordination among the bodies responsible for fighting corruption. Tools used by successive governments include the creation of specialist agencies, such as the ICPC and EFCC, improved funding, security of tenure for officers, better training of officers, a more efficient court system and the firm discipline of errant judges. Further, the Administration of Criminal Justice Act, 2015 (ACJA) (Section 396(3)) encourages day-to-day trial of a defendant upon arraignment.

10.6 Discontinuance of criminal proceedings (*nolle prosequi*)

The 1999 Constitution empowers the Attorneys-General of the Federation and States to discontinue any criminal proceedings at any time before judgment. Section 174(1)(c) and 211 (c), 1999 Constitution, Section 107, Administration of Criminal Justice Act, 2015, *Amaefule v State* (1988) 2 NWLR (Pt. 75) 156, *FRN v Osahon* (2006) 5

²⁶ See: 'FG Pays N375.8m to 20 Whistleblowers' (<https://leadership.ng/2017/06/08/anti-corruption-fg-pays-n375-8m-20-whistleblowers>) or 'Nigerian Govt. Pays 20 Whistleblowers N375.8 million' (<http://saharareporters.com/2017/06/07/nigerian-govt-pays-20-whistleblowers-n3758million>).

NWLR (Pt. 973) 361). A Nolle Prosequi operates as a mere discharge and not as an acquittal. There are widespread allegations that this power has often been used to frustrate the prosecution of some politically powerful individuals who have engaged in conduct that is criminal under ABC Law.

10.7 Lack of resources

Many prosecutions are lost owing to the (i) lack of thorough investigation of cases and procuring sufficient evidence to substantiate charges before proceeding to Court; (ii) limited personnel capacity of anti-bribery agencies; and (iii) bad case management by the prosecutors. The investigating and prosecuting authorities are under-resourced. The ratios of policemen, lawyers and judges respectively to the entire population are significantly lower than the ratios in most western countries.

10.8 Selectiveness

There have been allegations that the current war against corruption is selective since it is being fought against those perceived to be opposed to the incumbent Government or those in the opposition parties.

Rwanda



Julien Kavaruganda
Senior Partner
K-Solutions & Partners
julien@ksolutions-law.com

1. What is the anecdotal perception of the level of corruption in the country?

- 1.1 Rwanda is the third least corrupt country in Africa with a corruption awareness rate of 59 percent for citizens of Rwanda.²⁷ Various campaigns against corruption are carried out in all parts of the country for the awareness and sensitisation of the citizens.
- 1.2 The office of the Ombudsman revealed that the fight against corruption in high leadership organs had registered great progress, but corruption was still rampant at the lower administrative levels.²⁸
- 1.3 As of December 2014, Rwanda remained the least corrupt country in the East African Community and stayed among the five best performers in Africa in fighting corruption. Despite this, the country is not complacent since a considerable number of its citizens are still victims of corruption when they are interacting with public officials while seeking services which they should be getting for free.²⁹

2. What is the level of corruption in the country as seen by monitoring bodies (e.g. Transparency International)?

The Transparency International Corruption Perception Index 2018 ranked Rwanda at position 48 out of 180 countries³⁰ with a score of 56/100 which is above the global average score of 43.³¹

3. What are the anti-bribery law enforcement organisations recognised by law?

- 3.1 The primary anti-corruption agency is the Office of the Ombudsman established by law No 25/08/2003 establishing the organisation and the functioning of the Office of the Ombudsman as modified and complemented by law No 17/2005 of 18/08/2005. The Office of the Ombudsman has several units that enable it to perform its duties as provided for under the law, some of which include the Declaration of Assets Unit, Administration and Finance Unit and the Corruption Prevention Unit, amongst others.
- 3.2 There are a number of other institutions with core functions closely related to anti-corruption action but have a wide mandate with corruption being only

²⁷ <https://www.transparency.org/country/RWA> as of 25/07/2018.

²⁸ <http://www.newtimes.co.rw/Section/read/26473/> as of 01/08/2017.

