

The Demand and Supply Sides of Corruption in the Extractives Industries

(With emphasis on the role of parliament in curbing corruption)

A compendium of outputs from a research project
funded by Canada's Social Sciences and Humanities Research Council



*Compiled and edited
by Isabelle Watkinson*



McGill

School of
Continuing Studies

École
d'éducation permanente



Table of Contents

List of Contributors.....	3
Introduction	4
The Supply and Demand Sides of Corruption: Canadian Extractive Companies in Africa	5
Introduction	6
Parliamentary Oversight of Extractive Industries (1).....	24
Oladeji Olaore and Rick Stapenhurst with Rasheed Draman, Emine Sarigollu, Myung-Soo Jo, Fahri Karakas and Myriam Ertz.....	24
Parliamentary Oversight In Extractive Industries (2)	49
Between a Rock & A Hard Place	65
Rick Stapenhurst.....	65
How Misconduct in Business Contributes to Understanding the Supply Side of Corruption in International Business.....	68
Democracy, Legislatures and Business Conditions in Post-Authoritarian African Regimes.....	98
Between a Rock and a Hard Place: Rdrs Mining and Corruption in Africa (A Case)	121
Between a Rock and a Hard Place: Rdrs Mining and Corruption (B Case).....	132
Between a Rock and a Hard Place	137
The Role of Parliament in Curbing Corruption	144
Between a Rock and a Hard Place: Presentation to the Kedge School of Business, Marseilles, France	151



List of Contributors

Rasheed Draman

Isabelle Côté

Myriam Ertz

Myung-Soo Jo

Fahri Karakas

Oladeji Olaore

Emine Sarigöllü

Frederick Stapenhurst



Introduction

As globalization, worldwide trade, and financial flows increase, private companies and governments alike are facing increasing demands from stakeholders and citizens to curb corruption. Various estimates put the costs of corruption at around US \$ 1.5 trillion annually, of which at least half is corporate corruption in developing countries. Indeed, corruption is thought to add some 10% to the total cost of doing business globally, and up to 25% of the cost of procurement contracts in developing countries.

The oil, gas and mining industries are, according to the OECD, the most corrupt industries globally; furthermore, corruption is particularly acute in Africa, where these industries altogether are prolific. Meanwhile, Canada's involvement in both the extractives industry and Africa has become stronger over the past decade. In fact, there has been a rapid expansion of Canadian investment in mining, oil and gas in African countries, in particular. Canada's reputation as a low corruption country has faltered. Canada currently ranks 11th internationally (with a score of 77/100) in Transparency International (TI)'s corruption perception index, (down from 6th, and a score of 89/100) in 2010.

A multi-disciplinary, multi-institutional research team was awarded two successive research SSHRC grants to help develop a better understanding of corruption in the extractives sector and to provide guidance to companies, governments and parliaments. Our research identified a multifaceted and complex picture of corruption whereby different stakeholders have very different perceptions and assumptions regarding the nature, reasons, and dynamics of corruption. It also extended our understanding of corruption, providing a more comprehensive viewpoint, bridging many facets of corruption and mobilizing a greater variety of theoretical framework and disciplinary perspectives.

The research team included Emine Sarigollu and Myung-Soo Jo from McGill's Desautels Faculty of Management, Myriam Ertz from UQAM, Fahri Karakas from the University of East Anglia (the United Kingdom), the Kedge School of Business (France) and Rasheed Draman from the African Centre for Parliamentary Affairs, in Ghana. Oladeji Oloare, consultant at the World Bank, was also involved in the research

This compendium presents some of the outputs of our research. Included are peer-reviewed journal articles, an article from the a trade journal of the Canadian mining sector, two teaching case studies, and some PowerPoints from presentations given at professional conferences and meetings in Canada, Europe and Africa. (For more information on this and other research, please visit: <https://www.mcgill.ca/scs-parliament/>)

Rick Stapenhurst

*Assistant Professor (Professional) and Director, Parliamentary Research and Training
School of Continuing Studies, McGill University*



The Supply and Demand Sides of Corruption: Canadian Extractive Companies in Africa¹

Frederick Stapenhurst, Fahri Karakas, Emine Sarigöllü, Myung-Soo Jo, Rasheed Draman

¹ <https://www.tandfonline.com/doi/full/10.1080/11926422.2016.1250655>

Introduction

With the rapid expansion of Canadian investment in mining and oil & gas around the world (Foreign Affairs, Trade and Development 2014), it is perhaps not surprising that Canada's reputation as a low corruption country has faltered: Canada currently ranks 9th internationally (with a score of 83/100) in Transparency International (TI)'s corruption perception index (down from 6th, and a score of 87/100) in 2010), and sixth (down from first (i.e. best) in 2009) in TI's Bribe Payer's index (Transparency International 2011, 2015)². In a cross-Canada survey conducted by Leger Marketing for Transparency International, 48 percent of respondents thought Canadian companies were corrupt (Transparency International 2013).

This article presents the preliminary findings of our ongoing research project, which analyzes both the demand-side (that is, the request for bribes, principally by foreign officials) and the supply-side (that is, the giving of bribes, principally by corporations) of corruption. To date, we have examined Canadian mining companies operating in two African countries, Ghana and Burkina Faso³. On the demand-side, we are examining the causes of corruption and what measures are being taken by host country governments and (especially) parliaments – a here-to-fore largely neglected anti-corruption institution – to reduce corruption⁴. On the supply-side, we are examining to what extent companies considered potential demands for corruption from host government officials (such analyses typically assumed to be part of political risk analysis (e.g. Bremmer 2005, Jessen 2012) and whether the corporations included the results of such analyses into their macro-planning (corporate policies and strategic planning) and micro-level planning/activities (corporate social responsibility).

Public policies are being implemented in Ghana and Burkina Faso to reduce demand-side corruption (e.g. by increasing government accountability through better parliamentary oversight (Stapenhurst et al., 2014)). Canada, like most other developed countries, is implementing policies to reduce supply-side corruption (e.g. by adopting anti-bribery legislation and guidelines for CSR⁵). However, the empirical evidence - and the conceptual and theoretical framework - to justify confidence in the potential success of these policies is lacking.

The objective of this article is to assess the (anti-) corruption and CSR performance of Canadian companies and to offer suggestions regarding how they might improve such performance, especially at the host-country level. We recommend how Canadian and host-country governments and parliaments can more effectively ensure better corporate performance. The article is structured as follows: the next section briefly summarises the contextual situation regarding Canadian mining companies in Africa. Thereafter, we review

Continued on next page >

² In the Corruption Perceptions index, Canada's drop represents increasing global perceptions of corruption in Canada, while in the Bribe Payers index, Canada's drop represents global perception of increasing bribes by Canadian companies operating abroad.

³ Canada is chosen because 75% of the world's mining companies are based there. Africa is chosen because African countries are among the most corrupt-prone (Transparency International 2015); these particular countries are chosen because we have good contacts with companies operating there, with governments and with parliaments.

⁴ Stapenhurst, Pelizzo and Jacobs (2014) demonstrate that 64% of the variation of corruption across countries can be attributed to differences in the effectiveness of parliamentary oversight

⁵ In Canada, the Corruption of Foreign Public Officials Act; the Canadian government's policy regarding CSR in the extractive industries, called "Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canada's Extractive Sector Abroad" was announced on Nov. 14, 2014

the pertinent literature regarding political/corruption risk, the definition and costs of corruption, and corporate social responsibility. We continue by presenting our theoretical framework, methodology, and data analysis. Thereafter, we present our results, noting ten ‘tensions’ we discovered. We conclude by considering public policy and corporate implications and presenting a brief conclusion.

Context

The growth of the African mining industry has been an increasing focus of attention (De Backer 2012). Since the 1990s, the World Bank and the International Monetary Fund have implemented series of development programs (Akabzaa & Darimani 2001) which, inter alia, entail economic mining policy reforms designed to accelerate the growth of the industry (Campbell 2008). Canada is one of the biggest players in African mining, with Canadian-based companies owning half of the 315 listed non-African mining businesses in Africa, six of the 12 largest companies operating in the continent are Canadian, and Canadian companies have invested around \$20 billion in African mining projects (Campbell 2011). Assessing risk is thus vital for Canadian interests.

Ghana and Burkina Faso rank 56th and 76th, respectively, out of 167 countries in Transparency International's Corruption Perceptions Index (Transparency International 2015). This middling performance translates into most Canadian mining companies reporting that corruption is a ‘mild’ deterrent to investment in Ghana and Burkina Faso (McMahon & Cerantes 2012).

Literature Review

Political risk (which, according to many scholars and practitioners, typically includes corruption risk) arises when a company's operations suffer as a result of political changes, instability, or host (or home) government interference with business operations. Scholars have identified two types of political risk; macro and micro (Stapenhurst 1992, Khattab et al. 2007, Emel & Huber 2008). There are various methods that can be used to ascertain risk (Goldstone et al. 2010), but many mining companies fail to undertake either political or corruption risk assessments (Rice & Mahmoud 1990, Dake 1992, Slovic 1999, Alon et al. 2006). This is a significant failing, as it leads such companies to be reactive to local stakeholder demands rather than proactive. Assessments of *micro-risks* have underlined the importance of foreign investment to the local economy, but Polanyi (2001) noted that individuals, groups and communities may also be embedded in social and political relationships and that what is economically valuable may not necessarily be politically or socially viable. Alon and Herbert (2009) suggested that the extent to which a corporation can be viewed as beneficial for the local community depends on three factors: the company's contribution to the local economy, the bargaining power of the firm vis-à-vis the government and the governance structure of the company. Pelizzo (2010) adds that the benefits a corporation provides to a local community may be symbolic or material, objective or perceptive. It is not known if and to what extent Canadian mining companies in Africa are perceived to be beneficial by local communities, but anecdotal evidence suggests that they are not⁶.

⁶ Comment by Tanzanian investigative journalist Lawrence Kiliminwiko to Stapenhurst in 2005: “Canadian mining companies are the worst (in terms of good corporate citizenship)”

Corruption is an important indicator of the performance of a political system (Anderson & Tverdova 2003). Certain characteristics of host governments have been found to increase the prevalence of corruption related to the mining industry, including the poor quality of democracy (United States Institute of Peace 2010), political instability (Winbourne 2002), and government decentralization (Goel & Nelson 2011). The discourse of corruption varies greatly from one country to another since it is dependent on particular historical trajectories and everyday fragments of local culture. Social expectations marking acceptable behavior are not the same, but rather culturally specific and socially produced in the local context.

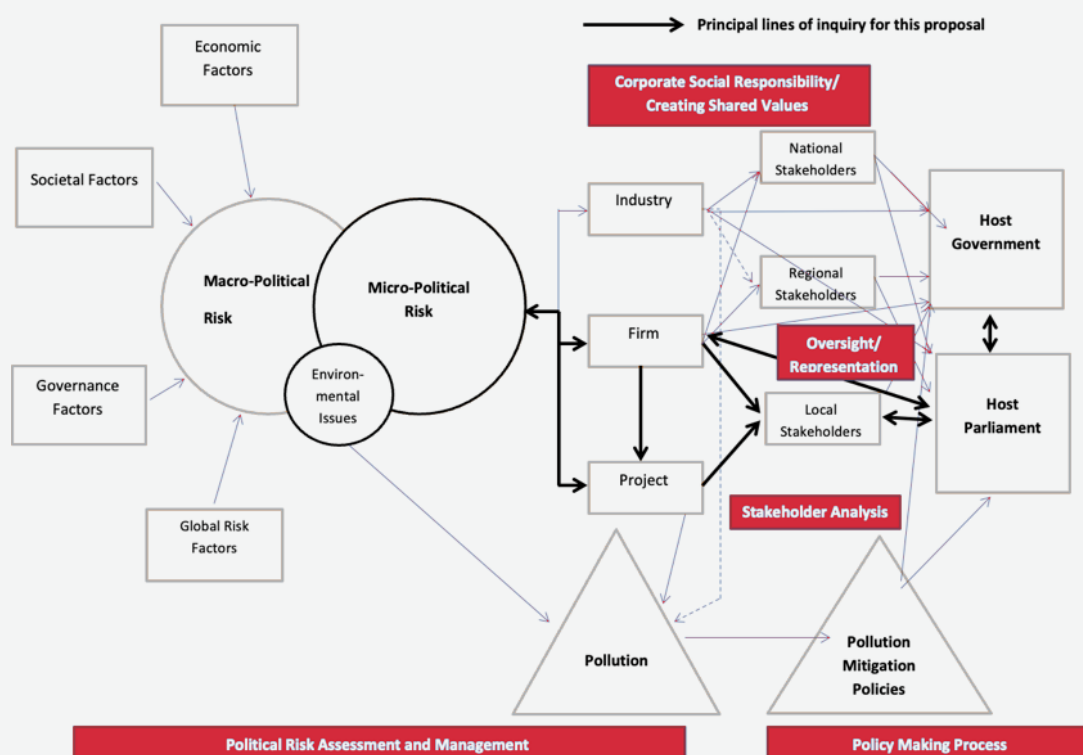
Corruption is a two-sided transaction with a 'payer' (the supply side of corruption) and a receiver (the demand side). In terms of the supply side, multi-national corporations - usually but not always from advanced countries - pay bribes to public officials (often, but not always in developing countries). On the demand side, the costs of corruption are well documented. Countries with higher levels of corruption have lower levels of economic growth (Mauro 1995), less investment (Lambsdorff 2003) and lower levels of inward foreign investment (Wei 2000), especially from countries with laws against corruption (Cuervo-Cazurra 2016). But as Cuervo-Cazurra (2016) points out, on the supply side, the consensus is less clear. While corruption increases the costs of doing business (Kaufmann 1997, Svensson 2005), individual companies may benefit from getting government contracts or bypassing complex regulations (Huntingdon 1968).

Many developed countries are starting to tackle the supply side of corruption by making bribe-giving a criminal offence. Canada enacted the Corruption of Foreign Public Officials Act in 1999 but even now is only "moderately" (OECD, 2013) enforcing the law. Canada tops the list of corrupt businesses barred from bidding on World Bank projects (Financial Post, September 18, 2013).

Corporate social responsibility programs can help mining firms resolve their micro-political risk problems (Knox & Maklan 2004, Rangan et al. 2012, Africa Study Group 2013). Different standards have been created to assist mining firms in the development of CSR, the most prominent of which is the International Finance Corporation's (IFC) 'Performance Standards on Environmental and Social Sustainability' (2012). To assist, Canada's Department of Global Affairs has re-aligned its development assistance programs to provide support to Canadian companies investing in developing countries to meet these standards (Fantino 2012). To meet the increasing demand for good corporate citizenship, a growing number of corporations around the world are practising some form of CSR. However, ongoing tensions between business and social/environmental goals remain. The World Bank found pockets of excellence from which lessons can be drawn but gaps in company-community engagement at the project level. Interestingly, Cuervo-Cazurra (2016) introduces the concept of corporate social *irresponsibility* - the notion of corporate managers using corruption to gain a competitive advantage.

Diagram 1 presents our project's theoretical framework. At the core is the relationship between the mining firm in the host country and local stakeholders. The line of inquiry (bold lines) is upstream, to examine how the company assesses micro-political risks, particularly as they relate to corruption issues, and downstream, to examine how this shapes relations with the host government and parliament. The key theories we draw on are shown in the shaded boxes. For this article, we are presenting the preliminary findings on how Canadian mining companies undertake corruption risk assessment, and how this informs corporate activity in the host country (i.e. the supply side of corruption) and the actions of host country governments and parliaments, and how these affect the demand side of corruption.

Diagram 1



Methodology

We have adopted a qualitative research approach, surveying and interviewing approximately 60 key informants: Canadian mining officials, host government officials, legislators and civil society representatives, in Canada, Burkina Faso and Ghana. We have also conducted a significant document search to gather other (home and host) country-specific evidence. We have adopted a mixed method of data collection because we recognize that traditional social science methods like surveys and quantitative studies run the risk of being identified with police interrogations, and they may produce embarrassed silence and biased results. By engaging in semi-structured conversations and immersing ourselves in people's everyday discourses, we were able to gather a contextual richness (including observations and anecdotes) typically lost in purely quantitative research.

Data Analysis

Thematic analysis (Miles & Huberman 1994) was used to examine interview and fieldwork data. Transcribed interviews were read to get an overview of the responses. They were re-read, and first-level codes were assigned to data by two researchers independently. These first-level codes were then clustered into themes. The data were again reviewed to ensure that the content fit the identified categories. The themes were reworked until two researchers reached an agreement, and all coded data fit into the identified themes. These constitute the basis for the themes described in the Results section below.

Then all the qualitative materials and data were reviewed using constant comparison method (Glaser & Strauss 1967), and the following blocks were produced: 1) Memos that capture similarities and differences in participants' perspectives of corruption; 2) A catalogue of the community projects, CSR practices, ethical codes of Canadian mining companies operating in the African context; 3) An inventory of all metaphors, meanings, rituals and symbols encountered during fieldwork and ethnography. The data obtained from these blocks confirmed the themes identified in the thematic analysis.

Results

Our results to date indicate ten of interesting findings and tensions.

The first contradiction and tension concerns the **definition of corruption**. Generally, host country civil society representatives and, to a somewhat lesser degree, government officials and legislators, defined corruption broadly as 'the abuse of public trust for personal gain,' consistent with much of the literature (see, for example, Alvaro Cuervo-Cazzura 2016); indeed, one respondent went further and argued that *"It is not only public office holders who are corrupt. There is evidence that private sector actors engage in corruption. The definition should be broadened to include everyone."* In contrast, corporate officials defined it more narrowly as 'an illegal payment to a public official for corporate or personal benefit' (consistent with Rose-Ackerman 1999 and 2006).

The second tension that arose from the data was regarding the costs of corruption. Host country informants tended to describe the costs of corruption in socio-economic and development terms: *"Through corruption, the state is losing effectiveness, efficiency and resources in general". "Corruption is impacting the economy as a whole"*, generally consistent with development theorists and practitioners (e.g. Mauro 1995; Kaufmann & Dininio 2006). By contrast, corporate respondents referred to the additional cost of the bribe itself, plus – and more notably – "the time spent by management in attending to investigations, press inquiries or regulatory processes [which] can distract management from the business of developing or operating a mineral property" (L'expert 2012) and management time spent with corrupt bureaucrats (Kaufmann 1997).

A third tension is between **official corporate policy against corruption and the necessity to give bribes** in order to do business in Africa. Interestingly, corporate officials at headquarters in Toronto, Montreal, Calgary and Vancouver were generally aware of the anti-bribery provisions in Canada's Corruption of Foreign Public Officials Act (CFPOA), passed in 1999, which made the bribing of foreign officials by Canadian companies

Continued on next page > **10**

a criminal act. Not enforced until a decade later, the Can \$ 9.5 million fine Niko Resources paid for bribing a government Minister in Bangladesh *“was a wake-up call to Canadian companies operating abroad to more rigorously control corruption by their officials”*. While some company officials in host countries were reluctant to be interviewed by us ‘without permission from headquarters’, others were more forthcoming. Reported by one official, the company *“bribes frequently”*, notwithstanding the official company line that *“we never bribe”*. Some corporate officials working in Africa were unfamiliar with the CFPOA.

A fourth tension is **recognition of a need to assess corruption risk and actually doing so**. The majority of corporate respondents believed that their company had better anti-corruption policy/programs than other companies in the same industry. They strongly agreed that their company emphasized the importance of ethics and social responsibilities in society and that their company rejected offers of bribery. However, few companies undertake corruption risk assessment prior to undertaking investment, and several are seeking guidance regarding the dilemma they are facing: under Canadian law, it is illegal to bribe foreign officials, but the reality on the ground is that nothing gets done without some sort of bribe. The majority of respondents reported that there is both petty and grand corruption: *“[There is...] some - in that it helps to have connections and relationships to ensure that the bureaucracy does its job on a timely basis.”* The majority of the correspondents viewed corruption as a necessary evil that comes with doing business in Africa: *“There is corruption in all industries due to a lack of the rule of law - the laws are there but they are not fairly and generally applied - corruption up to level of courts and ministers...and by inference - president”*.

While respondents from mining companies reported that they have a code of conduct or system of due diligence to prevent corruption, along the lines of that proposed by Troyer and Boucher (date unknown) and Klotz (2013), they admitted that their officials and agents (or at least, officials from other companies) did pay bribes: *“There are known examples with other companies operating there.”* *“It is part of doing business in that part of the world.”* In the words of a senior manager: *“[There is a]... a certain group of companies who, by that corruption, support the lack of will to change. This supports the Governmental groups and gangs who thus maintain this time-honoured practice. The way ahead in name of country withheld by authors is the shake down method learned from an early age”*. This may be a particular problem for junior companies (Christer Michelsen Institute 2015) that generally lack the resources or knowledge to implement sophisticated due diligence systems.

A fifth tension is between the **large and integrated mining companies and the smaller (“junior”) exploration and development companies**. The latter, said a senior host government official, *“...can be unscrupulous. A company came fuming [to the appropriate government department when its license was refused] but a few weeks later obtained one of the open grants. So when the law suits them, they comply. When it doesn’t, then they try to get around it”*. One civil society representative concurred: *“The stories about these [foreign] companies, particularly the juniors (and especially the Canadian companies) are not good.”* However, when asked, a senior host government official said: *“The larger companies are just as bad. It is just that they have the resources and knowledge to avoid getting caught.”* The data suggested that there are differences in the strategies, resources, and discourses of large and small companies; however, corruption seemed to be a prevalent problem for both large and small companies.

A sixth tension is the **gap between law and practice in host countries**. All of the three countries in this study have laws against corruption. In Ghana, for example, the Criminal Code criminalises corruption in the form of active and passive bribery, extortion, wilful exploitation of public office, use of public office for private gain and bribery of foreign public officials. Corruption is illegal, and both agent and principal are liable; the nationality of the person who is bribing or being bribed is irrelevant (Business Anti-Corruption Portal-GAN).

The problem on the demand side is not lack of laws but lack of their implementation. Said one host country government official: *“There are so many laws that tell you what not to do but do not spell out what happens if you do it. There is a very weak sanctions regime and very weak oversight mechanisms”*. A civil society representative explained that the core of the problem is institutional: *“The institutions that are mandated with enforcing the law are not independent enough. The Commission for Human Rights and Administrative Justice is financially constrained, just like many other [oversight] institutions. It needs to be resourced to be independent [from government control] to fight corruption”* and that *“...issues of corruption often become politicized which makes it difficult to prosecute”*. Another striking case, narrated by a civil society representative, demonstrates how corruption is multilayered and entangled with multiple institutions: *“In regard to environmental pollution in the communities or mining areas, and the extent to which states institutions – such as the Environmental Protection Agency (EPA) - are supposed to regulate the operations of mining companies all enforce compliance of the law, such institutions are quick to take up the defense of the very companies they are supposed to be regulating. The nature of such defense shows some level of interference in terms of possible corrupt practices that might have taken place. For example, [name of company withheld by authors] is a Canadian company operating in the [name of region withheld by authors] region of Ghana. The company was supposed to post a bond, a requirement under Ghanaian law for reclamation of the environment after the mines closed. The company wound up its operations and left the country, leaving a depleted environment and various unpaid bills while the EPA at the same time was reporting that the company was requesting a time extension for the posting of the bond. It was subsequently indicated that there was some level of exchange of money between the company and EPA, which resulted in the EPA continually requested an extension to the bond posting”*.

The existence of weak state institutions was confirmed by a government official, who noted that: *“There are very weak oversight institutions. There is weak supervision from regulatory bodies, some of which rely on mining companies to cover their costs of regulation. Furthermore, the [host country] parliament’s understanding of the issues is very low so they are unable to do much.”* Another example was provided by a high-ranking official who said the major oil and gas contracts were considered by the parliamentary energy committee but that *“the Members of Parliament on the Energy Committee attested not to understanding the terms of the contract, but that the agreement was approved by Parliament anyway.”* One Member of Parliament summarized this theme as follows: *“It is not a lack of laws that is the problem, rather it is the weak implementation of the laws that is the problem.”*

A major related problem reported by respondent MPs was the lack of a public culture of accountability in host countries: *“Accountability in Ghana has a very short history...accountability has come into Ghanaian culture only recently. It is only recently that we have begun to question people who seem not to be accountable or transparent.”*

It is perhaps not surprising, then, to find that 76% of Ghanaians reported in 2015 that corruption had increased over the previous 12 months – the largest reported increase in Africa other than South Africa (Transparency International - Global Corruption Barometer 2015). In Burkina Faso, the situation is similar: said one National Assembly member: *“...a law against corruption was passed by the National Assembly but implementation of that law is lacking.”*

A seventh tension regards **corporate social responsibility (CSR)**. Mining companies, host governments and civil society representatives have different perspectives: mining companies often see CSR as a means to fight corruption and/or to promote local goodwill, although host key informants often see it as self-serving or even contributing to corruption. A majority of mining company respondents said that their companies use CSR to help combat corruption. One manager provided examples of these CSR activities as follows: *“We have engaged in different collective action efforts ...These include engagement with communities, education, transparency efforts, and information sharing with government officials and other companies.”* Another manager similarly described a diverse range of CSR activities intended to reduce corruption: *“We use our CSR activities to illustrate the benefits to the community employment and assistance with local initiatives. Road, water, school and to control the havoc from illegal mining activities.”*

On the other hand, some companies disagreed with the view that CSR activities curbed corruption: *“Social responsibility activities are not targeted to curb corruption but we believe assistance to local community will improve community life and therefore potential for involvement in corruption decreased.”* The view from host government officials, civil society representatives and MPs is mixed, in terms of whether CSR programs are part of the solution to reduce corruption, with some suggesting that it is part of the problem: *“CSR programs have increased, rather than decreased, corruption. The approaches by many companies to CSR questionable.”* This would seem to support Cuervo-Cazurra’s (2016) notion of ‘corporate social irresponsibility’. Another official suggested that: *“Corporate social responsibility projects are not necessarily good or bad, but the fundamental reason for them is so that the mining company can receive a tax deduction for expenses incurred. Some sort of minimum national standard should be established that mining companies could be asked to adhere to.”* A third official pointed to a major recurrent challenge: *“The problem boils down to the fact that there are substantial expectations that local communities have when a mining project starts. When these expectations are not met, activists in the community may disrupt mining operations, thereby holding the company to ransom.”* In short, there is a long-standing discussion around whether CSR is just another term for ‘greenwashing,’ or whether CSR is a platform for ensuring sensitivity to social and environmental concerns, facilitating local social and economic development and shared value; and for addressing impacts and redressing harms when they occur⁷.

An eighth tension regards **how companies deal with local chiefs and governments**. A particular problem is that many mining companies do not fully appreciate local customs and traditions, with the result that the traditional concept of paying (modest) tributes to tribal chiefs as a token of respect... *“Actually, there is usually a kind of relationship between the mining companies and the Chiefs in terms of granting contracts, which boils down to saying: ‘take this and then make sure you silence your people from protesting about operations.’”* One government official noted that: *“one of the Chiefs in a region in which a large multi-national mining company operates,*

⁷ We are grateful to Jeffrey Davidson for this comment

is alleged to have received gifts including cars, foreign trips and contracts from the mining company. The revenues that go to traditional Chiefs and the local district assemblies are largely unaccounted for.”

A former Member of Parliament explained the cross-cultural gap as follows: *“One of our values is that when going to a tribal chief, you cannot go empty-handed in the traditional sense, a bottle two of schnapps is enough but when mining companies of listing the chief maybe it could be that intermediaries mistake these companies to send big gift so large amounts of money or maybe it could also be that the companies think the Chiefs are corruptible so they go prepared to pay their way through in so doing the companies may be responding to our traditional values but to what extent? Some of these gifts are clearly meant to influence the chief to act in one way or another I’m not to swear to compromise.”*

These observations support the findings of Standing and Hilson (2013) that “In Ghana 45% of mineral revenue disseminated to the grassroots is, at some point, ‘handled’ by traditional authorities and that too often Ghana’s chiefs have tended to show a low level of interest in investing the revenues derived from natural resource wealth in their jurisdictions” (page 6). Furthermore, quoting the CHRAJ report (page 5), they state that: “...Communities impacted by mining activities do not directly benefit from mining royalties. In most cases, most communities did not even know of the existence of the facility [transfer of funds to their chief]. In communities where people expressed knowledge of the facility, they said the chief was the main beneficiary of these funds.” (Standing & Hilson 2013, page 7).

Local governments and assemblies, with which mining companies also collaborate to obtain ‘social license’ are no better. In the words of a Member of Parliament: *“The actors can be both at the local and state level. Take the connivance of local politicians and chiefs because when he comes to mining, the Chiefs wield significant power due to royalty issues. But the Chiefs do not have the power to mobilize state support to be able to allow such operations, but he/she can do so if they align themselves with a local or national politician.* It is not surprising, then, that according to the latest Afrobarometer report (2015), that 62% of Ghanaians have little or no trust in their local assembly, and 47% have little or no trust in traditional leaders.

A ninth tension concerns **small-scale or artisanal mining**. Early commentators, such as the World Bank, saw such mining as “...fertile ground for the growth of indigenous entrepreneurship” (Noetstaller 1987, page 16, quoted in Hilson 2009), as creating a social safety net and cash-generating alternative for local people in times of economic or environmental stress (Davidson 1993), and as providing livelihoods for retrenched civil servants, teachers and others as a result of structural adjustment policies (e.g. Banchirigah 2006; and Chachage 1995). In most countries, such mining is illegal (i.e. miners do not have a license to mine) and, in recent years, has expanded greatly, with adverse environmental and safety concerns. Our data confirmed the rise of such illegal mining practices: A former mayor in Burkina Faso reported that *“There is corruption, particularly in the galamsey or illegal mining and it gets worse as the election nears.”* Some host government interviewees confirmed the problem and concern, noting that increasingly, such mining *“is backed by foreign (particularly Chinese) investors.”* In Ghana, where such mining is colloquially referred to as ‘galamsey’, it is estimated that there are 200,000 artisanal miners and in Burkina Faso 150,000. In 2006, Banchirigah

reported that there were “...tens of thousands of illegal artisanal miners now working with the concession awarded to the Canadian multi-national Golden Star Resources. The company has no intention to mine the plot...” having decided that it is unfeasible economically; yet its management remains opposed to the idea of returning the land of the government for possible demarcation to small-scale miners. Mining companies in our data set remain concerned. One representative summarized this as follows: *“It is clear that corruption has increased in the country (Ghana) in the last five years and the huge impact has been in a dramatic increase in illegal mining which appears to be happening with impunity if it is not brought under control it will lead to the formal mining sector beginning to leave.”* In Burkina Faso, a former mayor reported: *“When I was mayor, a small-scale miner came to me to explain the problems he had with a competitor and asked for my intervention. At the end of the meeting, the miner gave me an envelope containing money.”*

Finally, a tenth tension relates to the **multitude of stakeholders yet a piecemeal approach to the problem**. There are, clearly, two sides to corruption, the supply side and the demand side. On the supply side, there are mining companies, many of which, in order to be good corporate citizens and not face prosecution under home government laws that make foreign bribery illegal, have adopted compliance regimes and codes of conduct for their employees. There appears to be a dichotomy between corporate head office officials, who espouse anti-bribery initiatives, and employees based in host countries who face the day-to-day pressures to bribe to get things done. There is also the home country parliament, which has the responsibility to ensure that anti-bribery laws are implemented. On the demand side, there are host government officials at both the national and local levels and tribal chiefs who demand bribes, host country oversight institutions (including parliaments) which do not adequately ensure that national anti-corruption laws are implemented.

Discussion

The findings clearly illustrate that corruption in this context can be characterised as a ‘wicked problem’ (Head & Alford 2015; Rittel & Webber 1973) as there is no definitive formulation or solution, the problems are socially complex and multilayered with many stakeholders, proposed measures may have unforeseen effects, and there are many interdependencies and multi-causal aspects (Head & Alford 2015). As the responsibilities to solve the corruption problem in the mining sector in Africa stretch across multiple organizations and stakeholders, their perspectives and the gaps and contradictions among these perspectives do matter. In this regard, this paper has outlined some of these gaps, issues, and tensions that arose from our field research. These findings clearly demonstrate that any attempts to prevent corruption require radical shifts in attitudes and deep behavioural changes by managers, mining professionals, local administrators, citizens, host government representatives, members of parliament, civil society leaders, and other stakeholder groups.

Findings also indicate that corruption is an ambiguous phenomenon often causing diverse, ambivalent, and contradictory understandings among scholars, policymakers, and practitioners alike. Given such ambiguousness, discourses of corruption can only be understood when seen as part of wider social and cultural contexts. In this article, we have argued for a broader understanding of corruption. Finding the conventional definition of corruption too narrow and excessively concerned with the illegality of practices,

Continued on next page > **15**

a more open approach has been argued for. Anthropological research might open up new venues as it has an inventory of methodological tools and analytical approaches appropriate for capturing people's own assessments of courses of action.

The most interesting debates about corruption are those which explore the complex relations between private and public sectors in particular contexts and those that embed analyses within an appropriate understanding of local political cultures and unique historical contexts. These ask vital questions about concepts such as transparency, accountability and governance and ask us to analyse what they mean within the socio-political and cultural context in which they were constructed.

Several approaches mention that those involved in corruption deny doing or intending harm. Perpetrators try to avoid the term 'corruption' and disengage their actions from ethical and moral discourses. Part of a strategy to fight corruption for corruption researchers is to emphasize and highlight the moral aspects of corruption and corruption cases. Who is the victim? What is the harm? Identifying the victims and damage gives corruption a face and a voice. We know from social science theories on morality and ethics that victims who can be seen and heard receive more attention. Further research also needs to provide a holistic and multilayered perspective of corruption dynamics, which can only be achieved through a triangulation of research methods collecting data from diverse stakeholders.

Public Policy and Corporate Implications

Regarding the **demand side** of corruption, anti-corruption laws are largely unenforced. This seems to reflect a lack of political will among some key influential bureaucrats and politicians to combat corruption. What is needed is a multi-stakeholder approach involving governments, parliaments, civil society, the media and business. The host country parliament – charged with overseeing probity and accountability of government, needs to more effectively oversee public sector activities. As well as strengthened oversight committees – such as Public Accounts and Finance – parliaments need to ensure that other 'watchdog' institutions such as supreme audit institutions, ombuds offices, and anti-corruption agencies, are adequately resourced and operate freely, without government interference. They also need to verify that all points of contact through the project cycle (from the granting of licenses, through mining agreements, contracting, procurement and revenue payment) between mining companies and local (including tribal leaders) and national governments are transparent. The Extractive Industries Transparency Initiative is a step in the right direction⁸, but only covers payments from companies to governments – it needs to be more rigorously expanded to cover other parts of the project cycle⁹. Both parliaments and governments need to encourage ethical behaviour by their members and staff, through the establishment of ethics regimes, including codes of conduct, restrictions on the receipt of gifts, declaration of interests (to avoid a conflict of interest) and declaration of assets (for both politicians and senior officials and their close family members), and declaration of interests. Such regimes

Continued on next page >

⁸ Part of EITI is developing local in-country capacity to hold the central government to account for the way it spends or allocates these revenues. Several of our respondents noted, however, that implementation of EITI in host countries remains weak, as does oversight (and even knowledge of EITI) by host parliaments.

⁹ As is now happening with EITI++ (i.e. upstream and downstream approaches) and a variety of home country initiatives, such as Dodd-Frank in the United States, and more recently by Canada's Extractive Sector Transparency Measures Act.

should operate in a wholly transparent fashion and have sanctions for wrong-doing. In short, public officials need to be encouraged to serve the public, not themselves.

Civil society has important roles to play. As Pelizzo and Stapenhurst (2012) pointed out, governments and parliaments will rarely act with probity, unless citizens demand this of governments and parliaments as a precondition for (re-) election of politicians, who in turn demand this of public servants. The media plays a critical role in reporting incidences of corruption – and following up on actions taken against the miscreants. Here, access to information law can assist the media in carrying out its investigative functions, as can the repeal of laws, such as seditious libel, which some governments use to restrict investigative journalism.

On the **supply side**, the Canadian parliament, government and mining companies can all help reduce corruption. Canada was an early signatory to the OECD Convention Against Corruption, and after a slow start, the RCMP is becoming more rigorous in investigating foreign corruption by Canadian companies. Despite recent improvement, moving up the OECD convention enforcement rankings from 9th in 2012 to 6th in 2014, more can be done: the Canadian government still lags behind the United States, Germany, the United Kingdom, and Switzerland in the implementation of anti-bribery legislation. The government has recently beefed-up support through Global Affairs' Trade Commissioner Service and Export Development Canada. Further support could be given to Canadian companies to help them better understand and assess corruption risks and avoid demands for bribes, and to host country parliaments to meet/(comply with) the EITI and other transparency initiatives¹⁰. The Canadian parliament also has a role to play in overseeing the implementation of such policies.

And, of course, Canadian mining companies need to take a more proactive stance against corruption. The incentive for many to develop anti-corruption compliance programs is the threat of investigation by the RCMP. Perhaps a better understanding of *why* corruption is, in the words of former World Bank President James Wolfensohn, “a cancer” and how it distorts public policymaking in host countries, weakens governance and democracy and ultimately impacts adversely on the poor would be an additional incentive to reduce the supply of corruption. Many of the large integrated mining companies already have relatively sophisticated compliance and ethics regimes; these need to be mainstreamed within their global operations. Junior companies generally do not have such in-company anti-corruption programs. The outputs of this research project should assist them in developing such programs.

¹⁰ With Canadian government support, UN Global Compact Network Canada has recently published the e*book “Designing an Anti-Corruption Compliance Program: a Guide for Canadian Businesses”

Conclusions

There is a larger agenda of research that can be conducted to shed further light on the dynamics of corruption in the mining sector in Africa: First, further research should develop an integrated framework to link corruption, political risk, corporate anti-corruption programs, including CSR initiatives, and host government accountability through parliamentary oversight. The hypotheses regarding the links between these variables could be tested, thereby creating an empirical model based on the framework. Second, further research can inquire whether corporate anti-corruption programs and CSR activities are reactive to host country corruption problems and adverse stakeholder reaction, or whether, via ex-ante micro-political risk assessment, such corruption problems can be anticipated and corporate activities, including CSR, can be designed pro-actively and strategically. Third, further research should examine if, and to what extent, the host governments (both executives and legislatures) take into account corruption problems associated with foreign direct investment in the extractive industries at the national and constituency (project site) levels. Fourth, there is a need for further research and guidance for mining companies on how to manage political risks and corruption as well as for the home and host governments and parliaments on how to develop appropriate public policies regarding corruption problems caused by mining operations.

