

MIRANDA

Miranda & Associados Sociedade de Advogados, SP, RL

Soldiers of Fortunes: The Role of Lawyers in the Fight Against Corruption in Africa

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- **The Multiple Faces of Corruption**
- **Redressing Mechanisms**
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- **UNTOC**
- **The African Union Convention**
- **SADC Protocol against Corruption**
- **The ECOWAS Protocol**
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- **Conclusion**

1. Corruption: A Threat to Justice

Corruption is universal

Corruption in Africa

- Still on the rise
- Bribery affects one-in-five Africans
- Police and private executives viewed as most corrupt
- Governments are failing their citizens
- Many people feel impotent



2. The Multiple Faces of Corruption

Political corruption: public-office-centered

- Nepotism
- Favoritism
- Abuse of office
- Clienteles
- Improper political contributions



2. The Multiple Faces of Corruption (Cont.)

Economic corruption: market-centered

- Collusion
- Embezzlement
- Fraud
- Extortion

Administrative corruption: public-interest-centered

- Bribes
- Graft



2. The Multiple Faces of Corruption (Cont.)

Bribes as a species of corruption

- The bribe has a history, divisible into discernible epochs
- Bribes come in different forms and shapes
- Bribery is a legal concept



3. The Effects of Corruption

- Causes Poverty
- Violates human rights
- Undermines representative democracy
- A barrier to economic development
- Causes environmental damage
- A tool of organized crime



4. Is Corruption in Africa Unique?

African states are more prone to corruption, because

- The steady erosion of governance institutions
- The politicization of corruption
- Lack of culture of outrage towards corruption
 - Strong obligations toward family, tribe, district
 - The idea of national interest is weak
 - Benefits of holding an office are relatively enormous
 - Corruption is relatively easy to conceal



5. Redressing Mechanisms

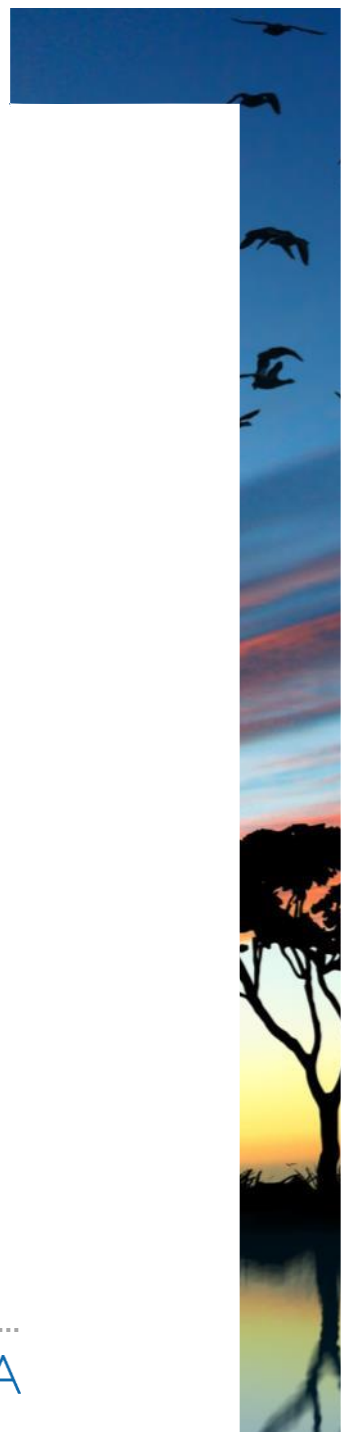
- A comprehensive approach is required
- National and international system of transparency and accountability
- Preventive measures
- Punitive measures



5. Redressing Mechanisms (Cont.)

Preventive measures

- Political parties funding and management
- Increasing citizen activism and engagement
- Strengthening the policy, legal and institutional framework
- Increasing transparency
- Access to information