²⁹ http://www.minaloc.gov.rw/index.php?id=469&tx_ttnews%5Btt_news%5D=392 as of 01/08/2017

³⁰ <https://www.transparency.org/country/RWA>

³¹ A score of 0 means highly corrupt whereas a score of 100 means a country is clean from corruption.

one of the elements. These include the National Public Prosecution Authority, the Rwanda National Police, the Office of the Auditor General of State Finances, and the Rwanda Public Procurement Authority.

4. To what extent does the law command, or give incentives to make, disclosure of crimes?

- 4.1 According to Article 662 of the Penal Code, a superior who is aware that another leader has behaved in a manner that is inconsistent with the organic law on the leadership code of conduct and does not prevent or disclose it shall be treated as an accomplice.
- 4.2 The same article imposes a penalty of a term of imprisonment and/or fine on a person who is aware that another leader, regardless of whether he/she is their superior, has behaved in a manner that is inconsistent with the organic law on the leadership code of conduct who does not report the case in writing to competent authorities within a period not exceeding 15 days.
- 4.3 The Penal Code³² further imposes penalties on any person who intentionally and without justification fails to provide information or illegally withholds information for the purpose of concealing this information: a term of imprisonment of one month but less than six months and/or a fine of RWF 200,000 (approximately, USD 221) to RWF 1,000,000 (approximately, USD 1,106).
- 4.4 An obligation is also placed by virtue of Article 3 of law No 35/2012 of 19/09/2012 relating to the protection of whistleblowers upon every person to disclose to the relevant organ any information in his/her possession or which has been brought to his/her attention in connection with offenses, illegal acts and behaviour.
- 4.5 A civil servant, an employee of a public or private entity shall be required to disclose any information

he/she possesses or which has been brought to his/her attention in connection with offenses, illegal acts and behaviour arising in his/her workplace as per Article 4 of the aforementioned whistleblowers law.

5. What kinds of acts are made criminal by law?

5.1 Organic Law N° 01/2012/OL of 02/05/2012 instituting the penal code stipulates several acts that constitute corruption and related offences, including:

- a. Demanding or receiving a gift or any other illegal benefit in order to offer a service under Article 634.
- b. Demanding or receiving a gift or an illegal benefit in order to accomplish an illegal act or refrain from carrying out required duties under Article 635.
- c. Self-enrichment without indicating the justification of honest and legal source under Article 636.
- d. Explicitly or implicitly demanding or benefiting from, or accepting favours of sexual nature as a promise in order to accomplish a duty, or to refrain from carrying out duties under Article 637.
- e. Offering a gift in order to get an illegal service under Article 641.
- f. Demanding or receiving undue or excessive money under Article 642.
- g. Soliciting, promising and receiving bribes or any other illegal benefit in order to use influence under Article 644.
- h. Offer of an illegal benefit or any other gift to benefit from the exertion of another person's influence under Article 645.
- i. Making a decision based on favouritism,

³²Article 591 of Organic Law N° 01/2012/OL of 02/05/2012 instituting the penal code.

friendship, hatred or nepotism under article 647.

- j. Illegal exemption of fees, duties, taxes, fines, security and other required fees, or giving free of charge or at a lower price the delivery of public or private goods under Article 643.
- k. Giving or receiving a bribe in order to assist justice in obtaining evidence as per Article 650.

5.2 Organic Law No 65/2008 of 11/09/2008 regulating the leadership code of conduct as modified and complemented by law No 11/2013/OL of 11/09/2013

Embezzlement, deliberately destroying or letting their subordinate destroy Government property or that of an institution where Government has shares by a leader under Article 22.

5.3 The law No. 47/2008 of 09/09/2008 on prevention and penalising the crime of money laundering and financing terrorism

Illicit deriving of money or assets through corruption and related offences as defined by the law under Article 5.

5.4 Law No. 05/2013 of 13/02/2013 modifying and completing the Law No. 12/2007 of 27/03/2007 on Public Procurement

Acceptance, direct or indirect solicitation, or offer to an employee or a former employee of the procuring entity or other public institution, or a bribe in any form, to compromise someone with respect to any act or decision in connection with the procurement proceedings under Article 10.