References

- Africa Study Group Canada (2013) *CSR in Africa: Policy Recommendations for a Business-Positive Strategy: Ottawa.*
- Afrobarometer (2015). <http://afrobarometer.org/publications/ghana-round-6-summary-results-2014> accessed May 15, 2016
- Akabzaa, T., & Darimani, A. (2001). Impact of mining sector investment in Ghana: A study of the Tarkwa mining region. *South Asia Policy & Research Institute, 1-71.*
- Al Khattab, A., J. Anchor, and E. Davies 2009. Managerial Perceptions of Political Risk in International Projects. *International Journal of Project Management* 25, no. 7, pp. 734-743.
- Alon, Ilan, and Theodore T. Herbert. 2009. A Stranger in a Strange Land: Micro Political Risk and the Multinational Firm. *Business Horizons* 52, no. 2, pp. 127-137.
- Alon, I., R. Gurumoorthy, M. C. Mitchell, and T. Steen 2006. Managing Micropolitical Risk: A Cross-sector Examination. *Thunderbird International Business Review* 48, no. 5. pp. 623-642.
- Anderson, C. J., & Tverdova, Y. V. 2003. Corruption, Political Allegiances, and Attitudes Toward Government in Contemporary Democracies. *American Journal of Political Science, 47(1)*, pp. 91-109.
- Bamchirigah, S. M. 2006. How Have Reforms Fuelled the Expansion of Artisanal Mining: Evidence from Sub-Saharan Africa *Resources Policy* 31 pp. 165-171
- Bremmer, I. 2005. Managing Risk in an Unstable World. *Harvard Business Review*, pp 1-10
- Business Anti-Corruption Portal – GAN <http://www.business-anti-corruption.com> accessed May 5, 2016
- Campbell, B. (2008). Regulation & legitimacy in the mining industry: Where does Canada stand? *Review of African Political Economy, 117*, pp. 367-385.
- Campbell, B. (2011). Canadian Mining in Africa: “Do as You Please” Approach Comes at High Cost. *Canadian Dimension*. January/February
- Chachage, C.S.L. (1995). The Meek Shall Inherit the Earth but not the Mining Rights: the Mining Industry and Accumulation in Tanzania, in P. Gibbon (ed.) *Liberalised Development in Tanzania*. Nordiska Afrikainstituteit, Uppsala pp. 37-108
- Christer Michelsen Institute 2015. Steps to Limit the Endemic Corruption Around Junior Mining Companies. <https://cmi.atavist.com/limit-corruption-in-junior-mining-companies> Accessed April 3, 2016

Cuervo-Cazurra, A. 2016. Corruption in International Business. *Journal of World Business* 51, pp. 35-49

Dake, K. 1992. Myths of Nature: Culture and the Social Construction of Risk. *Journal of Social Issues* 48, no. 4, pp. 21-37.

Davidson, Jeffrey. 1993. The Transformation and Successful Development of Small-Scale Mining Enterprises in Developing Countries. *Natural Resource Forum*. November, pp.315-326

De Backer, S. 2012. Mining Investment and Financing in Africa: Recent Trends and Key Challenges. Paper presented at the Africa's Mining Industry: Perceptions and Reality, Toronto. March

Department of Foreign Affairs, Trade and Development Canada. 2013. *Building the Canadian Advantage: a Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector*. Government of Canada.

Emel, J., and M. T. Huber 2008. A Risky Business: Mining, Rent and the Neo-liberalization of "Risk". *Geoforum* 39, no. 3, pp. 1393-1407.

Fantino, J. 2012. Responsible Extractive Sector speech at the United Nations General Assembly, side-event on Extractive Industries, New York. September 25

Financial Post 2013. Canada Now Dominates World Bank Corruption List, Thanks to SNC-Lavalin. September 19

Glaser, B. S., & Strauss, A. 1967. *The discovery of grounded theory. Strategies for qualitative research*. London: Weidenfeld and Nicolson.

Goel, R. K., & Nelson, M. A. (2011). Government Fragmentation versus Fiscal Decentralization and Corruption. *Public Choice*, 148, pp. 471-490.

Goldstone, J. A., R. H. Bates, D. L. Epstein, T.R. Gurr, M. B. Lustik, M. G. Marshall, J. Ulfelder, and M. Woodward (2010). A Global Model for Forecasting Political Instability. *American Journal of Political Science* 54, no. 1, pp. 190-208.

Head, B. W., & Alford, J. 2015. Wicked Problems Implications for Public Policy and Management. *Administration & Society*, 47(6), 711-739.

Hilson, G. 2009. Small-scale Mining, Poverty and Economic Development in Sub-Saharan Africa: An Overview. *Resources Policy* 34 pp. 1-5

Huntingdon, S.P. (1968). *Political Order in Changing Societies*. New Haven, CT: Yale University Press

- International Finance Corporation Performance Standards on Environmental and Social Sustainability (2012): Washington, DC
- Jessen, L. 2012. Corruption as a Political Risk Factor for Investors in the Oil and Gas Industry, with Specific Emphasis on Nigeria. University of Stellenbosch
- Kaufmann, D. 1997. Corruption: The Facts. *Foreign Policy* 107 (Summer) pp. 114-31
- Kaufmann, D. and Phyllis D. 2006. Corruption: A Key Challenge for Development. In R. Stapenhurst, N. Johnson and R. Pelizzo (eds.) *The Role of Parliament in Curbing Corruption*. Washington, DC: World Bank Institute.
- Klotz, J. 2013. The Anti-Corruption Dilemma for Canadian Companies – Just How Far Must Companies Go to Comply With The Law *Thomson Reuters Lexpert*
- Knox, S. and Maklan, S. 2004. Corporate Social Responsibility: Moving Beyond Investment Towards Measuring Outcomes *European Management Journal* 22 (5) pp. 508-16
- Lambsdorff, J.G. (2003). How Corruption Affects Persistent Capital Flows. *Economics of Governance*, Vol. 4 pp 229-243
- Lexpert American Lawyer Guide to the Leading 500 Lawyers in Canada (2013): Thomson Reuters Canada Limited.
- Mauro, P. (1997). The Effects of Corruption on Growth, Investment, and Government Expenditure in Kimberly Ann Elliot (ed.) *Corruption and the Global Economy*. Washington, DC: Institute for International Economics
- McMahon, Fred and Miguel Cervantes (2012). *Survey of Mining Companies 2011/12*. Vancouver, BC: The Fraser Institute
- Miles, M. B., & Huberman, A. M. 1994. *Qualitative data analysis: An expanded sourcebook*. Sage.
- Noetstaller, R. 1987. *Small-Scale Mining: A Review of the Issues*. World Bank: Washington, DC
- OECD. 2013. Canada: Follow-Up to the Phase 3 Report & Recommendations. In Organisation for Economic Co-operation and Development (Ed.).
- Pelizzo, R. 2010. Party Direction The Italian Case in Comparative Perspective. *Party Politics* 16, no. 1, pp. 51-67
- Pelizzo, R. and F. Stapenhurst (2012). *Parliamentary Oversight Tools*. London & New York: Routledge.
- Polanyi, K. 2001. *The Great Transformation: The Political And Economic Origins Of Our Time*. Beacon Press: Pennsylvania

Rangan, K., Chase, L. and Sohel K. 2012. Why Every Company Needs a CSR Strategy and How to Build It. Harvard Business School Working Paper 12-088

Rice, G. and Essam M. 1980. Political Risk Forecasting by Canadian Firms. *International Journal of Forecasting* 6, pp. 89-102

Rittel, H.W. J. and Webber, M.M. 1973. 'Dilemmas in a General Theory of Planning', *Policy Sciences*. 4 (2): 155-169.

Rose-Ackerman, S. 1999. Corruption and Government. Cambridge: Cambridge University Press

Rose-Ackerman, S. 2006. International Handbook on the Economics of Corruption. Northampton, MA: Edward Elgar

Slovic, P.(1999). Trust, Emotion, Sex, Politics, and Science: Surveying the Risk-Assessment Battlefield. *Risk Analysis* 19, no. 4, pp. 689-701.

Standing, A. and Gavin Hilson. 2013. Distributing Mining Wealth to Communities in Ghana: Addressing Problems of Elite Capture and Political Corruption. Bergen, Norway: Chr. Michelsen Institute

Stapenhurst, F.1992 Political Risk Analysis Around the North Atlantic. New York, St. Martin's Press.

Stapenhurst, F., Riccardo P. and Kerry J. 2014. Following the Money: Comparing Parliamentary Public Accounts Committees. London: Pluto Press

Svensson, J. 2005. Eight Questions About Corruption *Journal of Economic Perspectives* 19, pp. 19-42

Transparency International 2011. Bribe Payers Index <http://www.transparency.org/bpi2011>
Accessed May 2, 2016

Transparency International. (2013). Global Corruption Barometer.
http://www.transparency.org/research/gcb/gcb_2015_16/0/ accessed January 11, 2016

Transparency International. 2015. Corruption Perceptions Index <http://www.transparency.org/cpi2015>
accessed May 1, 2016

Transparency International. (2015). Global Corruption Barometer.
http://www.transparency.org/research/gcb/gcb_2015_16/0/ accessed May 1, 2016

Troyer, S. and Boucher, S. (date unknown). *Managing Corruption Risks in the Canadian Mining Sector: Practical Guidance for Small- to Mid-Cap Mining Companies*. Grant Thornton

United States Institute of Peace 2010. Governance, Corruption, and Conflict. *A Study Guide Series on Peace and Conflict*. Washington, D.C.

Wei, S.J. (2000) How Taxing is Corruption on International Investors? *Review of Economics and Statistics* 82 pp. 1-11

Winbourne, S. (2002). *Corruption and the Environment*. Washington, D.C.: United States Agency for International Development.





*Parliamentary Oversight of Extractive Industries (1)*¹¹

Oladeji Olaore and Rick Stapenhurst with Rasheed Draman, Emine Sarigollu, Myung-Soo Jo, Fahri Karakas and Myriam Ertz¹²

¹¹ <https://www.tandfonline.com/doi/full/10.1080/11926422.2016.1250655>

¹² Oladeji Olaore: Consultant, World Bank
Rick Stapenhurst: Assistant Professor, McGill University
Rasheed Draman: President & CEO, African Centre for Parliamentary Affairs
Emine Sarigollu: Associate Professor, McGill University
Myung-Soo Jo: Associate Professor, McGill University
Fahri Karakas: Associate Professor, University of East Anglia
Myriam Ertz: Assistant Professor, University of Quebec at Chicoutimi

Abstract

Africa has experienced a boom in extractive industries since the beginning of this century. Extractive companies are often exposed not just to government patronage, but also requests to consider local third-party agents, vendors or applications for employment. But is corruption a necessary evil? While there is consensus that multifaceted strategies are required to curb corruption, heretofore, there is little research on how legislative oversight can help reduce corruption, in general, and on legislative oversight of corruption in the extractives sector, in particular.

This article corrects this gap and examines legislative oversight of the mining industry in three African countries: Burkina Faso, where – according to Transparency International corruption levels are moderate and declining; Ghana, where they are moderate and increasing and Tanzania, where they are high and unchanging. In so doing, it seeks to answer the following questions: How can parliamentary oversight reduce corruption in the mining industry? What are the parliaments of Ghana, Burkina Faso and Tanzania doing to reduce the corruption in the mining industry? Could they do more, and if so, what?



Parliamentary Oversight of Extractive Industries

Africa has experienced a boom in extractive industries since the beginning of this century. The substantial growth in Africa's natural resource exports—ranging from hydrocarbons such as oil and natural gas to minerals such as gold, copper, and iron ore—significantly contributed to the remarkable turnaround in the economic growth trajectory of the continent¹³.

According to the Economic Commission for Africa¹⁴, natural resource endowment represents one of the best ways of mobilizing revenues for Africa's economic growth and development. The minerals and metals sector contributes over 20 percent of Africa's overall economic output, and even with currently depressed markets, the extractive sector remains a highly significant source of fiscal revenues for many countries¹⁵. As a result, many international mining companies are expanding their exploration and operations in Africa. While this development is a boom to many African countries, it is not without problems: the oil and gas and mining industries are the fourth and fifth most corrupt industries globally, after public works and construction, utilities and real estate, property, legal and business services¹⁶.

Extractive companies are often exposed not just to government patronage, but also to requests to consider local third-party agents, vendors or applications for employment. These requests, especially when associated with a decision by the official, carry an elevated risk as the official might have an undisclosed interest. Indeed, a number of mining and metals companies have felt forced to sign deals which 'compensate' a number of interested third parties just to be able to do business¹⁷. But is corruption a necessary evil? A review of Transparency International's Corruption Perceptions Index over the past decade reveals that some African countries, such as Rwanda, Namibia, Senegal, Burkina Faso and Togo, have made considerable progress in curbing corruption, while others such as Ghana, Gambia, Angola, Uganda and Malawi have slipped back¹⁸.

According to the World Bank¹⁹, there is increasing evidence that the costs of corruption are enormous, whether at the economic, social, environmental or political level. Beyerle²⁰ stated that a risk analysis from the 2011 World Bank Development Report found that countries in which government effectiveness, rule of law, and control of corruption are weak have a 30-45 percent higher risk of civil war and significantly higher risk of extreme criminal violence than other developing countries. The role of Parliament is critical in the control of corruption. Staphenurst, Johnston, and Pelizzo²¹ note that Parliament is an important institution that cuts

Continued on next page >

¹³ Chuhan-Pole, P.A. Dabalan and B. Land (2017). *Mining in Africa: Are Local Communities Better Off?* (Africa Development Forum and World Bank Group 2017)

¹⁴ Economic Commission for Africa (2016). *Optimizing Domestic Revenue Mobilization and Value Addition of Africa's Minerals: Towards Harmonizing Fiscal Regimes in the Mineral Sector*.

¹⁵ Moolman, Victor (2016), 'African mining has potential to grow stronger' Mining Weekly, July 8, 2016. http://www.miningweekly.com/article/african-mining-has-potential-to-grow-stronger-2016-07-08/rep_id:3650 accessed December 12, 2017

¹⁶ Transparency International. (2011). Bribe Payers Index

¹⁷ Ernst & Young (2012). *Managing Bribery and Corruption Risks in the Mining and Metals Industry*. p.4

¹⁸ Transparency International, *Corruption Perception Index 2016* http://www.transparency.org/news/feature/corruption_perceptions_index_2016 accessed on November 10, 2017

¹⁹ World Bank (2017) *Corruption and Development*

²⁰ Beyerle, S. (2014). *Curtailing Corruption People Power for Accountability and Justice*. Colorado: Lynne Rienner

²¹ Staphenurst, R., N. Johnston, and R. Pelizzo (2006). *The Role of Parliament in Curbing Corruption*. Washington, DC: World Bank

across both vertical and horizontal accountability, and in most countries, it has the constitutional mandate to both oversee government and hold the government to account.

It is important to note that while the role of Parliament is critical in overseeing the executive and ensuring effective implementation of the anti-corruption laws, the implementation of the laws is beyond the remit of Parliament alone. The laws are implemented in tandem with other government agencies such as courts, the police and other government agencies. This poses a significant challenge to the oversight function of Parliament. Stapenhurst et al.²² observed that, while appropriate laws may be a necessary component in a country's arsenal of policies and interventions to curb corruption, they are never sufficient. Parliament must address some relevant issues such as conflicts of interest, nepotism, and statutes of limitation - not only to provide for the necessary punitive measures but also to promote administrative and social environments adverse to corruption.

According to Draman²³, active and effective committees are an important indicator of Parliament's role in fighting corruption. For instance, in Ghana, while oversight committees meet regularly and have been somewhat active when it comes to uncovering corruption, that activism has not translated into effective oversight. Furthermore, Ghana's maturing political culture has often been compromised by excessive partisanship that hinders the work of the Legislature. This partly explains the weakness of committees in providing effective oversight and fighting corruption despite their activism. Similarly, Tritiku²⁴ observed that in the Parliament of Uganda, legislative committees are effective in uncovering fraud and corruption, but at other times, the reports of the committees are shelved without debate or the recommendations are not implemented. The situation is also complicated by the fact that Uganda has adopted the 'multi-agency model' of Anti-corruption commission, i.e., a number of autonomous offices, but that together weave a web of agencies to fight corruption. Though there is no clear-cut anti-corruption agency, there are a number of institutions that collectively make the anti-corruption set-up in the country, albeit operating in a parallel manner. They include the Ombudsman known as the Inspector General of Government (IGG) Parliament, Auditor General, police and the anti-corruption court.

According to Kaufmann²⁵, there is consensus that multifaceted strategies are required to curb corruption. While there is general agreement that one of the key components of such strategies is legislative oversight, heretofore, there is little research on how legislative oversight can help reduce corruption, in general, and legislative oversight of corruption in the extractives sector in particular.

This article corrects this gap and examines legislative oversight of the mining industry in three African countries: Burkina Faso, where, according to Transparency International, corruption levels are moderate and declining; Ghana, where they are moderate and increasing and Tanzania, where they are high and

Continued on next page >

²² Op cit

²³ Draman, R (2017). *The Role of Parliament in Curbing Corruption: The Case of Ghana*. Nigerian Journal of Legislative Studies Forthcoming.

²⁴ Tritiku, A (2017) The Role of Parliament in Curbing Corruption: The Case of Uganda Policy Brief, <https://www.britac.ac.uk/sites/default/files/Parliamentary%20oversight%20and%20corruption%20in%Uganda.pdf>

²⁵ Daniel Kaufmann (2015). *Corruption Matters Finance & Development*. Vol. 52, No. 3, 20

unchanging²⁶. These countries were chosen because we wanted both West African and East African countries, countries with a Napoleonic form of government and Westminster form of government, and countries where extractive industries played an important role in the economy. Specifically, the article focuses on the roles of parliament in promoting transparency and government accountability, and thereby reducing corruption. In so doing, it seeks to answer the following questions: How can parliamentary oversight reduce corruption in the mining industry? What are the parliaments of Ghana, Burkina Faso and Tanzania doing to reduce the corruption in the mining industry? Could they do more, and if so, what?

In the next section, we review the literature regarding legislative oversight, particularly as it refers to reducing corruption. While there is consensus in the literature that multifaceted strategies are required to curb corruption, there is little research on how legislative oversight – as a component of such strategies – can help reduce corruption. This is especially the case in the extractives industries, among the most corrupt sectors globally. We seek to answer the following questions: How can parliamentary oversight reduce corruption in the mining industry? What are the parliaments of Ghana, Burkina Faso and Tanzania doing to reduce the corruption in the mining industry? Could they do more, and if so, what? We look specifically at some of the tools and mechanisms that parliaments have in reducing corruption. Then, we present the analytical framework that guided our research and the methodology adopted. We present our findings, answer the questions noted above and make some recommendations. The final section presents our conclusions.

Literature Review

Corruption in the value chain of extractives is a major impediment to development. While there have been increased efforts to improve transparency and accountability in the management of revenues from the extractive industry (see below), little attention has been placed on the roles of elected representatives. This is despite the fact that recent studies have shown that legislators are important stakeholders in the strategies to reduce corruption and that parliaments have a critical role to play in fighting corruption, not only by enacting legislation to counter corruption but also in ensuring that such legislation is effectively implemented²⁷.

Ernst & Young²⁸ observed that there is an increasing level of global legislative and enforcement alignment on anti-corruption laws. The report indicated that “the number and severity of overseas anti-bribery and anti-corruption laws and the increasing scope of their reach are increasingly influencing not only the resources sector, but corporations conducting business outside their home markets”. Similarly, Barkan²⁹ argued that legislatures are mechanisms for achieving both vertical and horizontal accountability of the rulers to the ruled. In general, parliaments seem relatively good at enacting anti-corruption legislation but weak in overseeing the implementation of such legislation. Staphenurst et al.³⁰ observed that considering the extensive causes

Continued on next page >

²⁶ Transparency International, Corruption Perception Index 2017 https://www.transparency.org/news/feature/corruption_perceptions_index_2017 accessed February 3, 2018

²⁷ Staphenurst, F. N. Johnston, and R. Pelizzo (2016). *The Role of Parliament in Curbing Corruption* Washington, DC: World Bank

²⁸ Ernst & Young (2012). *Managing bribery and corruption risks in the mining and metals industry* p.4

²⁹ Joel Barkan (2009). *Legislative Power in Emerging African Democracies*. Colorado: Lynne Rienner

³⁰ Staphenurst, F. N. Johnston, and R. Pelizzo (2016). *The Role of Parliament in Curbing Corruption* Washington, DC: World Bank

of corruption, as well as the complexity of anti-corruption measures, parliaments need to fully exploit their constitutional roles and use parliamentary oversight tools to carry out their constitutional responsibilities effectively. They also observed that parliamentarians could explore further their representative role as an important instrument for building integrity in public governance by engaging their constituents on matters of public policy, such as corruption.

As part of their legislative mandate, parliaments are responsible for ensuring that there is a strong legal framework in place to curb corruption. This not only involves passing national *anti-corruption legislation* that tackles corruption and money laundering but also lobbying national governments to ratify relevant international instruments such as the United Nations Convention against Corruption³¹. Stapenhurst et al.³² argued that parliaments have the authority to enact any laws they wish and can therefore create the necessary legal framework to prevent and curb corruption. They explained that parliaments could enact laws to address inappropriate behavior by citizens, businesses and other organizations. In addition, they stated that parliaments could also curb corruption by holding the government accountable through effective participation in the budget process, the exercise of parliamentary oversight through *anti-corruption commissions*, and collaboration with the *Supreme Audit Institutions* (SAI) and by promoting a *media*-friendly environment. Beetham, Deveaux, Heller and Laberge³³ submitted that parliaments and parliamentarians can play active roles in the design and implementation of national anti-corruption strategies, the establishment and strengthening of relevant national anti-corruption body/bodies, and in framing and reviewing relevant legislation.

One important area where many African parliaments are active is the review of various mining codes. Besada and Martin³⁴ stated that in Africa, over 30 countries passed new legislation between 1990 and 2000 to regulate the mining industry, and many changes have also occurred between 2000 and 2010. However, they observed that many of these reforms were directed towards attracting greater foreign investment through decreased regulation, liberalized social and labor policies, and more private sector-friendly ownership and taxation schemes rather than to ensure transparency and accountability.

Bryan and Hofmann³⁵ go further and note that a robust *committee system* is the framework for effective legislative involvement in lawmaking and executive oversight, as well as a platform for citizen engagement. These committees are empowered to, among other things, enact laws that govern the operations of the extractives sector, hold public hearings, conduct outreach visits, engage with citizens and communities, and conduct effective oversight. For example, the Ghanaian Parliament has a Mines and Energy Committee, the Cameroon National Assembly established a Natural Resource Committee, South Africa's Parliament has Energy and Mineral Resources committees, and the Nigerian National Assembly has committees on oil and gas, as well as a committee on solid minerals. Stapenhurst submitted that while all these committees perform

Continued on next page >

³¹ Transparency International (2017). What Works in Working with Parliaments Against Corruption? U4 Anti-Corruption Resource Centre

³² Stapenhurst, F. N. Johnston, and R. Pelizzo (2016). The Role of Parliament in Curbing Corruption Washington, DC: World Bank

³³ Beetham, D., Deveaux, K., Heller, N., & Laberge, M. (2014). Anti-Corruption Assessment Tool for Parliamentarians. GOPAC and UNDP

³⁴ Besada, H. and P. Martin (2013), 'Mining Codes in Africa: Emergence of a Fourth Generation?' North-South Institute 2013) <http://www.nsi-ins.ca/wp-content/uploads/2013/03/Mining-Codes-in-Africa-Report-Hany.pdf> accessed on November 10, 2017

³⁵ Bryan, S. and B. Hofmann (2007) *Transparency and Accountability in Africa's Extractive Industries: The Role of the Legislature* Washington, DC: National Democratic Institute for International Affairs

some level of oversight, some legislatures have established specialized audit or Public Accounts Committees, which work closely with the SAI. Such committees can enhance ex-post budget oversight and complement the policy oversight of other committees. He observed that in some legislatures, such as Nigeria, anti-corruption committees have also been established to work closely with anti-corruption agencies³⁶.

Many legislatures also set up *special commissions of inquiry*, or investigation committees, to examine issues of public concern and make recommendations on current and future policies and legislation. Such commissions are time-bound, and their subjects typically cut across the responsibilities of several government agencies or departments and several parliamentary committees. Such commissions are usually empowered to summon witnesses to testify under oath, including officials of the executive branch, and to demand documents and order on-site inspections. Countries that have established such commissions to examine corruption include Kenya, Sao Tome and Principe, Nigeria and Ghana³⁷. Though most of these special committees uncovered frauds and corruption, many of the culprits are never prosecuted either by anti-corruption agencies or the police. For example, in 2012, the Nigerian House of Representatives set up an Ad-hoc Committee to investigate the government's implementation of fuel subsidy. This committee uncovered huge corruption in the federal government's application of its fuel subsidy. The committee found out that the subsidy regime, as operated between the period under review (2009 and 2011), was fraught with endemic corruption and entrenched inefficiency. The committee made several recommendations (including prosecutions and recovery of a huge amount of funds) to the Nigeria Economic and Financial Crimes Commission (EFCC) -an anti-corruption agency. Unfortunately, six years after the report of the committee had been tabled at the National Assembly, the EFCC and the courts have not jailed any of the indicted individuals³⁸. Many of the cases are still pending in courts. Similarly, Draman³⁹ observed that while Parliamentary committees in Ghana are relatively effective in uncovering fraud and corruption, they have not been effective at ensuring that once cases of fraud and corruption are uncovered, sanctions are meted out to those found culpable by the country's anti-corruption agency and the courts.

However, despite the constitutional provisions that empower parliaments to act as a major catalyst in the fight against corruption, many parliamentarians still face serious challenges in fulfilling their roles and responsibilities. Bryan and Hofmann⁴⁰ observed that African legislators face many constraints in fulfilling their roles and responsibilities, including *weak individual and institutional capacity*, little *independence from more powerful executives and ruling political parties*, and, perhaps most significantly, limited *political will*. They also stated that oversight of the extractive industries is further complicated by a common perception held by many legislators themselves that the industry's technical complexity is beyond their comprehension. Bryan and Hofmann⁴¹ submitted that when faced with proposals⁴¹ from well-informed or connected executive branch

Continued on next page >

³⁶ Stapenhurst, F. (2011). *Legislative Oversight and Curbing Corruption: Presidentialism and Parliamentarianism Revisited*. Thesis for the degree of Doctor of Philosophy at the Australian National University

³⁷ Stapenhurst, F (2011). Op cit.

³⁸ Nigerian House of Representatives, Report of Ad-Hoc Committee on Fuel Subsidy (RESOLUTION NO. HR.1/2012)

³⁹ Draman, R (2017) *The Role of Parliament in Curbing Corruption: The Case of Ghana* Nigerian Journal of Legislative Studies Forthcoming.

⁴⁰ Bryan, S. and B. Hofmann (2007). *Transparency and Accountability in Africa's Extractive Industries: The Role of the Legislature* Washington, DC: National Democratic Institute for International Affairs

⁴¹ Op cit.

agencies or officials, legislators often lack both the *information* and the confidence to influence legislation, policy or management of the extractive industries.

The Extractive Industries Transparency Initiative (EITI) was set up by governments, companies and civil society organizations in the shared belief that natural resource wealth should benefit citizens and that this requires high standards of transparency and accountability. The EITI Standard requires governments to publish timely and accurate information on key aspects of their natural resource management, including how licenses are allocated, how much tax and social contributions companies are paying and where this money ends up in the government at the national and regional level. By so doing, legislators, along with governments and citizens, increasingly know who is operating in the sector and under what terms, how much revenue is being generated, where it ends up and whom it benefits⁴².

According to Brouwer, Haytayan and Smitham⁴³, one of the key roles of parliamentarians is to help improve policy and initiate reforms in the extractive sector and help oversee EITI compliance by companies and governments.

Various assessments of the capability of African parliaments to undertake oversight shows that they are at different levels of engagement in ensuring transparency and accountability in the management of natural resources in their respective countries⁴⁴. In addition to having the oversight tools and mechanisms noted above, their ability to conduct oversight also depends on the prevailing political climate, the capacity of the parliamentarians, the level of development of legislative institutions, the educational background of parliamentarians, the financial resources available to parliaments and political will of the elected representatives in each country. Clearly, a few parliaments are striving to play more active roles in providing effective oversight of the extractives sector, while others are constrained by a lack of financial and administrative autonomy from government and excessive executive dominance of the polity.

Analytical Framework and Methodology

For this research, we adapt analytical frameworks developed by Wang⁴⁵ to guide our research design.

A Conceptual Framework

As noted above, legislatures have developed a variety of 'internal' oversight tools, most notably, committees (examining legislation, public spending and public procurement, including major contracts) and special commissions of inquiry 'external' (e.g. SAIs such as Auditors General and anti-corruption commissions) to help

Continued on next page >

⁴² EITI, The global standard for the good governance of oil, gas and mineral resources (FACTSHEET 2017)

⁴³ Femke Brouwer, Lauray Haytayan and Luke Smitham *EITI: A parliamentary tool for extractive sector governance in Liberia and Yemen* (NRGI, 2014)

⁴⁴ Mohammed, A. (2011). Supporting Ghana's Parliament for Good Governance in the Extractive Sector. Parliamentary Centre; Stapenhurst, R. (2011). Legislative Oversight and Curbing Corruption: Presidentialism and Parliamentarianism Revisited: Thesis for the degree of Doctor of Philosophy at the Australian National University.

⁴⁵ Wang, V. (2005). The Accountability Function of Parliament in New Democracies; Tanzanian Perspectives *Bergen, Norway: Christer Michelsen Institute Working Paper* 2005:2

them hold the executive to account.⁴⁶ But legislative oversight tools only partially explain legislative oversight and lower corruption. Contextual factors matter; here, we consider two of the contextual factors identified by Stapenhurst⁴⁷ to be particularly relevant in shaping this context: political parties, public trust and institutional learning and adaptation.

It is the *combination* of these oversight tools and contextual factors that explains legislative oversight (see Diagram 1). At the heart of the diagram are the oversight tools and contextual factors. There is a two-way relationship between these variables. Contextual factors influence the number of oversight tools available to a legislature⁴⁸. There is some reason to believe that the greater number of oversight tools used by legislatures in parliamentary systems reflect the relative weakness of contextual factors in such systems relative to presidential systems⁴⁹. Legislative oversight comprises both oversight tools and contextual factors, and together these influence the efficacy of oversight. This conceptual framework also lends theoretical support to Olson and Norton, who argue that external factors “...will largely determine [the capacity of the legislature] to exercise an independent influence in... policy making and that variables internal to it – along with the nature of the policy brought before it – will, at most, reinforce, but not determine that capacity.” (page 6)⁵⁰

The framework further suggests that contextual factors are driven more by a country’s social-political history than by notions of international templates associated with international best practice. Here, the concept of templates associates with archetypes and path dependency is important. For example, former British colonies now usually have a parliamentary form of government, a majoritarian electoral system, while former French colonies have a hybrid (semi-presidential) form of government and a proportional representation electoral system. The framework also acknowledges the importance of social legitimacy – public trust in parliament, which acts as the glue which helps hold the framework together – and the political will of parliamentarians to use whatever tools they have available to oversee governments and mining operations.

A key issue remains, however – how can this conceptual framework be operationalized? Wang⁵¹ developed a framework for analyzing legislative oversight, which was subsequently extended by Pelizzo and Stapenhurst⁵², differentiating between internal oversight tools and mechanisms and contextual factors. Again, we modify this framework; it is presented in Diagram 2.

⁴⁶ The adoption of these tools by legislatures is influenced by ‘path-dependent’ pressures and by the identification and adoption of good practice by one legislature from other legislatures (e.g., the adoption of Public Accounts Committees – historically associated with countries with ‘Westminster-style’ parliamentary systems by legislatures in non-Commonwealth countries which have no political-historical ties with the United Kingdom). There is evidence to suggest that such adoption of good practice encourages legislatures operating in countries with different forms of government to converge, as they learn about each other’s procedures and practices through bodies such as the Inter-Parliamentary Union and the Commonwealth Parliamentary Association.

⁴⁷ Stapenhurst (2011) also noted that the electoral system and type of government also impact oversight, but these factors were not considered as part of this research.

⁴⁸ Pelizzo, R and R. Stapenhurst (2002). [A Bigger Role for Legislatures](#). Finance and Development Vo. 39 No. 4 pp. 46-8

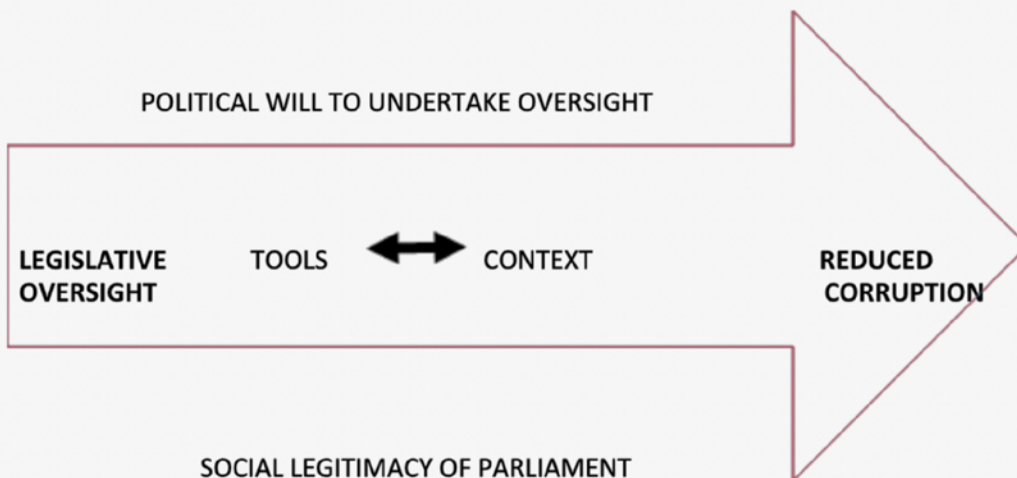
⁴⁹ Stapenhurst (2011) op cit.

⁵⁰ Olson, D and P. Norton (1996) *The New Parliaments of Central and Eastern Europe* London: Frank Cass

⁵¹ Wang, V. (2005). The Accountability Function of Parliament in New Democracies; Tanzanian Perspectives Bergen, Norway: *Christer Michelsen Institute Working Paper 2005:2*

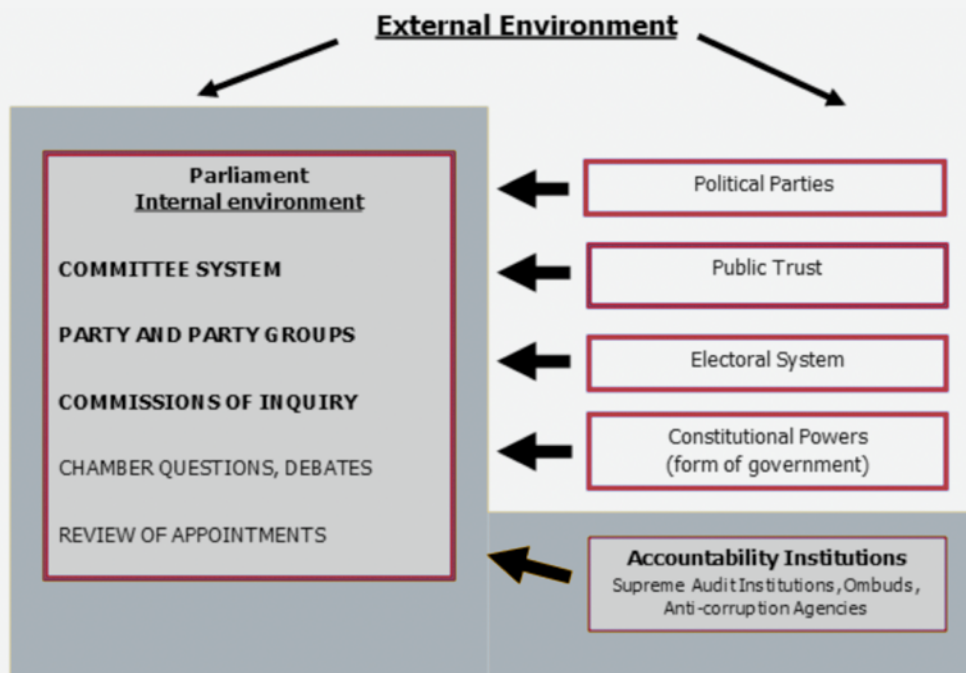
⁵² Pelizzo, R and R. Stapenhurst (2012) ‘Parliamentary Oversight Tools’ New York: Routledge

Diagram 1: Conceptual Framework of Legislative Oversight



Source: Authors, adapted from Stapenhurst (2011), Pelizzo and Stapenhurst (2012)

Diagram 2: Legislative Oversight Tools: Modified Framework



Tools/mechanisms and contextual factors considered in this paper, in bold

Source: Authors, adapted from Stapenhurst (2011) and Pelizzo and Stapenhurst (2012)

Methodology

Applying the Framework presented in Diagram 2, we examined the internal oversight tools and mechanisms, such as the committee system, political party groups, question time, and commissions of inquiry and the contextual factors of political parties and social legitimacy (as measured by trust in parliament).

A mixed method of data collection was adopted because it enabled us to triangulate our results. In so doing, we juxtaposed the approaches by Lieberman (2005, p.441) and Robson (2002, p. 182). The former suggested that “...because such materials are produced in such different shapes and forms across time and space, it is often impossible to specify *a priori*, a set of very precise coding rules.” The latter argued that “if the purpose is confirmatory, where previous work has suggested an explanation of some phenomenon, then there is a place for some degree of pre-structure.” Three data collection methods were followed.

First, in-depth research of publicly available documents at the World Bank library and on the internet was undertaken. This provided a general overview of the roles of African parliaments in curbing corruption in the extractives industries and the constraints and challenges that such parliaments faced.

Second, we conducted key informant interviews with a total of approximately 20 Canadian mining representatives, host government officials, legislators and civil society representatives in each of the three countries from October 2016 through June 2017. Interviews were semi-structured, combining fully structured and open-ended questions, which allowed us to go into more depth and clarify possible ambiguities. Respondents were encouraged to add any additional information they deemed relevant. The survey instrument used for government officials and MPs is presented in Annex 1; the survey instruments for mining company executives and CSOs were similar. The interviews were transcribed, and participants’ responses were coded.

Thirdly, we held focus groups comprising ten respondents (different from those interviewed) in two of the three countries (Burkina Faso was excluded due to logistical problems) to both gather additional information and to enable us to verify interview results. The focus group protocol is presented in Annex 2.

The project, along with the survey instrument and focus group protocol, was reviewed and approved by McGill University’s Ethics Board.