5. Redressing Mechanisms (Cont.)

Punitive measures

- A legal framework geared towards a zero-tolerance approach
- Investigating, prosecuting and sentencing corrupt officials and business
- Protecting whistleblowers, witnesses and anti-corruption fighters
- Barring corrupt official and business



6. The Legal Response

At the international level

- United Nations Convention against Corruption (“UNCAC”)
- African Union Convention on Preventing and Combating Corruption and Related Offenses (“ANC”)
- Other Regional Anti-corruption Instruments

The purpose and efficacy of anti-corruption conventions



7. United Nations Convention Against Corruption (UNCAC)

- Adopted: 2003
- Entry into force: 2005
- Parties: 181
- Main Obligations of the Parties
- Critique



7. United Nations Convention Against Corruption (UNCAC) (Cont.)

- Implementation Review Group
- Working Group on Asset Recovery
- Working Group on Prevention
- International Anti-Corruption Academy
- Judicial Integrity Group
- TRACK (Tools and Resources for Anti-Corruption Knowledge)



8. United Nations Convention Against Transnational Organized Crime (UNTOC)

- Adopted: 2000
- Entry into force: 2003
- Parties: 187
- Recognizes that corruption is an integral component of transnational organized crime
- Three Supplementary Agreements
 - Protocol on Trafficking in Persons (adopted in 2000 / entered into force in 2003)
 - Protocol Against the Smuggling of Migrants (2000/2004)
 - Protocol Against Trafficking in Firearms (2001/2005)



9. African Union Convention on Preventing and Combating Corruption

- Adopted: 2003
- Entry into force: 2006
- Parties:
- Highlights of the Convention
 - Preventive measures
 - Criminalization
 - International cooperation
 - Follow-up mechanism
- Uniqueness of the Convention



9. African Union Convention on Preventing and Combating Corruption

(Cont.)

- The Advisory Board on Corruption (2009)
- The African Charter on Democracy, Elections and Governance (2008)
- African Charter on the Values and Principles of Public Service and Administration (2011)
- New Partnership for Africa's Development ("NEPAD")
- The African Peer Review
- African Court on Human and Peoples' Rights



10. Africa's Regional Economic Communities (RECs)

RECs formally recognized by the African Union:

- Southern African Development Community (SADC)
- Economic Community of West African States (ECOWAS)
- East African Community (EAC)
- Arab Maghreb Union
- Common Market for Eastern and Southern Africa
- Community of Sub-Saharan States
- Intergovernmental Authority on Development



11. Southern African Development Community (“SADC”)

- What is SADC
- The SADC Protocol against Corruption
 - Adopted: 2001
 - Entry into force: 2003
- Highlights of SADC Protocol
- SADC Protocol on Mutual Assistance in Legal Matters (2002)
- SADC Tribunal



12. Economic Community of West African States (ECOWAS)

- What is ECOWAS
- ECOWAS Protocol on the Fight Against Corruption
 - Adopted: 2001
 - Entry into force: not yet
- Highlights of ECOWAS Protocol
- The Inter-Governmental Action Group Against Money Laundering in West Africa
- The ECOWAS Community Court of Justice



13. East African Community (EAC)

- What is EAC
- Draft Protocol on Preventing and Combating Corruption
- The East African Court of Justice



14. The Role of Lawyers

- Lawyers as soldiers and protectors
- The lawyer-client privilege
- Sources of Liability
 - Hard Law
 - Soft Law



14. The Role of Lawyers (Cont.)

- Hard Law
 - Liability arising from laws targeted at the legal profession
 - Liability arising from criminal laws
 - Professional Liability
- Types of Liability
 - Principal Liability
 - Accessory Liability
 - Other forms of liability



14. The Role of Lawyers (Cont.)

- Soft Law
 - Codes of Ethics, guidelines, etc.
 - The responsibility of professional organizations
 - The responsibility of law firms
 - The ethical lawyer



15. Conclusions

- Corruption is universally shameful
- A pervasive concern for potential investors
- Petty corruption v. large-scale corruption
- A difficult yet surprisingly simple solution



Thank you

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