5.5 Customary gifts

Article 633 of the Penal code prohibits the giving or agreeing to give a gift in cash or any other illegal benefit for the provision of a service or an act in an unlawful way, or to reward the provider of the service or act rendered by a recipient or an intermediary.

5.6 Gifts to close friends and relations

If the gift is offered, promised or given to a close friend and/or relation who knows or believes the acceptance of the gift would in itself constitute the improper performance of a relevant function or activity this constitutes a criminal offence of giving a bribe under Article 633 of the Penal Code.

5.7 Gifts (a) made after the outcome is known and (b) not promised in advance

Article 640 of the Penal Code prohibits any person from explicitly or implicitly offering, directly or indirectly proposing, or promising a gift or any other illegal benefit to a person in charge of a service, mission or mandate in order to render a service to him/her or somebody else. From an interpretation of this provision, knowledge of the reason behind the gift being given is a crucial aspect of whether or not the act is of an illegal nature; this is regardless of whether the gift is promised in advance or at a later stage.

5.8 Incentives purely to accelerate performance rather than influence outcomes

The law qualifies what amounts to an offence as far as corruption and related offences are concerned:

- a. Any act of abuse of a position, power or honour one enjoys within a state organ, in a public or private institution, in a foreign company or international organisation working in the country, or power conferred by any other function which is used contrary to the law, by giving to oneself, giving to others or requiring an illegal benefit or a service contrary to the law;
- b. Any act leading to the accumulation of property without legal justification;
- c. Using a person with a position, power or honour in order to benefit from an illegal advantage or a service contrary to the law;
- d. Giving or agreeing to give a gift in cash or any other illegal benefit for the provision of a service or act in an unlawful way or to reward

the provider of the service or act rendered, either by the recipient or an intermediary; and

- e. Requiring, receiving or accepting to receive a gift in cash or any other illegal benefit for the provision of a service in an unlawful way or to be rewarded once the service is provided or the act is done either by the recipient or an intermediary.

For one to be held liable as far as the offence of corruption is concerned, one of the aforementioned acts must be performed to its completion. The use of whatever means necessary to ensure that something happens as fast as possible does not constitute corruption unless it falls under the ambit of the law as provided for above.

5.9 Gifts not able to influence the outcome in question

According to the presidential order³³ determining the modalities for a leader to receive or give donations and gifts, there are certain gifts which a leader would be allowed to give or receive:

- a. Safeguarding the good image of the country;
- b. Adhering and respecting foreign culture;
- c. Reciprocating the offer; and
- d. Avoiding embarrassment to an institution represented.

Thus if a gift falls under any one of the categories above, it would be deemed as being unable to influence the outcome.

5.10 Very small gifts

The law allows leaders to receive or offer gifts that do not exceed the value RWF 100,000 (approximately, USD 110).

If a gift exceeding the amount prescribed above is received or given by an official from the Office of the Ombudsman, he/she shall inform the Bureau of Senate in writing.

5.11 Incentives to do what the receiver was bound by law, or very likely in fact, to do in any event

The law is not discriminative. Anything that looks like bribery will be taken to be bribery no matter what that gift is intended for.

5.12 Incentives disclosed in advance

The disclosure of an incentive in advance would amount to a promise and accordingly would still be caught by the definition of giving a bribe in Article 633.³⁴

5.13 Incentives conferred in ignorance of law or fact

The law provides that it does not matter whether the person giving the bribe knows or believes that the performance of the function or activity is improper. Further, under Rwanda criminal law, ignorance of the law is not a defence.

5.14 Gifts to cover losses or expenses incurred by the recipient

These will not be deemed as bribes if the giver and recipient do not offer and accept the gifts respectively in a manner prohibited under the law as provided for above.

5.15 Gifts to compensate for injury or death

These will not be deemed a bribe if the giver and recipient do not offer and accept the gifts respectively in a manner prohibited under the law as provided for above.

6. To what extent is the law in section 5 above:

6.1 Unclear or ambiguous

The law does not provide a clear definition of bribery. Therefore, punishments for corruption are normally prescribed to what would constitute the offence of bribery.