Data Analysis

The process of thematization, which involves clustering common descriptions, key phrases and statements, was employed to organize participants’ experiences into common themes and recurring features captured in the interviews. This was an iterative process that involved reading and re-reading the interview transcripts, grouping and re-grouping key phrases and important statements into appropriate thematic groups⁵³.

⁵³ King, N. and C. Horrocks (2010). Interviews in Qualitative Research. CA: Thousand Oaks

Based on the conscientious analysis of the transcripts, five cross-cutting themes were identified as essential to the experiences of the participants and crucial to the study. These were: (1) Regardless of oversight tools and mechanisms available, weak institutional capacity of legislators and legislative institutions seriously undermined oversight in general and of the extractive industries in particular; (2) this inherent weakness is compounded by the complex and opaque nature of the industries and by the extreme information asymmetry between companies and governments, on the one hand, and legislatures on the other; (3) the resulting lack of implementation of legislations/regulations; (4) an absence of political will by legislators to confront the culture of corruption, which in part is due to: (5) conflicts of interest. A sixth theme was gleaned from literature: public trust in parliament. These themes are examined in more detail in the next section.

Findings and Discussion

Findings from the study confirm that corruption is pervasive in the mining sector in African countries and that parliaments (as bodies of elected representatives of the people) have an important role to play in curbing corruption in the extractives industries. Parliaments have three important functions – to enact new laws or amend the existing legislations (lawmaking), to serve as representatives of the people (representation) and to oversee the activities of the executives (oversight). Similarly, in the management of natural resources, parliaments must ensure that there are appropriate (and updated) legal frameworks guiding the extractive industries; legislators must have regular dialogues and consultations with citizens throughout the extractives industries (EI) value chain, and they must provide effective oversight over management and effective utilization of revenues from extractives industries. However, the study shows that African Parliaments are constrained by weak institutions and lack of capacity among the Members and parliamentary staff, absence of political will, conflict of interests, lack of financial autonomy and the complex nature of extractives industries, among others.

While examining the roles of legislature in curbing corruption in the mining sector and the extractives industries in general, five important themes emerged.

The first major theme that emerged is **weak institutional capacity of legislators and legislatures**. A common trend among African legislatures is that the majority of legislators are inexperienced, and they are operating within weak institutions. Bryan and Hofmann⁵⁴ observed that weak legislative bodies cannot serve as counterweights to more powerful executive branches. A Ghanaian Member of Parliament stated that often, *“the issue boils down to lack of capacity. Most MPs do not have the background to understand the contracts, but they still get approved on the floor of the House.”* For example, when the power plant contract was to be considered by the Energy and Finance Committees, the MP said, *“most committee members attested to not understanding the terms of the contract, but the report was still approved by the parliament.”* This is common practice among African Parliamentarians; they do not possess the technical knowledge required to critically examine the mining contracts or documents that come before them for scrutiny. Similarly, many respondents referred to the same problem in Tanzania - *“Lack of capacity, knowledge and understanding of the extractive*

Continued on next page >

sector by the Parliamentarians are major challenges. You have members of the Mining Committee who do not understand the mining sector, and they do not have any technical staff to assist them in conducting research and analysis of the sector. On top of this, Parliamentary Committees are re-shuffled every two and a half years. How do you retain and sustain the technical knowledge of the industry in this manner?” observed a CSO leader. Bryan and Hofmann⁵⁵ observed that this phenomenon cut across African Legislatures, and they confirmed that African legislators face many constraints in fulfilling their roles and responsibilities, including weak individual and institutional capacity.

In some cases, institutional constraints prevent legislators from engaging effectively in the extractives industries. For example, an elected representative indicated that Parliament has a very little part or influence in negotiating the mining contracts - *“negotiations are done between the Minerals Commission, the Sector Ministry and the Chamber of Mines. Parliament only ratifies it. So all the works would have been done without parliament’s involvement. By the time it gets to parliament, it is already a done deal. Most of these negotiations are even held outside the country, with the mining companies paying for government delegation. A lot of the mining contracts never even went to parliament.”* Part of the institutional challenge is the lack of resources. Most institutions mandated to fight corruption are not well-resourced nor independent.

Most respondents agreed that there is a huge problem of corruption and lack of transparency in the mining/extractives industries. More importantly, corruption practices manifest at different phases and stages of the mining sector. One respondent said that *“the sector has different levels of corruption and different presentations of it.”* This could be from the granting of the concessions to contract negotiations and contract awards, compliance with the industry regulations, to the district assembly level and traditional chiefs. Another respondent confirms this notion that corruption in the mining sector is at different phases. *“This corruption is on several levels: firstly, at the issuance of mining titles corruption. Mining titles are often granted to mining officials in conditions where the political authorities receive huge sums and where the transparency in the management of these funds remains to be seen.”* According to this respondent, the same problem is observable in the private sector, particularly under the Public-Private Partnerships in the mining sector. According to OECD⁵⁶ (2016), there are corruption risk factors specific to each value chain of the extractives, and there are also several corruption risk factors that are of cross-cutting relevance common to all of the EI value chain. For example, these include: weaknesses in the anti-corruption legal and judicial system, high politicization and discretionary power in decision-making processes, inadequate governance of the extractive sector, gaps and discrepancies in corporate due diligence procedures and opacity on beneficial ownership.

It is a web of corrupt practices at different levels, which leaves citizens of these countries as the ultimate losers and highly impoverished. One respondent stated that *“when it comes to extractives, there is feeling citizens are not benefiting. Foreign companies come and mine the resources and take them away.”* There is a consensus among respondents that citizens are being shortchanged. A former Member of Parliament argued that

Continued on next page >

⁵⁵ Bryan, S and B. Hofmann (2007) Transparency and Accountability in Africa’s Extractive Industries: The Role of the Legislature Washington, DC: National Democratic Institute for International Affairs

⁵⁶ Organization for Economic Co-operation and Development (2016). *Corruption in the Extractive Value Chain: Typology of Risks Mitigation Measures and Incentives*

“we don’t have much to show for all the mineral wealth. Whether it is because we are not getting as much revenue as we should get because of corruption in that area or whether the revenues that end up with government are not properly utilised, one is not very sure.” This is consistent with the observation made by Chuhan-Pole, Dabalen and Land⁵⁷ that although the resource boom has underpinned growth in Africa’s commodity producers, it has been less successful in improving people’s welfare.

The complex and opaque nature of the mining industry is another major theme that emerged during the study. Bryan and Hofmann⁵⁸ submitted that effective oversight of the extractives industries is further complicated by a common perception held by legislators themselves that the industry’s technical complexity is beyond their comprehension. A respondent affirms this position that *“Parliament’s understanding and appreciation of the issues is very low, so they are unable to do much.”* Another factor responsible for this perception is because the mining industry in most African countries is shrouded in secrecy. A former Member of Parliament observed when *“you look at how some of the mining companies operate, transparency seems to be an issue – when you look at the declaration of revenues, how concessions are acquired, you cannot rule out corruption. The whole process is shrouded in secrecy.”* Similarly, another respondent observed that mining contracts or processes leading to the signing of these agreements are usually not accessible or open to the public. As a result, *“citizens are not privy to whatever compromises that might have been made. There have been contracts that had stability clauses that protected the interest of mining companies more than that of the nation or the host community.”* A respondent summed it up by saying that a *“lack of transparency in the processes for awarding concessions is a major problem in the mining industry. There seems to be a lot happening that people are not aware of. For instance, you sometimes hear of lands reserved for small-scale mining going to large-scale mining companies, and you wonder how that came about.”* Another respondent concluded that *“whatever contracts the government signed, is on behalf of the people. Hence, there should be no secrecy in contracts that involve public interest. Therefore, every contract should have the blessing of the Parliament because Parliament is the organ that represents people’s interest.”* According to OECD⁵⁹, the asymmetry of information between the negotiating parties as well as the lack of transparency in contract negotiations constitute major risk factors for corruption in the negotiation phase. They further stated that non-transparent negotiations provide the ideal setting for the exchange of abnormal and non-traceable cash payments either as fees or commissions.

Another key finding from this study is that the complex/opaque nature of the mining industry provides incentives for some of the sector’s stakeholders to shut out the public (including parliaments) from knowing what exactly is going on in the industry, thereby preventing effective public scrutiny and participation in the management of natural resources. Rosenblum and Maples⁶⁰ argue that contract transparency is critical to addressing better resource management. Given the history of corruption and mismanagement in the extractives sector, there are increased calls for more transparency and accountability in the sector. With extractives contracts publicly available, government officials will have a strong incentive to stop negotiating

Continued on next page >

⁵⁷ Punam Chuhan-Pole et al. (2017). *Mining in Africa: Are Local Communities Better Off?* Washington, DC: Africa Development Forum and the World Bank

⁵⁸ Bryan, S and B. Hofmann (2007). *Transparency and Accountability in Africa’s Extractive Industries: The Role of the Legislature* Washington, DC: National Democratic Institute for International Affairs 2007

⁵⁹ Organization for Economic Co-operation and Development, (2016). *Corruption in the Extractive Value Chain: Typology of Risks Mitigation Measures and Incentives*

⁶⁰ Rosenblum, P. and S. Maples (2009). *Contracts Confidential: Ending Secret Deals in the Extractive Industries* Revenue Watch Institute

bad deals due to corruption, incompetence, or otherwise. More importantly, citizens will better understand the complex nature of extractive agreements if they are out in the open and explained by the contract parties.

Thus, the third theme that emerged from the study is the **lack of implementation of existing laws/regulations** that govern corrupt practices. Various laws against corruption exist in the three countries studied. For example, Ghanaian anti-corruption law is contained in the Criminal Code, which criminalizes active and passive bribery, extortion, willful exploitation of public office, use of public office for private gain and bribery of foreign public officials (Business Anti-Corruption Portal-GAN). Similarly, the interim Parliament of Burkina Faso, under the National Transitional Council (TNT), passed an anti-corruption law in 2015. Under the new legislation, as well as any gifts or donations received while in office. In Tanzania, there is Prevention and Combating of Corruption Act (PCCA) passed in 2007.

The problem, therefore, is not a lack of laws but non-implementation of the various anti-corruption laws and other regulations guiding the mining industry. According to a Member of Parliament from Burkina Faso, *“government has set up structures such as the Court of Auditors, and the Superior authority of State Control to fight against corruption. These structures are responsible for controlling the management of public finances. The government also presented a Bill on the definition and punishment of corruption which was passed by the Parliament. However, the implementation of the Act is what is lacking.”* Another respondent observed that *“There are so many laws that tell you what not to do but do not spell out what happens if you do it. There is a very weak sanctions regime and very weak oversight mechanisms.”* One respondent explained that there are several government initiatives such as appropriate laws, public sensitization, various sanction regimes and monitoring mechanisms: *“These measures exist, and they are sufficient to control corruption, but unfortunately, they are not properly implemented.”*

Another respondent believed that enforcement of existing regulations would make a huge difference in the fight against corruption. He argues, *“enforcement is key in the fight against corruption because it impacts everything that is done. Ghana has an anti-corruption action plan with a three-prong approach of education, prevention and enforcement. Enforcement has to do with investigating and prosecution. But the focus has largely been on prevention and education. But prevention is only effective if you’re able to enforce it. So, if people see those who are corrupt walking around freely, then it becomes attractive. There is a need to ensure that corrupt people are prosecuted and proceeds from corrupt acts are confiscated. That will serve as the lessons and deterrent.”* Similarly, a CSO leader in Tanzania observed that *“We have sufficient laws to deal with corruption, but the problem is lack of implementation.”* Unfortunately, in some countries, parliamentarians are the ones behind flouting engendered anti-corruption laws they helped create, such as the Leadership Code (2002 as amended in 2017) in Uganda and Asset Declaration Code in Nigeria. For instance, in Nigeria, the Senate President was charged to court over false assets declaration since 2015; the case is still before the country’s Supreme Court⁶¹.

⁶¹ The Guardian, Supreme court fixes July 6 for ruling on false assets declaration charges against Saraki.
<https://guardian.ng/news/supreme-court-fixes-july-6-for-ruling-on-false-assets-declaration-charges-against-saraki/>

In view of the huge gap that exists between anti-corruption laws and their implementations, a Member of Parliament advocates for strong enforcement regimes rather than focusing on enacting new legislation. He stated that *“Beyond having the laws, we should seek to enforce them. If companies know there is a price to pay, they will not be tempted to pay bribes, etc. Deprivation makes room for people to accept bribes. If people are educated well enough that there are consequences, these things can be curbed.”* However, a respondent placed the blame for the non-implementation of the laws and regulations at the doorstep of implementing agencies, including Parliament. He submitted that *“We have laws, but the implementation is a problem. It is not a lack of laws. It is the weak implementation. This is when people should be looking in a particular way but choose to look another way because they have been bribed.”* This supports the finding of Stapenhurst et al.⁶² that it is not a lack of laws that is the problem; rather, it is the weak implementation of the laws. Similarly, NRG⁶³ observed in its *2017 Resource Governance Index* report that countries often fail to follow rules that do exist. The report stated that, on average, countries’ legal frameworks score 54 of 100 points, while in practice (implementation), countries score 45— an average difference of nine points. And this gap is even wider for countries exhibiting the worst overall governance of the extractive sector.

It is evident from our research that all three countries (included in the study) are striving hard to provide appropriate regulatory framework for the mining sector, including other anti-corruption laws and initiatives. For example, there is anti-corruption law in Burkina Faso, Ghana’s anti-corruption law is coded in the country’s Criminal Code and in Tanzania, there is the Prevention and Combating of Corruption Act (PCCA). However, having these laws in the books is not enough; they must be enforced. Unfortunately, many African Parliaments still operate like an appendage of the executive—they lack both administrative and financial autonomy as well as the guts required to take on the executive in the implementation (or lack of implementation) of the laws enacted by parliaments. In fact, most African parliaments are rubber stamps to proposals from the executive, including the most important development tool – the national budget. According to Bryan and Hofmann⁶⁴, weak legislative bodies cannot serve as counterweights to more powerful executives branches. They observed that in many African countries, legislatures are marginalized from decision-making processes and dissuaded from conducting oversight activities.

The fourth theme is the **absence of political will to confront the culture of corruption** in the extractives industries. Many respondents argue that, though there are several anti-corruption laws and regulations in the three countries, lack of political will to enforce these laws among elected officials is a major problem. A respondent from Tanzania observed that: *“Tanzania does not lack laws and regulations... What is lacking in this country, but which fortunately is being demonstrated right now with our current President, is leadership. The current President is making things happened. It is not because he has changed the country’s laws. No, it is because of strong political will and desire for change”* Another interviewee from Ghana stated that the *“culture of impunity, lack of political will to fight corruption and weak enforcement of anti-corruption laws”* are the bane of the fight against corruption. He argued that *“application of these laws and the implementation of various*

Continued on next page >

⁶² Stapenhurst, F. N. Johnston, and R. Pelizzo (2016). *The Role of Parliament in Curbing Corruption* Washington, DC: World Bank

⁶³ Natural Resource Governance Institute (2017) *Resource Governance Index*

⁶⁴ Bryan, S and B. Hofmann (2007) *Transparency and Accountability in Africa’s Extractive Industries: The Role of the Legislature* Washington, DC: National Democratic Institute for International Affairs 2007

reforms remain major challenges that could only be met with firm political will from governments.” Another respondent claimed that the *“issue of corruption often get politicized which makes it difficult to prosecute. For instance, the Access to Information Bill has been on the table for a long time. It never gets passed. Each side of the House always promises to pass it when they come into government, only to change their mind when they do come into government. Parliament unites only on issues that affect them directly.”* He concluded that *“It is evident that parliament is the major block standing in the way of the bill becoming law.”* A parliamentarian observed that the governance system in these countries also encourages executive dominance. *“The average parliamentarian is not looking for faults. The onus lies on opposition to do that, and often, people tend to look at it as political even when it is technical.”* He argues that until there is a complete separation of power between the executive and the legislature, there may not be any significant change in the fight against corruption. According to Bryan and Hofmann⁶⁵, many African legislatures have little independence from more powerful executives and ruling political parties, and they also have limited political will to carry out their legislative oversight functions without fear. This confirms the finding of Stapenhurst et al.⁶⁶ that argued that anti-corruption laws are largely unenforced, and this seems to reflect a lack of political will among some key influential bureaucrats and politicians to combat corruption.

Fifthly, **conflicts of interest** are another important theme identified as an obstacle to effective oversight of the mining industry by legislators and government officials. A Member of Parliament from Ghana observed that *“Political parties reward members with appointments. Almost all public service appointments are made by the President. Even MPs are serving on Boards which is wrong because these are entities parliament is supposed to oversee.”* However, this same problem was addressed in Tanzania by preventing MPs from serving on boards of State-Owned Enterprises – *“This presents a conflict of interest as MPs cannot perform oversight functions over government organizations where they are serving as Board members, so we stopped this practice,”* said a former MP. Participants also pointed out that it was difficult for people to separate their private lives from their public lives. For instance, *“there have been many examples of people in high offices who have allowed family ties and relationships to affect their judgement... they always allow personal ties and personal interests to override the public interest.”*

The study also reveals that there is a wide spread of compromise among the local chiefs. For instance, a respondent observed that *“some of the chiefs had become sub-contractors for the mining companies making it difficult for them to stand firm when they have to defend the interest of the community.”* There are instances where the government agency (Customs Division) responsible for assessing the volumes of mineral exported is compromised by mining companies. One of the respondents reported that *“There was an instance where the individual posted by the Customs Service was housed by the mining company, relied on their canteen for meals and spent a great deal of time in their company. It would be difficult for such a person to be objective.”* Unfortunately, Members of Parliament are not immune to this problem as well. One of the respondents gave an example of a *“case where the local MP was a member of the Board of the mining company operating in his constituency because Ghanaian MPs could sit on private Boards provided they declare.”*

⁶⁵ Op cit.

⁶⁶ Stapenhurst, R. E. Sarigollu, M-S Jo, F. Karakas, and R. Draman (2017). *The Supply and Demand Sides of Corruption: Canadian Extractive Companies in Africa*. Journal of Canadian Foreign Policy Vol 23, No. 1

There are generally low levels of **public trust in parliament**. For instance, the 2016 Afrobarometer⁶⁷ study indicated that fewer than half of respondents (48%) across African countries affirmed that they trust their Parliament. The study indicated that trust in Parliament varies considerably across countries, with more than seven in 10 Tanzanian citizens trusting their MPs “somewhat” or “a lot.” Overall, however, among the 18 countries tracked by the study since 2005/2006, trust in Parliament has decreased by five percentage points, with trust decreasing sharply in Ghana (by -32 percentage points). Bryan and Hofmann⁶⁸ argued that concern over standards of ethics in public office is one reason for widespread skepticism about legislators’ capacity and will for improved transparency and accountability in the extractive industries. They therefore advocated for improved ethical conduct among legislators to build public confidence and increase legitimacy. As they represent citizens, “members of parliament need to reflect the ethical standards of their community, be exemplary in performing their mandate and adhere to the highest standards of integrity. This is a pre-requisite for promoting/restoring trust in the institution which is often perceived as one of the most corrupt institutions in many countries of the world”⁶⁹.

Conclusions

This article presents the findings of an exploratory study that examines the roles of parliament in reducing corruption, particularly from the demand side. In the study, we set out to answer these three questions:

- i. Can parliamentary oversight reduce corruption in the mining industry?
- ii. What is parliament doing to stop the corruption in the mining industry?
- iii. And what do parliaments need to do in collaboration with civil society organizations to address this problem?

Findings from this study conclude that ‘Parliament Matters’ across the whole spectrum of the extractives industries value chain in the fight against corruption, particularly in the mining sector. Parliamentarians are people’s representatives, and they must always serve and protect the interests of their constituents. Hence, it is their responsibility to ensure sustainable and judicious use of natural resources that belong to the people. Nevertheless, this can only be achieved through a multi-stakeholder approach, particularly when Parliaments work closely or collaborate with other demand-side actors in the accountability ecosystem, such as civil society organizations, the media, Supreme Audit Institutions, anti-corruption agencies, national secretariats of EITI and other external actors. Effective legislative engagement creates a multiplier effect, reinforcing the efforts of civic groups and others to improve the management of extractives industries⁷⁰. Similarly, civil society’s active engagement in the EITI has been described as critical to ensure that the broader public has

Continued on next page >

⁶⁷ Afrobarometer 2016: *Job performance of MPs, local councillors: Are representatives serving voters or themselves?*

<http://afrobarometer.org/press/job-performance-mps-local-councillors-are-representatives-serving-africas-voters-or-themselves>

⁶⁸ Bryan, S. and B. Hofmann (2007) *Transparency and Accountability in Africa’s Extractive Industries: The Role of the Legislature* Washington, DC: National Democratic Institute for International Affairs 2007

⁶⁹ Transparency International (2016) *Corruption Perception Index* http://www.transparency.org/news/feature/corruption_perceptions_index_2016

⁷⁰ Bryan, S and B. Hofmann (2007) *Transparency and Accountability in Africa’s Extractive Industries: The Role of the Legislature* Washington, DC: National Democratic Institute for International Affairs 2007

access to information about the payments and transfers made from extractives industries. By empowering civil society with information about extractives revenues, it can hold companies and the government accountable⁷¹. Good governance of the extractives sector requires participation, transparency and accountability across the EI value chain. Therefore, parliaments and parliamentarians must seek collaboration with multi-stakeholder organizations or groups active in this space to address challenges of corruption in the extractives industries.

Parliamentarians must also be very conversant and effective in their financial oversight of the extractives sector. In particular, they need to acquire the knowledge and skills required to monitor and validate government estimates and forecasts of the EI revenues included in the annual budget. In addition, Parliament needs to develop internal mechanisms, tools and skillsets to participate effectively in ensuring that revenues from the sector are properly accounted for, optimized and deployed appropriately for current and long-term sustainable development purposes⁷². One of such tools is the establishment of a Parliamentary Budget Office (PBO), which assists parliamentarians in analyzing the national budget in an objective and non-partisan manner and forecast revenues from the extractives industries. The establishment of a PBO will help African parliaments overcome these institutional barriers such as lack of information, inexperience of legislators, and excessive executive dominance, among others. On the other hand, such an institution will enhance parliaments' credibility and promotes accountability⁷³. Finally, further research is needed to examine evidence of what works and what did not work through legislative engagements in the oversight of extractive industries. There is a major knowledge gap around this issue, and a systematic assessment of the roles of legislatures in curbing corruption throughout the EI values chain is suggested to better understand this phenomenon.

⁷¹ World Bank Group. (2015). Annual Report Extractive Industries Transparency Initiative-Multi-Donor Trust Fund (EITI-MDTF).

⁷² World Bank Group. (2016). Guide to Effective Parliamentary Financial Oversight of the Extractives Industries

⁷³ World Bank (2013). Parliamentary budget offices and extractive revenues. A presentation at the Global Conference on Parliament and Extractive Industries in Vienna.

References

- Afrobarometer 2016: *Job performance of MPs, local councilors: Are representatives serving voters or themselves?* <http://afrobarometer.org/press/job-performance-mps-local-councillors-are-representatives-serving-africas-voters-or-themselves>
- Barkan, J. *Legislative Power in Emerging African Democracies*. Lynne Rienner Publishers Inc. Colorado, 2009.
- Beetham, D., Deveaux, K., Heller, N., & Laberge, M. (2014). *Anti-Corruption Assessment Tool for Parliamentarians*. A publication of GOPAC and UNDP.
- Besada, H., & Martin, P (2013). *Mining Codes in Africa: Emergence of a “Fourth” Generation?* A research report of the North-South Institute.
- Beyerle, S. (2014). *Curtailling Corruption People Power for Accountability and Justice*. Lynne. Rienner Publishers Inc.
- Bonkougou, Mathieu (2015) “Burkina passes corruption law required for World Bank support.” Reuters March 4, 2015 <http://in.reuters.com/article/burkina-politics-worldbank-idINKBN0M013B20150304>
- Brouwer F., Haytayan L., & Smitham L. (2014). *EITI: A parliamentary tool for extractive sector governance in Liberia and Yemen*. A publication of NRGi.
- Bryan, S., & Hofmann, B. (2007). *Transparency and Accountability in Africa’s Extractive Industries: The Role of the Legislature*. National Democratic Institute for International Affairs (NDI).
- Chuhan-Pole, P. Dabalen, A., & Land, B. (2017) *Mining in Africa: Are Local Communities Better Off?* Washington, DC: Africa Development Forum and the World Bank
- Economic Commission for Africa (2016) *Optimizing Domestic Revenue Mobilization and Value Addition of Africa’s Minerals: Towards Harmonizing Fiscal Regimes in the Mineral Sector*
- EITI FACTSHEET. (2017) “*The global standard for the good governance of oil, gas and mineral resources*.”
- Ernst & Young. (2012) *Managing bribery and corruption risks in the mining and metals industry*.
- Global Organization of Parliamentarians Against Corruption. (2005) “*Controlling Corruption: A Parliamentarian’s Handbook*.” A publication of GOPAC.
- Kaufmann, D. *Corruption Matters*. (2005) in *Finance & Development*. September 2015, Vol. 52, No. 3
- King, N., & Horrocks, C. (2010) *Interviews in Qualitative Research*. Thousand Oaks.

Continued on next page >

Lieberman, E. (2005) Nested Analysis as a Mixed-Method Strategy for Comparative Research, *American Political Science Review*, 99(3), pp. 435–52.

McMahon, F., & Cervantes, M. (2012). Survey of Mining Companies 2011/12. Vancouver, BC: The Fraser Institute

Mohammed, A. (2011). *Supporting Ghana's Parliament for Good Governance in the Extractive Sector*. Parliamentary Centre

[Moolman, V. \(2016\). "African mining has potential to grow stronger." Mining Weekly, July 8, 2016. \[http://www.miningweekly.com/article/african-mining-has-potential-to-grow-stronger-2016-07-08/rep_id:3650\]\(http://www.miningweekly.com/article/african-mining-has-potential-to-grow-stronger-2016-07-08/rep_id:3650\) accessed December 12, 2017](http://www.miningweekly.com/article/african-mining-has-potential-to-grow-stronger-2016-07-08/rep_id:3650)

Natural Resource Governance Institute. (2017) *Resource Governance Index*.

Organization for Economic Co-operation and Development. (2016) *"Corruption in the Extractive Value Chain: Typology of Risks Mitigation Measures and Incentives."*

Robson, C. (2002) *Real World Research 2nd edition* (Malden, MA: Blackwell).

Rosenblum, P., & Maples, S. (2009). *"Contracts Confidential: Ending Secret Deals in the Extractive Industries"* Publication of Revenue Watch Institute.

Stapenhurst, R., Sarigollu, E., Jo, M., Karakas, F., & Draman, R. (2017) *The Supply and Demand Sides of Corruption: Canadian Extractive Companies in Africa*. Journal of Foreign Policy.

Stapenhurst, R. (2011). *Legislative Oversight and Curbing Corruption: Presidentialism and Parliamentarianism Revisited: Thesis for the degree of Doctor of Philosophy at the Australian National University*.

The Guardian 2018, Supreme court fixes July 6 for ruling on false assets declaration charges against Saraki. <https://guardian.ng/news/supreme-court-fixes-july-6-for-ruling-on-false-assets-declaration-charges-against-saraki> accessed on April 25, 2018

Transparency International. (2016). *Corruption Perception Index 2016* http://www.transparency.org/news/feature/corruption_perceptions_index_2016

Transparency International, Corruption Perception Index 2017 https://www.transparency.org/news/feature/corruption_perceptions_index_2017 accessed February 3, 2018

Transparency International (2017) *What Works in Working with Parliaments Against Corruption?* (U4 Anti-Corruption Resource Centre) accessed on January 5, 2018

Continued on next page >

Wang, V. (2005). *The Accountability Function of Parliament in New Democracies; Tanzanian Perspectives* Christer Michelsen Institute Working Paper 2005:2 Bergen, Norway

World Bank. (2013). *Parliamentary budget offices and extractive revenues*. A presentation at the Global Conference on Parliament and Extractive Industries in Vienna.

World Bank Group. (2015). *“The Power of the Mine: A Transformative Opportunity for Sub-Saharan Africa”*

World Bank Group. (2015). *Annual Report Extractive Industries Transparency Initiative-Multi-Donor Trust Fund (EITI-MDTF)*.

World Bank Group. (2016). *Guide to Effective Parliamentary Financial Oversight of the Extractives Industries*.

World Bank Group. (2017). *Connecting Voices: Corruption and Development*.

World Bank Group. (2017). *“Doing Business 2017. Equal Opportunities for All. Regional Profile 2017”* South Saharan Africa (SSA).



Appendix 1: Key Informant Questionnaire

Semi-structured Interview Protocol for Government Officers/Leaders/Parliamentarians

1. Interviewee and the Organization:

1. Interviewee general information: Age, sex, demographics; job and position, years and experiences in Government & Parliament (e.g. Minister; Chair of committees)
2. Basics about the organization: ministry/agency; parliament
3. Organizational culture, values and how they are related to the foreign mining corporations; attitudes toward business ethics, corporate social responsibility, and corruption

2. Experiences/Perceptions of Corruption

Local context

4. How would you define or describe corruption in the business environment?
5. Perceptions about foreign mining companies and the challenges of dealing with/overseeing foreign mining operations

Probe into perceptions/experiences of corruption in the local context

6. Experiences/perceptions of foreigners in this sector
7. Experiences/perceptions of corruption in the in this sector
8. Experiences/perceptions of corruption regarding public-private sector relationships in this sector
9. Experiences/perceptions of corruption regarding the mining sector and mining operations

Narratives of corruption

10. Any experiences/moments in daily life that you have encountered cases/instances of corruption/bribery? Please explain.
11. Any instances/experiences where you have had to make tough choices?
12. How do you make decisions when ethical/moral obligations clash with pragmatic realities of doing business in this context?
13. Any cases where your Ghanaian (Burkinabe/Tanzanian) identity/values clashed with the foreign mining company?

3. Reducing/Preventing Corruption

14. Structural challenges in preventing/reducing corruption?
15. How do you try to prevent or reduce corruption?

Continued on next page >

16. How do you try to prevent or reduce corruption as an individual?
17. What government initiatives/policies are there to prevent/reduce corruption?
18. Does the EITI make a difference in the way foreign mining companies operate in your country?

4. Corporate Social Responsibility

19. Are you aware of any CSR principles/policies/projects by foreign mining companies? Please describe.
20. How do foreign mining companies contribute to the lives of local communities here?
21. Do you think CSR practices help in reducing/preventing corruption in the local context? How?

Appendix 2: Focus groups Protocol

1. Introductions:

1. Attendants' introduce themselves/meet each other
2. General knowledge/perceptions about the company and its local practices
3. Probe into attitudes toward salient local issues (perhaps ask about recent cases/events involving business ethics, social responsibility, and corruption topics – such as a recent mining accident or a demonstration of miners)

2. Experiences/Perceptions of Corruption

4. Experiences/perceptions of corruption in this country

3. Reducing/Preventing Corruption

5. How would you try to prevent or reduce corruption?

4. Corporate Social Responsibility

6. How does this company contribute to the lives of local communities here?
7. Do you think CSR practices help in reducing/preventing corruption in the local context? How?



*Parliamentary Oversight In Extractive Industries (2)*⁷⁴

Oladeji Olaore and Rick Staphenhurst⁷⁵

⁷⁴ <https://www.tandfonline.com/doi/full/10.1080/11926422.2016.1250655>

⁷⁵ Emine Sarigollu, Myung-Soo Jo, Fahri Karakas, and Myriam Ertz.

Chapter 9: Parliamentary Oversight of Extractive Industries⁷⁶

Virtually all of the countries examined in the case studies presented in Chapters 3 to 8 have significant mining and/or oil and gas industries. Ghana, for example, is a major gold exporter and has recently begun oil and gas production. Nigeria is an important oil exporter. Uganda and Tanzania have recently discovered oil and gas reserves and while mining is a relatively small part of Uganda's economy, gold mining, especially, is essential in Tanzania. Trinidad and Tobago is an oil and gas producer. Grenada is the sole exception.

This chapter presents a review of parliamentary oversight and extractive industries in two countries, Ghana and Tanzania, which were both parts of the British Academy's ACE project and of the separate research project, funded by Canada's Social Sciences and Humanities Research Council project, which examined corruption and Canadian mining companies operating in Africa. In so doing, this chapter seeks to answer the following questions: How can parliamentary oversight reduce corruption in the mining industry? What are the parliaments of Ghana and Tanzania doing to reduce the corruption in the mining industry? Could they do more, and if so, what?



⁷⁶ This Chapter summarizes and updates the article "Parliamentary Oversight and the Extractives Industries" in *Journal of Anti-Corruption Law*, 2018 Vol. 2 pp. 1-30, written by the authors with Rasheed Draman,

Background

Africa has experienced a boom in extractive industries since the beginning of this century. The substantial growth in Africa's natural resource exports—ranging from hydrocarbons such as oil and natural gas to minerals such as gold, copper, and iron ore—significantly contributed to the remarkable turnaround in the economic growth trajectory of the continent (Chuhan-Pole, Dabalan, and Land, 2017).

According to the Economic Commission for Africa (2016), natural resource endowment represents one of the best ways of mobilizing revenues for Africa's economic growth and development. The minerals and metals sector contributes to over 20 percent of Africa's overall economic output, and even in currently depressed markets, the extractive sector remains a highly significant source of fiscal revenues for many countries (Moolman, 2016). As a result, many international mining companies are expanding their exploration and operations in Africa. While this development is a boom to many African countries, it is not without problems: the oil and gas and mining industries are the fourth and fifth most corrupt industries globally, after public works and construction, utilities and real estate, property, legal and business services (Transparency International, 2011).

Extractives companies face many challenges on the continent, including government patronage, requests to consider local third-party agents or vendors and applications for employment. These requests, especially when associated with a decision by a government official, carry an elevated risk as the official might have an undisclosed interest. Indeed, some mining and metals companies have felt forced to sign deals which 'compensate some interested third parties, to be able to do business' (Ernst and Young, 2012). However, is corruption a necessary evil? A review of Transparency International's Corruption Perceptions Index over the past decade reveals that some African countries, such as Rwanda, Namibia, Senegal, Burkina Faso, and Togo, have made considerable progress in curbing corruption, while others such as Ghana, Gambia, Angola, Uganda, and Malawi have slipped back (Transparency International, 2016).

While the role of Parliament is critical in overseeing the executive and ensuring the effective implementation of the anti-corruption laws, the implementation of such laws is beyond the remit of Parliament alone. This poses a serious challenge to the oversight function of Parliament. Parliament must address some relevant issues such as conflicts of interest, nepotism, and statutes of limitation - not only to provide for the necessary punitive measures but also to promote a regulatory and social environment adverse to corruption.

According to Draman (2017), active and effective committees are an essential indicator of Parliament's role in fighting corruption. For instance, in Ghana, while oversight committees meet regularly and have been somewhat active when it comes to uncovering corruption, that activism has not translated into effective oversight. Furthermore, Ghana's maturing political culture has often been compromised by excessive partisanship that hinders the work of the Legislature. This partly explains the weakness of committees in providing effective oversight and fighting corruption despite their activism. Similarly, Tritiku, in Chapter 5, observed that in the Parliament of Uganda, legislative committees are effective in uncovering fraud

Continued on next page >

and corruption, but at other times, the reports of the committees are shelved without debate or the recommendations are not implemented. The situation is also complicated by the fact that Uganda has adopted the 'multi-agency model' of the Anti-corruption commission, i.e., some offices that are autonomous but together weave a web of agencies to fight corruption. Though there is no clear-cut anti-corruption agency, there are many institutions that collectively make the anti-corruption set-up in the country, albeit operating in a parallel manner. They include the Ombudsman known as the Inspector General of Government (IGG) Parliament, Auditor General, police and the anti-corruption court.

There is little research on how legislative oversight can help reduce corruption, in general, and legislative oversight of corruption in the extractives sector in particular. In this chapter, we consider the following questions: How can parliamentary oversight reduce corruption in the extractives industries? What are the parliaments of Ghana and Tanzania doing to reduce the corruption in the mining industry? Could they do more, and if so, what? We look specifically at some of the tools and mechanisms that parliaments have in reducing corruption. We present the research findings, answer the questions noted above and make some recommendations and conclusions.

Literature Review

Corruption in the value chain of extractives is a serious impediment to development. While there have been increased efforts to improve transparency and accountability in the management of revenues from the extractive industry (see below), little attention has been placed on the roles of elected representatives.

Ernst & Young (2012) observed an increasing level of global legislative and enforcement alignment on anti-corruption laws. Their report indicated that "the number and severity of overseas anti-bribery and anti-corruption laws and the increasing scope of their reach are increasingly influencing not only the resources sector but corporations conducting business outside their home markets" (2012). Similarly, Barkan (2009) argued that legislatures are mechanisms for achieving both vertical and horizontal accountability of the rulers to the ruled. In general, parliaments seem relatively good at enacting anti-corruption legislation but weak in overseeing the implementation of such legislation. Stapenhurst, Ulrich and Strohal (2006) observed that parliamentarians could further explore their representative role as an essential instrument for building integrity in public governance by engaging their constituents on matters of public policy, such as corruption; this is examined further in Chapter 12.

As part of their legislative mandate, parliaments are responsible for ensuring that there is a sound legal framework in place to curb corruption. This not only involves passing national legislation that tackles corruption but also lobbying national governments to ratify relevant international instruments such as the United Nations Convention against Corruption (Transparency, 2017). Beetham, Deveaux, Heller, and Laberge (2014) went further and submitted that parliaments and parliamentarians could also play active roles in the establishment and strengthening of relevant national anti-corruption body/bodies.

One crucial area where many African parliaments are active is the review of various mining codes. Besada and Martin (2013) stated that in Africa, over 30 countries passed new legislation between 1990-2000 to regulate the mining industry, and many changes have also occurred between 2000-2010. However, they observed that many of these reforms were directed towards attracting greater foreign investment through decreased regulation, liberalized social and labor policies, and more private sector-friendly ownership and taxation schemes rather than to ensure transparency and accountability.

Bryan and Hofmann (2007) note that a robust *committee system* is critical for effective legislative involvement in lawmaking and executive oversight, as well as a platform for citizen engagement. Parliamentary committees are empowered to, among other things, enact laws that govern the operations of the extractives sector, hold public hearings, conduct outreach visits, engage with citizens and communities, and conduct effective oversight. For example, the Ghanaian Parliament has a Mines and Energy Committee, and the Nigerian National Assembly has committees on oil and gas, as well as a committee on solid minerals. While all these committees perform some level of oversight, all the legislatures studied in this book have established specialized audit or Public Accounts Committees, which work closely with the Auditor General. In some legislatures, such as Nigeria, anti-corruption committees have also been established to work closely with anti-corruption agencies (see Chapter 4).

It was noted in Chapters 3-8 that many parliaments have also set up *special commissions of inquiry*, or investigation committees, to examine issues of public concern and make recommendations on current and future policies and legislation. Such commissions are time-bound, and their subjects typically cut across the responsibilities of several government agencies or departments and several parliamentary committees. Such commissions are usually empowered to summon witnesses to testify under oath, including officials of the executive branch, demand documents and order on-site inspections. Countries that have established such commissions to examine corruption include Nigeria and Ghana (see Chapters 3 and 4). Though most of these special committees uncovered fraud and corruption, many of the culprits were never prosecuted either by anti-corruption agencies or the police. For example, in 2012, the Nigerian House of Representatives set up an Ad-hoc Committee to investigate the government's implementation of fuel subsidy. This committee uncovered massive corruption in the federal government's application of the fuel subsidy. The committee found that the subsidy regime, as operated between the period under review (2009 and 2011), was fraught with endemic corruption and entrenched inefficiency. The committee made several recommendations (including prosecutions and recovery of a huge amount of funds) to the Nigeria Economic and Financial Crimes Commission (EFCC) - an anti-corruption agency. Unfortunately, six years after the report of the committee had been tabled at the National Assembly, the EFCC and the courts have not jailed any of the indicted individuals⁷⁷. Many of the cases are still pending in courts. Similarly, Draman (Chapter 3) observed that while Parliamentary committees in Ghana are relatively effective in uncovering fraud and corruption, they have not been effective in ensuring that once cases of fraud and corruption are uncovered, sanctions are meted out to those found culpable by the country's anti-corruption agency and the courts.

⁷⁷ Nigerian House of Representatives, Report of Ad-Hoc Committee on Fuel Subsidy (RESOLUTION NO. HR.1/2012)

Despite the constitutional provisions that empower parliaments to act as an important catalyst in the fight against corruption, many parliamentarians still face serious challenges in fulfilling their roles and responsibilities. Bryan and Hofmann (2007) observed that African legislators face many constraints in fulfilling their roles and responsibilities, including *weak individual and institutional capacity, little independence from more powerful executives and ruling political parties*, and, perhaps most significantly, limited political will. They also stated that oversight of the extractive industries is further complicated by a common perception held by many legislators themselves that the industry's technical complexity is beyond their comprehension. Bryan and Hofmann (2007) submitted that when faced with proposals from well-informed or connected executive branch agencies or officials, legislators often lack both the *information* and the confidence to influence legislation, policy or management of the extractive industries.

The Extractive Industries Transparency Initiative (EITI) was set up by governments, companies and civil society organizations in the shared belief that natural resource wealth should benefit citizens, and this requires high standards of transparency and accountability. The EITI Standard requires governments to publish timely and accurate information on critical aspects of their natural resource management, including how licenses are allocated, how much tax and social contributions companies are paying and where this money ends up in the government at the national and regional level. By so doing, legislators, along with governments and citizens, increasingly know who is operating in the sector and under what terms, how much revenue is being generated, where it ends up and whom it benefits (EITI, 2017).

According to Brouwer, Haytayan, and Smitham (2014), one of the critical roles of parliamentarians is to help improve policy and initiate reforms in the extractive sector and help oversee EITI compliance by companies and governments.

Various assessments of the capability of African parliaments to undertake oversight show that they are at different levels of engagement in ensuring transparency and accountability in the management of natural resources in their respective countries (Mohammad, 2011). In addition to having the oversight tools and mechanisms noted above, their ability to conduct oversight also depends on the prevailing political climate, the capacity of the parliamentarians, the level of development of legislative institutions, the educational background of parliamentarians, the financial resources available to parliaments and political will of the elected representatives in each country. A few parliaments are striving to play more active roles in providing effective oversight of the extractives sector, while others are constrained by a lack of financial and administrative autonomy from government and excessive executive dominance of the polity.

Parliamentary Oversight and Extractives Industries in Africa

Olaore and Stapenhurst (2018) presented the key findings from the SSHRC-funded project, which confirmed that corruption is pervasive in African countries' mining sectors and that parliaments (as bodies of elected representatives of the people) have an essential role to play in curbing corruption in the extractives industries.

Parliaments have three essential functions – to enact new laws or amend the existing legislation (lawmaking), to serve as representatives of the people (representation) and to oversee the activities of the executives (oversight). Similarly, in the management of natural resources, parliaments must ensure that there are appropriate (and updated) legal frameworks guiding the extractive industries, legislators must have regular dialogues and consultations with citizens throughout the extractives industries (EI) value chain, and they must provide sufficient oversight over management and effective utilization of revenues from extractives industries. However, the research also showed that African Parliaments are constrained by weak institutions and lack of capacity among the Members and parliamentary staff, an absence of political will, conflict of interests, lack of financial autonomy and the complex nature of extractives industries, among others.

While examining the roles of a legislature in curbing corruption in the mining sector and the extractives industries in general, Olaore and Stapenhurst (2018) came up with five critical themes.

The first is a **weak institutional capacity of legislators and legislatures**. A common feature among African legislatures is that the majority of legislators are inexperienced, and they are operating within weak institutions. Bryan and Hofmann (2007) observed that weak legislative bodies could not serve as counterweights to more powerful executive branches. A Ghanaian Member of Parliament stated that often, *“the issue boils down to lack of capacity. Most MPs do not have the background to understand the contracts, but they still get approved on the floor of the House.”* For example, when the power plant contract was to be considered by the Energy and Finance Committees, the MP said, *“most committee members attested to not understanding the terms of the contract, but the parliament still approved the report.”* This is a standard practice among African Parliamentarians; they do not possess the technical knowledge required to critically examine the mining contracts or documents that come before them for ratification.

Similarly, many respondents referred to the same problem in Tanzania - *“Lack of capacity, knowledge, and understanding of the extractive sector by the Parliamentarians are major challenges. You have members of the Mining Committee who do not understand the mining sector, and they do not have any technical staff to assist them in conducting research and analysis of the sector. On top of this, Parliamentary Committees are reshuffled every two and a half years. How do you retain and sustain the technical knowledge of the industry in this manner?”* noted a CSO leader. Bryan and Hofmann (2007) observed that this phenomenon cut across African Legislatures, and they confirmed that African legislators face many constraints in fulfilling their roles and responsibilities, including weak individual and institutional capacity.

In some cases, institutional constraints prevent legislators from engaging effectively in the extractives industries. For example, an elected representative observed that Parliament has minimal role or influence in negotiating the mining contracts - *“negotiations are done between the Minerals Commission, the Sector Ministry and the Chamber of Mines. Parliament only ratifies it. So, all the works would have been done without the parliament’s involvement. By the time it gets to parliament, it is already a done deal. Most of these negotiations are even held outside the country, with the mining companies paying for government delegation. A lot of the mining contracts never even went to parliament.”* Part of the institutional challenge is the lack of resources. Most institutions mandated to fight corruption are not well-resourced nor independent.

Most respondents agreed that there is a massive corruption problem and lack of transparency in the mining/extractives industries. More importantly, corruption practices manifest at different phases and stages of the mining sector. One respondent said that *“the sector has different levels of corruption and different presentations of it.”* This could be from the granting of the concessions to contract negotiations and contract awards, compliance with the industry regulations, to the district assembly level and traditional chiefs. Another respondent confirms this notion that corruption in the mining sector is at different phases: *“This corruption is on several levels: firstly, at the issuance of mining titles level. Mining titles are often granted to mining officials in conditions where the political authorities receive huge sums and where the transparency in the management of these funds remains to be seen.”* According to this respondent, the same problem is observable in the private sector, particularly under the Public-Private Partnerships in the mining sector. According to OECD (2016), there are corruption risk factors specific to each value chain of the extractives, and there are also several corruption risk factors that are of cross-cutting relevance common to all the EI value chain. For example, these include weaknesses in the anti-corruption legal and judicial system, high politicization and discretionary power in decision-making processes, weak governance of the extractive sector, gaps and discrepancies in corporate due diligence procedures and opacity on beneficial ownership.

It is a web of corrupt practices at different levels, which leaves citizens of these countries as the ultimate losers and highly impoverished. One respondent stated that *“when it comes to extractives, there is feeling citizens are not benefiting. Foreign companies come and mine the resources and take them away.”* There is a consensus among respondents that citizens are being shortchanged. A former Member of Parliament argued that *“we do not have much to show for all the mineral wealth. Whether it is because we are not getting as much revenue as we should get because of corruption in that area or whether the revenues that end up with government are not properly utilized, one is not very sure.”* This is consistent with the observation made by Chuhan-Pole, Dabalén, and Land (2017) that although the resource boom has underpinned growth in Africa’s commodity producers, it has been less successful in improving citizen welfare.

The complex and opaque nature of the mining industry is another major theme that emerged during the study. Bryan and Hofmann (2007) submitted that effective oversight of the extractives industries is further complicated by a common perception held by legislators that the industry’s technical complexity is beyond their comprehension. A respondent affirms this position that *“Parliament’s understanding and appreciation of the issues are very low, so they are unable to do much.”* Another factor responsible for this perception is that the mining industry in most African countries is shrouded in secrecy. A former Member of Parliament observed that when *“you look at how some of the mining companies operate, transparency seems to be an issue – when you look at the declaration of revenues, how concessions are acquired, you cannot rule out corruption. The whole process is shrouded in secrecy.”*

Similarly, another respondent observed that mining contracts or processes leading to the signing of these agreements are usually not accessible or open to the public. As a result, *“citizens are not privy to whatever compromises that might have been made. There have been contracts that had stability clauses that protected the interest of mining companies more than that of the nation or the host community.”* A respondent summed

Continued on next page > **56**

it up by saying that *“lack of transparency in the processes for awarding concessions is a major problem in the mining industry. There seems to be a lot happening that people are not aware of. For instance, you sometimes hear of lands reserved for small-scale mining going to large-scale mining companies, and you wonder how that came about.”* Another respondent concluded that *“whatever contracts the government signed, are on behalf of the people. Hence, there should be no secrecy in contracts that involve public interest. Therefore, every contract should have the blessing of the Parliament because Parliament is the organ that represents people’s interest.”* According to OECD (2016), the asymmetry of information between the negotiating parties, as well as the lack of transparency in contract negotiations, constitutes major risk factors for corruption in the negotiation phase. They further stated that non-transparent negotiations provide the ideal setting for the exchange of abnormal and non-traceable cash payments either as fees or commissions.

Another key finding from this study is that the complex/opaque nature of the mining industry provides incentives for some stakeholders in the sector to shut out the public (including parliaments) from knowing what exactly is going on in the industry, thereby preventing effective public scrutiny and participation in the management of natural resources. Rosenblum and Maples (2009) argued that contract transparency is critical to addressing better resource management. Given the history of corruption and mismanagement in the extractives sector, there are increased calls for more transparency and accountability in the sector. With extractives contracts publicly available, government officials will have a strong incentive to stop negotiating bad deals due to corruption, incompetence, or otherwise. More importantly, citizens will better understand the complex nature of extractive agreements if they are out in the open and explained by the contract parties.

Thus, the third theme that emerged from the study is the **lack of implementation of existing laws/regulations** that govern corrupt practices. There exist various laws against corruption in the two countries studied. For example, Ghanaian anti-corruption law is contained in the Criminal Code, which criminalizes active and passive bribery, extortion, willful exploitation of public office, use of public office for private gain and bribery of foreign public officials (Business Anti-Corruption Portal-GAN). In Tanzania, there is Prevention and Combating of Corruption Act (PCCA) passed in 2007.

The problem, therefore, is not a lack of laws but the non-implementation of the various anti-corruption laws and other regulations guiding the mining industry. One respondent observed that *“there are so many laws that tell you what not to do but do not spell out what happens if you do it. There is a very weak sanctions regime and weak oversight mechanisms.”* Another respondent explained that there are several government initiatives such as appropriate laws, public sensitization, various sanction regimes, and monitoring mechanisms: *“These measures exist, and they are sufficient to control corruption, but unfortunately, they are not properly implemented.”*

Another respondent believed that enforcement of existing regulations would make a huge difference in the fight against corruption. He argues, *“Enforcement is key in the fight against corruption because it impacts everything that is done. Ghana has an anti-corruption action plan with a three-prong approach of education, prevention, and enforcement. Enforcement has to do with investigating and prosecution. However, the focus has largely been on prevention and education. But prevention is only effective if you can enforce it. So, if people see those who*

are corrupt walking around freely, then it becomes attractive. There is a need to ensure that corrupt people are prosecuted and proceeds from corrupt acts are confiscated. That will serve as the lessons and deterrent.”

Similarly, a CSO leader in Tanzania observed that *“We have sufficient laws to deal with corruption, but the problem is lack of implementation.”* Unfortunately, in some countries, parliamentarians are the ones behind flouting engendered anti-corruption laws they helped create, such as the Leadership Code (2002 as amended in 2017) in Uganda and Asset Declaration Code in Nigeria. For instance, in Nigeria, the Senate President was charged in court over false assets declaration since 2015; at the time of writing, the case is still before the country’s Supreme Court.

Given the huge gap that exists between anti-corruption laws and their implementations, a Member of Parliament advocates for strong enforcement regimes rather than focusing on enacting new legislation. He stated that *“Beyond having the laws, we should seek to enforce them. If companies know there is a price to pay, they will not be tempted to pay bribes, etc. Deprivation makes room for people to accept bribes. If people are educated well enough that there are consequences, these things can be curbed.”* However, a respondent placed the blame for the non-implementation of the laws and regulations at the doorstep of implementing agencies, including the Parliament. He submitted that *“We have laws, but the implementation is a problem. It is not a lack of laws. It is the weak implementation. This is when people should be looking in a particular way but choose to look another way because they have been bribed.”* This supports the finding of Stapenhurst et al. (2007) - it is not a lack of laws that is the problem; instead, it is the weak implementation.

Similarly, NRG (2017) observed in its *2017 Resource Governance Index* report that countries often fail to follow rules that do exist. The report stated that, on average, countries’ legal frameworks score 54 of 100 points, while in practice (implementation), countries score 45— an average difference of nine points. Moreover, this gap is even wider for countries exhibiting the worst overall governance of the extractive sector.

It is evident from both the British Academy ACE project and the SSHRC corruption and mining in Africa project that many countries are striving to provide an appropriate regulatory framework for the mining sector, including other anti-corruption laws and initiatives. For example, there is Ghana’s anti-corruption law coded in the country’s Criminal Code, while in Tanzania, there is the Prevention and Combating of Corruption Act (PCCA). However, having these laws in the books is not enough; they must be enforced. Unfortunately, many African Parliaments still operate as an appendage of the executive—they lack both administrative and financial autonomy as well as the guts required to take on the executive in the implementation (or lack of implementation) of the laws enacted by parliaments. Most African parliaments are rubber stamps of proposals from the executive, including the most crucial development tool - the national budget. According to Bryan and Hofmann (2007), weak legislative bodies cannot serve as counterweights to more powerful executive branches. They observed that in many African countries, legislatures are marginalized from decision-making processes and dissuaded from conducting oversight activities.

The fourth theme is the **absence of political will to confront the culture of corruption** in the extractives industries. Many respondents argue that, though there are several anti-corruption laws and regulations in the two countries, lack of political will to enforce these laws among elected officials is a significant problem. A respondent from Tanzania observed that: *“Tanzania does not lack laws and regulations... What is lacking in this country but is fortunately being demonstrated right now with our current President is leadership. The current President is making things happened. It is not because he has changed the country’s laws. No, it is because of strong political will and desire for change.”* Another interviewee from Ghana stated that the *“culture of impunity, lack of political will to fight corruption and weak enforcement of anti-corruption laws”* are the bane of the fight against corruption. He argued that *“The application of these laws and the implementation of various reforms remain major challenges that could only be met with firm political will from governments.”* Another respondent claimed that the *“issue of corruption often gets politicized, which makes it difficult to prosecute. For instance, the Access to Information Bill has been on the table for a long time. It never gets passed. Each side of the House always promises to pass it when they come into government, only to change their minds when they do come into government. Parliament unites only on issues that affect them directly.”* He concluded that *“It is evident that parliament is the major block standing in the way of the bill becoming law.”* A parliamentarian observed that the governance system in these countries also encourages executive dominance; *“The average parliamentarian is not looking for faults. The onus lies with the opposition to do that, and often, people tend to look at it as political even when it is technical.”* He argues that until there is a complete separation of power between the executive and the legislature, there may not be any significant change in the fight against corruption. This issue of political will is examined further in Chapter 11.

Fifthly, **conflicts of interest** are another critical theme identified as an obstacle to effective oversight of the mining industry by legislators and government officials. A Member of Parliament from Ghana observed that *“Political parties reward members with appointments. Almost all public service appointments are made by the President. Even MPs are serving on Boards which is wrong because these are entities parliament is supposed to oversee.”* However, this same problem was addressed in Tanzania by preventing MPs from serving on boards of State-Owned Enterprises – *“This presents a conflict of interest as MPs cannot perform oversight functions over government organizations where they are serving as Board members, so we stopped this practice,”* said a former MP. Participants also pointed out that it was difficult for people to separate their private lives from their public lives. For instance, *“There have been many examples of people in high offices who have allowed family ties and relationships to affect their judgement...they always allow personal ties and personal interests to override the public interest.”*

Similarly, there is a widespread compromise among the local chiefs. For instance, a respondent observed that *“Some of the chiefs had become sub-contractors for the mining companies making it difficult for them to stand firm when they have to defend the interest of the community.”* There are instances where the government agency (Customs Division) responsible for assessing the volumes of minerals exported is compromised by mining companies. One of the respondents reported that *“There was an instance where the individual posted by the Customs Service was housed by the mining company, relied on their canteen for meals and spent a great*

Continued on next page >

deal of time in their company. It would be difficult for such a person to be objective.” Unfortunately, Members of Parliament are not immune to this problem as well. One of the respondents gave an example of a “case where the local MP was a member of the Board of the mining company operating in his constituency because Ghanaian MPs could sit on private Boards provided they declare.”

There are generally low levels of **public trust in parliament**. For instance, the Afrobarometer study (2016) indicated that fewer than half of respondents (48%) across African countries affirmed that they trust their Parliament. The study indicated that trust in Parliament varies considerably across countries, with more than seven in ten Tanzanian citizens trusting their MPs “somewhat” or “a lot.” Overall, however, among the 18 countries tracked by the study since 2005/2006, trust in Parliament has decreased by five percentage points, with trust decreasing sharply in Ghana (by -32 percentage points). Bryan and Hofmann (2007) argued that concern over standards of ethics in public office is one of the reasons for widespread skepticism about legislators’ capacity and will for improved transparency and accountability in the extractive industries. They, therefore, advocated for improved ethical conduct among legislators to build public confidence and increase legitimacy. According to Transparency International (2016), since parliament represent citizens, “members of parliament need to reflect the ethical standards of their community, be exemplary in performing their mandate and adhere to the highest standards of integrity. This is a pre-requisite for promoting/restoring trust in the institution which is often perceived as one of the most corrupt institutions in many countries of the world”. This issue is considered further in Chapter 10.

Conclusions

This chapter presents findings from both the British Academy ACE project and the SSHRC study. It set out to consider three questions:

- iv. Can parliamentary oversight reduce corruption in the mining industry?
- v. What is parliament doing to stop corruption in the mining industry?
- vi. Moreover, what do parliaments need to do in collaboration with civil society organizations to address this problem?

Findings from these studies concluded that ‘Parliament Matters’ across the whole spectrum of the extractives industries value chain in the fight against corruption, particularly in the mining sector. Parliamentarians are the peoples’ representatives, and they should always serve and protect the interests of their constituents. Hence, it is their responsibility to ensure sustainable and judicious use of natural resources that belong to the people. Nevertheless, this can only be achieved through a multi-stakeholder approach, particularly when Parliaments work closely or collaborate with other demand-side actors in the accountability ecosystem such as civil society organizations, the media, Supreme Audit Institutions, anti-corruption agencies, national secretariats of EITI and other external actors. Effective legislative engagement creates a multiplier effect, reinforcing

Continued on next page >

the efforts of civic groups and others to improve the management of the extractives industries (Bryan and Hofmann, 2007). Similarly, civil society's active engagement in the EITI has been described as critical to ensure that the broader public has access to information about the payments and transfers made from extractives industries. By empowering civil society with information about extractives revenues, it can hold companies and the government accountable (World Bank, 2015). Good governance of the extractives sector requires participation, transparency, and accountability across the EI value chain. Therefore, parliaments and parliamentarians must seek collaboration with multi-stakeholder organizations or groups active in this space to address the challenges of corruption in the extractives industries.

Parliamentarians must also be very conversant and competent in their financial oversight of the extractives sector (Olaore and Stapenhurst, 2018). In particular, they need to acquire the knowledge and skills needed to monitor and validate government estimates and forecasts of the EI revenues included in the annual budget. Besides, Parliament needs to develop internal mechanisms, tools and skillsets they need to participate effectively in ensuring that revenues from the sector are appropriately accounted for, optimized and deployed appropriately for current and long-term sustainable development purposes (World Bank, 2016).



References

- Afrobarometer 2016: *Job performance of MPs, local councilors: Are representatives serving voters or themselves?* <http://afrobarometer.org/press/job-performance-MPs-local-councillors-are-representatives-serving-africas-voters-or-themselves>
- Barkan, J. *Legislative Power in Emerging African Democracies*. Lynne Rienner Publishers Inc. Colorado, 2009.
- Beetham, D., Deveaux, K., Heller, N., & Laberge, M. (2014). *Anti-Corruption Assessment Tool for Parliamentarians*. A publication of GOPAC and UNDP.
- Besada, H., & Martin, P (2013). *Mining Codes in Africa: Emergence of a “Fourth” Generation?* A research report of the North-South Institute.
- Beyerle, S. (2014). *Curtailling Corruption People Power for Accountability and Justice*. Lynne. Rienner Publishers Inc.
- Brouwer F., Haytayan L., & Smitham L. (2014). *EITI: A parliamentary tool for extractive sector governance in Liberia and Yemen*. A publication of NRGi.
- Bryan, S., & Hofmann, B. (2007). *Transparency and Accountability in Africa’s Extractive Industries: The Role of the Legislature*. National Democratic Institute for International Affairs (NDI).
- Chuhan-Pole, P. Dabalen, A., & Land, B. (2017) *Mining in Africa: Are Local Communities Better Off?* Washington, DC: Africa Development Forum and the World Bank
- Economic Commission for Africa (2016) *Optimizing Domestic Revenue Mobilization and Value Addition of Africa’s Minerals: Towards Harmonizing Fiscal Regimes in the Mineral Sector*
- EITI FACTSHEET. (2017) *“The global standard for the good governance of oil, gas and mineral resources.*
- Ernst & Young. (2012) *Managing bribery and corruption risks in the mining and metals industry.*
- Global Organization of Parliamentarians Against Corruption. (2005) *“Controlling Corruption: A Parliamentarian’s Handbook.”* A publication of GOPAC.
- Kaufmann, D. *Corruption Matters*. (2005) in *Finance & Development*. September 2015, Vol. 52, No. 3
- Mohammed, A. (2011). *Supporting Ghana’s Parliament for Good Governance in the Extractive Sector*. Parliamentary Centre

Continued on next page >

Moolman, V. (2016). "African mining has potential to grow stronger." Mining Weekly, July 8, 2016.
http://www.miningweekly.com/article/african-mining-has-potential-to-grow-stronger-2016-07-08/rep_id:3650 accessed December 12, 2017

Natural Resource Governance Institute. (2017) *Resource Governance Index*.

Olaore, O., Stapenhurst, R., Draman, R., Sarigollu, E., Jo, M., Karakas, F., & Ertz, M. (2018). *Parliamentary Oversight of Extractive Industries*. Journal of Anti-Corruption Law, 2018 Vol. 2 pp. 1-30.

Organization for Economic Co-operation and Development. (2016) "*Corruption in the Extractive Value Chain: Typology of Risks Mitigation Measures and Incentives*,"

Rosenblum, P., & Maples, S. (2009). "*Contracts Confidential: Ending Secret Deals in the Extractive Industries*" Publication of Revenue Watch Institute.

Stapenhurst, R., Sarigollu, E., Jo, M., Karakas, F., & Draman, R. (2017) *The Supply and Demand Sides of Corruption: Canadian Extractive Companies in Africa*. Journal of Foreign Policy.

Stapenhurst, R. (2011). *Legislative Oversight and Curbing Corruption: Presidentialism and Parliamentarianism Revisited: Thesis for the degree of Doctor of Philosophy at the Australian National University*.

The Guardian 2018, Supreme court fixes July 6 for ruling on false assets declaration charges against Saraki.
<https://guardian.ng/news/supreme-court-fixes-july-6-for-ruling-on-false-assets-declaration-charges-against-saraki> accessed on April 25, 2018

Transparency International. (2016). *Corruption Perception Index 2016* http://www.transparency.org/news/feature/corruption_perceptions_index_2016

Transparency International, Corruption Perception Index 2017
https://www.transparency.org/news/feature/corruption_perceptions_index_2017 accessed February 3, 2018

Transparency International (2017) *What Works in Working with Parliaments Against Corruption?* (U4 Anti-Corruption Resource Centre) accessed on January 5, 2018

Wang, V. (2005). The Accountability Function of Parliament in New Democracies; Tanzanian Perspectives *Christer Michelsen Institute Working Paper 2005:2* Bergen, Norway

World Bank. (2013). *Parliamentary budget offices and extractive revenues*. A presentation at the Global Conference on Parliament and Extractive Industries in Vienna.

World Bank Group. (2015). "*The Power of the Mine: A Transformative Opportunity for Sub-Saharan Africa*"

Continued on next page >

World Bank Group. (2015). *Annual Report Extractive Industries Transparency Initiative-Multi-Donor Trust Fund (EITI-MDTF)*.

World Bank Group. (2016). *Guide to Effective Parliamentary Financial Oversight of the Extractives Industries*.

World Bank Group. (2017). *Connecting Voices: Corruption and Development*.

World Bank Group. (2017). *“Doing Business 2017. Equal Opportunities for All. Regional Profile 2017” South Saharan Africa (SSA)*.





*Between a Rock & A Hard Place*⁷⁸

Rick Stapenhurst

⁷⁸ <https://magazine.cim.org/en/voices/between-a-rock-and-a-hard-place/>

Many Canadian mining companies operating internationally find themselves between a rock and a hard place. On the one hand, the mining industry has been ranked as the fifth most corrupt industry globally, and many developing countries with mineral resources have high levels of corruption. Yet, on the other hand, the Canadian Parliament passed the Corruption of Foreign Public Officials Act, making it illegal for Canadian companies and their officers to bribe foreign officials and reports indicate that the RCMP is ramping up investigations into alleged international bribery by Canadian companies.

On-going research⁷⁹ by professors at McGill University (Canada) and the University of East Anglia (United Kingdom), together with researchers at the African Centre for Parliamentary Affairs (Ghana), is looking at the 'supply' and 'demand' sides of corruption (i.e., the bribe givers and the bribe takers) in the mining sector in Africa. Their preliminary results, after field research in Canada and West Africa, identify ten 'tensions' regarding corruption in the mining industry and suggest possible steps that can be taken by mining companies to reduce their exposure to corruption risk.

Ten tensions and contradictions have been identified:

1. **The definition of corruption.** Generally, host country civil society representatives and, to a somewhat lesser degree, government officials and legislators, defined corruption broadly as 'the abuse of public trust for personal gain.' In contrast, corporate officials typically defined it more narrowly as 'an illegal payment to a public official for corporate or personal benefit.'
2. A related issue is the **costs of corruption.** Host country informants in Africa tended to describe the costs of corruption in socio-economic and development terms: *"Through corruption, the state is losing effectiveness, efficiency and resources in general."* By contrast, corporate respondents referred to the additional cost of the bribe itself, plus – and more notably – "the time spent by management in attending to investigations, press inquiries or regulatory processes [which] can distract management from the business of developing or operating a mineral property" and management time spent with corrupt bureaucrats.
3. There is often a discrepancy between **official corporate policy against corruption and the necessity to give bribes at the local level**, in order to do business in Africa.
4. While most Canadian mining companies **recognise the need to assess corruption risk, few are actually doing so.**
5. There is a substantial difference between the **large and integrated mining companies and the smaller ("junior") exploration and development companies** in terms of corporate policies and practice regarding corruption. But the data suggested that corruption is a problem for both large and small companies.
6. There is a **gap between law and practice in host countries.** Virtually all African countries have laws against corruption, but most fail to implement these laws.

Continued on next page >

⁷⁹ Funded by Canada's Social Sciences and Humanities Research Council

7. Mining companies often see **corporate social responsibility (CSR)** as a means to fight corruption and/or to promote local goodwill, while many African officials and civil society representatives see it as self-serving or even contributing to corruption.
8. **Mining companies often do not know how to deal with local chiefs and governments** and may not fully appreciate local customs and traditions, especially the traditional concept of paying (modest) tributes to tribal chiefs as a token of respect.
9. There is a problem of **small-scale or artisanal mining**. Early commentators, such as the World Bank, saw such mining as creating a social safety net and cash-generating alternative for local people in times of economic or environmental stress and as providing livelihoods for retrenched civil servants, teachers and others. In most countries, such mining is illegal and, in recent years, has expanded greatly, with adverse environmental and safety concerns.
10. There is a **multitude of stakeholders yet a piecemeal approach to the problem**. There are, clearly, two sides to corruption, the supply side and the demand side, and a multitude of stakeholders (host and home governments, parliaments, civil society organizations and corporations). Any serious attempt to tackle corruption must include a coalition of these stakeholders, working toward a common goal, namely a reduction in corruption.

Clearly, mining companies need to take a more proactive stance against corruption. The incentive for many to develop anti-corruption compliance programs is the threat of investigation by the RCMP. Perhaps a better understanding of *why* corruption is, in the words of former World Bank President James Wolfensohn, 'a cancer' and how it distorts public policymaking in host countries, weakens governance and democracy and ultimately impacts adversely on the poor would be an additional incentive to reduce the supply of corruption. Many of the large integrated mining companies already have relatively sophisticated compliance and ethics regimes; these need to be mainstreamed within their global operations. Junior companies generally do not have such in-company anti-corruption programs. Planned outputs of this research project should assist them in developing such programs by providing guidance as to where to seek assistance in building anti-corruption policies and programs, as well as providing detailed assessment frameworks and outlines for corporate compliance regimes.





How Misconduct in Business Contributes to Understanding the Supply Side of Corruption in International Business⁸⁰

Myriam Ertz, Assistant Professor Marketing, Department of Economics and Administrative Sciences

Fahri Karakas, Lecturer in Business and Leadership, Norwich Business School, University of East Anglia,

Frederick Stapenhurst, Professor of Practice, Desautels Faculty of Management at McGill University

Rasheed Draman, President, African Centre of Parliamentary Affairs

Emine Sarigöllü, Associate Professor of Marketing, Desautels Faculty of Management at McGill University

Myung-Soo Jo, Associate Professor of Marketing, Desautels Faculty of Management at McGill University

⁸⁰ <https://www.emerald.com/insight/content/doi/10.1108/cpoib-09-2019-0067/full/html>

Professional Misconduct: Beyond a Silo Perspective and towards a Holistic View

1. Introduction

Professional Misconduct (hereafter, PM) is a form of misconduct that occurs during the exercise of a given profession, is intentional, usually defined, and regulated by the profession itself, and violates the norms and expectations of a variety of stakeholders, such as other professionals, clients, and the general public (Neale, 1996; Muzio et al., 2016; Huberts 1998; Dixon-Woods et al., 2011). This paper advances the perspective that if we are to understand PM holistically, we must consider it in the broader context of corruption. Indeed, corruption is conceptually very close to PM since it is defined as the abuse of entrusted power for private gain (Transparency International, 2016). It thus intrinsically refers to a greater variety of stakeholders, which all may influence professionals' actual conduct in some way (Hauptman and Hill, 1991; Valentine and Fleischman, 2008).

PM has recently become a significant topic of examination among researchers (Kish-Gephart et al., 2010; Muzio et al., 2016; Palmer, 2012; Vaughan, 1999). In particular, researchers have explored the range of factors that lead to PM (Lefkowitz, 2009; Mayer, Kuenzi, and Greenbaum, 2010; Vardi, 2001) as well as the processes and consequences of PM (Greve et al., 2010). A range of theoretical perspectives have been developed to understand PM, including institutional theory (Shadnam and Lawrence, 2011), boundaries perspective (Muzio et al., 2016), critical analysis perspective (Palmer, 2012), symbolic interactionist perspective (MacLean, 2008), and moral responsibility perspective (Norton, 1991).

Since instances of PM have become more widespread in organizations, researchers in different disciplines have invested concentrated efforts in conducting research on PM. This has resulted in a stream of research accumulating across a wide variety of disciplines on PM, including medicine (Biaggio et al., 1998; Bolsin, 1998; Dixon-Woods et al., 2011; Elkin et al., 2011), engineering and sciences (Anderson and Shultz, 2003; Lock, 2001; Smith, 2006), law (Gardiner, 1986; Greenbaum, 2002; Arnold and Hagan, 1992), accounting (Neale, 1986), policing (Seron, Pereira and Kovath, 2004), and correctional centres (McIlwain, 2004).

Three siloed perspectives have been developed in the literature to explain PM: a) The functionalist perspective (the bad apple hypothesis); b) The conflict perspective (the red barrel hypothesis); and c) The ecological perspective (the bad cellar perspective). While each of these perspectives offers useful guidance for understanding the different layers of PM, they have usually been considered either in isolation of each other or as alternatives of each other, rather than combined to offer a rich and comprehensive picture of PM. There is a disconnect among the three perspectives explaining PM (each of which focuses on a different aspect of PM respectively: The individual/behavioural level, the organizational/contextual level, and the ecological/environmental level). Although these levels have been studied in the literature, they have not been addressed in relation to one another. In each piece written, a particular perspective is emphasized while others are mostly neglected or deferred to a future research section. How can this gap and puzzle be resolved? This paper is aimed at bridging this gap and contributing to this debate through understanding how these different perspectives relate to each other.

In line with previous calls to study PM from a novel perspective (e.g. De Graaf, 2007), this study proposes a new integrative perspective on PM. Conceptually, drawing on Bourdieu's (1998) relational paradigm and, more broadly, on the relationalism-substantialism theoretical framework in sociology (Cassirer, 1923; Festinger, 1954; Bourdieu, 1998; Bajoit, 1992; Mische, 2011; Emirbayer, 1997), we propose a new perspective on PM which aggregates these three, otherwise disparate perspectives, into a coherent whole. Using a grounded theory approach with a rich and varied corpus of data sources and data collection methods, we have identified two themes, relationality and substantiality, and propose a theoretical framework bridging different perspectives in order to holistically understand PM in organizations. Our research has been conducted in the context of Canadian companies' mining operations in Africa.

The PM framework we develop and the arguments we propose provide the foundation for three key contributions to organizational literature. First, we provide fresh and holistic insights into PM, a complex contemporary social problem in organizations. Applying a multilevel perspective to PM allows us to build on and extend previous work that has tended to focus on individual (micro), or organizational (meso), or environmental (macro) levels of analysis, largely overlooking the interrelationships and processes among these levels. Our second contribution is to apply Bourdieu's relational paradigm to explain the dynamics and nature of PM and arrive at an interlinked and nuanced understanding of PM that transcends the relationalism and substantialism divide. We analyze how the whole actual enactment of PM boils down to the granular level of the individual, even though that individual is embedded in broader organizational settings or subject to wider macro-environmental forces. Third, the emergence and dynamics of PM in organizations are of significant practical importance to managers and policymakers concerned with preventing the occurrence of PM. By adopting a multilevel perspective, we shift attention away from individual-focused interventions that focus on punishing 'misconducters' and underline the systemic reforms that emphasize organizational cultures, professional norms, and institutions.

2. Literature review

2.1. The functionalist perspective: the "bad apple" hypothesis

PM has been analyzed from different perspectives over time. The earliest perspective, called the functionalist perspective, considered that PM is eminently rooted in the individual. For example, the trader Jérôme Kerviel's actions nearly destroyed the French bank Société Générale. In the aftermath of the global financial crisis, he was found guilty in 2010 of betting 50 billion euros of the bank's money without its knowledge leading to losses of nearly five billion euros (Petroff and Buet, 2016). Kerviel has often been described as a rogue trader, hence a lonely faulty individual who breached the codes and principles of a system, all by himself, in order to achieve self-centered interests (e.g. BBC, 2016). To functionalist writers, 'misconduct results from the behaviour of rogue individuals acting against the standards and norms of their profession' (Muzio et al., 2016, p.5-6). From this perspective, those

Continued on next page >

who misbehave are bad apples (Coleman, 1987; Dixon-Woods et al., 2011) and have defective human character and wrong value system which predisposes them to PM. The bad apple hypothesis confines the level of analysis to the micro-level of the individual (De Graaf, 2007), with his or her character, values and/or perceptions as the root cause of PM.

2.2. The conflict perspective: the “red barrel” hypothesis

According to this view, the unit of analysis is the organization instead of the individual. Several investigators questioned the possibility that Kerviel was exposed to relatively lax controls at Société Générale. For example, the positions he took as a back-office trader were completely inconsistent with the amount he was allowed to trade (Arnold et al., 2008). According to Kerviel himself, a swaggering and hard-driving culture was rampant within Société Générale that allowed even a mid-ranking employee to repeatedly make enormous bets with the bank’s money without being detected (Arnold et al., 2008). The organizational culture and objectives were therefore conducive to PM. It might be conceivable that some of Kerviel’s co-workers and supervisors were equally engaged in such dubious practices (Le Bret, 2010). The peculiar nature of professionalism is in question here, in the sense that the inherent and defining feature of professionalism may favour PM (Muzio et al., 2016). Professional ethics are nothing more than ‘a rhetoric that legitimates the privileges of monopoly, self-regulation and higher levels of income’ (Muzio et al., 2016, p.6). This perspective explains PM as a ‘red barrel’ (Dixon-Woods et al., 2011) and posits that the responsibility of the individual is lessened, and the analysis is restricted to the meso-level of the organization (Muzio et al., 2016; De Graaf, 2007).

2.3. The ecological perspective: the “bad cellar” hypothesis

A third perspective, called the ecological perspective, emerged to view PM as a consequence of the influence of higher-order factors (Coffee, 2006; De Graaf, 2007). PM occurs because of concomitant macro-environmental forces exerting pressure on both individuals and organizations. Since the 1980s, for example, the economy has become financialized, with banks playing an increasingly pivotal role over other key stakeholders such as the State and corporations (Davis, 2013; De Graaf, 2007; Muzio et al., 2016). In line with neoliberal thought epitomized by the Chicago School, organizations and especially banks have the prerogative to create more value (i.e. profit) for private stockholders. This financial pressure at the organizational level translates into aggressive cultures of arrogant or cynical profit-making (Arnold et al., 2008), pressurizing professionals to be financially successful, whatever the cost might be. The ecological perspective implies a “bad cellar hypothesis” (Muzio et al., 2016). Both individual and organizational responsibilities are reduced, and PM occurs because of macro (changes in the) environmental factors which affect the individual both directly and indirectly through the organization.