6.2 Extra-territorial in application

Under Article 16 of the Penal Code, any person regardless of whether Rwandan or a foreigner

³³Presidential Order No 54/01 of 19/08/2010

³⁴Organic law No 01/2012/ol of 02/05/2012 instituting the penal code.

and any Rwandan or foreign non-governmental organisation or association that commits crimes inside or outside the Rwandan territory or across borders may, if apprehended on the territory of the Republic of Rwanda, be prosecuted and tried by Rwandan Courts in accordance with Rwandan laws as if any of the crimes specified inclusive of money laundering had been committed in Rwanda.

6.3 Discriminatory among foreigners or between foreigners and locals

The corruption laws apply to any citizen, or resident in Rwanda, a body incorporated under the laws of Rwanda and which carries on business within or outside Rwanda and any other body corporate that carries on business, or part of business in Rwanda.

7. What sanctions does the law impose in respect of assets (e.g. fines, forfeiture, freezing)?

- a. A fine of two to ten times the value of the illegal benefit demanded .
- b. Confiscation of proceeds from corruption and other related offences.³⁵
- c. Seizure of the goods acquired by a leader in a manner inconsistent with the law.³⁶

8. What sanctions does the law impose in respect of persons (e.g. imprisonment, loss of permits or licences, disqualification)?

- 8.1 The Penal Code imposes penalties on several actions performed by persons that constitute corruption and are thus punishable by a penalty of imprisonment and/or fines. According to Article 634, explicitly or implicitly demanding or directly or indirectly receiving a gift or any other illegal benefit for him or herself or another person, or accepting it as a promise in order to offer a service under

his or her mandate makes one liable to a term of imprisonment of two to five years and a fine of two to ten times the value of the illegal profit solicited.

- 8.2 Article 635 provides that explicit or implicit demand or direct or indirect receiving of gifts or any other illegal benefit for him or herself or another person, or accepting it as a promise in order to accomplish an illegal act or to refrain from carrying out his or her duties, shall be liable to a term of imprisonment of five to seven years and a fine of two to ten times the value of the illegal benefit demanded.
- 8.3 Furthermore, Article 636 states that illicit enrichment carries a term of imprisonment of two to five years and a fine of two to ten times the value of the property the legal source of which he or she is not able to justify.
- 8.4 According to Article 637, demanding favours of a sexual nature in exchange for a service carries a term of imprisonment of three to five years and a fine of RWF 50,000 (approximately USD 55) to RWF 1,000,000 (approximately, USD 1,106).
- 8.5 Article 638 provides that the offering of favours of a sexual nature in exchange for a service exposes one to a liability of a term of imprisonment of three years to five years and a fine of RWF 50,000 (approximately USD 55) to RWF 1,000,000 (approximately, USD 1,106).
- 8.6 Additionally, Article 639 provides that corruption or any related offences committed by judges, arbitrators, judicial officers, prosecutors, police officers or other judicial police officers shall carry a sentence of seven to ten years and a fine of two to ten times the value of the illegal benefit solicited.
- 8.7 The law provides for debarment from participation in public procurement for four years for collusion with other bidders.³⁷
- 8.8 The law also provides for definite debarment from public procurement of any company already debarred that uses fraudulent means to escape

³⁵ Article 651 of the Leadership Code of Conduct.

³⁶ Article 32 Ibid.

³⁷ Article 12 of the public procurement law as modified and complemented to date.

sanctions imposed on it in order to continue to participate in public procurement during the debarment period.

- 8.9 Finally, it provides for rejection of a bidder's offer by a tender committee where it is established that the former was engaged in any corrupt or fraudulent practices while competing for a public procurement contract.³⁸

9. Who is caught by the law (e.g. companies, individuals, relatives, agents and other fiduciaries, aiders and abettors, both givers and takers)?

The law applies to every entity whether public or private,³⁹ an individual or a group, involved in either directly or indirectly receiving or giving an illegal benefit or service.

10. What are the most topical issues in your country on anti-bribery and corruption law?

10.1 Training and budget for enforcers

The Office of the Ombudsman plays a fundamental role in teaching and sensitisation on the issue. It organises occasional trainings for various stakeholders, such as civil servants, the youth and organisations to educate them on the fight against corruption.

The Office of the Ombudsman also organises countrywide campaigns that are aimed at sensitising the public on various aspects of corruption, including its contribution to injustice and impact on accessible service delivery.

Political leaders have joined hands in the creation of an ideal environment to fight against corruption in its totality through discussions by the Ombudsman in charge of monitoring the implementation of various

anti-bribery and corruption laws and the results of the code of conduct for government officials in order to strengthen the ability of the public to take a stand against and prevent corruption.⁴⁰

The Ombudsman's office submits a budget request to the Ministry on an annual basis, detailing its requirements and the functions to be supported by the requested budget. The parliament of Rwanda is in charge of making the final decision and appropriation of funds.

10.2 Whistleblowing and witness protection

A whistleblower is defined by law as a civil servant, an employee of a public or private entity and any other person who discloses to the relevant organ any information in his or her possession or which has been brought to his or her attention in connection with offenses, illegal acts and behaviours.

Every person is required to disclose to the relevant organ any information in his or her possession or which has been brought to his or her attention in connection with offenses, illegal acts and behaviours.⁴¹

A civil servant, an employee of a public or private entity shall be required to disclose any information he or she possesses or which has been brought to his or her attention in connection with offenses, illegal acts and behaviours arising in his or her workplace.

Article 4 places an obligation on a civil servant, an employee of a public or private entity, to disclose any information he or she possesses or which has been brought to his or her attention in connection with offenses, illegal acts and behaviours arising in a partner entity or organisation of the entity where he or she works.

10.3 Plea bargaining

Article 36 of the Criminal Procedure Code allows the Prosecutor to ask the accused to choose

³⁸ Article 10 the public procurement law as modified and complemented to date

³⁹ Article 649 of the Penal Code.

⁴⁰ The Anti-Corruption Policy of Rwanda.

⁴¹ Article 3 of the Whistleblowers Law.

between being brought before the court or paying a fine without trial, which fine cannot exceed the maximum fine increased by any possible additional amount stipulated by law, if he or she considers that, owing to the circumstances in which the offence was committed, the Court may only impose a fine and possibly order confiscation of property.⁴²

10.4 Foreign and international anti-corruption statutes

International treaties such as the UN Convention Against Corruption, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the African Union Convention on Preventing and Combating Corruption, and the East African Treaty have been ratified by Rwanda and they are now in use.

10.5 Application of the law to private transactions

It seeks a well-informed public that demands high standards from public officials and a private sector that operates on a level playing field and acts as a partner in the fight against corruption. In addressing these issues, the Rwanda anti-corruption policy will:

- a. Guide public and private institutions in formulating their anti-corruption action plans;
- b. Promote an active and open engagement with the public and with stakeholder groups to improve access to information and the public demand for accountability; and
- c. Provide a framework for the capacity development of anti-corruption institutions.⁴³

10.6 Guidelines on the procedures for prevention of bribery

There are no clear guidelines as to the procedures for preventing bribery. However, Article 4 of the same law requires every institution to set up certain measures aimed at preventing corruption and related offences such as having a procedure manual

describing the decision making process, conducting an internal audit as well as adopting a code of conduct for its officials.⁴⁴

10.7 When private entities are required to put in place anti-bribery procedures

The law preventing and suppressing corruption requires all institutions, inclusive of private institutions, to set up mechanisms for preventing and fighting corruption.⁴⁵

The Anti-Corruption Policy of 2012 acknowledges the code of business ethics and excellence established by the Private Sector Federation while recognising the need for sensitisation of the community to adhere to the code, and to encourage best practices in a number of key business dealings, such as transparency in financial matters, eliminating corruption, ensuring product quality, proper treatment of workers, and compliance with the business laws among others.

⁴² Law N° 30/2013 of 24/5/2013 relating to the Code of Criminal Procedure. Important to note is that this law is currently under review and is therefore subject to change.

⁴³ The Rwanda Anti-Corruption Policy.

⁴⁴ Under Article 7 *ibid* this code of conduct must be displayed in an open place and the employer must also bring to the employees' knowledge the laws governing the code of conduct at their respective level of employment.

⁴⁵ Article 3 of the law n° 23/2003 of 07/08/2003 relating to Prevention, Suppression and Punishment of Corruption and Related Offences.