3. Theoretical framework

3.1. The relationalistic perspective

As shown previously, the prevalent view in the literature is that of a deterministic linear logic pertaining to PM (i.e. bad apple theory or micro; red barrel theory or meso; and bad cellar theory or macro). The many studies seeking to predict PM quantitatively with a set of independent factors, considered as causes, epitomize this view (De Graaf, 2007). In fact, the literature consists of a typology of essentialized factors supposed to lead to PM (Huberts, 1998); the bad cellar hypothesis has lately become the most widely accepted one in scholarly literature (Muzio et al., 2016). In contrast, we adopt the relational perspective framework (Cassirer, 1923; Festinger, 1954 Bourdieu, 1998; Bajoit, 1992; Mische, 2011) by viewing individuals not as self-subsistent or self-acting entities, but rather by viewing practices as constitutive of individuals (Emirbayer, 1997, p.281). According to Bourdieu: 'Objects under investigation are seen in context, as part of a whole [...] Their meaningfulness is determined not by the characteristic properties, attributes, or essences of the thing itself, but rather with reference to the field of objects, practices, or activities within which they are embedded' (Mohr, 2013, p.101-102).

Bourdieu's approach (1998) can be recast in a wider net of sociological theories known as relational sociology, which emphasize relationalism over substantialism to explain and interpret social phenomena (Donati, 2007). To Bourdieu (1998), the real is relational. Nothing exists except by the comparative relational comparisons and differentiations from other objects in a comprehensive whole (Mohr, 2013, p. 101). This relational framework formed the conceptual basis for the theory of social comparison processes, which emphasized how social comparison is important in opinion formation (Festinger, 1954).

In line with Bourdieusian relational theory, both PM and good conduct exist in relation to the institutionality of professional codes, against which any action can be compared and categorized as either good professional conduct or PM. An increase in PM could occur when relationality is attenuated, that is when the difference between PM and good professional conduct becomes blurred. Our empirical findings indicated that blurring occurs under two conditions:

- 1) The undermining of institutionality, i.e. institutional dysfunctionality;
- 2) The attenuation of actors' perceptions of relationality, i.e. conflation.

We will elaborate more on both in the relationality theme.



3.2. The substantialist perspective

Bourdieu's relational framework has often been criticized for privileging social relations between social positions at the expense of exploring the substance of these positions, which is disengagement with the intersubjective (Bottero, 2009; Murphy, 2011). In contrast, the substantialist approach 'privileges things rather than relations and, as such, has a tendency to reify the social order, to essentialize social phenomena, and to embody a positivist orientation to social research' (Mohr 2013, p. 101). PM should not only be understood as an outcome of attenuated relationality perceptions, but also in the examination of the inherent essence, substance or characteristics of the actors involved in its potential enactment, which are essentialist considerations. Individual intersubjectivity lies at the core of this perspective.

The notion of substantiality captures this idea of intersubjectivity and judgement *in lieu* of relativistic comparatism. The findings show that intersubjectivity emanates from two sources: 1) Individuals and their will, i.e. agency; 2) Overall environment, i.e. culture. Individuals have agency, which may be positively or negatively valenced. Similarly, the cultural canvas can be positively or negatively valenced, promoting good professional conduct in the former case while encouraging PM in the latter. More on this will be discussed in the substantiality theme.

3.3. Beyond the relationalist-substantialist divide

The debate on relationalism versus substantialism has often been criticized for being too dichotomistic. According to recent research, they do not necessarily represent different points of view (Smith, 2010; Bottero, 2009; Murphy, 2011). Instead, 'pure relationality cannot and does not create objects. Relations need substances and substances need relations. All that exists and every way it works requires relations and substances' (Smith, 2010, p. 232). Furthermore, the relationalistic perspective supposes that all action is always trans-action, so that it has important implications that are transcending the momentary intent (Emirbayer, 1997, p.281). In other words, individual agency may affect culture or the reverse, and both may concur to attenuate relationality. The combination of attenuated relationality and negatively-valenced substantialism creates potential for PM diffusion. We extrapolate this in the "grounded model" section.

4. Field study

4.1. Study framework

We applied the relationalism-substantialism theoretical frameworks to the study of PM in the context of a field study on corruption in the Canadian mining sector in Africa.

Corruption as PM. We posit that the investigation of PM in the context of corruption enables a better understanding of the larger-scale ramifications that lead to its enactment. We explore the specific case of Canadian mining companies. These companies comprise diverse professions, engineers, lawyers and business executives, all of which are regulated by their respective professions in Canada. PM in this study corresponds to the corruption behaviour (e.g. paying bribes) to whichever stakeholder to attain specific business objectives. These particular actions correspond to PM because: 1) from the perspective of Canadian professional associations, such practices are unequivocally considered as highly reprehensible; 2) they occur during the exercise of each respective profession; 3) they are intentional; and 4) they violate norms and expectations of a variety of stakeholders, such as other professionals, clients, the government, and the public.

Study context. Canada is one of the biggest players in African mining, owning half of the 315 listed non-African mining businesses in Africa, six of the 12 largest companies operating in the continent are Canadian, and Canadian companies have invested around \$20 billion in African mining projects (Campbell, 2011). Canada is also characterized as the least prone to corruption⁸¹. From a relational perspective, Canadian mining organizations typically deal with institutions and professional associations characterized by strong relationality, i.e. sharp distinctions between good corporate behaviour and reprehensible behaviour. However, despite exemplary conduct at home (Frasier Institute, 2016), Canadian mining companies are regularly blamed for misbehaving abroad, especially in Africa (Tscherning, 2017; Stapenhurst et al., 2017). Why that discrepancy? According to a report by Ernst and Young (2011), mining is the most heavily regulated industry and consequently, officials who have the power to block, delay or frustrate a project may attempt to solicit bribes for the benign exercise of that power. The avenues for corruption are therefore wide. The weakness of the host countries' institutions seems to lie at the root cause of the issue (Burgis, 2016). On the other hand, the Canadian Government is also being blamed for being relatively lax (Drohan, 2010) and has consequently developed an enhanced corporate social responsibility strategy just recently to strengthen Canada's extractive sector abroad (Global Affairs Canada, 2016). Since 2009, Canadian mining companies have been subject to the Corruption of Foreign Public Officials Act, which makes it a crime for a business to bribe officials in other countries, provided some part of the corruption involves Canada. However, despite that and despite reports emphasizing that corruption may not be financially worth it (Frasier Institute, 2016), recent studies (e.g., Burgis, 2016; Kisenga, 2016; Tscherning, 2017) show that Canadian companies continue to be embroiled in subversive cases. We use our theoretical framework in order to show how corruption arises in such a context.

We studied the case of two African countries, namely Ghana and Burkina Faso. The two countries differ somewhat in their level of perceived corruption, lending support to the validity of this study. Ghana ranks 56th and Burkina Faso 76th, respectively, out of 167 countries (Transparency International, 2015). We gathered data from mining professionals, managers, company representatives, experts, industry

Continued on next page >

⁸¹ According to the first edition of the TRACE matrix developed by the anti-bribery non-profit TRACE International and the RAND Corporation, Canada scores 22 out of 100 (the lower the score, the less likelihood of bribery), and is one of the least corruption-prone countries in the world. Available at: <http://www.traceinternational.org/trace-matrix/> (accessed 27-03-2017).

leaders, and government officials as well as Civil Society Organizations (CSO) activists (e.g. Oxfam) using multiple methods, including one-on-one expert interviews, semi-structured interviews, a focus group, and an open-ended questionnaire.

4.2. Methodological approach

In this study, we adopt ‘qualitative comparisons of cases [...] in which the relationship between theory and facts is captured largely in narrative form’ (Lieberman, 2005, p. 436). This methodology enables us to perform an in-depth qualitative look at oversight within a particular socio-political context by capturing the texture and real-life experience.

4.3. Comparative case studies

A case study design with a semi-fixed approach was used in recognition of the trade-off between looseness and selectivity. The looser the design, the less selective one can afford to be in data collection. A relatively tight framework may result in recognizing important features of the case or misinterpreting evidence. Thus, we juxtaposed the approaches suggested by Lieberman (2005, p. 441) and Robson (2002, p. 182). The former suggested that ‘because such materials are produced in such different shapes and forms across time and space, it is often impossible to specify a priori, a set of very precise coding rules.’ The latter argues that ‘if the purpose is confirmatory, where previous work has suggested an explanation of some phenomenon then there is a place for some degree of pre-structure.’ The survey instrument used in the case study field research included structured interviews with open-ended questions and more flexible focus groups and document research.

4.4.1. Document research

We searched public documents as a supplementary data resource; we considered international organizations’ (e.g. IMF, World Bank) reports on country corruption, parliamentary inquiries and debates (in Burkina Faso), and newspaper reports on mining and PM over the past five years. This approach enabled us to ‘make replicable and valid inferences from data in their context’ (Krippendorff, 1980, p. 21). In other words, we were able to examine the relationship between content and context, which assisted us in triangulating other data collected through interviews and focus groups. The advantages of this approach were that it was unobtrusive, and the data were in permanent form and could be re-analyzed. The disadvantages were that the documents were limited and partial - they were written for some purpose other than our research, and it was very difficult to assess relationships from such data alone.



4.4.2. Expert interview

In Ghana, we conducted both an expert interview and a focus group. We did this as we suspected; given the experience of our first round of data collection, Canadian companies would only talk to us under the 'Chatham House Rule.' Potential participants were invited to one or two two-hour open-ended group discussions, guided by the research team. Participant recruitment for the expert interview (i.e. Canadian mining company representatives and Canadian government officials) was undertaken by the Canadian High Commission. Participant recruitment for the focus group was conducted by the African Centre for Parliamentary Affairs, which is a national non-governmental organization. The expert interview comprised eight Canadian government officials and Canadian mining company representatives. No notes were taken during the meeting. Immediately after, however, the two members of the research team reviewed the expert interview dynamics and discussion, and made notes.

4.4.3. Focus group

The focus group comprised staff from parliament working on oversight/corruption issues, CSO representatives and journalists. A research assistant made notes on who was speaking and noted non-verbal interactions; we audiotaped this session, which was subsequently professionally transcribed. We used focus groups because they are an efficient way of generating substantial amounts of data (Patton, 2002). In the case of the two focus groups in Ghana, we were able to interview nine individuals. The disadvantage – that it was difficult to follow up on the views of individuals – was offset by the fact that we complemented the focus groups with individual key informant interviews. We deliberately designed and carefully facilitated the focus groups to minimize the risk of participants not responding to the sensitive issue of PM. Administrative and logistical constraints prevented us from organizing a focus group in Burkina Faso.

4.4.4. Interviews

We interviewed 25 participants in both Ghana and Burkina Faso, comprising approximately equal numbers of company representatives, government officials, Members of Parliament and civil society representatives. The survey instrument comprised both open-ended and closed-ended questions. A few participants, mainly from the mining companies, refused to answer some questions. Respondents were encouraged to add any additional information they deemed relevant. We chose the semi-structured interview format because it standardizes data. We were able to clarify participant questions, and our presence may have encouraged participation. However, we recognize that this approach also means that the data are affected by several factors, including (i) the characteristics of the respondents (i.e., their memory, knowledge,

Continued on next page >

experience, motivation, personality); (ii) the fact that respondents may not accurately report their beliefs and attitudes; (iii) our personal characteristics (skills, experience, motivation, personality); and (iv) the interactions between our characteristics and those of the respondents.

Through the interviews, we sought to find out what participants know about corruption in their country, what the key informants do when faced with PM in carrying out their work duties (behaviour) and what they think about the mining companies and the role that they are currently/potentially playing in curbing corruption (beliefs/attitudes). We designed a sequence of loosely structured questions in each introduction, main body, cool-off, and closure phase of the interview. Each interview took 45-60 minutes. We followed Robson (2002, pp. 230–235) in designing the interview schedule.

During the data collection and analysis phases, we dated all contacts, resulting actions, and coding. Coding the open-ended questions involved combining the detailed responses into a limited number of categories so that the data could be described and systematically analyzed.

4.5. Validity and reliability

In accordance with Yin (2013) and Eisenhardt (1989), we improve the validity of our findings by triangulating methods of data collection (i.e. expert interview, focus group, semi-structured interviews, written open-ended questionnaires) and data sources (i.e. business professionals, CSO activists, government representatives) (see Appendix 1).

4.6. Analytical procedure

We have followed the principles of grounded theory as delineated by Glaser and Strauss (1967). More specifically, after any given data collection, we have committed to a continual re-examination of the data in light of the theory and determined the point at which we should stop based on theoretical saturation (Glaser and Strauss, 1967). In other terms, we have stopped data collection after we reached the point where the sampling of more data would not lead to more information related to our research questions (Seale, 1999). We then conducted a thematic analytical procedure of the data. We have not used pseudonyms for study participants (people or organization); rather, we use the respondents' function and organization in a generic form.



5. Data analysis

5.1. Relationality

PM is a deviation from expected professional behaviour, as usually defined in a set of charters or codes of practice by professional organizations. Codes of practice are closely tied to the government laws and serve as differentiators between what is professionally acceptable and what is not, therefore allowing relational comparisons. Professionals know and are trained on what makes professional conduct acceptable; the professional codes are there to remind them. Therefore, the issue of PM occurs when professionals do not perceive any discrepancy between the expected behaviour, in line with the code of conduct, and behaviour deviating from that code. Misbehaviour, therefore, conflates with acceptable behaviour. PM can be enhanced through the incidence of two factors: a lack of relationality at the government level, called institutional dysfunction theme, and a lack of relationality at the business professional level, entitled conflation. The lack of relationality at the institutional (i.e. government) level generates a lack of relationality at the corporate level, thus increasing conflation risks.

Institutional dysfunctionality

Foreign companies such as Canadians typically come from countries characterized by strong institutions or mature networks. Mature networks 'have [...] core areas, but they are of various relative sizes and strengths compared with the other regions of the overall structure' (Fuchs, 2001, p. 284). This means that the different layers of power (e.g. judicial, legislative and executive) are fairly independent and different from each other, through the system of checks and balances, in line with Montesquieuan doctrine published in *The Spirit of the Laws*, and which prevails in Western civilization. Yet, many African countries have weak institutions – from a Western viewpoint - characterized by emerging networks, which 'do not yet have the critical mass to collapse into a core' (Fuchs, 2001, p. 284). In other words, the different layers of power are not necessarily separated, which creates political conflicts of interest and confusion for foreigners. In addition, there are no professional organizations to relay codes of conduct tied to institutional legislation. Many respondents thus evoked the absence of control and oversight mechanisms, which typically characterize a system of checks and balances with autonomous entities mutually controlling their respective behaviour in an optimally objective manner. The Member of Parliament (MP) from Ghana evoked that issue with regards to the lack of protection of government funds which are not managed by separate entities:

Corruption in the public sector has been a system where because of a lack of protection of government funds, civil servants, public servants and politicians are allowed to basically steal the money. We'll refer to it as thievery, nothing more than that. And this has been made possible because of the complete lack of accountability mechanisms. The internal controls, the checks and balances that are normally there to protect the funds, are not there. Therefore, people are able to steal without fear.

In a similar vein, a representative of the Ghana Integrity Initiative (GII), a civil society organization (CSO), spoke about grand misbehaviour from the political personnel and its representatives in the following terms:

There's a lot of collusion by lawmakers, law executors, the judiciary and everybody to a large extent is involved. Some of the things that leaders, parliamentarians, or the Attorney General does create room for corruption, and this incidence of corruption is impacting the economy as a whole.

The notion of collusion conveys this idea of a lack of barriers and differentiation between the three key components of modern governmental institutions, namely lawmakers or the legislative; law executors or the executive; and the judiciary, or the judicial power, therefore creating potentialities for misbehaviour. An MP in the current Parliament of Ghana stated:

The governance system encourages Executive Dominance. The average parliamentarian is not looking for faults. Onus lies on opposition to do that, and often, people tend to look at it as political even when it is technical. Until complete separation, it is not going to change.

The problem then lies in executive dominance where the one in power is unaccountable and basically able to do whatever wanted without much opposition from independent entities acting as gatekeepers or watchdogs, a predisposer to critical system failures (Coffee, 2002).

Conflation

Foreign mining companies are differentiated from the core governmental network, that is, the institutions of the country within which they operate. They may perceive discrepancies between the functioning of the local government and that of their country of origin or simply perceive discrepancies with their personal value systems. They perceive a clash between Western-infused macro morality, which emphasizes the abstract universal system of formal laws, the complementarity of rights and duties, equality and (blind) justice, and which is usually both explicitly and implicitly required from a professional role, and micro morality, which emphasizes the private duties and obligations to particular individuals (e.g. family, friends) (De Graaf, 2007).

Consequently, business professionals – foreign or local – blame the government for issues that derive naturally from institutional dysfunction: *lack of transparency in the granting of mining concessions; personal rapprochement between business and government; gift-giving culture to local chiefs; changing legislation; lack of law enforcement and oversight; heavy bureaucracy, with many points-of-contact with government officials.* Collectively, these all strongly increase the demand for bribes, and thus, PM. We shall elaborate more specifically on the issue of the gift-giving culture to local chiefs to show how professionals' perception of relationality may be attenuated and trigger corruption. A closed meeting

Continued on next page >

at the Canadian High Commissioner's Residence with five top representatives from four different Canadian mining companies operating in Ghana, under the Chatham House Rule, brought up a number of controversial issues, including *corporate relations with tribal chiefs and the tension that exists between traditional gift-giving and bribery*. One participant to the meeting said that:

What would appear to be good practice is that of one company, which has developed detailed guidelines of what is acceptable in this – and other – situations. [Professionals] are allowed judgement within the guidelines but need higher-level approvals to make gifts outside the guidelines. In one instance, it was noted that a request to help restore a tribal chief's residence was turned down, with the explanation that the companies' CSR projects were designed to benefit local communities, not individuals. Another company had a different set of guidelines, where direct gifts to the tribal chiefs were considered on a 'case-by-case' basis.

The importance that companies grant to establishing good relations with local chiefs can only be understood in light of the actual power that these local chiefs have. According to the CEO of the Ghana Mineral Commission, in the Ghanaian Ministry of Lands and Natural Resources:

During the application process, a lot of things are required, including agreement from local authorities. If any chief or landowner should raise any form of objection, the process will be stalled until everything is resolved. So it is likely companies will court the goodwill of local actors like chiefs. The commission doesn't get involved in what happens between the project proponent [professional] and the landowner [local chief]. They are only interested in whether possible objections have been resolved, and once the District Chief Executive attests to that, the process will go on.

Local chiefs are, therefore, important political figures with a lot of power in their hands. The lack of official involvement from the government and the ambiguous nature of gift-giving would thus entice companies to be complacent with chiefs by offering them gifts with the promise of facilitating their applications, which constitutes an obligatory disposition (Bourdieu, 1998). The practice is amplified by the impression professionals have that everybody is doing it, and they fear being left behind or missing lucrative business opportunities if they do not engage in the gift-giving practice. In line with Festinger's (1954) social comparison theory, the large prevalence of the practice might lead to the situation where the opinion of professionals may change or even be comforted in considering bribery not as reprehensible but as gift-giving and as an essential ingredient for conducting business successfully. As one focus group participant asserted:

When you are [...] not corrupt, and you encounter corrupt situations, you are likely to resolve it immediately, but if the whole country is corrupt, law enforcement becomes difficult. [...] For instance, a fresh [...] graduate [...] in Accra may want to do things in the right manner. [...] After some time, his attitude changes because everyone around him might be getting rewards for doing things in a wrong way that he will be missing out on because of his stern attitude against corruption. He/she will even

Continued on next page >

get punished or transferred to a different department for doing the right thing in the long run because it may be preventing others from making money (Focus group participant, Ghana).

In the business world, corruption has become the rule. Those who refuse to indulge find themselves excluded from business (MP2 in the 5th, 6th, and 7th parliaments and Treasury Inspector, Burkina Faso).

Corruption is commonplace – service providers build the costs of corruption into their prices, which makes doing business costly (VP for Sustainability from a Canadian mining company, Burkina Faso).

Presently it is difficult to do business while adhering to moral and ethical values since the majority of business people are more interested in profit than moral values. When you decide to adhere to these values, then you lose a percentage of your market share and can also lose opportunities because of these values (Head of the CSO Guardians of Democracy, Ghana).

In sum, companies feel destabilized by environments in which there seems to be a lack of barriers between personal relationships and business partnerships: They appear conflated. The large prevalence of the practice further contributes to a situation of strong conflation, diminishing professionals' perception of an anomaly in granting gifts to the owners of the land on which they expect to conduct mining operations. Both the case-by-case approach and the detailed guidelines exemplify a process through which the ethical gap narrows gradually to become eventually culturally acceptable. They constitute an attempt to recreate relationality (i.e. differences) of some sort, between what is reconsidered as acceptable and not. Yet, this process happens idiosyncratically in reaction to the environmental pressures, by means of making a sublation [aufhebung] - in the Hegelian term - of the contradictions, that is, the theses and antitheses (Hegel, 1827-1830/2004) to which companies are confronted. Albeit gift-giving would be legally reprehensible in several of the companies' countries of origin (e.g. Canada) (i.e. thesis), this is not so in the country of operation (i.e. antithesis). Lack of relationality issue lies, therefore, in that the difference between what is normally considered as misbehaviour and what is not, is not antinomical anymore. Companies end up internalizing the practice but compensate complacency and indulgence by pseudo-relationality in the form of ad hoc judgements and guidelines more fitting to the context in which they evolve (i.e. sublation/aufhebung). A clear difference between personal, friendly relationships and formal business relationships, as well as gift-giving and bribery, has been attenuated. This lack of relationality leads companies to engage in pseudo-relationality through which they reconsider gift-giving as something acceptable for developing business.

In sum, PM is more likely to arise under a concomitant increase in institutional dysfunctionality and stronger perceptions of conflation between good professional conduct and wrongdoing, with dysfunctional institutions strongly contributing to conflation.



5.2. Substantiality

As explained previously, PM should not only be understood as an outcome of attenuated relationality perceptions, but also as the result of inherent essence, substance or characteristics of the actors involved in its potential enactment, which conflates with essentialist considerations (Bottega, 2009; Murphy, 2011; Mohr, 2013; Smith, 2010). This leads to the treatment of individual agency (valence) as an important sub-theme of substantiality (i.e. bad apple hypothesis). Nevertheless, in line with previous theoretical developments, emphasizing the impact of macro-environments and culture (i.e. red barrel, bad cellar hypotheses), this does not mean that PM is only explicable from an individual perspective either. A second sub-theme of *culture* (valence) as influencing and influenced by individuals themselves shows the more complex and ambiguous nuances that exist between these two theoretical constructs and the need to consider both perspectives to explain PM.

Agency

Relationality suggests that professionals end up misbehaving because of environmental pressures or macro configurations, which weaken their moral standards through a lack of relationality perception. Yet, respondents emphasized that personal values, morals, ethics, will, and thus some sort of personal agency matter too. These results suggest that the understanding of PM should not only be based on a relational perspective but complemented by an essentialist perspective that takes the intersubjective into account. For example, respondents mentioned that even if there was a strong level of relationality within or between many different fields – institutional or professional – PM may still be an issue because of individual characteristics and flaws (cf. Coleman's [1987] hypothesis of individuals' defective character or wrong value system). In sum, in contrast to a deterministic relational perspective, the substantialist notion of agency implies that despite environmental pressures, individual subjectivity ultimately determines the occurrence of misconduct. Agency may be of positive valence:

When ethical obligations clash with the realities of doing business, you try to appeal to your moral obligations as much as possible (MP in the current Parliament of Burkina Faso).

If you resist it and are patient, you can have what you want without recourse to it [PM]. If you are not willing to wait to obtain a given result, you are doomed. If you start bribing, be ready to never stop. Do not agree to buy peace. Integrity is a path that requires patience and the willingness to lose from time to time or see others do better than you (Respondent to the open-ended survey).

The former director of [...] Awuni, who was a no-nonsense man, abhorred corruption, and because of that, his promotions were denied for so many years; even his juniors by-pass him in rank until it got to a time that somebody said enough is enough let's just give him his promotion. There are instances that he had a backlash [...] because some politicians were caught in corruption issues. He has never been afraid to say in the media that this is what he stands for.... Though he died out of it (Focus group participant, Ghana).

Conversely, agency may also be of negative valence in the sense that, even if all the arrangements and technology are put in place to reduce corruption, some individuals may still continue misbehaving:

There are individuals who, because they make a living out of it, will use subtle ways to make situations complex for normal individuals to induce them to pay bribes. Thus there are also human impediments created by individuals in institutions that benefit from corruption to support their lifestyle (Focus group participant, Ghana).

Human beings have a tendency not to do the right thing when there are no laws, though it does not mean that we are all corrupt; when institutions are not functioning well, and smart people see loopholes and see he can make something of it, he will do it (Focus group participant, Ghana).

...[me] and [my] crew had to do an HIV aids story around some prostitutes in Togo. The prostitutes were initially unwilling to give out information because it was within their working time. We were forced to pay for a slot of their time so they could speak to us. The point is there are some times that you may have to compromise to get what you want. [I] think technology should be employed to interface with humans to address corruption in our daily lives (Focus group participant, Ghana).

Consequently, respondents indicated that an individual's good morals, ethics or values determine at the end whether that individual will engage in PM. Upholding strong moral values is often very difficult. For example, an influential Ghanaian journalist said that there are currently discussions in Ghana about passing the right to information bill. But this bill has not passed yet. He stated that he had a professional encounter with a junior officer demanding an unauthorized fee in order to release a document that can aid him in blowing up a story about the true cost of an item that is currently being debated. This officer is the only person that has the document. This situation presents an obvious ethical dilemma that boils down to the core moral proclivities of the individual confronted with environmental pressures. If he refuses, he will not be able to write about the story of the hidden costs, which could have dramatic impacts on the political and social arenas. As a journalist, though, he owes the public a responsibility to report any wrongdoing. Yet, if he accepts, he is himself contributing to the wrongdoing.

This does not make a compelling case for the bad apple theory, though. According to theories delegating importance to social pressure in the definition of social identities (e.g. Chu, 2009), the very essence of a substantive entity, say an individual, results from peer pressure and external social forces, or culture. But contrary to Bourdieu's statement, these forces have subjective and thus inherently directional (i.e. good or bad) impacts on individuals (Murphy, 2011).

Culture

Several respondents referred to culture in explaining the propensity of some people to misbehave or not. Culture may exert either positive or negative valence in that it may encourage or reprehend PM.

The increase in a culture of accountability, in Ghana, for example, induces a positive cultural valence since it diminishes PM occurrences.

Accountability has come into Ghanaian culture only recently. It is only recently that we have begun to question people who seem not to be accountable or transparent. At the time, he was Minister of Energy and was signing most of the petroleum agreements; no one ever questioned him that they wanted to do a review of the agreements. People were not interested – not the media nor civil society. Now it seems governance challenges in Ghana have shifted. Seeing democracy in practice has now made people talk about how to ensure transparency, accountability, etc. (MP in the current Parliament of Ghana).

Americans are people like Ghanaians who have built these systems for so many years; therefore, it is imbibed in them that you can't do certain things (Focus group participant, Ghana).

In addition, culture may exert a negative influence on individuals inasmuch as it may constitute a predisposition for them to misbehave. As several respondents suggested:

... incomes are low, and with the extended responsibilities from the extended family system that public servants have, they try to find extra avenues and ways to make extra money (Focus group participant, Ghana).

Some of these wrongdoings can also be attributed to our cultural settings; there are some sayings in our traditional settings that fuel corruption. For instance, there is a saying, 'Everybody eats from his work.' You don't press the cheek of the one cracking the peanut. These sayings influence us wherever we find ourselves. Young people are also pressured by the necessities of lives so that the community will know he/she is also working and getting things out of it (Focus group participant, Ghana).

It is almost accepted that when you are in a position to make money, you should make it so that your extended family can also benefit (Former MP, Burkina Faso).

In some cultures, micro morality, which has to do with connections to people, and informal norms, values and obligations based on reciprocity and sociality, may be so strong that they weaken the sense of macro morality, which is more abstract and based on formal norms and equality (Höffling, 2002). Holding such values may reverberate onto behaviour in the form of patronage, cronyism, and patrimonial administration in developing countries (Theobald, 1999; Williams and Theobald, 2000) but also in developed countries, e.g., clubs, fraternities, alumni networks (Perkin, 1996).

In sum, individual agency valence alone cannot be understood if it is not related to collective agency valence, which guides individual behaviour. The naturally strong need for acceptance exhibited by individuals comes with pressure brought to bear via cultural persuasiveness, cajoling and influence (Murphy, 2011), and which ultimately impacts individual choices.

5.3. Grounded model

Both relationalistic and substantialistic theoretical frameworks determine a professional's propensity to misbehave through their empirically-grounded proxies of, respectively, relationality, characterized by the level of institutional functionality and conflation, as well as of substantiality as defined by agency valence and cultural valence. As shown in Figure 1:

(1) *Relationality* can be considered as a continuum ranging from most dysfunctional institutions (i.e. lack of power separation, checks and balances system) and strong conflation (i.e. normalization of questionable practices) to most functional institutions (i.e. clear separation of power and efficient checks and balances system) and weak conflation (i.e. disregard to questionable practices).

(2) *Substantiality* is a second continuum crossing relationality and ranging from most negatively-valenced agency (i.e. absence of morality and ethics) and most negatively-valenced culture (i.e. cultural frames conducive to misconduct) to most positively-valenced agency (i.e. strong morality and ethics) and most positively-valenced culture (i.e. morality-prone cultural canvass).

By combining these two axes together, four generic configurations emerge. Following recommendations to the flexible use of metaphors for abstract metonymical constructs (Morgan, 2016; Jermier & Forbes, 2016; Schoeneborn et al., 2016), we propose a metaphor for each generic configuration as an attempt to deal with the difficulty of multidimensional complexity:

(a) *Minimally-induced compliance* is the worst-case scenario characterized by a combination of lack of power separation, checks and balances system, strong conflation at the relational level, and absence of morality and ethics as well as cultural frames conducive to misconduct. In other words, individuals are neither individually encouraged to demonstrate good conduct nor are they structurally encouraged to do so. This configuration is antinomical to Etatism/hierarchy and morality – from whichever religion or system of beliefs – which corresponds to Anarkhia or anarchy (Takahashi, 1997).

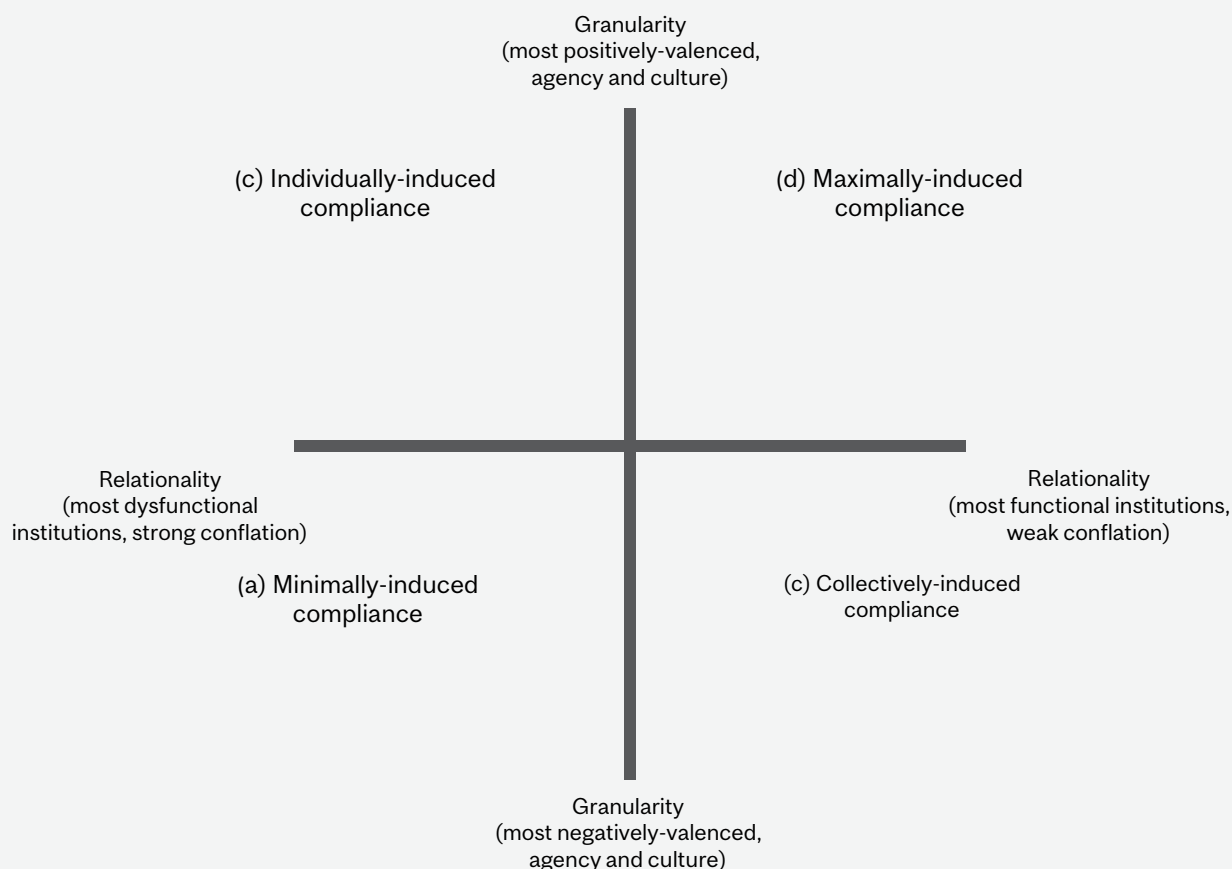
(b) *Collectively-induced compliance* means moving up the relational ladder; individuals characterized by negatively-valenced agency and sharing a negatively-valenced culture may nonetheless be driven to good professional conduct because of structural dispositions such as most functional institutions and weak conflation issues. We borrow George Orwell's Big Brother surveillance metaphor from his 1984 novel to characterize this configuration;

(c) *Individually-induced compliance* constitutes the symmetrical opposite of collectively-induced compliance. Individuals who work in settings characterized by most dysfunctional institutions and strong conflation are essentially driven by their own selves, that is, by their more positively-valenced agency and background culture, to show good professional conduct. Voltaire's character *Candid* from his magnum opus *Candid, ou l'Optimisme* epitomizes well the evolution of a candid and optimistic agent in a harsh, unfair and hostile environment;

Continued on next page >

(d) *Maximally-induced compliance* represents the antinomy of minimally-induced compliance and therefore constitutes the best-case scenario. In a nutshell, the maximal level of compliance to good professional conduct occurs with most functional institutions and weak conflation, but also most positively-valenced agency as well as most positively-valenced culture. This configuration we call it utopia, not so much in the sense of a place that does not exist – what the word originally means in Greek – but rather as in Thomas More’s meaning of a good place.

Figure 1. Generic configurations of professional misconduct



Any given professional setting, characterized by a specific generic configuration in compliance to good professional conduct and best practices (d), may crumble down to minimally-induced compliance (a) if it regresses from positively-valenced substantiality and strong relationality to most negatively-valenced substantiality and weak relationality. Conversely, minimally-induced compliance may turn into maximally-induced compliance through actors’ moving up from most-negatively-valenced substantiality and weak relationality to the positively-valenced substantiality and strong relationality. We provide a more concrete discussion of how to achieve maximally-induced compliance in the section on practical implications.



6. Discussion and conclusion

6.1 Theoretical contribution

This study sought to identify the mechanisms leading to PM by overcoming the limiting three-perspective vision offered in the literature. By investigating PM in the broader context of corruption, we showed the complexity of both the individual and environmental ramifications that interact to produce misbehavioural outcomes. It is therefore essential to adopt a holistic instead of a siloed perspective when considering PM. More specifically, drawing on a combination of the classic relationalist sociological framework (Bourdieu, 1998) and its recent revision (Murphy, 2011; Smith, 2010; Bottero, 2009), the reason why PM occurs is not exclusively tied to any given perspective, whether the individual (bad apple theory or functionalist perspective), the organization (red barrel or conflict perspective) or the wider societal context (bad cellar theory or ecological perspective). Rather, these different layers are tightly intertwined and interact with each other for PM to occur. We propose a net of conceptually related constructs that intervene in the process of PM occurrence, namely relationality influenced by institutional dysfunctionality and conflation, and substantiality through agency and culture.

We show that through the concept of relationality derived from the classic relationalistic sociological framework (Cassirer, 1923; Festinger, 1954; Mische, 2011; Bourdieu, 1998; Emirbayer, 1997), for PM to exist, it first has to be recognized as such in a system of comparative evaluations where different conducts are benchmarked against each other and hierarchically ordered as being more or less hurtful in a given profession. Formally, this is typically shown in the professional codes of conduct, which aim at expressing what PM is explicitly, thus increasing members' relational awareness. We report the findings relating to foreign companies operating in African countries where the level of relational awareness may not be as acute as in their country of origin and end up engaging in PM because of a lack of perceived relationality. These findings have important implications for theory in human relations, which typically characterized ethics as a discursive resource (Bardon et al., 2017; Clarke and Knights, 2015; Kornberger and Brown, 2007; Barker, 2002; Lewis and Mackenzie, 2000; Watson, 2003). We first show that, similar to ethics, PM can be conceived as a discursive resource on which professionals may draw in their attempts to make sense of their environment. Secondly, and more specifically, we recast past results into a more comprehensive theoretical whole, namely the relational paradigm, which implies that discourses in past studies (e.g. Kornberger and Brown, 2007) should contribute to clearly framing good professional conduct in order to make PM more salient to professionals.

In contrast to literature on ethics, which focus on the discursive nature of ethical behaviour, we show that enhanced relationality is not enough to control for PM since actual enactment of PM boils down to the granular level of the individual, even though that individual is embedded in broader organizational settings or subject to wider macro-environmental forces. We thus acknowledge

Continued on next page > **87**

a certain level of personal agency exhibited by professionals and thus, adhere to the theoretical framework of substantialism in addition to relationalism to explain PM. Personal agency is itself a product of influences emanating from various layers of the environment (e.g. micro, meso, macro), which we conflated in the notion of culture or cultural ingraining. This is the notion of Bourdieu's social capital or *habitus* concept, which as De Graaf (2007) theoretically suggested, is very useful to explain PM. The concept of *habitus*, which we elaborated on in the sub-theme of culture, is the recipient of the individual perceptions pertaining to the external world and hence, the aspects of culture that are anchored in the mind and resurface in actual behaviour.