Zambia



Arshad Dudhia
Managing Partner,
Musa Dudhia & Co.
aadudhia@musadudhia.co.zm



Mulopa Ndameta
Senior Associate,
Musa Dudhia & Co.
mndalameta@musadudhia.co.zm

1. What is the anecdotal perception of corruption in the country?

- 1.1 Corruption is perceived by nationals as being rampant especially in relation to police officers when dealing with traffic offences, and in the area of contracts for construction of roads.

2. What is the level of corruption in the country as seen by monitoring bodies (e.g. Transparency International)

- 2.1 The Transparency International, Corruption Perception Index 2018 ranks Zambia at position 105 out of 180 countries. Zambia scored 35/100 points which is below the global average of 43.⁴⁶

3. What are the anti-bribery law enforcement organisations recognised by law?

- 3.1 The organisation in charge of anti-bribery enforcement is the Anti-Corruption Commission (the Commission). Under Section 5 of the Anti-Corruption Act No. 3 of 2012, the Commission shall not be subject to the control or direction of anyone in the performance of its duties.

- 3.2 Its functions are stated under Section 6 of the Anti-Corruption Act No. 3 of 2012 as being among other things:

- a. To prevent, and take necessary and effective measures for the prevention of corruption in public and private bodies;
- b. Initiate, receive and investigate complaints of alleged or suspected corrupt practices, and, subject to the directions of the Director of Public Prosecutions, prosecute offences relating to corruption;
- c. Co-ordinate or co-operate, as applicable, with other institutions authorised to investigate, prosecute, prevent and combat corrupt practices so as to implement an integrated approach to the eradication of corruption;
- d. Consult, co-operate and exchange information with appropriate bodies of other countries that are authorised to conduct inquiries or investigations in relation to corrupt practices; and
- e. Adopt and strengthen mechanisms for educating the public to respect the public good.

⁴⁶ A score of 0 means highly corrupt whereas a score of 100 means a country is clean from corruption.

- 3.3 The Zambia Police Force has the general mandate to prevent the commission of offences and public nuisances, to detect and bring offenders to justice, and to apprehend all persons whom they are legally authorised to apprehend and for whose apprehension sufficient grounds exist.

4. To what extent does the law command, or give incentives to make, disclosure of crimes?

- 4.1 The Public Interest Disclosure (Protection of Whistleblowers) Act No. 4 of 2010 defines as a 'public interest disclosure' a disclosure of information made by any person or an employee, regarding any conduct of any person or an employer, or an employee of that employer, that the person making the disclosure believes on reasonable grounds shows or tends to show, amongst other things, that a criminal offence has been committed, is being committed or is likely to be committed.
- 4.2 A disclosure is a protected disclosure if all of the following conditions are met:
- a. It is made in good faith by an employee who reasonably believes that the information disclosed, and any allegation contained in it, are substantially true and the employee does not make the disclosure for purposes of personal gain, excluding any reward payable in terms of any law;
 - b. (i) At the time of making a disclosure the employee who makes the disclosure has reason to believe that the employee shall be subjected to an occupational detriment if the employee makes a disclosure to the employer; or

(ii) The employee making the disclosure has reason to believe that it is likely that evidence relating to the impropriety shall be concealed or destroyed if the employee makes the disclosure to the employer; or

(iii) The employee making the disclosure has previously made a disclosure of substantially the same information to the employer in respect of which no action was taken within a reasonable period after the disclosure; or

(iv) The impropriety is of an exceptionally serious nature.

- c. In all the circumstances of the case, it is reasonable to make the disclosure.

- 4.3 Generally for a disclosure to be protected, it must be voluntary. Where the disclosure is by a public officer to the Anti-Corruption Commission, it shall be protected if it is a disclosure of information that shows or tends to show that a Government agency or another public officer has engaged, is engaged in, or intends to engage in corrupt conduct.