While we acknowledge the importance of personal agency, this does not equal « rehabilitating » the bad apple theory. Similarly, the importance of culture or *habitus* does not mean validating either the red barrel or the bad cellar theories in particular, as recently proposed (Muzio et al., 2016). In line with recent works on the need to overcome the relationalism vs. substantialism divide (Smith, 2010), PM may not be explained by relationality and substantiality alone. Rather, for the first time, we propose that both are entangled together. Our research expresses more formally, recent nudges in past sociological studies (Bajde, 2013; Arnould and Rose, 2016), as well as in the literature on workplace incivility (Pearson et al., 2001), namely that both (lack of) relationality and (negatively-) positively-valenced substances concur to foster good professional conduct (PM). The effects of lack of relationality or negatively-valenced substantiality may be long-lasting and alienating to many different entities, and that it has the potential to spill over from instigator to target to witness and even to the public at large. Therefore, PM should be understood as an organizational problem but has actual ramifications that are rooted well beyond the organization and should be treated to be successfully combated.

6.2 Practical implications

We showed that PM is the result of a decrease in the perception of relationality or of the differences among diverse behaviours, ending up being all conflated into a flat whole. Therefore, it is essential for organizations to ensure that all of their professional members are aware of the behaviours which are clearly considered deviant. Professional codes and guidelines should be as detailed as possible, leaving no stone unturned and no grey zone or loophole apparent. One important way to further enforce compliance with codes or guidelines is institutional functioning in its broadest sense. This means that the institutions (e.g. associations) in charge of devising the codes and enforcing them should themselves be characterized by relationality, such as, for example, by separating layers of power and installing a system of checks and balances, which would prevent the cover-up of controversial cases. As the Director of Mine of a Canadian company in Burkina Faso recommended:

Don't give too much power to one person. Better to distribute power... that is one of the things that the mining code states... division of labor in terms of power...

The division of powers, mirroring that in central government, should be applicable to professional associations as well so that they may function effectively. Doing so also sends a positive signal to professionals and society alike about the sincerity of the association and the reputation of the profession and its practitioners.

As observed in the data, a more relationalist perspective is not sufficient to fight against what Muzio et al. (2016) call “rogue individuals” who turn into “bad apples” and end up contaminating the rest of the orchard. Instead, personal agency, will, norms and values, which are strongly influenced by the individual social capital, habitus, or ingrained culture, often determines, in the end, an individual’s eventual proclivity to engage in misbehaviour. Surely there are different levels of intensity in misbehaviour, and not all kinds of misbehaviour should be put on the same level. Nonetheless, the underlying process is relatively similar across different misbehaviour intensities. Individuals will react differently given their cultural background, morals and values. Practically, this means that in addition to work on the structural aspect of the code, associations and decision-makers should work on education and transmitting the set of universalistic values promoting ethics and morality. The CSO representatives mentioned educational initiatives:

“As a civil society organization, REN-LAC’s contribution in the fight against corruption is articulated around the following areas of intervention: Engaging civil consciences against corruption and related practices. This is done by carrying out public lectures, radio broadcasts, the publication of press articles, the organization of forums, theaters, the publication of a cartoon “Kuka” dedicated to youth, organizing competitions on the subject, etc. All these actions are carried out on the basis of reliable information produced by the REN-LAC on these phenomena specific studies (studies on corruption presumptions in the customs sector, public procurement and in the mining sector; study on the moral, ethical and civic values in the fight against corruption; survey of national anti-corruption legislation) and, production of reports on the state of corruption in Burkina Faso” (Lawyer and head of fundraising and lobbying at the National Anti-Corruption Network RENLAC).

One respondent, the Vice-President for Sustainability from a mining company in Ghana, mentioned offering Christmas hampers such as corporate t-shirts with anti-misbehaviour messages, as well as gadgets or books such as *The Bad Samaritans*.

Importantly, misbehaviour may spread once it is performed and thus contaminate not only professional spheres but political or civilian ones as well, or the reverse. In the study, some specific initiatives that were proposed to break the cycle of PM were anonymous corporate whistleblower systems or the use of the *lpaidabribe.com* website. Business representatives from mining companies proposed the introduction of e-governance whereby human and government contact is limited to break the vicious circle of PM, especially between business professionals and governments. Overall, the promotion of ethics should not be limited to a professional association alone but should extend to the whole public. Exhorting civil society to behave ethically will reduce the incidence of PM, whether emanating from within or outside the professional milieu.

7. Limitations

The study drew upon a considerable amount of data from diverse sources. While this is an important advantage because it provides the authors with a multidimensional perspective on a sensitive issue, it must be noted that it does not enable us delve as deeply into the data as suggested in the conventional qualitative methods literature (Patton, 2002). We tried to follow De Graaf's (2007) guidelines in the application of Bourdieu's theoretical framework but may therefore lack in-depth study of contingencies as recommended by the author. However, multi-faceted opinions on the subject under study enabled us to better dissect the issue on hand than if we had focused on one single actor or entity alone (i.e. government, professional, CSO, local chief), which would have shown social desirability. The access to a greater variety of viewpoints enabled us to take a more holistic stance and be more nuanced in our interpretations of the data. Although this study is focused on PM, we investigated and analyzed it in the broader context of corruption. Corruption is closely related to PM because corruption conflates with PM, in that it is behaviour where the expected standard has not been manifested (Neale, 1996). Corruption may thus be conceived as a more generic term, with PM being one of its particularities in the exercise of a profession. Therefore, we believe that the conceptual closeness of both terms does not preclude us from the use of a case focused on corruption to theorize about PM.



References

- Anderson, M. S., & Shultz, J. B. (2003). The role of scientific associations in promoting research integrity and deterring research misconduct. *Science and Engineering Ethics*, 9(2), 269-272.
- Arnold, B. L., & Hagan, J. (1992). Careers of misconduct: The structure of prosecuted professional deviance among lawyers. *American Sociological Review*, 771-780.
- Arnold M, Larsen PT, Hollinger P, O'Doherty J and Milne R (2008) How Kerviel exposed lax controls at Société Générale. Available at: <https://www.ft.com/content/927fe998-d5b2-11dc-8b56-0000779fd2ac> (accessed 21-04-2017).
- Arnould EJ and Rose AS (2016) Mutuality: Critique and substitute for Belk's "sharing". *Marketing Theory* 16(1): 75-99.
- Bajde D (2013) Consumer culture theory (re) visits actor-network theory: Flattening consumption studies. *Marketing Theory* 13(2): 227-242.
- Bajoit G (1992) *Pour une sociologie relationnelle*. Paris: Presses Universitaires Françaises.
- Bardon T, Brown AD and Pezé S (2017) Identity regulation, identity work and phronesis. *Human Relations*. Doi: 10.1177/0018726716680724.
- Barker RA (2002) An examination of organizational ethics. *Human Relations* 55(9): 1097-1116.
- Biaggio, M., Duffy, R., & Staffelbach, D. F. (1998). Obstacles to addressing professional misconduct. *Clinical Psychology Review*, 18(3), 273-285.
- Bolsin, S. N. (1998). Professional misconduct: the Bristol case. *The Medical Journal of Australia*, 169(7), 369-372.
- Bottero W (2009) Relationality and social interaction. *The British Journal of Sociology* 60(2): 399-420.
- Bourdieu P (1998) *Practical reason: On the theory of action*. Stanford: Stanford University Press.
- BBC (2016) Jerome Kerviel, rogue trader, wins unfair dismissal case. Available at: <http://www.bbc.com/news/world-europe-36472099> (accessed 21-04-2017).
- Burgis T (2016) *The Looting Machine: Warlords, Oligarchs, Corporations, Smugglers, and the Theft of Africa's Wealth*. New York: Public Affairs Books.

Continued on next page >



Campbell B (2011) Canadian mining in Africa: “Do as You Please” approach comes at high cost.

Canadian Dimension, May. Available from:

<https://canadiandimension.com/articles/view/canadian-mining-in-africa> (accessed 04-04-2017).

Cassirer E (1923) *Der begriff der symbolischen form im Aufbau der Geisteswissenschaften*. Berlin: Teubner.

Chu JY (2005) Adolescent boys’ friendships and peer group culture. *New Directions for Child and Adolescent Development* 2005(107): 7-22.

Clarke CA and Knights D (2015) Career through academia: Securing identities or engaging ethical subjectivities? *Human Relations* 68(12): 1865-1888.

Coffee JC (2006) *Gatekeepers: The professions and corporate governance*. Oxford: Oxford University Press on Demand.

Coleman JW (1987) Toward an Integrated Theory of White-Collar Crime. *American Journal of Sociology* 93(2):406-39.

Davis GF (2013) After the corporation. *Politics & Society* 41(2): 283-308.

De Graaf G (2007) Causes of corruption: towards a contextual theory of corruption. *Public Administration Quarterly* 31(1/2): 39-86.

Dixon-Woods M, Yeung K and Bosk CL (2011) Why is UK medicine no longer a self-regulating profession? The role of scandals involving “bad apple” doctors. *Social Science & Medicine* 73(10): 1452-1459.

Donati P (2007) Building a relational theory of society: A sociological journey. In M. Deflem (ed), *Sociologists in a global age: Bibliographical perspectives*. Ashgate: Aldershot. 159-174.

Drohan M (2010) Regulating Canadian mining companies abroad: The 10-year search for a solution. Centre for International Policy Studies / Centre d’Études en Politiques Internationales. *Policy Brief* 7: 1-5. Available at: http://www.cips-cepi.ca/wp-content/uploads/2015/01/CIPS_PolicyBrief_Drohan_Jan2010-1.pdf (accessed 21-04-2017).

Eisenhardt KM (1989) Building theories from case study research. *Academy of Management Review* 14(4): 532-550.

Elkin, K. J., Spittal, M. J., Elkin, D. J., & Studdert, D. M. (2011). Doctors disciplined for professional misconduct in Australia and New Zealand, 2000–2009. *Med J Aust*, 194(9), 452-456.

Continued on next page >

Emirbayer M (1997) Manifesto for a relational sociology 1. *American Journal of Sociology* 103(2): 281-317.

Ernst & Young (2011) Managing fraud, bribery and corruption risks in the mining industry and metals industry. Available at: [http://www.ey.com/Publication/vwLUAssets/EY-managing-fraud-bribery-and-corruption-risks-in-the-mining-and-metals-industry/\\$FILE/EY-managing-fraud-bribery-and-corruption-risks-in-the-mining-and-metals-industry.pdf](http://www.ey.com/Publication/vwLUAssets/EY-managing-fraud-bribery-and-corruption-risks-in-the-mining-and-metals-industry/$FILE/EY-managing-fraud-bribery-and-corruption-risks-in-the-mining-and-metals-industry.pdf) (accessed 21-04-2017).

Festinger L (1954) A theory of social comparison processes. *Human Relations* 7(2): 117-140.

Frasier Institute (2016) <https://www.fraserinstitute.org/studies/annual-survey-of-mining-companies-2016> (accessed 04-04-2017).

Fuchs S (2001) *Against essentialism*. Cambridge: Harvard University Press.

Gardiner, J. A. (1986). Preventing Judicial Misconduct: Defining the Role of Conduct Organizations. *Judicature*, 70, 113.

Glaser BG and Strauss A (1967). The discovery of ground theory. New York: Alpine.

Global Affairs Canada (2016). Canada's enhanced corporate social responsibility strategy to strengthen Canada's extractive sector abroad. Available at: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?lang=eng> (accessed 21-04-2017).

Greenbaum, A. F. (2002). The Attorney's Duty to Report Professional Misconduct: A Roadmap for Reform. *Geo. J. Legal Ethics*, 16, 259.

Greve, H. R., Palmer, D., & Pozner, J. E. (2010). Organizations gone wild: The causes, processes, and consequences of organizational misconduct. *The Academy of Management Annals*, 4(1), 53-107.

Hauptman, R., & Hill, F. (1991). Deride, abide or dissent: On the ethics of professional conduct. *Journal of Business Ethics*, 10(1), 37-44.

Hegel GWF (1827-1830/1991) *Encyclopedia of the philosophical sciences in outline and critical writings: GWF Hegel (German Library), First Edition*. New York: Bloomsbury Academic.

Höffling C (2002) *Korruption als Soziale Beziehung*. Opladen: Leske+Budrich.

Huberts L (1998) *Blinde Vlekken in de Politiepraktijk en de Politiewetenschap*. Gouda: Gouda Quint.

Jermier JM and Forbes LC (2016) Metaphors, organizations and water: Generating new images for environmental sustainability. *Human Relations* 69(4): 1001-1027.

Continued on next page >

- Kisenga N (2016) *RDC, L'africain de l'année: L'art de piller propre*. Charleroi: Congolobbying.
- Kish-Gephart J.J., Harrison D.A., & Trevino L.K. (2010) Bad apples, bad cases, and bad barrels: Meta-analytic evidence about sources of unethical decisions at work. *Journal of Applied Psychology*, 95: 1-31.
- Kornberger M and Brown AD (2007) Ethics' as a discursive resource for identity work. *Human Relations* 60(3): 497-518.
- Krippendorff K (1980) *Content analysis*. Thousand Oaks: Sage Publications.
- Le Bret H (2010) *La semaine où Jérôme Kerviel a failli faire sauter le système financier mondial: Journal intime d'un banquier*. Paris: Éditions Points.
- Lefkowitz, J. (2009). Individual and organizational antecedents of misconduct in organizations: what do we (believe that we) know, and on what bases do we (believe that we) know it. *Research companion to corruption in organizations*, 60-91.
- Lewis A and Mackenzie C (2000). Morals, money, ethical investing and economic psychology. *Human Relations* 53(2): 179-191.
- Lieberman ES (2005) Nested analysis as a mixed-method strategy for comparative research. *American Political Science Review* 99(3): 435-452.
- Lock, S. (2001). *Fraud and misconduct in biomedical research* (pp. 51-63). F. O. Wells, & M. J. Farthing (Eds.). London: BMJ books.
- MacLean, T. L. (2008). Framing and organizational misconduct: A symbolic interactionist study. *Journal of Business Ethics*, 78(1), 3-16.
- McIlwain, G. B. (2004). *Professional misconduct between inmates and non-custodial staff: A study of Queensland's correctional centres* (Doctoral dissertation, Griffith University Australia).
- Mayer, D. M., Kuenzi, M., & Greenbaum, R. L. (2010). Examining the link between ethical leadership and employee misconduct: The mediating role of ethical climate. *Journal of Business Ethics*, 95, 7-16.
- Mische A (2011) Relational sociology, culture, and agency. In J. Scott and P. J. Carrington (eds), *The sage handbook of social network analysis*. London: Sage Publications. 80-97.
- Mohr JW (2013) Bourdieu's relational method in theory and in practice: From fields and capitals to networks and institutions (and back again). In F. Dépelteau and C. Powell (eds), *Applying relational sociology*. 101-135.
- Morgan G (2016) Commentary: Beyond Morgan's eight metaphors. *Human Relations* 69(4): 1029-1042.

Continued on next page >

Murphy M (2011) The Ties that Bind: Distinction, Recognition and the Relational. *International Journal of Interdisciplinary Social Sciences* 5(10): 103-116.

Muzio D, Faulconbridge J, Gabbioneta C and Greenwood R (2016) Bad Apples, Bad Barrels and Bad Cellars: A 'Boundaries' Perspective on Professional Misconduct. *Organizational Wrongdoing*, 141-175. Doi: 10.1017/CBO9781316338827.007.

Neale A (1996) Professional conduct and professional misconduct: A framework and its application to the accounting profession. *Journal of Business Ethics* 15(2): 219-226.

Norton, T. W. (1991). Understanding professional misconduct: the moral responsibilities of professionals. *Journal of Business Ethics*, 10(8), 621-623.

Palmer D (2012) *Normal organizational wrongdoing: A critical analysis of theories of misconduct in and by organizations*. Oxford: Oxford University Press on Demand.

Patton MQ (2002) <https://canadiandimension.com/articles/view/canadian-mining-in-africa>. Thousand Oaks: Sage Publications.

Pearson CM, Anderson LM and Wegner JW (2001) When workers flout convention: A study of workplace incivility. *Human Relations* 54(11): 1387- 1419.

Perkin H (1996) *The Third Revolution: Professional Elites in the Modern World*. London: Routledge.

Petroff A and Buet ME (2016) Rogue trader's fine to Societe Generale cut by 99.98%. Available at: <http://money.cnn.com/2016/09/23/news/jerome-kerviel-rogue-trader-court/> (accessed 21-04-2017).

Robson C (2002) *Real World Research*. Oxford: Blackwell Publishing.

Schoeneborn D, Vásquez C and Cornelissen J (2016) Imagining organization through metaphor and metonymy: Unpacking the process-entity paradox. *Human Relations* 69(4): 915-944.

Seale C (1999) Quality in qualitative research. *Qualitative inquiry* 5(4): 465-478.

Seron, C., Pereira, J., & Kovath, J. (2004). Judging police misconduct: "Street-Level" versus professional policing. *Law & Society Review*, 38(4), 665-710.

Shadnam M and Lawrence TB (2011) Understanding widespread misconduct in organizations: An institutional theory of moral collapse. *Business Ethics Quarterly* 21(3): 379-407.

Smith MF (2010). *Research methods in sport*. London: SAGE Publications.

Continued on next page >

Stapenhurst, F, Karakas, F, Sarigöllü, E, Jo, MS, and Draman, R, "The supply and demand sides of corruption: Canadian extractive companies in Africa", *Canadian Foreign Policy Journal*, 23 (1), 2017, pp.60-76.

Takahashi N (1997) A single garbage can model and the degree of anarchy in Japanese firms. *Human Relations* 50(1): 91-108.

Theobald R (1999) So What Really Is the Problem about Corruption? *Third World Quarterly* 20: 491-502.

Transparency International (2015). Corruption perceptions index 2015.
Available at: <https://www.transparency.org/cpi2015/> (accessed 21-04-2017)

Transparency International (2016). Corruption perceptions index 2016.
Available at: <https://www.transparency.org/cpi2015/#downloads> (accessed 21-04-2017)

Tscherning R (2017). Canadian mining operators abroad: Corruption as a « real risk » factor in Forum Non Conveniens applications. University of Calgary. Available at:
<http://ablawg.ca/2017/02/09/canadian-mining-operators-abroad-corruption-as-a-real-risk-factor-in-forum-non-conveniens-applications/> (accessed 21-04-2017).

Valentine, S., & Fleischman, G. (2008). Professional ethical standards, corporate social responsibility, and the perceived role of ethics and social responsibility. *Journal of Business Ethics*, 82(3), 657-666.

Vardi, Y. (2001). The effects of organizational and ethical climates on misconduct at work. *Journal of Business Ethics*, 29(4), 325-337.

Vaughan, D. (1999). The dark side of organizations: Mistake, misconduct, and disaster. *Annual Review of Sociology*, 25(1), 271-305.

Watson TJ (2003) Ethical choice in managerial work: The scope for moral choices in an ethically irrational world. *Human Relations* 56(2): 167-185.

Williams R and Theobald R (Eds.) (2000). *Corruption in the Developing World*. Cheltenham: Edward Elgar.

Yin RK (2013). *Case study research: Design and methods*. Thousand Oaks: Sage publications.



Appendix 1. Qualitative Data Sources

Method	Source	Country
Expert interview	Canadian High Commissioner, and five representatives from four Canadian mining companies operating in Ghana	Ghana
Semi-structured interview	Vice President (VP) Sustainability, Canadian Mining Company (CMC 1), Ghanaian national.	Ghana
	VP Social Responsibility, CMC2, Australian national.	Ghana
	Clerk in the National Assembly, Head of the environmental component of a capacity building project in Mines and Environment (World Bank funded), former MP, former Director General of Water and Forests of Burkina Faso. Water and forests engineer by profession.	Burkina Faso
	Economist, and Committee Clerk in the National Assembly of Burkina Faso.	Burkina Faso
	Lawyer, Head of Fundraising and Lobbying at the National Anti-Corruption Network (REN-LAC), Civil Society Organization 1 (CSO1)	Burkina Faso
	MP 1, MP in the current Parliament of Burkina Faso.	Burkina Faso
	MP 2, MP in the 5th, 6th, and 7 th Parliaments and Treasury Inspector	Burkina Faso
	President of the Association “Guardians of Democracy”, CSO2	Burkina Faso
	Head of the Association “Guardians of Democracy”, CSO2	Burkina Faso
	MP 3, MP in the current Parliament of Burkina Faso	Burkina Faso
	MP 4, MP in the current Parliament of Burkina Faso, former Mayor. Engineer by profession.	Burkina Faso
	MP 5, MP in the current Parliament of Ghana.	Ghana
	Representative of « OXFAM », CSO3	Ghana
	Representative of “Ghana Anti-Corruption Coalition”, CSO4	Ghana
	Representative of «Ghana Center for Democratic Development (CDD)», CSO5	Ghana
	Representative of «Africa Centre for Energy Policy (ACEP) », CSO6	Ghana
	Representative of « Centre for Public Interest Law (CEPIL)», CSO7	Ghana
	CEO of the Mineral Commission of the Ghanaian Ministry of Lands and Natural Resources	Ghana
	Representative of “Ghana Integrity Initiative (GII)”, CSO8	Ghana
	Former MP of the Ghanaian Parliament	Ghana
MP 6, MP in the current Parliament of Ghana	Ghana	
Director of Corporate Affairs, CMC 3	Burkina Faso	
Mining Expert, CMC4	Burkina Faso	
Director of Mines, CMC5	Burkina Faso	
Focus group	Transcript of focus group in Ghana with 9 professionals	Ghana
Open-ended survey	Respondents from companies that are public ownership	Ghana & Burkina Faso





Democracy, Legislatures and Business Conditions in Post-Authoritarian African Regimes

Isabelle Côté and Rick Stapenhurst

Abstract

Following the independence movement in Africa, most countries replaced colonialist powers by one-party rule, or dictatorship maintaining authoritarianism and disabling the rise of democracy on the continent; legislatures were generally weak. Between 1991 and 2011, this tendency changed with The Third Wave of democratization spreading across Africa⁸². Overall, African countries have maintained stable levels of democracy (civil and political liberties), with some countries experiencing stronger democracies and legislatures and others falling back to less democracy and weaker legislatures. This has implications for the business climate in African countries, as well as growth and investment.



⁸² Huntington, 'Democracy's Third Wave.'

Introduction

The *2019 Freedom in the World* report presents a bleak picture; worldwide democracy is falling, and it has been declining for more than a decade. Six of the thirteen least democratic countries worldwide are located in sub-Saharan Africa; South Sudan, Somalia and the Central African Republic are shattered by civil war, Eritreans live under a hermetic police state, Equatorial Guinea is an oil kleptocracy, and Sudan's future remains uncertain after the recent fall of dictator Omar al-Bashir in spring 2019⁸³. Many authors rightfully read this as a worldwide attack on democracy, which consequently leads to an increase in authoritarianism.

In this chapter, we will argue that sub-Saharan countries are at odds with this global trend as democracy remained stable in the region, with some countries becoming more democratic with stronger legislatures and others falling back to 'rubber stamp' legislatures⁸⁴ and authoritarian regimes. We will also consider why stronger democracies and legislatures are important by examining the relationship between these trajectories and a country's business environment, which in turn impacts economic growth and development.

Background

For most of the western world, democratic practices echoed back centuries where European societies shared best practices and evolved, incrementally improving the power of citizens. For a modern era example, the British Empire can date back to 1707 when they established the *First Parliament of Great Britain*. In contrast, most African nations did not experience any democracy before the 1990s.

Before the 1880s, there were only sparse colonies along the coasts of Africa, summing up to only ten percent of the continent. In the early 20th century, while occidental women were rallying to obtain electoral rights, European leaders partitioned Africa; the *Scramble for Africa* between 1881 and 1914 divided the second largest continent and shared it between European Imperialist powers (namely Belgian, British, French, German, Italian, Portuguese and Spanish). All of the African nations except one, Ethiopia, were colonized by European powers.

Independence came later, starting with Egypt in 1922, and followed by most of Northern Africa (Morocco, Tunisia, Libya) in the early 1950s. Then came sub-Saharan countries, starting with Ghana's secession from the United Kingdom in 1957. As independence spread across the continent, nations were left in ruins after decades of violence and reinforced inequalities by the former colonial power, and local politics were destabilized and chaotic. In many countries, colonial authoritarianism was replaced by military regimes, autocratic rulers, and one-party rule. It was not until the 1990s that 'the Third Wave' of democratization⁸⁵ swept across Africa, with the first democratic transition occurring in Benin in 1990, followed by the end of one-party rule and democratic elections in Zambia the following year⁸⁶. While this democratization wave is believed to have ended by the

Continued on next page >

⁸³ Freedom House, 'Freedom in the World 2019: Democracy in Retreat'.

⁸⁴ Al Jazeera and News Agencies, 'Toll in Sudan Army Attack Jumps as China, Russia Block UN Action'.

⁸⁵ Huntington, 'Democracy's Third Wave.'

⁸⁶ Barkan, 'African Legislatures and the "Third Wave" of Democratization.'

late 1990s in the rest of the world⁸⁷, sub-Saharan countries lagged by some 20 years and transitioned toward electoral democracy up until 2011 when South Sudan became independent. As Fish⁸⁸ pointed out in the context of Eastern European and Central Asian countries, ‘stronger democracies are associated with stronger legislatures’ – and as will be demonstrated, that proposition holds up for Africa as well.

Democratic Growth Hypothesis

The underlying logic that needs to be tested for causality is that stronger democracy and stronger legislatures result in better economic policies which in turn result in a more favorable business climate for investment (presented in Diagram 1). To demonstrate that, we will run a cross-country analysis using five indexes created by renown international institutions and scholars (Freedom House, Fish and Kroenig, the World Bank, Transparency International, and the United Nations).

Diagram 1. Linkage Between Democratic Institutions and Business Climate



We focussed on sub-Saharan countries rather than all of Africa for various reasons. First, international institutions like the World Bank, the International Monetary Fund, and the United Nations group African nations in two separate categories; the six northern countries (Algeria, Djibouti, Egypt, Libya, Morocco, and Tunisia) are grouped with the *Middle East* due to century-old ties between these Islamic states. The remaining forty-eight nations, inland, and isles are consequently part of sub-Saharan Africa. Then, when looking at the democratization process, it has been demonstrated that Islamic states followed a different trend than the bulk of African nations⁸⁹. And lastly, to ensure academic coherence, most scholarly research focuses on either Northern Africa or sub-Saharan Africa. We focus on sub-Saharan countries as defined by the World Bank.



⁸⁷ Diamond, 'Is the Third Wave Over?'; Joseph, 'Africa, 1990-1997: From Abertura to Closure'.

⁸⁸ Fish, 'Stronger Legislatures, Stronger Democracies.'

⁸⁹ Huntington, 'Democracy's Third Wave.'

Democracy on the Continent

Over the past 20 years, the ‘freedom status’⁹⁰ of twenty-nine countries in sub-Saharan Africa remained unchanged with ten countries classified as ‘not free,’ twelve countries as ‘partly free’ and seven countries as ‘free’⁹¹⁹². There were eight countries which improved with regards to their status (Côte d’Ivoire, Gambia, Ghana, Guinea, Kenya, Niger, Senegal, and Togo). Three countries moved up-down, improving their democratic situation before regressing; four of them moved from ‘not free’ to ‘partly free’ and back to ‘not free’ (Burundi, Mauritania and Sudan) while a single country (Lesotho) moved back and forth between ‘partly free’ and ‘free’ status. Seven countries saw a decrease in their status: five of them moved from ‘partly free’ to ‘not free’ status (Central African Republic, Eritrea, Ethiopia, Gabon, and Zimbabwe) and two moved from ‘free’ to ‘partly free’ (Malawi and Mali).

The consolidation of democracy in Sub-Saharan Africa has been uneven. Overall, the region had not democratically deteriorated nor improved with regards to both freedom status and aggregate score on the Freedom Index. There is the same number of ‘free’ countries (eleven) as there was twenty years ago; half the region has shown a decrease in their aggregate score between 2003 and 2018 while the other half have improved⁹³. Countries have remained spread out, evenly distributed according to their aggregate Freedom score for the last fifteen years (see graph 1). Each line (graph 1) represents a country’s fluctuation, and no trends are identifiable; sub-Saharan Africa democracy remains country specific.

When looking at the average score for sub-Saharan countries over the last fifteen years, we see a marginal annual drop of 0.3216 points on the Freedom aggregate score⁹⁴. This slight yet constant fall does not have repercussions on countries’ ranking as it takes more than a fall of four points over fifteen years to drop ranking. Furthermore, it is hard to attribute it to any variables; either all countries degenerated, or some countries dropped considerably, bringing down the average score. Looking at Freedom House data⁹⁵, we would support the latter idea based on the fact that three countries in the region (South Sudan, Mali and Central African Rep.) have encountered war and political unrest in the past two decades, which lead to a drastic decrease in their score. Further research could look into this specific decline and evaluate if the decrease is concentrated in political rights, civil rights, or both. However, overall, democracy in sub-Saharan Africa has been relatively stable on a macro level.

⁹⁰ As measured by Freedom House, which ranks countries as ‘free,’ ‘partly free’ or ‘not free.’

⁹¹ Freedom House, ‘Freedom in the World 2019: Democracy in Retreat’.

⁹² In 2003, Freedom House added a numeral rating on the top of the initial ranking. Under that rating, twenty-four countries decreased on the Freedom House Index (from the greatest to the smallest decline, Central African Rep., Mali, Gabon, Dem. Rep. of Congo, Ethiopia, Kingdom of eSwatini, Gambia, Eritrea, Mauritania, Botswana, Eq. Guinea, South Africa, Burundi, Chad, Somalia, Lesotho, Mozambique, Tanzania, Guinea-Bissau, Angola, Niger, Sao Tome et Principe, Madagascar, and Uganda), twenty-one countries increased their score (from the most significant improvement to the smallest, Liberia, Cote d’Ivoire, Comoros, Togo, Ghana, Zimbabwe, Sierra Leone, Malawi, Guinea, Senegal, Benin, Nigeria, Burkina Faso, Sudan, Seychelles, Rep. of Congo, Zambia, Rwanda, Namibia, Mauritius, and Cape Verde) and only two countries kept the same rating (Cameroun and Kenya). Seventeen African countries moved up-down (Angola, Botswana, Burundi, Dem. Rep. Congo, Rep. of Congo, Djibouti, Ep. Guinea, Guinea-Bissau, Kenya, Lesotho, Mali, Mauritania, Mozambique, Niger, Rwanda, Tanzania, Zambia) while five moved down-up (Madagascar, Malawi, Sao Tome et Principe, South Africa, and Zimbabwe). However, most country’s fluctuation in the freedom rating was incremental, with twenty-nine countries maintaining their status over the last two decades.

⁹³ Ibid.

⁹⁴ Freedom House aggregate score gives relatively relevant information when comparing countries within the same region, as it analyses the political and civil rights in comparison with neighboring countries. However, the aggregate score might not be the best available tool to compare countries across the globe. For example, Ghana scored 83 while the United State scores 86 in 2018. While Ghana is the outlier in sub-Saharan Africa, we could not state with confidence that its population has political and civil liberties to the same level as the USA, even though America has dropped considerably this year.

⁹⁵ Freedom House, ‘Freedom World 2018 Table of Country Scores’.

In the context of democratization beyond political and civil rights, legislatures also matter because they are the institutions that ensure both horizontal and vertical accountability of the rulers over the ruled ones⁹⁶. Legislatures are, in most countries, responsible for checking abuses by the government; they are also a mechanism by which citizens seek to enforce standards of good performance on officials⁹⁷. Furthermore, it is precisely because legislatures are institutions of both representation and accountability that they are a defining attribute of all established democracies, and why they play an essential role in democratization⁹⁸. Indeed, as Steven Fish⁹⁹ stated in his examination of legislatures in Eastern Europe, “stronger legislatures, stronger democracies.”



⁹⁶ Pelizzo and Stapenhurst, 'The Dividends of Good Governance.'

⁹⁷ O'Donnell, 'Horizontal Accountability in New Democracies'; Cavill and Sohail, 'Strengthening Accountability for Urban Services.'

⁹⁸ Barkan, 'African Legislatures and the "Third Wave" of Democratization.'

⁹⁹ Fish, 'Stronger Legislatures, Stronger Democracies.'

FREEDOM HOUSE AGGREGATE SCORE FOR SUB-SAHARAN COUNTRIES (2003-2018)

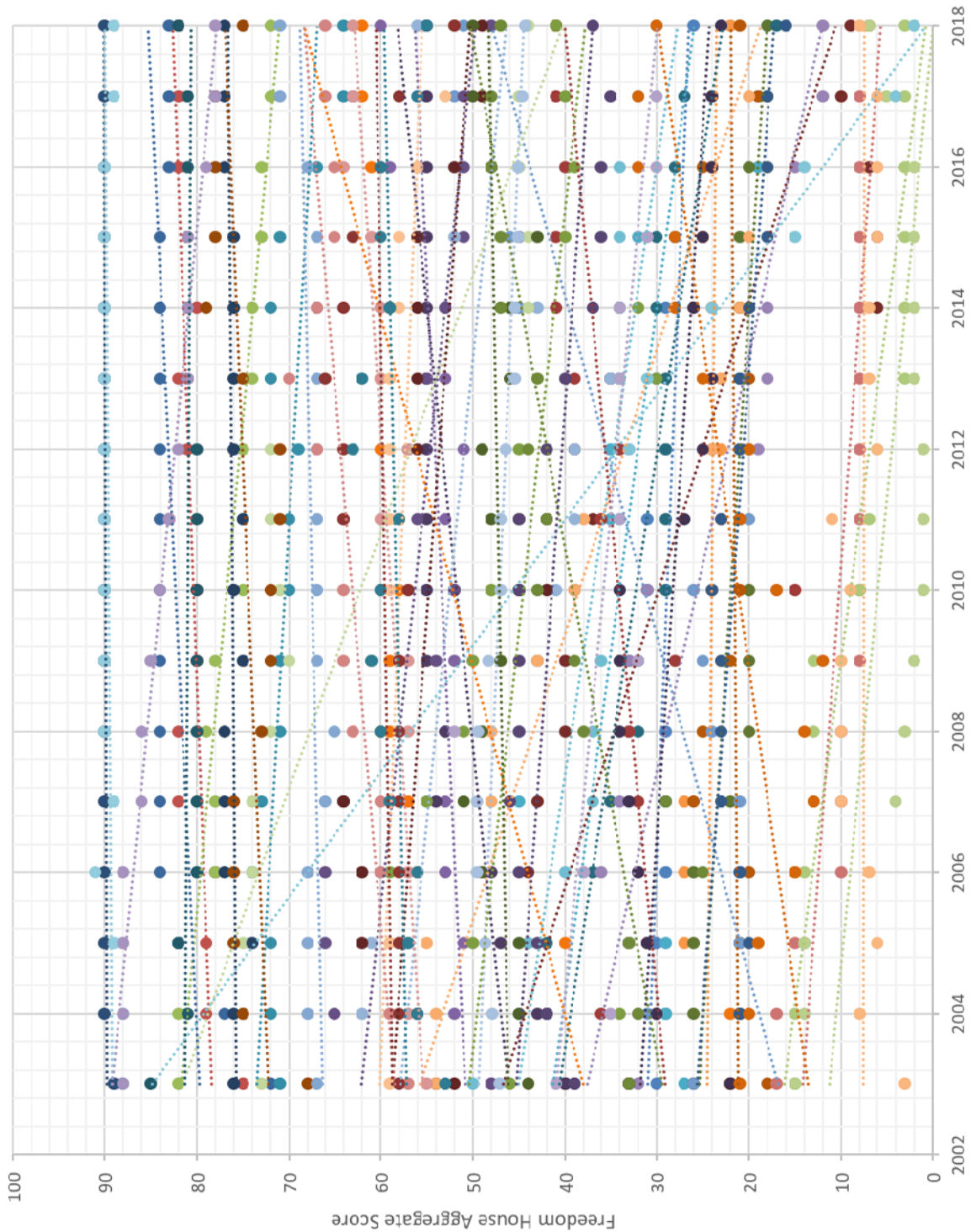


Table 1. Democracy and Legislature for Each Sub-Saharan Countries

Countries	Democracy ¹⁰⁰	101
South Sudan	2	
Eritrea	3	0.2500
Eq. Guinea	7	
Somalia	7	0.0000
Sudan	8	0.2188
Central African Rep.	9	0.3438
Ethiopia	12	0.5000
Kingdom of eSwatini	16	0.2500
Dem. Rep of Congo	17	0.2500
Burundi	18	0.4063
Chad	18	0.2188
Rep. of Congo	21	0.3750
Cameroon	22	0.2500
Gabon	23	0.4375
Rwanda*	23	0.4688
Angola	26	0.4375
Mauritania	30	0.3125
Zimbabwe	30	0.3125
Uganda	37	0.4375
Gambia	41	0.3125
Guinea	41	0.3125
Guinea-Bissau	41	0.2500
Mali	44	0.3438
Togo	47	0.3750
Kenya	48	0.3125
Niger	49	0.5000
Nigeria	50	0.4688
Cote d'Ivoire	51	0.3750
Mozambique	52	0.4375
Tanzania	52	0.3125
Comoros	55	0.3750
Zambia	55	0.2813
Madagascar	56	0.4063
Burkina Faso	60	0.5313
Liberia	62	0.4375
Malawi	63	0.3750
Lesotho	64	0.5313
Sierra Leone	66	0.4063
Seychelles	71	

¹⁰⁰ Democracy is proxied by the aggregate score of Political and civil liberties compiled by Freedom House in 2018.

¹⁰¹ The legislature is proxied by Parliamentary Power Index created by Fish and Kroenig in 2009.

Botswana	72	0.4375
Senegal	75	0.4375
Namibia	77	0.5000
South Africa	78	0.6250
Benin	82	0.5625
Sao Tome et Principe	82	
Ghana*	83	0.4688
Mauritius	89	0.6563
Cape Verde	90	

Like democratization, legislative development in Africa has been uneven. Barkan¹⁰² points out that while African legislatures remain weak relative to the executive, most are more powerful and autonomous now than at any time since independence, and a small number have become institutions of countervailing power vis-à-vis the executive.