5. What are the bribery offences in your country?

Corrupt transactions

- 5.1 Public officers corruptly soliciting, accepting or obtaining, or agreeing to accept or attempting to receive or obtain, from any person for oneself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to any matter or transaction, actual or proposed, with which any public body is or may be concerned. This also applies to employees in private entities.
- 5.2 A person corruptly giving, promising or offering any gratification to any public officer, whether for the benefit of that public officer or of any other public officer, as an inducement or reward for doing or forbearing to do, anything in relation to any matter or transaction, actual or proposed, with which any public body is or may be concerned.

Abuse of authority

- 5.3 Doing, or directing to be done, in abuse of one's position, office or authority any arbitrary

act prejudicial to the rights or interests of the Government or any other person.

- 5.4 Using one's position, office or authority or any information one obtains as a result of, or in the course of, the performance of one's functions to obtain property, profit, an advantage or benefit, directly or indirectly, for oneself or another person.
- 5.5 Using one's position, office or information to obtain, promise, offer, or give an undue advantage to oneself or another person, directly or indirectly, in order for one to perform or refrain from performing one's duties.
- 5.6 Soliciting or accepting directly or indirectly an undue advantage or benefit for oneself or for another person in order for one to perform or refrain from performing the public officer's duties.
- 5.7 Unreasonably delaying, refusing, neglecting or omitting to perform one's duties or functions in order to procure or induce a person to offer or give gratification to that public officer.

Corruption in relation to meetings of private or public bodies

- 5.8 A person commits an offence by corruptly soliciting, accepting or obtaining, or agreeing to accept or attempting to receive or obtain, any gratification as an inducement or reward for:
 - a. That person's voting or abstaining from voting at any meeting of such public or private body in favour of, or against, any measure, matter, resolution or question submitted to such public or private body;
 - b. That person's performing or abstaining from performing, or for that person's aid in procuring, expediting, delaying, hindering or preventing the performance of, any official act by such public or private body; or
 - c. That person's aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person.

Corruption of witness and obstruction of justice

- 5.9 Corrupting a witness so as to induce false testimony, an advantage or benefit for oneself or another person from the witness in a trial, hearing or other proceeding before any court, tribunal, judicial officer, committee, commission or any officer authorised by law to hear evidence or take testimony.
- 5.10 By corrupt means, or with intent to pervert the course of justice, interfering with the exercise of official duties by a judge, magistrate, judicial officer or any other arbiter or law enforcement officer.

Sporting events

- 5.11 Corruptly influencing the run of play or outcome of any sporting event.

Duty to report

- 5.12 A public officer to whom any gratification is corruptly given, promised or offered shall make a full report of the circumstances of the case to an officer of the Commission or a police officer within twenty-four hours of the occurrence of the event.
- 5.13 Corruptly soliciting, accepting, obtaining or agreeing to do so, from any person for oneself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, anything in relation to any matter or transaction, which any private or public body is or may be concerned, commits an offence, as provided for by Sections 19 and 20 of the Anti-Corruption Act. This also applies to employees of private entities.

6. To what extent is the law in section 5 above:

6.1 Unclear or ambiguous

The mere receipt of a gift by a public officer in and of itself is arguably not a corrupt act, in the absence of a related act of abuse of office.

The law on whether the President receiving a gift is illegal and amounts to corruption is unclear. This is largely because the definition of Public Officer

set out in the Anti-Corruption Act differs from that in the Constitution, which excludes constitutional office holders such as the President.

6.2 Extra-territorial in application

The Anti-Corruption Act, unlike the Penal Code, does not provide for extra- territorial application.

6.3 Discriminatory among foreigners or between foreigners and locals

The Anti-Corruption Act does not distinguish between foreigners and locals as it focuses on the commission of an offence by any person.

7. What sanctions does the law impose in respect of assets (e.g. fines, forfeiture, freezing)?

7.1 Where a person is convicted of a corrupt practice, the Court may, in addition to the sentence that it may impose, order the convicted person to pay to the rightful owner the amount or value, as determined by the court, of any gratification actually received by that person, and such order shall be deemed to form part of the sentence.

7.2 A person convicted of a corrupt practice is also liable to forfeit to the State any pecuniary resource, property, advantage, profit or gratification received in the commission of a corrupt practice.