It is not surprising, then, that countries considered as ‘Liberal Democracies’ or ‘Aspiring Democracies’ by Freedom House¹⁰³ also have the strongest legislatures according to Fish and Kroenig¹⁰⁴. For example, Table 1 presents the relationship between democracies and legislatures, where countries with low democratic standards also score low with regards to their legislatures. Furthermore, Pelizzo and Baris¹⁰⁵ found that the quality of governance affects the quality of the business environment. Enhanced political stability, lower corruption, coupled with stronger oversight and more accountable governments, as well as stronger enforcement of the rule of law result in policy continuity, better business environment and an increase in foreign direct investment proportionally to the size of the economy¹⁰⁶.

The Impact of Democracy in Africa

To analyze the more profound repercussion of democratization in Africa, we ran a cross-country analysis, where we considered five different indexes for all forty-eight sub-Saharan countries. We initially looked into the relationship between democracy proxied by the Freedom House score, the strength of legislatures proxied by the Parliamentary Power Index (PPI) and the business environment evaluated by the Ease of Doing Business index (from the World Bank). We then added two more variables to assess implications outside the political and business environment: the level of corruption proxied by Transparency International’s Corruption Perception Index (CPI) and the Human Development Index (HDI) created by the United Nations Development Programme.

¹⁰² Barkan, ‘African Legislatures and the “Third Wave” of Democratization.’

¹⁰³ Abramowitz, ‘Freedom in the World 2018 Democracy in Crisis Highlights from Freedom House’s Annual Report on Political Rights and Civil Liberties’.

¹⁰⁴ Fish and Kroenig, *The Handbook of National Legislatures: A Global Survey*.

¹⁰⁵ Pelizzo and Baris, ‘Governance, Business Environment, and Foreign Direct Investments.’

¹⁰⁶ Ibid.

Table 2. Cross-Country Analysis for sub-Saharan States (data from 2018)

	Democracy	Legislature	Ease of Doing Business	CPI	HDI
Democracy	1				
legislature	0.656	1			
Ease of Doing Business	0.622	0.607	1		
CPI	0.549	0.527	0.673	1	
HDI	0.435	0.366	0.540	0.508	1

Looking first at legislative power and the most recent data on democracy by Freedom House, we find a strong correlation of 0.656, supporting Fish's¹⁰⁷ the contention that democratization was connected with a robust national legislature (see Table 2). The connection between effective legislatures and democracy is a virtuous cycle. On the one hand, democratic societies ensure that its citizen have high civil and political freedom. Those rights will enable the population to actively participate in the political debate and keep the government in check with, among other, the use of media. On the other hand, strong legislations stabilize parliaments and supports elected officials in their multiple roles of representation, legislator, oversight, and support of constituents. Efficient parliaments are more resilient to political shocks, thus guarding the rights and freedom of citizens. Unfortunately, this relationship also goes in the other direction where weak legislatures pave the way to repression and authoritarianism¹⁰⁸. Thus, lawmakers aiming to move away from authoritarianism should focus on creating a comprehensive constitution that enshrines the power of legislatures and prevents future governments from abusing their power¹⁰⁹.

One might presume that stronger democracies result in more liberal economic policies and greater economic freedom. This is corroborated by a strong relationship between the Ease of Doing Business and both democracy (correlation of 0.622) and legislature (correlation of 0.607). This relationship is supported by extensive research on foreign direct investment in Africa, and it will be looked into in country-specific case analyses. Overall the cross-country analysis confirms the idea that democracy (Freedom score) and legislatures (Parliamentary Power Index) are mutually reinforcing. Our analysis also demonstrates that good governance has a noticeable impact on economic policies with a strong link between democracy and Ease of Doing Business. However, does this increase in sound economic policies lead to a better business climate and increase foreign direct investment (FDI)?

The Democratic Outliers of Africa

As we looked through sub-Saharan Africa macro-data, we wanted to assess in more detail the strongest and the weakest democracy on the continent and evaluate the business development in each circumstance. Ghana was our leading choice as it ranks third highest on the Freedom House index (with a score of 83 out

Continued on next page >

¹⁰⁷ Fish, 'Stronger Legislatures, Stronger Democracies.'

¹⁰⁸ Ibid.

¹⁰⁹ Pelizzo and Stapenhurst, 'The Dividends of Good Governance'; Fish, 'Stronger Legislatures, Stronger Democracies.'

of 100) after Cape Verde and Mauritius. We did not consider taking the two island-states, as small nations (by geography and population) face different challenges when it comes to democratization, and we wish the case study to reflect the region better. The antagonist role went to Rwanda as it is a country with a strong autocratic ruler, yet it has managed to foster rapid economic growth in the last two decades¹¹⁰.

What proves interesting in our case study is that while most sub-Saharan countries maintain a strong correlation between the strong legislature, thriving democracy, and economic development (see Graph 2), both Ghana and Rwanda are significant outliers. Regarding the relationship between stronger democracies and stronger legislatures, Ghana is a significant outlier. Lindberg and Zhou¹¹¹ highlight Ghana's democratization as one of the political success stories in Africa, a point confirmed by Staphenhurst and Pelizzo¹¹² who note that there has been not only a succession of free and fair elections but also several alternations of government. Conversely, Rwanda is an outlier with opposite characteristics: it has a low score regarding political freedom but a relatively high legislative power score (see Graph 2), reflecting Rwanda's tight control of corruption, and President Kagame's effort to run effective, transparent and accountable government¹¹³.

Regarding the relationship between better governance (as measured by legislatures and by extension, stronger democracies) and better business conditions (as measured by the Ease of Doing Business), we again see a strong correlation. In general, stronger legislatures are again associated with better business environments, but with obvious outliers, including Ghana and Rwanda (see Graph 3).



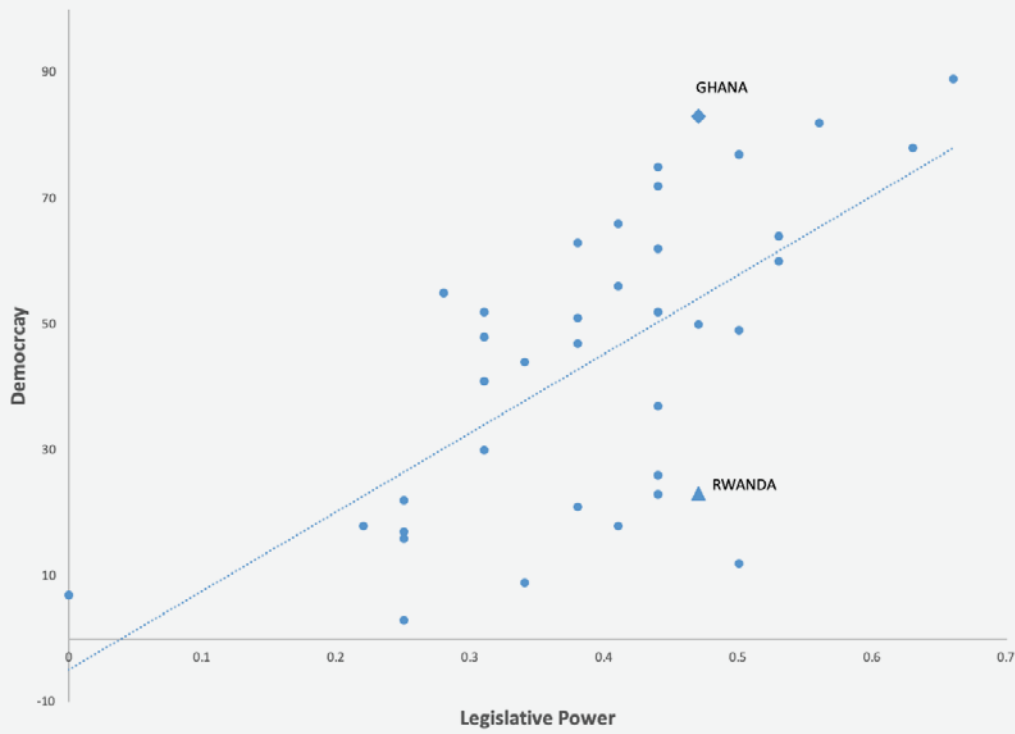
¹¹⁰ Ansoms, 'Resurrection after Civil War and Genocide: Growth, Poverty, and Inequality in Post-Conflict Rwanda.'

¹¹¹ Lindberg and Zhou, 'Co-Optation Despite Democratization in Ghana.'

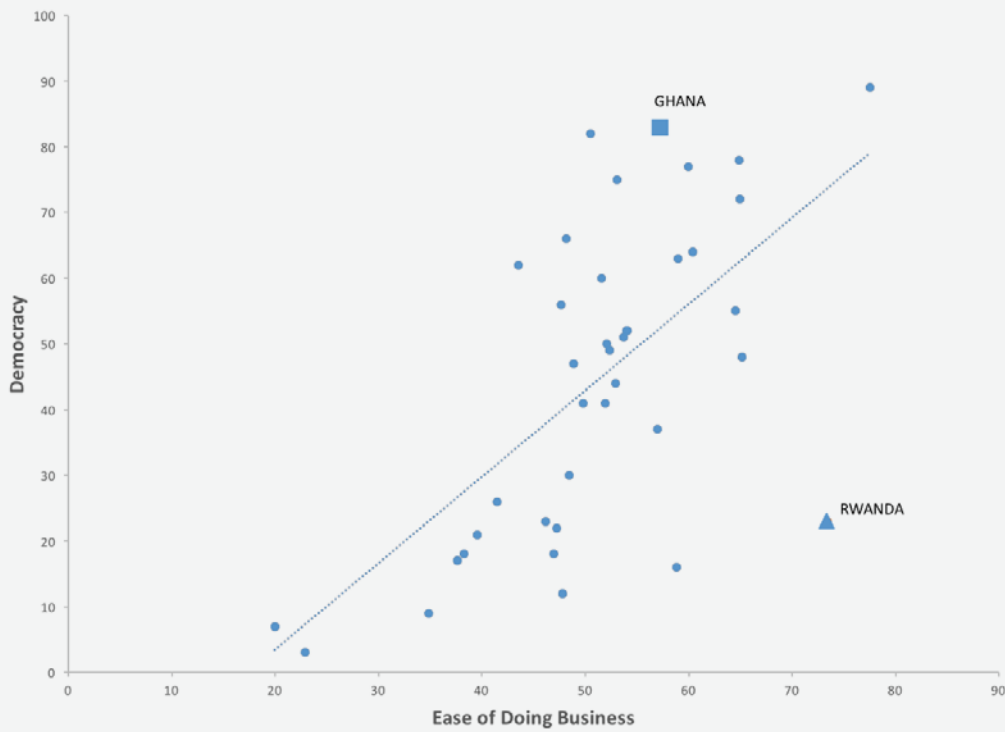
¹¹² Staphenhurst and Pelizzo, 'Improving Democracy and Accountability in Ghana: The Importance of Parliamentary Oversight Tools.'

¹¹³ Regional Political Handbooks of the World, 'Political Handbook of Africa 2007'.

Graph 2: Democracy and Legislative Power



Graph 3: Democracy and the Ease of Doing Business



The Case of Ghana

In its early steps toward democracy, Ghana's transition from neopatrimonial system¹¹⁴ was merely a defense mechanism, as there was an imminent threat of removing European financial aid if the regime did not abandon power before the Conference of Paris in May 1991¹¹⁵. Even though the regime drafted a new constitution and called for elections, the whole process was a "PR" exercise, and the military dictators had a low commitment toward democracy¹¹⁶. In the 1992 election, General Rawlings actively repressed civil society to ensure his victory in the first election¹¹⁷. However, if the transition toward democracy was shaky and forced by international parties, the following elections demonstrated Ghana's ability to maintain multi-party elections as well as the peaceful transition of power¹¹⁸.

The new constitution gave extensive powers to the legislatures; only the parliament has the power to pass new laws, and it has the right to remove from office any officials, including the president¹¹⁹. The two main parties, the National Democratic Congress (NDC) and the New Patriotic Party (NPP), which have shared power for the last twenty-five years, have respected the legislature rights¹²⁰. Ghana's democracy has been growing through the first four parliaments (1992, 1996, 2000 and 2004) but since 2008, the executive (the president and its cabinet) has been consolidating power, leaving the parliament vulnerable and unable to implement policy changes¹²¹. Ghana's newly loosening legislature is also demonstrated by the Parliamentary Power Index, where Ghana ranks 9 out of 42, identical score with Nigeria and Rwanda¹²²; it is a considerably lower score than that of its third position ranking on democracy¹²³. This deterioration in the legislature is echoed by Ghana's constant decline in transparency and accountability score over the last ten years (currently standing at 45.2 out of 100 points)¹²⁴. Legislative oversight is essential to democracy's wellbeing since it ensures representativity of the electorate by the political elite, yet legislative power is weak and getting weaker in Ghana¹²⁵. Too much power in the hands of the executive can have a damaging effect on democracy, reinforcing already strong party discipline in Ghana¹²⁶. This is not too far of a stretch before leaders stop consulting parliament, weaken the constitution and eventually modify it in their interest as has been the case in Burundi, Rwanda, Uganda, Democratic Republic of Congo, Cameroon, Gabon, Republic of Congo and Chad¹²⁷. In all of those countries, rulers have modified the constitution to retain power and extend their term in office.

¹¹⁴ Barkan, 'African Legislatures and the "Third Wave" of Democratization.'

¹¹⁵ Adejumobi, 'Elections in Africa : A Fading Shadow of Democracy ?'

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Staphenurst and Pelizzo, 'Improving Democracy and Accountability in Ghana: The Importance of Parliamentary Oversight Tools'; Lindberg and Zhou, 'Co-Optation Despite Democratization in Ghana.'

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Fish and Kroenig, *The Handbook of National Legislatures: A Global Survey*.

¹²³ Freedom House, 'Freedom World 2018 Table of Country Scores'.

¹²⁴ Ni, Kresl, and Liu, '2018 Ibrahim Index of African Governance: Report'.

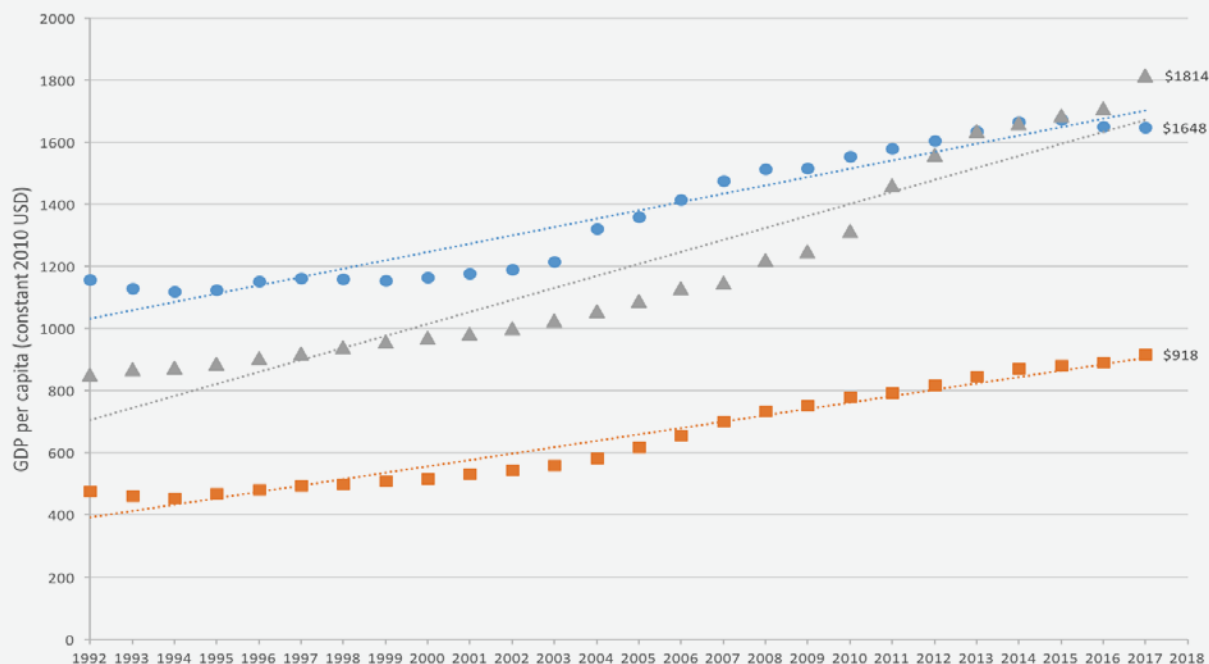
¹²⁵ Lindberg and Zhou, 'Co-Optation Despite Democratization in Ghana.'

¹²⁶ Pelizzo and Baris, 'Governance, Business Environment, and Foreign Direct Investments.'

¹²⁷ The Economist, 'Burundi's President Is Now "Supreme Eternal Guide". Retirement Is Out'.

However, does Ghana’s democratic success support economic development in the country? Right after its independence (on March 6, 1957), Ghana’s GDP per Capita was \$1053, just a little under the regional average (see graph 4). In the following three decades, the country would regress to a low of \$702 per capita in 1983¹²⁸. From then onward, the country has seen constant growth between one and three percent, with a small peak between 2010 and 2013 where the GDP per capita rose significantly more (with an average 2.6% annual growth between 1983 and 2017). Ghana was always above the Least Developed Countries average but only outran the sub-Saharan Africa average in 2015. In 2017, there were only fifteen countries over the average, while thirty-three remained under, representing a highly skewed distribution pulled by higher income countries in the region. When looking at the Ease of Doing Business index, Ghana ranked eighth (score of 57.18) in the region in 2010. By 2018, Ghana regressed to the 12th position (score of 57.24). The country did not fall back but has not improved since 2010, setting it back in comparison with other sub-Saharan countries, all competing for foreign money and improving their business environment as fast as possible. From the Ibrahim index, Ghana’s ranks fifth when it comes to ‘Human Development’ (score of 69.9 out of 100), demonstrating effective welfare, health, and education systems. From the same index, Ghana ranks 13th in ‘Sustainable Economic Opportunities,’ demonstrating constant challenges to improve business conditions in rural areas as well as the construction of infrastructure.

Graph 4. Comparing Ghana GDP per Capita to Global Averages



¹²⁸ World Bank, ‘GDP per Capita (Constant 2010 US\$) | Data for Ghana’.

While improvements in business conditions tend to attract increasing FDI, discoveries of natural resources impact capital inflow¹²⁹. In the case of Ghana, the mining sector has become almost synonymous with FDI as the country's FDI doubled (from \$860M in 2007 to \$1.67B in 2011) following important mineral discoveries¹³⁰. Ghana has maintained a high FDI inflow, averaging eight percent of total GDP since 2011¹³¹; this is the 7th highest in sub-Saharan Africa¹³², much higher than the region's average of 2.2% of GDP¹³³.

Ghana's FDI inflow and economic growth impact corruption level and human development in different ways. In 2008, Ghana ranked seventh highest in the region on the Corruption Perception Index, with the weak score of thirty-nine, demonstrating medium corruption, while maintaining a level better than most sub-Saharan African countries. By 2017, Ghana scored forty and downgraded to 12th rank. This can be explained, just as it was for Ease of Doing Business, by Ghana's stagnation in its actions to curb corruption. This stagnation in oversight coincides with Ghana's executive co-optation of the legislature, leading to a drop in transparency and accountability. This profoundly demonstrates the importance of autonomy of the legislature in the fight against corruption. Even though the country did not regress by much, other sub-Saharan countries have drastically improved. As for Human Development, Ghana ranked 11th with a score of fifty-eight out of a hundred in 2015. The country has increased by twelve points since 1990 and maintained precisely the same ranking¹³⁴. In the last two decades, Ghana maintained relatively low corruption and constant human development. Conclusively, the presence of a robust democratic institution is linked with a constant increase in all indexes, and the country scores well overall in the continent. As demonstrated in the cross-country analysis, good things come together.

The Case of Rwanda

Rwanda has a tumultuous history with tensions between the two major ethnic groups, the Hutu majority, and the Tutsi minority, dating back before German colonization in 1884. Rwanda was led by the Tutsi monarchy until the 1959 Hutus revolution that forced the King into exile¹³⁵. In 1961, Grégoire Kayibamba won the Belgian organized legislative election under the banner of Parmehutu (*Parti du Mouvement de l'Émancipation Hutu*) and acquired independence from Belgium the following year¹³⁶. Kayibamba reigned over the country until he was overthrown and replaced by yet another Hutu single-party dictatorship in 1973. Major General Juvénal Habyarimana from the MRND (*Mouvement Révolutionnaire National pour le Développement*) ruled until the 1994¹³⁷.

¹²⁹ Asiedu, 'Foreign Direct Investment in Africa: The Role of Natural Resources, Market Size, Government Policy, Institutions, and Political Instability.'

¹³⁰ Olatunji and Shahid, 'Determinants of FDI in Sub-Saharan African Countries: A Review of the Evidence.'

¹³¹ World Investment Report by UNCTAD, *World Investment Report 2017*.

¹³² The ten countries which have the highest FDI inflow (as a percentage of GDP) are Mozambique, Angola, Dem. Rep. of Congo, Liberia, Sierra Leone, Seychelles, Ghana, Cape Verde, Chad, and Malawi.

¹³³ Olatunji and Shahid, 'Determinants of FDI in Sub-Saharan African Countries: A Review of the Evidence.'

¹³⁴ UNDP, 'Human Development Indices and Indicators: 2018 Statistical Update'.

¹³⁵ Regional Political Handbooks of the World, 'Political Handbook of Africa 2007'.

¹³⁶ Butenschøn, Stiansen, and Volla, 'Rwanda.'

¹³⁷ Ibid.

In 1978, President Habyarimana passed a new constitution, where all executive power resided in the elected president. In the new unicameral system, only members of the MRND was allowed to run for election¹³⁸. By the end of the 1980s, the number of Tutsis killed in northern provinces spiked, resulting in the Rwandan Patriotic Front (RPF) to leave its training ground in Uganda and march down in Rwanda. The militia group primary purpose was to protect the Tutsi minority. In 1991, as an attempt to prevent the RPF from gaining power, President Habyarimana signed a new charter into law to establish a bicameral legislature, and allow for multiparty election, enabling the RPF to run in the next election¹³⁹. Even though this improvement was necessary, it was too little too late; tensions between Hutus and Tutsis were growing as more killings were reported throughout the country.

Peace talks were organized, and Rwanda's government and the RPF signed a power-sharing peace agreement, yet it did not de-escalate tensions. On April 6, 1994, the plane carrying both Burundi and Rwanda's president was downed, launching a wholesale slaughter in Kigali, the capital city¹⁴⁰. Rwandans wiped out up to one million citizens, including three-quarters of the Tutsis population within one hundred days¹⁴¹. In July 1994, the RPF, led by Major General Paul Kagame, ceased Kigali and ended the war by forming a transition government. A moderate Hutu from the RPF, Pasteur Bizimungu was named president while a member of the opposition coalition (also Hutu), Faustin Twagiramungu, became prime minister¹⁴². The transition government ended in 2003 with the adoption of a new constitution, followed by multiparty general election won by President Paul Kagame.

In response to the long-lasting Hutu-Tutsi antagonism, the RPF enshrined a significant non-discriminatory policy in the constitution, wanting to prevent any future tension between the two ethnic groups. This clause prohibits the formation of parties based solely on race, gender or religion, but it was turned into a power consolidating tool; nowadays no one can denounce the imposing Tutsis presence in power position without retaliation by the RPF¹⁴³. The non-discriminatory policy is implemented in biased and repressive manners. The RPF government eradicates opposition as Hutu dissidents, and human-rights activists have been arbitrarily arrested, beaten, intimidated, killed, or driven into exile¹⁴⁴. This is corroborated by Freedom House's 'not free' status, setting Rwanda in the lowest quarter in sub-Saharan Africa with a score of twenty-three out of a hundred¹⁴⁵. The Rwandans population has low freedom of association, civil rights, and there is reoccurring violence against civilians¹⁴⁶. Rwanda moved further away from democracy in 2015 when the government modified the constitution to enable President Kagame to stay in power indeterminately¹⁴⁷.

¹³⁸ Regional Political Handbooks of the World, 'Political Handbook of Africa 2007'; Butenschøn, Stiansen, and Vollan, 'Rwanda.'

¹³⁹ Regional Political Handbooks of the World, 'Political Handbook of Africa 2007'.

¹⁴⁰ Butenschøn, Stiansen, and Vollan, 'Rwanda'; Regional Political Handbooks of the World, 'Political Handbook of Africa 2007'.

¹⁴¹ Central Intelligence Agency, 'Africa: Rwanda – The World Factbook.'

¹⁴² Regional Political Handbooks of the World, 'Political Handbook of Africa 2007'; Central Intelligence Agency, 'Africa: Rwanda – The World Factbook.'

¹⁴³ Butenschøn, Stiansen, and Vollan, 'Rwanda.'

¹⁴⁴ Ibid.; Freedom House, 'Freedom in the World 2019: Democracy in Retreat'.

¹⁴⁵ Freedom House, 'Freedom World 2018 Table of Country Scores'.

¹⁴⁶ Ni, Kresl, and Liu, '2018 Ibrahim Index of African Governance: Report'.

¹⁴⁷ Reyntjens, 'The Changes Made to Rwanda 's Constitution Are Peculiar – Here 's Why.'

Despite low democratic scores, Rwanda scores high on the Parliamentary Power Index (same ranking as Ghana). This reflects the meritocratic and technocratic government and the respect of the institutions as prescribed by the constitution. Soon after the end of the war, much has been done to ensure that the country could be run efficiently. In 2006, there was a significant reduction of provinces, sectors, and districts to consolidate decision making, cut costs and streamline legislation¹⁴⁸. Parliament meets regularly, enacted laws are published in the official Gazette (with approximately 80 annual publications in the last decade), and Rwandans women represent the highest proportion of member of parliament worldwide¹⁴⁹. Furthermore, Rwanda ranks 8th in terms of overall governance. It specifically strives in the areas of accountability, transparency, and gender equity where it ranks first on the continent¹⁵⁰.

Even though the country is not democratic, the legislature runs smoothly, similarly to Asian Tigers (namely Hong Kong, Singapore, South Korea, and Taiwan) half a century ago. Each country high economic growth was planned by its strong ruler, who demonstrated leadership similar to that of dictator¹⁵¹. President Kagame is no exception. Early in the aftermath of the genocide, Kagame ensured constant economic policies to increase GDP and control inflation, aiming to gain recognition from international agencies (the IMF, the World Bank, and USAID) and secure FDI inflow¹⁵². Yet in the midst of expedited development, there was low tolerance for rebellion. For example, after banning plastic bags in 2008, citizens smuggling or using plastic bags are now facing jail time but as a result, Kigali is among the cleanest city on the continent¹⁵³.

If Rwanda's political system has been so repressive, how is the country doing regarding human development and economic growth? Right after the civil war, Rwanda's economy sprang back as the country received fifty-five percent more international aid compared to sub-Saharan standards¹⁵⁴. Rwanda's technocratic government injected this aid into economic reconstruction, and it led to the country's exceptional recovery¹⁵⁵. Between 2010 and 2018, the Rwanda business environment significantly improved, its Ease of Doing Business score ramped up twenty points, and now puts the country as the second best in the region with a score of 73.40¹⁵⁶. Under Kagame, there was a major crackdown on corruption, and the country moved from 17th to fourth best in sub-Saharan Africa with the region's highest score improvement in the last ten years¹⁵⁷.

Could economic growth in Rwanda bring about the transition toward liberal democracy? According to Huntington, economic development eventually creates enough wealth to create a strong middle-class which demands increasing human rights, freedom of the press as well as vertical and horizontal accountability¹⁵⁸.

¹⁴⁸ Butenschön, Stiansen, and Volla, 'Rwanda.'

¹⁴⁹ UNDP, *Human Development Report 2016: Human Development for Everyone*.

¹⁵⁰ Ni, Kresl, and Liu, '2018 Ibrahim Index of African Governance: Report'.

¹⁵¹ Ayittey, *Defeating Dictators: Fighting Tyranny in Africa and around the World* LK - <https://McGill.on.worldcat.org/Ocld/820835979>.

¹⁵² Regional Political Handbooks of the World, 'Political Handbook of Africa 2007'.

¹⁵³ de Freytas-Tamura, 'Public Shaming and Even Prison for Plastic Bag Use in Rwanda - The New York Times'; Human Rights Watch, 'Why Not Call This Place a Prison?'

¹⁵⁴ Ansoms, 'Resurrection after Civil War and Genocide: Growth, Poverty, and Inequality in Post-Conflict Rwanda.'

¹⁵⁵ Ibid

¹⁵⁶ World Bank, 'Doing Business 2018: Sub-Saharan Africa'.

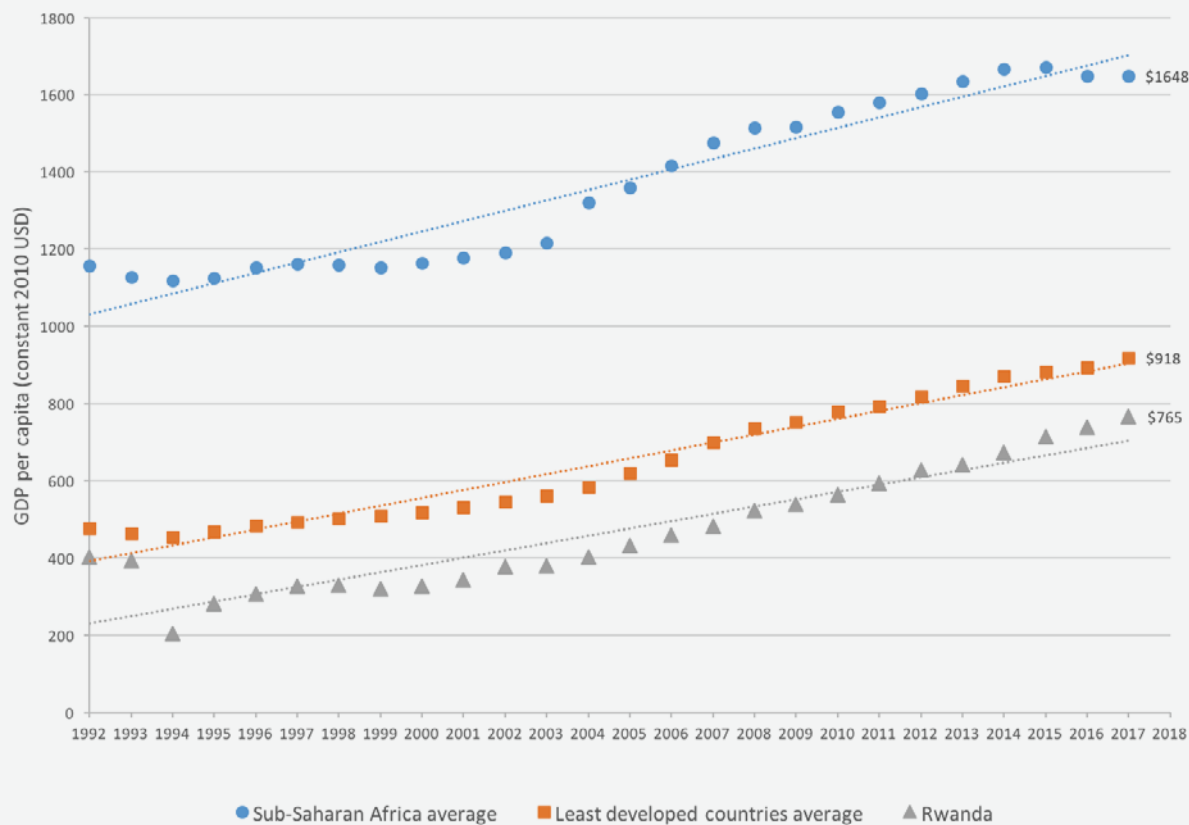
¹⁵⁷ Transparency International, 'Corruption Perceptions Index 2018'.

¹⁵⁸ Huntington, 'Democracy's Third Wave.'



Thus, an increase in the GDP should lead to democracy, but at this stage, Rwanda (Graph 5) remains undemocratic, its GDP per capita well under the region average and even though the country's economy is growing fast, Rwanda remains \$153 below the 'Least developed countries' average of \$918¹⁵⁹. Rwanda quick recovery turns out to be deceptive as the country still has much to do to reduce poverty.

Graph 5. Comparing Rwanda GDP per Capita to Global Averages



Even though Rwanda has doubled its human development score since 1990, the country shows 'low human development' with a score of forty-nine out of a hundred, ranking 24th in sub-Saharan Africa¹⁶⁰. Rwanda's steep improvement in human development and business environment has not emerged from democracy but rather from strong legislation and low levels of corruption. In some cases, a dictator can have a positive impact on their country, but they are the exception rather than the rule¹⁶¹. As Ansoms¹⁶² points out, the post-war economic growth is slow at reducing poverty. The case of Rwanda initially appeared as a counter-success story, countering the initial hypothesis that democracy and legislation lead to a conducive business environment. Rwanda still has to demonstrate that it can successfully sustain growth without democracy.



¹⁵⁹ World Bank, 'GDP per Capita (Constant 2010 US\$) | Data for Rwanda'.

¹⁶⁰ UNDP, 'Human Development Indices and Indicators: 2018 Statistical Update', 27:200.

¹⁶¹ Ayittey, *Defeating Dictators: Fighting Tyranny in Africa and around the World* LK - <https://McGill.on.Worldcat.Org/Oclc/820835979>, 18.

¹⁶² Ansoms, 'Resurrection after Civil War and Genocide: Growth, Poverty, and Inequality in Post-Conflict Rwanda.'

Conclusion

Looking initially at forty-eight sub-Saharan countries, this chapter demonstrated through a cross-country analysis that strong democratic institutions and legislatures lead to sound economic policies, thus improving business climate and inflow of investments. In the past two decades, 69% of countries in the region maintained a stable democratic status, 17% improved while 14% decreased. Even though the state of democracy in sub-Saharan Africa has remained stable, the consolidation of democracy is uneven; some countries maintained high democratic standards while others demonstrated little interest in civil and political rights of their population¹⁶³. When looking to improve the state of democracy, the condition of legislatures matters because these institutions ensure both horizontal and vertical accountability of the rulers¹⁶⁴. These institutions are responsible for identifying abuse of power and curbing corruption; they are the structures that keep the governmental machinery running¹⁶⁵. They are defining attributes of good governance. Yet from North America to Asia, legislatures face increasing challenges as executives creatively seek to increase their hold on power at the expense of civil society. Ghana and Rwanda were no exceptions, even though those two countries represent opposed cases of democracy in the region. Ghanaians have extensive political and civil rights, and the per capita income is higher than the regional average. The country maintains a conducive business environment, the fight against corruption is present, and the quality of life is improving, yet Ghana's democratic condition has not translated into a strong legislature. To foster long-term democratic growth, the parliament should ensure legislative oversight; as Diamond¹⁶⁶ stated, "electoral democracy must be deepened and liberalized politically so that their institutions will become more broadly and intrinsically valued by their populations." Conversely, democracy in Rwanda is limited. This is explainable by the historical background of Hutu-Tutsi antagonism and the war that shattered the country in 1994. The transition after the genocide did not successfully install a functioning democracy¹⁶⁷. Kagame seized power and concentrated it in the hands of the Tutsi minority, all the while forbidding citizens to denounce current ethnic inequalities¹⁶⁸. Yet, this unfree democracy has maintained a strong legislature, curbed corruption, and drastically improved the local business environment as it is now one of the best in Africa.

While the business environment was outstanding in both cases, the trickle-down economic impact was significantly lower in Rwanda compared to Ghana. This demonstrates that Rwanda's technocratic government, following in the track of Singaporean leaders, attracted an impressive amount of foreign direct investment and international aid, but as for now, the population's quality of life remains well under the African average, with deplorable human rights and low development. In contrast, the case of Ghana attests to the strength of democracy where the constitution was drawn in 1992, consolidated long-lasting democratic practices, constant economic growth, and improving human development and civil liberties. Coherent democracy is the best indicator of the stability of the business environment, leading to steady economic growth.

¹⁶³ Botswana, Namibia, Ghana, Senegal, South Africa, and small island-states attained and maintained high democratic standards. Other countries such as Liberia and Côte d'Ivoire have improved dramatically although, in South Sudan, Mali, and the Central African Republic, democracy has fallen, mainly because of civil wars and insurgency.

¹⁶⁴ O'Donnell, 'Horizontal Accountability in New Democracies'; Cavill and Sohail, 'Strengthening Accountability for Urban Services.'

¹⁶⁵ O'Donnell, 'Horizontal Accountability in New Democracies.'

¹⁶⁶ Diamond, 'Is the Third Wave Over?'

¹⁶⁷ Wantchekon and Neeman, 'A Theory of Post-Civil War Democratization.'

¹⁶⁸ Ansoms, 'Resurrection after Civil War and Genocide: Growth, Poverty, and Inequality in Post-Conflict Rwanda.'

Consolidation of democracy and the development of legislatures is partly a process of habituation, and it is appropriate to remember that, on the African continent, the process started less than thirty years ago. As Africa has moved beyond colonial authoritarianism, some countries have seen further political liberalization, often but not always associated with the development of strong legislatures, while other countries remain stuck in single-party states or other forms of authoritarianism with weak legislatures. Africa was late for the third wave of democratization. Could it be the case that it is late, once again, to the reverse-wave? Alternatively, is the continent following its path, slowly consolidating democracy, developing stronger legislatures and ensuring long term prosperity for its people?



Bibliography

Abramowitz, Michael J. 'Freedom in the World 2018 Democracy in Crisis Highlights from Freedom House' s Annual Report on Political Rights and Civil Liberties', 2018.

Adejumobi, Said. 'Elections in Africa: A Fading Shadow of Democracy?' *International Political Science Review* 21, no. 1 (2010): 59–73.

Ansoms, An. 'Resurrection after Civil War and Genocide: Growth, Poverty, and Inequality in Post-Conflict Rwanda.' *European Journal of Development Research* 17, no. 3 (2005): 495–508.

<https://doi.org/10.1080/09578810500209577>.

Asiedu, Elizabeth. 'Foreign Direct Investment in Africa: The Role of Natural Resources, Market Size, Government Policy, Institutions, and Political Instability.' *The World Economy* 29, no. 1 (2006): 63–77.

<https://doi.org/10.2139/ssrn.717361>.

Ayittey, George B N. *Defeating Dictators: Fighting Tyranny in Africa and around the World* LK -

<https://Mcgill.on.Worldcat.Org/Oclc/820835979>. New York: Palgrave Macmillan, 2012.

Barkan, Joel D. 'African Legislatures and the "Third Wave" of Democratization.' In *Legislative Power in Emerging African Democracies*, edited by Joel D. Barkan, 1–31. Boulder, CO: Lynne Rienner Publishers, 2009.