7.3 Under the Forfeiture of Proceeds of Crime Act No 19 of 2010, if the Court is satisfied that the property is tainted property, it may order that the property be forfeited to the State. Where the property cannot be located, is located outside Zambia or has been transferred to a third party, instead of forfeiture, the Court may instead order the person to pay to the State an amount equal to the value of the property.

7.4 Any fine imposed pursuant to the commission of a corrupt practice and the amount or value of any gratification ordered to be paid may be recovered by distress and sale of the movable and immovable property of the person sentenced.

8. What sanctions does the law impose in respect of persons (e.g. imprisonment, loss of permits or licences, disqualification)?

8.1 Subject to the applicable legal and administrative procedures relating to the right to justice and a fair hearing applicable to public officers under their conditions of service, a public officer who is charged with corruption shall be suspended, at half pay, with effect from the date of the charge.

8.2 A person who is convicted of a corrupt practice is generally liable:

- a. Upon first conviction, to imprisonment for a period not exceeding fourteen years; and
- b. Upon a second or subsequent conviction, to imprisonment for a term of not less than five years but not exceeding fourteen years.

8.3 A person convicted of a corrupt practice shall, by reason of such conviction, be disqualified for a period of five years from the date of such conviction, from being elected or appointed to, or from holding or continuing to hold, any office or position in any public body.

9. Who is caught by the law (e.g. companies, individuals, relatives, agents and other fiduciaries, aiders and abettors, both givers and takers)?

9.1 Where a corrupt practice is committed by a body corporate or unincorporated body, every director or manager of the body corporate or unincorporated body shall be liable, upon conviction, as if the director or manager had personally committed the offence, unless the director or manager proves to the satisfaction of the Court that the act constituting the offence was done without the knowledge, consent or connivance of the director or manager or that the director or manager took reasonable steps to prevent the commission of the offence.

9.2 The provisions apply to both public and private bodies.

10. What are the most topical issues in your country on anti-bribery and corruption law?

Land administration:

There is a high risk of corruption in Zambia's land administration. According to the ZBPI,⁴⁷ Zambia's land administration is one of the most corrupted institutions in the country (ZBPI 2014). Property rights are generally adequately defined in urban areas, unlike in rural ones (BTI 2016), but the implementation of these rights faces many practical challenges (ICS⁴⁸ 2017). Property rights enforcement in the courts is weak and court decisions can take a long time to be finalised (ICS 2017). Allegations exist that persons with political connections use their position in illegal land dealings to acquire land, minimising chances of ordinary citizens obtaining land through the proper channels.

Public procurement:

Corruption is pervasive in Zambian government procurement presenting companies operating in the sector with high risks (ICS 2017). Both the diversion of public funds and favouritism in decisions of government officials are common (GCR⁴⁹ 2017-2018). Fraud in the tendering process for government bids is widespread and often occurs during vendor selection, contracting and maintenance (GECS⁵⁰ 2014). Transparency and accountability are particularly lacking in the last stages of the procurement process, which leaves significant room for manipulation (GI⁵¹ 2017).

Law enforcement:

Corruption in the police is very common (ICS 2017). In effect, half of Zambians consider the police to be corrupt, and a quarter of those who came into contact with police officers in the preceding twelve months paid a bribe (GCB⁵² 2015). Businesses have insufficient confidence in the reliability of police services to enforce law and order, yet do not report high business costs due to crime (GCR 2017-2018). The police frequently extort money and goods from drivers at roadblocks (FitW 2017; HRR 2016). There have been calls to disband the current Traffic Police due to the endemic levels of corruption (Lusaka Times, Jun. 2017).

⁴⁷ Transparency International Zambia.

⁴⁸ International Citizen Service Report.

⁴⁹ Global Corruption Report

⁵⁰ Global Economic Crime Survey.

⁵¹ Government Defence Anti-Corruption Index.

⁵² Global Corruption Barometer.

ALN

The Oval, 3rd Floor, Junction of Ring Rd., Parklands & Jalaram Rd.

P.O. Box 200-00606, Sarit Centre, Nairobi, Kenya

T: +254 20 364 0000, +254 70 303 2000

E: ALNinfo@africalegalnetwork.com

www.africalegalnetwork.com



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