Butenschøn, Nils A., Øyvind Stiansen, and Kare Vollan. 'Rwanda.' In *Power-Sharing in Conflict-Ridden Societies: Challenges for Building Peace and Democratic Stability*. London & New York City: Routledge, 2016.

Cavill, S., and M. Sohail. 'Strengthening Accountability for Urban Services.' *Environment and Urbanization* 16, no. 1 (2005): 155–70. <https://doi.org/10.1630/095624704323026223>.

Central Intelligence Agency. 'Africa: Rwanda – The World Factbook.' Central Intelligence Agency, 2019.

<https://www.cia.gov/library/publications/resources/the-world-factbook/geos/rw.html>.

Diamond, Larry Jay. 'Is the Third Wave Over?' *Journal of Democracy* 7, no. 3 (1996): 20–37.

<https://doi.org/10.1353/jod.1996.0047>.

Fish, M. Steven. 'Stronger Legislatures, Stronger Democracies.' *Journal of Democracy* 17, no. 1 (2006): 5–20.

<https://doi.org/10.1353/jod.2006.0008>.

Fish, M. Steven, and Matthew Kroenig. *The Handbook of National Legislatures: A Global Survey*. New York: Cambridge University Press, 2009. <https://doi.org/10.5860/choice.46-6568>.

Freedom House. 'Freedom World 2018 Table of Country Scores', 2018.

<https://freedomhouse.org/report/freedom-world-2018-table-country-scores>.

Continued on next page >

———. 'Freedom in the World 2019: Democracy in Retreat', 2019.

Freytas-Tamura, Kimiko de. 'Public Shaming and Even Prison for Plastic Bag Use in Rwanda - The New York Times,' 2017.

Human Rights Watch. 'Why Not Call This Place a Prison?' 2015.

Huntington, Samuel P. 'Democracy's Third Wave'. *Journal of Democracy* 2, no. 2 (1991): 12-34.

Jazeera and News Agencies, Al. 'Toll in Sudan Army Attack Jumps as China, Russia Block UN Action.' *Al Jazeera*. 5 June 2019.

Joseph, Richard A. 'Africa, 1990-1997: From Abertura to Closure'. *Journal of Democracy* 9, no. 2 (1998): 3-17. <https://doi.org/10.1353/jod.1998.0028>.

Lindberg, Staffan I. I., and Yongmei Zhou. 'Co-Optation Despite Democratization in Ghana.' In *Ssrn*, 2009. <https://doi.org/10.2139/ssrn.1744037>.

Ni, Pengfei, Peter Kresl, and Wei Liu. '2018 Ibrahim Index of African Governance: Report'. *The Global Urban Competitiveness Report - 2013*, 2018. <https://doi.org/10.4337/9781782548034.00024>.

O'Donnell, Guillermo A. 'Horizontal Accountability in New Democracies'. *Journal of Democracy* 9, no. 3 (1998): 112-26. <https://doi.org/10.1353/jod.1998.0051>.

Olatunji, Lateef Ademola, and Muhammad Sadiq Shahid. 'Determinants of FDI in Sub-Saharan African Countries: A Review of the Evidence.' *Business and Economic Research* 5, no. 2 (2015): 23-34. <https://doi.org/10.5296/ber.v5i2.6291>.

Pelizzo, Riccardo, and Omer F. Baris. 'Governance, Business Environment, and Foreign Direct Investments.' *BePress*, no. March (2015).

Pelizzo, Riccardo, and Frederick Stapenhurst. 'The Dividends of Good Governance.' *Poverty & Public Policy* 5, no. 4 (2013): 370-84. <https://doi.org/10.1002/pop4.49>.

Regional Political Handbooks of the World. 'Political Handbook of Africa 2007'. In *CQ Press*, edited by Arthur S. Banks, Thomas c. Muller, and William R. Overstreet, 699-715. Washington, D.C.: CQ Press, 2007.

Reyntjens, Filip. 'The Changes Made to Rwanda ' s Constitution Are Peculiar - Here ' s Why.' *The C*, 28 January 2016.

Stapenhurst, Rick, and Riccardo Pelizzo. 'Improving Democracy and Accountability in Ghana: The Importance of Parliamentary Oversight Tools.' *Governance* 25, no. 2 (2012): 335-46. *Continued on next page >* <https://doi.org/10.1111/j.1468-0491.2012.01573.x>.

The Economist. 'Burundi's President Is Now "Supreme Eternal Guide." Retirement Is Out'.
The Economist, 2018.

Transparency International. 'Corruption Perceptions Index 2018', 2019.

UNDP. 'Human Development Indices and Indicators: 2018 Statistical Update'. *United Nations Development Programme*. Vol. 27, 2018.

———. *Human Development Report 2016: Human Development for Everyone*. *United Nations Publications*, 2016.
<https://doi.org/10.18356/fdcff8d6-en>.

Wantchekon, Leonard, and Zvika Neeman. 'A Theory of Post-Civil War Democratization.' *Journal of Theoretical Politics* 14, no. 4 (2002): 439-64.

World Bank. 'Doing Business 2018: Sub-Saharan Africa', 2018.

———. 'GDP per Capita (Constant 2010 US\$) | Data for Ghana', 2019.
<https://data.worldbank.org/indicator/NY.GDP.PCAP.KD?locations=GH>.

———. 'GDP per Capita (Constant 2010 US\$) | Data for Rwanda', 2019.

World Investment Report by UNCTAD. *World Investment Report, 2017*. *United Nations Publications*, 2017.





Between a Rock and a Hard Place: Rdrs Mining and Corruption in Africa (A Case)¹⁶⁹

Frederick Stapenhurst and Rasheed Draman

¹⁶⁹ <https://www.thecasecentre.org/main/products/view?id=171521>

RDRS Miningⁱ was a Canadian mining company headquartered in Vancouver, British Columbia, and it had substantial operations in northern Canada. RDRS, which focused on mining diamonds, gold, and iron ore, was looking to internationalize their operations. In 2015, the mining company raised \$10.3 billion in equity on the Toronto and Vancouver Stock Exchanges. Of that amount, \$1.9 billion (18.5%) would be allocated to projects in Latin America, and \$1.7 billion (16.5%) was for projects in Africa.

In early 2015, RDRS Mining's CEO, Charles O'Toule, decided to explore potential mining opportunities in South America and Africa. In the process, the CEO sought to take full advantage of tax credit opportunities; Canadian mining companies can benefit from a 15% federal tax credit when investing in mineral exploration. Charles consulted his CFO, John Davos, on the matter of internationalization. Both Charles and John had ten years of experience in the mining industry, on top of John's experience as an ex-investment banker from Royal Mining Capital.

On March 12th, 2015, John and Charles met to discuss RDRS' international expansion strategy. For the continued profitability of the company, they both wanted to ensure their global operations would be successful. The executives took many factors into account; however, they weighed the feasibility of project execution and political stability as the most important. They also took into consideration the implications of Canada's anti-corruption legislation: the Corruption of Foreign Public Officials Act (CFPOA), which was passed in 1999ⁱⁱ (see Appendix 1).

At the conclusions of their discussions, Charles and John decided to take RDRS Mining to Africa and narrowed their search to a single country: Songhai. The country had vast deposits of easily-accessible iron ore and, while it had suffered from political instability in the past, the current President ruled the country with a firm grip.

The executive team left 'details' of the initial project development to their long-time colleague Rami Salasco, who concurred with the decision to invest in Songhai and who would be tasked with coordinating operations in the country (see Appendix 2). Rami was experienced in dealing with the local population's concerns and handling governmental bodies, at least in Canada. Meanwhile, Charles and John turned their attention to examining potential mining sites in Latin America.

In late 2015, Charles and John decided to send a team to Songhai to assess the mining potential, especially after the withdrawal of some international companies. They established policy objectives for the team, including securing government approval for exploration, preparing a project business plan, and developing a project budget. (Charles and John had previously met President Paul Obi and Michael Tadao, Head of Natural Resources) at an international mining 'indaba' (conference) in South Africa, where they discussed, in general terms, the development of Songhai's mineral resources.)



Background

Extractive Industries in Africa

Since the beginning of this century, Africa has experienced a boom in extractive industries. The substantial growth in Africa's natural resource exports – ranging from hydrocarbons such as oil and natural gas to minerals such as gold, copper, and iron ore – significantly contributed to Africa's steep economic growth trajectory (Chuhan-Pole, Dabalen and Land, 2017). Since 2000, the global super-cycle in commodity prices boosted the production of extractives in Africa and increased investor interest in the region's natural resources, signalling the importance of the extractive industries as a contributor to financial resources for Africa in the years to come (Chuhan-Pole, Dabalen and Land, 2017).

According to the Economic Commission for Africa (2016), natural resource development represented one of the best ways of mobilizing revenues for local economic growth and development. The mining sector contributed to over 20 percent of Africa's overall economic output, and even with depressed markets, remained a highly significant source of government revenues for many countries. As a result, many international mining companies, including Canadian, were expanding their exploration and operations across Africa. Mining companies were attracted to Africa not only by the large deposits of minerals on the continent but also by the low cost of labour and the development and implementation of more rigorous regulatory frameworks for the mining industry, at least in some countries (Moolman, 2016). Canadian company mining investments alone exceeded \$15 billion (Stapenhurst *et al.*, 2017).

Corruption

Researchers have demonstrated that corruption had a crippling cost on the economies of developing countries, from bribes increasing transaction costs to increasing economic and political uncertainty (Gray and Kaufman, 1998, pp. 7-10). Even though corruption has been present in every sector, some industries were more severely impacted. For example, the mining sector ranked as the fifth most corrupt industry globally, after public works & construction, utilities & real estate, property, legal & business services, and oil & gas (Heinrich and Hardoon, 2011).

Extractives companies were often exposed not just to government officials' demands for bribes, but also to requests to pay local third-party agents, vendors, or applications for employment of friends and relatives. These requests, especially when associated with a required decision by a public official, carried an elevated risk. Indeed, many mining companies were forced to sign deals which 'compensate' interested third parties to do business in developing countries (Ernst and Young LLP., 2015). Stapenhurst *et al.* (2017) contended that the problems of corruption were socially complex and multi-layered with multiple stakeholders, many of whom view corruption as a necessary evil that came with doing business. However, is corruption a necessary evil? A review of Transparency International's Corruption Perceptions Index over the past ten years revealed

Continued on next page >

that some African countries (such as Rwanda, Namibia, Senegal, Burkina Faso, and Togo) made considerable progress in curbing corruption, while others (such as Ghana, The Gambia, Angola, Uganda, and Malawi) slipped back (Transparency International, 2019).

Songhai

Songhai, located in Central Africa, was home to the largest untapped reserves of iron ore. It also had vast reserves of diamonds and represented 70% of Songhai's exports and 40% of state revenues. The government of Songhai was actively trying to diversify the country's mining activities through exploiting its coal, gold, and iron ore reserves. Investment in the mining sector increased substantially over the past two decades, and in 2015, Songhai attracted total foreign investment of \$20 billion, mainly for mineral exploration and development. Foreign investors owned 60% of registered mining projects; of these, 80% were joint ventures between international and local investors.

The country struggled with high levels of corruption as a result of years of political instability and social unrest in the late 20th century. Songhai ranked 160th worldwide on Transparency International's Corruption Perception Index, which measured levels of perceived corruption in more than 180 countries. Little progress had been achieved in the consolidation of democratic procedures – a national parliament had been established, but its powers remained weak in comparison with those of the President. Songhai's economic conditions were disappointing: the country suffered from high inflation, low economic growth, high unemployment rates, and low per capita incomes. On the other hand, Songhai had massive potential for future economic growth. The IMF had estimated that Songhai could export approximately 35 million tons of iron ore a year. However, this number was considered by industry analysts to be conservative, and output could reach between 45 and 75 million tons a year over the next decade.

Songhai had made some infrastructural improvements, including a significant expansion to its only port (Adawa) and an extension of its road network, to boost FDI and had aligned its legislation with international regulations for mineral exports, thus decreasing investors' risks and diversifying the country's exports. The Mitwe Mountain range, in the southern region, contained the world's largest known untapped deposit of iron ore.

Songhai underwent large-scale reforms following the civil war and periods of political unrest. In 2007, Songhai established a de-facto one-party government, ruled by President Paul Obi (see Appendix 2). He had a strong knowledge of Songhai's resource wealth and was aware of the extensive mineral and metal reserves. President Obi appointed his cousin, Michael Tadao, as the Head of Natural Resources. Tadao had general knowledge about mining and was experienced in foreign relations. He graduated from King's University with a Master's in International Development and worked in microfinance for ten years. Tadao claimed to understand business ethics, as well as the importance of his role to Songhai's government. He was aware of the abundance of iron reserves at the Mitwe Mountain range and decided to place restrictions on foreign mining in the region. He restricted mining operations, as he wanted control over the reserves to ensure that Songhai would retain mining profits. As a result, the country experienced a sharp fall in foreign mining investment, and several international mining companies withdrew from the country.

RDRS Explore

Part A

As noted in the Introduction, Rami and his team were sent to Songhai to assess the mining potential there. When they arrived, they set off to meet with President Obi and Tadao at the Hilton in Kosawa, the capital city. They enjoyed a night of food and drink as they considered objectives for the development of the Mitwe Mine. President Obi and Michael Tadao were initially hesitant to allow RDRS access to the Mitwe Mountain range, but Rami was persistent. Through tough negotiations and the addressing of the concerns of the government, Rami was able to structure an offer that included a generous \$10 million cash payment for services rendered; he essentially 'bought' a Presidential decree that would allow RDRS to begin exploration. Tadao and President Obi accepted the offer, but they also wanted 5% of profits generated so that they could fund their lavish lifestyles; Rami, while vaguely aware that the Canadian government had passed legislation making it illegal to bribe foreign officials, was also aware that implementation of this law was weak: it had only been six years prior that the first Canadian company had been prosecuted for corrupt foreign practices. Furthermore, he was aware that John and Charles were aware of Canada's CFPOA (see Introduction) but had not received any guidance on how RDRS should respond to demands for bribery. He agreed to pay the price President Obi and Tadao were demanding.

Part B

Once he secured the presidential decree, the RDRS team received a military escort to the Mitwe Mountain range. Over the next six months, Rami brokered deals with village chiefs and local police to keep all local stakeholders at rest. However, he found himself paying bribes to every local official he met. He was paying bribes for security, transportation, and housing. He had set aside a budget for the initial project development phase; however, expenses quickly exceeded the budgeted funds. Furthermore, Rami's business plan had no stipulations regarding corrupt practices.

Through Rami's establishment of strong personal relationships across multiple parties, RDRS Mining made a formal offer to exploit the Mitwe Mountain range. When international competitors became aware of this, they wanted to partake in mine development. Tadao quickly became overwhelmed with offers and solicitations from other companies wishing to exploit the Mitwe Mountain range and used this opportunity to leverage RDRS into providing more 'incentives.' Rami was pressured into offering more substantial bribes, but lacking the financial resources, he was forced to contact the CEO and CFO for additional funds. While this request did not specify that the funds required would be used for bribes, Charles and John were hesitant and demanded more time to analyze the request. At the same time, Tadao, overwhelmed with inquiries from other mining companies and frustrated about the delay of expected payments from RDRS, allowed a competing mining company, American-Australian Mining Company (AMCO), to start exploring the Mitwe Mountains.

AMCO is one of the world's largest mining companies. Founded in the early 20th century, *Continued on next page >*
it has operations around the world and is especially active in Australia and the United States.

It is listed in both the New York Stock Exchange and the Australian Securities Exchange. It thus is required to operate under the US FCPA. It has in the past been investigated by the US Department of Justice for corruption; the case did not go to trial but was settled via a deferred prosecution agreement, under which AMCO executives were required to resign, and the company paid a US \$ 1 billion fine.

Tendering Process

By June 2016, both RDRS and AMCO had established operations in the Mitwe Range. President Obi gave clearance to Tadao to open the tendering process. AMCO was aware of Rami's relationship with President Obi and Michael Tadao and therefore offered a premium bid that included incentive packages for both politicians. Soon after, AMCO contacted local authorities in the Mitwe Mountain range to begin developing the local infrastructure for mining operations. The Auditor General of Songhai, Mrs. Bankoso, audited all of the tender offers placed by AMCO, RDRS and several other firms. She met privately with Rami to discuss the tender offer. According to smaller international mining companies bidding for the Mitwe Mine, she was enticed by Rami through several bribes.

Licenses for four blocks were initially awarded to AMCO, but soon after, two northern blocks were revoked by President Obi, ostensibly because AMCO was not developing the site quickly enough. The rights to these blocks were assigned to RDRS Mining. The transfer of the blocks seemed suspect, as there was no upfront payment required; the deal appeared to be very attractive for RDRS.

President Obi suffered a heart attack and died on September 1, 2016. Tadao became President and appointed his son, Joshua, as the new Head of Natural Resources.

Contracting Process

As a result of the tumultuous tendering process and little oversight regarding legislation, RDRS and AMCO emerged as the two main stakeholders developing the Mitwe Mines. Both companies agreed to build and maintain a 'friendly' working relationship across their mining activities. This duality, however, resulted in several contracting disputes.

President Tadao, who was tired of dealing with the multinationals, decided to place the burden on his son. However, Joshua Tadao was inexperienced and naïve. For example, when RDRS or AMCO approached him with issues regarding payment of royalties and taxes, Joshua was quick to accept their suggestion for a taxation regime which was highly favorable to both mining companies. When RDRS began hiring local staff and service companies, there were large-scale protests over wages and worker benefits and of 'incentives' paid to local service companies which had links to the Tadao family. In response, President Tadao ordered the military to support RDRS and quiet the unrest.

When RDRS began contracting local service companies in late 2016, they were subject to import tariffs and high taxation. Rami decided to approach the Minister of Trade and Finance, Mr. Ameobi, requesting that the 'negotiated agreement' by RDRS and AMCO should be extended to local suppliers, especially regarding their importation of mining equipment. In exchange, Rami offered a \$100,000 compensation package. The Minister of Trade and Finance was appalled mainly by such a small offer, as it "...undermined his authority and reputation."

Rami was unaware that he had insulted Mr. Ameobi, as he thought that paying public officials was the best way to do business in Africa. Mr. Ameobi refused to grant Rami his request. Following this refusal, Rami, confused, approached President Tadao to discuss the matter, but President Tadao had no interest in the subject as long as he realized his profits. Rami returned to Mr. Ameobi with a sweetened up-front payment of \$500,000.

Mr. Ameobi granted RDRS their request, upon which RDRS and their suppliers began importing large-scale machinery and mining materials. AMCO was again faced with a competitive disadvantage; therefore, they also met with Mr. Ameobi. They placed a similar request to that of RDRS, but Mr. Ameobi asked for more, as he knew how vital the Mitwe Mine was to AMCO. To remain competitive with RDRS, AMCO had no choice but to comply.

Implementation

By mid-2017, the stage was set for the final phase of the Mitwe Mine project execution. Mr. Ameobi and Joshua oversaw the implementation phase. They had little concern for the formalities of the mining project as they were solely concerned with the personal gain they stood to acquire. There was no oversight regarding worker safety and benefits.

RDRS and AMCO both acquired local mining companies at a discount and used them to accelerate project integration and implementation. The Songhaian government ensured that the large international mining companies would have no issues with their local counterparts. As the machinery was assembled, drilling began in September 2017.

After three months, miners began protesting against poor working conditions and demanding improvement of local infrastructure. Mr. Ameobi and Joshua Tadao charged the local army with suppressing protestors and ensured that RDRS could focus its efforts on establishing a fully operational mine. Within six months, the mine was fully functional and operational.



Part C

High-Level Visit

In July 2018, RDRS's CEO and CFO decided to visit the mine for themselves. As a precaution, the local army was on high alert, and Rami ensured that operations were running smoothly. The miners and local villagers used the arrival of the executives as an opportunity to protest and demonstrate their frustration. When Charles and John arrived, they were shocked by the upheaval of resentment towards their firm. The disconnect between operations in Songhai and the corporate head office was apparent. Charles and John visited the mine, met with the project managers and received a comprehensive overview of the operations to ensure the mine was running at an efficient capacity.

Charles and John met with Rami to discuss the budget and the existence of significant gaps in the expenses. Charles and John had not been privy to the extent of bribery and payoffs in the project, and Rami had no option but to outline the various payments he made to different individuals throughout the mining project process. Aside from the bribes paid, he also had offered large sums of money, jewellery, two Toyota Land Cruisers, and a 5% stake in the project to persuade Mrs. Bankoso to support RDRS through the tendering process. He claimed to have paid \$100 million in bribes to the Songhaian government.

Return to Canada

Charles O'Toule and John Davos appeared to be shocked as they heard the extent to which their project was mired in corruption. Under Canadian law (the Corruption of Foreign Public Officials Act), the company could face hefty fines, and the executives could face prison sentences. Understandably, the CEO and CFO wanted to clean up the project. They returned to Canada and began to explore how they could proactively clean up the mess in Songhai.



Appendix 1: Corruption of Foreign Public Officials Act (CFPOA)

In Canada, there are two laws aiming to tackle corruption. The first one is the Corruption of Foreign Public Officials Act (CFPOA), focusing on international business, while the second law applies to domestic bribery (Osler Hoskin & Harcourt LLP, 2019). RDRS Mining here faces potential investigation and charges under the CFPOA.

To better understand anti-corruption law, one must understand the historical background of anti-corruption in Canada. In 1997, Canada signed the OECD's Convention on Combating Bribery in International Business Transactions (Global Affairs Canada, 2019). In response to the ratification of the Convention, the Canadian Parliament passed the Corruption of Foreign Public Officials Act (CFPOA) in 1998, which was later amended in 2013.

The CFPOA was designed as a part of Canadian Criminal law. It therefore relies on a high burden of proof, whereas the prosecutor needs to demonstrate "beyond reasonable doubt" that the accused committed corrupt practices. Canadian jurists say that "beyond reasonable doubt" accounts for 99% chances. This burden of proof is drastically different from the American Foreign Corrupt Practices Act passed in 1977; in the USA, companies and persons can be charged for corruption under both the criminal and administrative law, enabling the judiciary to tackle corruption faster, as prosecutors only need to demonstrate the balance of probabilities (there are more chances that the corrupt practices were done by the accused, which accounts to 50 percent plus one chance) (Macnab, 2018).

Corrupt practices considered by CFPOA include bribe, proposed bribe and accounting mal-practices. The former refers to gifts, payments, offers and benefits given in order to obtain business advantages (Minister of Justice Canada, 2015). The latter represent accounting schemes to hide bribe or pay bribe, including, among others, "[maintaining] accounts which do not appear in any of the books and records," not recording or incorrectly transactions, knowingly using a falsified document, and destroying accounting books (Minister of Justice Canada, 2015).

Any offenders of the Corruption of Foreign Public Officials Act can face major fines and a maximum jail sentence of 14 years (Minister of Justice Canada, 2015).

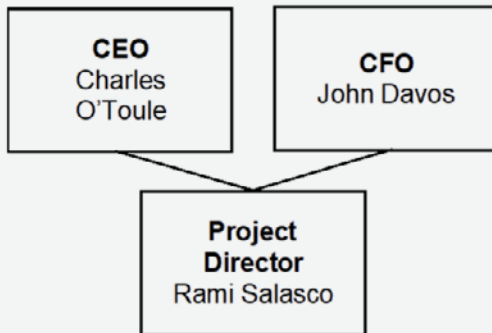
To address corruption, the assessment of potential risks associated with the business, the industry, and the country of operation is recommended. All Canadian companies are encouraged to create, implement, and maintain internal anti-corruption policies to prevent the occurrence of bribe and grease payments, resulting in judicial procedures.



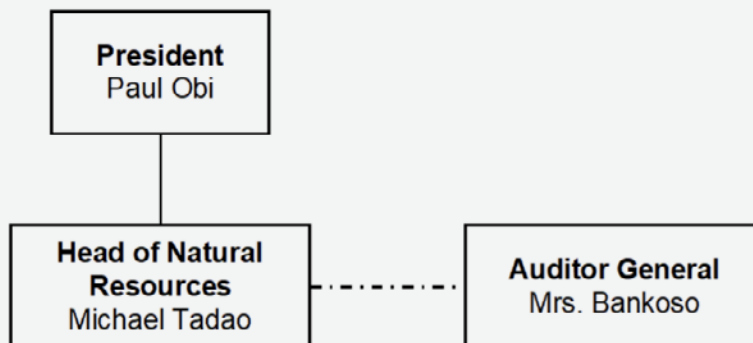
Appendix 2: Key People



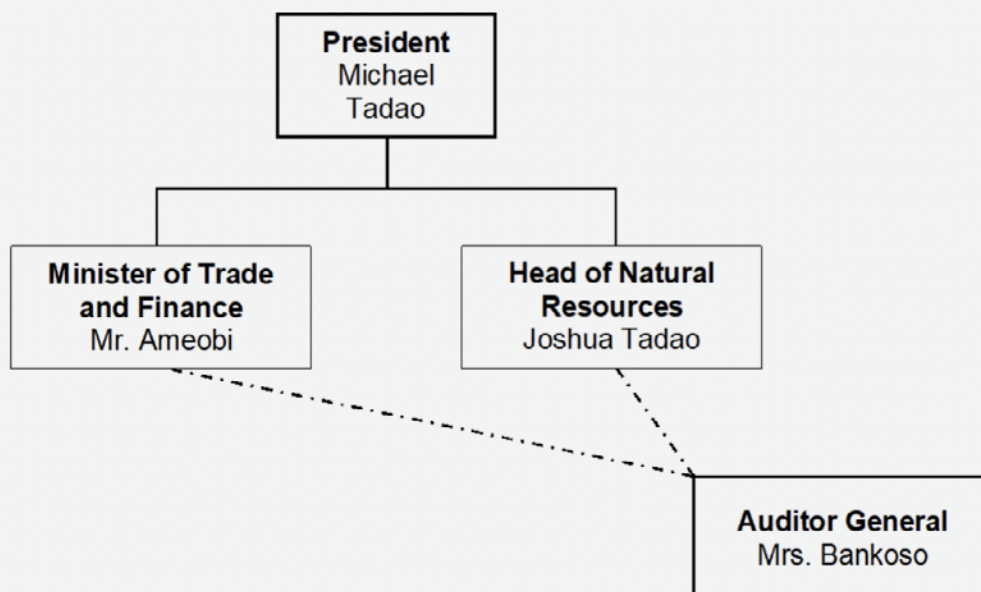
RDRS Mining:



Songhai (before September 2016)



Songhai (after September 2016)



References

Chuhan-Pole, P., Dabalen, A. L. and Land, B. C. (2017) *Mining in Africa: Are local communities better off?* The World Bank.

Economic Commission for Africa (2016) 'Optimizing Domestic Revenue Mobilization and Value Addition of Africa's Minerals'. doi: 10.1143/jjap.37.5297.

Ernst and Young LLP. (2015) 'Managing fraud, bribery and corruption risks in the mining and metals industry'.

Global Affairs Canada (2019) Bribery and Corruption. Available at:

<https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/corruption.aspx?lang=eng> (Accessed: 7 August 2019).

Gray, C. W. and Kaufman, D. (1998) 'Corruption and development', *The World Bank*.

Heinrich, F. and Hardoon, D. (2011) *Bribe Payers Index 2011*, Transparency International.

Macnab, A. (2018) Cracking down on corruption |, Canadian Lawyer. Available at:

<https://www.canadianlawyermag.com/practice-areas/criminal/cracking-down-on-corruption/275154> (Accessed: 7 August 2019).

Minister of Justice Canada (2015) Corruption of Foreign Public Officials Act. Canada.

Moolman, V. (2016) 'African Mining has Potential to Grow Stronger', *Mining Weekly*, 8 July.

Osler Hoskin & Harcourt LLP (2019) 'Anti-corruption, bribery and enforcement'.

Stapenhurst, F. *et al.* (2017) 'The supply and demand sides of corruption: Canadian extractive companies in Africa', *Canadian Foreign Policy Journal*. Taylor & Francis, 23(1), pp. 60–76. doi: 10.1080/11926422.2016.1250655.

Transparency International (2019) *Corruption Perceptions Index 2018*.



ii The companies RDRS Mining and AMCO, the country of Songhai and all individuals in this case, are fictitious. However, the case is based on actual events that occurred in Western and Central Africa.

ii This Act is often referred to as the [Canadian](#) equivalent to the United States' [Foreign Corrupt Practices Act](#) (FCPA).



Between a Rock and a Hard Place: Rdrs Mining and Corruption (B Case)¹⁷⁰

Frederick Stapenhurst and Rasheed Draman

¹⁷⁰ <https://www.thecasecentre.org/main/products/view?id=171521>

Elections and Parliament

In September 2018, there was renewed civil unrest across Songhai, which resulted in the downfall of the Tadao regime. In the run-up to the presidential and parliamentary elections, Kofi Kwadwado – leader of the Songhai Now (SN) party – explored Songhai’s past fiscal years and determined that the total iron ore exports were worth \$10 billion, but the country’s tax receipts only totaled \$240 million.

In February 2019, Kwadwado was elected President, and his party won 55 of the 100 seats in Parliament. The main opposition party, Forward Songhai (FS), won 40 seats, and several small parties won the remaining five seats. Mr. Kaduuloo was appointed Speaker of Parliament. Both President Kwadwado and Mr. Kaduuloo were aware of the extent of corruption in Songhai and were determined to tackle it. Two of their ‘go-to’ resources were the Global Organization of Parliamentarians Against Corruption’s Parliamentary Handbook on Oversight (2009) and *Improving Democratic Accountability Globally: a Handbook for Legislators on Congressional Oversight in Presidential Systems* (2013).

Corruption

Corruption is at the core of bad government and is the most critical obstacle to overcoming poverty in developing countries (Landell-Mills, 2013). There is increasing evidence that the costs of corruption are enormous, whether at the economic, social, environmental, or political level (World Bank, 2017). Beyerle (2014) states that a risk analysis from the World Bank found that countries where government effectiveness, the rule of law, and control of corruption were weak, they had a 30-45% higher risk of civil war, and a significantly higher risk of extreme criminal violence than other developing countries. There appears to be a consensus that corruption matters, that it hinders development and that a multifaceted strategy, which included multiple stakeholders, including government, civil society, the business community, and parliament, is required to curb corruption (Kaufmann and Dininio, 2006).

Parliament

International organizations like the World Bank and the United Nations Development Program and bilateral agencies such as Global Affairs Canada (GAC) had traditionally had high expectations regarding the role that parliaments could play in curbing corruption (Stapenhurst et al., 2006; Stapenhurst et al., 2014; Stapenhurst et al., 2020)ⁱ

These expectations, and their underlying propositions, had been well-tested through large-scale global and regional statistical analyses, which concluded that parliamentary oversight of public finances (and in turn, the curbing of corruption) was enhanced by the formal oversight powers assigned to the legislature (Loewenberg and Patterson, 1979), the institutionalization of oversight bodies (Jacobs, Jones and Smith, 2007), the resources made available to the parliament (Rawlings, 2006), the importance of the issues under investigation, political will and the non-partisan functioning of oversight bodies (Pelizzo and Stapenhurst, 2006, 2007), and the oversight bodies’ ability to publicize the findings of their investigations.

The Role of RDRS Mining

President Kwadwado knew he had to do something and launched a “Pillars of Integrity” program with the help of Transparency International.

He reached out to RDRS’s executives, who wanted to legitimize their operations and launch a comprehensive Corporate Social Responsibility program to curb corruption and thereby reduce poverty. This was the first joint initiative made by an African government and international mining company.

Starting with a week-long Integrity Conference and workshop (paid for by RDRS Mining), President Kwadwado sought to engage stakeholders, including former bribe givers and bribe-takers – to develop a national anti-corruption plan. Following the conference, Mr. Kaduuloo established a parliamentary commission with the mandate to analyze the mining industry, to identify the most vulnerable phases and to suggest possible legislature changes and oversight enforcement.



References

Beyerle, S. M. (2014) *Curtailling corruption: People power for accountability and justice*. Lynne Rienner Boulder, CO.

Global Organization of Parliamentarians Against Corruption (2009). *Parliamentary handbook on oversight*. Ottawa, Canada: GOPAC. Available at: http://gopacnetwork.org/Docs/Oversight_handbook_EN.pdf

Global Organization of Parliamentarians Against Corruption (2013). *Improving democratic accountability globally: a handbook for legislators on congressional oversight in presidential systems*. Ottawa, Canada: GOPAC. Available at: http://gopacnetwork.org/Docs/CO_Handbook_EN.pdf

Jacobs, K., Jones, K. and Smith, D. (2007). *An analysis of the sources of public accounts committee inquiries: the Australian experience*. Paper presented at the Annual Meeting of the American Political Science Association.

Kaufmann, D. and Dininio, P. (2006) 'Corruption: a key challenge for development', in *The Role of Parliament in Curbing Corruption*. Washington, World Bank, pp. 13-24.

Landell-Mills, P. (2013) *Citizens against corruption: report from the front line*. Troubador Publishing Ltd.

Lowenberg, G. & Patterson, S. (1979) *Comparing Legislatures* (Boston, MA: Little Brown).

Pelizzo, R. and Stapenhurst, R. (2006) *Democracy and oversight*. Paper presented at the annual meeting of the American Political Science Association, Philadelphia, PA, Aug 31, 2006.

Pelizzo, R. and Stapenhurst, F. (2007) *Strengthening Public Accounts Committees by targeting regional and country specific weaknesses* in A. Shah (ed.), *Performance Accountability and Combating Corruption*, Washington DC, The World Bank, pp. 379-393.

Rawlings, G. (2006) *Regulating responsively for oversight agencies in the Pacific*, targeted research paper for AusAid.

Stapenhurst, R., Johnston, N. & Pelizzo, R (2006) (eds.) *The role of parliament in curbing corruption*, (Washington, DC: World Bank Institute).

Stapenhurst, R., R. Pelizzo and K. Jacobs. (2014). *Following the money: comparing parliamentary Public Accounts Committees*. London, Pluto Press.

Stapenhurst, R., Draman, R. Larson, B. and Staddon, A. (eds) (2020) *Anti-Corruption Evidence: The Role of Parliaments in Curbing Corruption*. Springer Switzerland

World Bank Group. (2017). "Doing Business 2017. Equal Opportunities for All. Regional Profile 2017" South Saharan Africa (SSA).

Further reading

Fish, S. (2006) *Stronger legislatures, stronger democracy*. *Journal of Democracy*, 17(1), pp. 5-20.

Morlino, L. (2001) "Consolidamento democratico: la teoria dell'ancoraggio", *Quaderni di Scienza Politica*, vol. 8, n. 2, pp. 217-247.

Morlino, L. (2005). "Spiegare la qualita' democratica: quanto sono rilevanti le tradizioni autoritarie?", *Rivista Italiana di Scienza Politica*, vol. 35, n. 2, pp. 191-212.

O'Brien, Mitchell (2005). *Parliaments as peacebuilders: The rise of parliaments in conflict affected countries*. WBI Working Paper 37250. Washington, DC: World Bank



ⁱ Such agencies have had high expectations, too, on the role that parliaments can play in poverty reduction (Stapenhurst, 2002), building post-conflict societies (O'Brien, 2005), and promoting democracy (Fish, 2006; Morlino, 2001, 2005)



Between a Rock and a Hard Place

Powerpoint

Between a Rock and a Hard Place: Mining Companies and Corruption

Rick Stapenhurst

A presentation at the Virtual Canadian Institute
of Mining Annual Conference, April 2021

McGill | School of Continuing Studies | Case: Educational purposes

mcgill.ca/scs



Outline

- **Introduction**
 - Mini-exercise
 - Types of Corruption
- **Why should we be concerned?**
- **OECD Convention**
 - United States: FCPA
 - Canada:
- **New research**
 - 10 tensions and contradictions

McGill | School of Continuing Studies | Case: Educational purposes

2

First: a Scenario (1)

- It is late one night. You are walking to your car in a deserted parking lot.
- You pick up an unmarked envelope. Inside are ten \$100 notes.
- You look around to see who might have dropped it, but there is no-one around

McGill | School of Continuing Studies | Case: Educational purposes

3

First: a Scenario (1) cont'd

- What would you do
- (A) Go to the nearest police station and hand in the money.
- (B) Put the money in your pocket, knowing that whatever you do, no-one will know
- (Ignore options (C) and (D))

McGill | School of Continuing Studies | Case: Educational purposes

4

First: a Scenario (2)

- It is late one night. You are walking to your car in a deserted parking lot.
- **DIFFERENCE:** now there is a CCTV camera in the parking lot
- You pick up an unmarked envelope. Inside are ten \$100 notes.
- You look around to see who might have dropped it, but there is no-one around

McGill | School of Continuing Studies | Case: Educational purposes

5

First: a Scenario (2) cont'd

- What would you do
- (A) Go to the nearest police station and hand in the money.
- (B) Put the money in your pocket, knowing that **THIS TIME:** whatever you do, someone will know
- (Ignore options (C) and (D))

McGill | School of Continuing Studies | Case: Educational purposes

6

What is Corruption?

Short Definition

"The abuse of public office for private gain"



McGill | School of Continuing Studies | Case: Educational purposes

7

CORRUPTION

'Involves the behaviour on the part of officials in the public and private sectors, in which they improperly and unlawfully enrich themselves and/or those close to them, or induce others to do so, by misusing the position in which they are placed'

(World Bank)

McGill | School of Continuing Studies | Case: Educational purposes

8

Continued on next page >

Types of Corruption

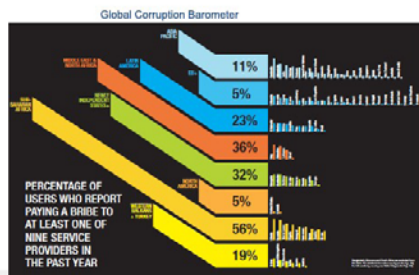
- **Petty Corruption**
 - small bribes (often for survival because of low pay)
 - mainly what the public encounters
 - **Effect:** burden on the poorest, increases cynicism and erodes confidence in government
- **Grand Corruption**
 - Corruption at highest levels involving “big money”
 - Invisible to the public and often hard to prove
 - **Effect:** curbs & distorts investment & development
- **Looting – State Capture**
 - Political and vested interests run the state primarily for the benefit of those in power and their entourage

How does bribe-paying happen?

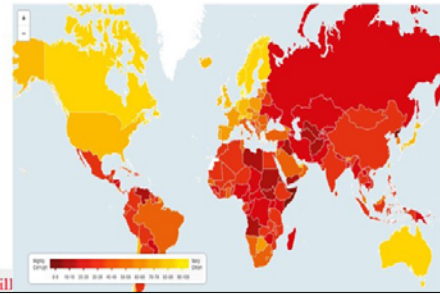


HOW MUCH DOES CORRUPTION COST?

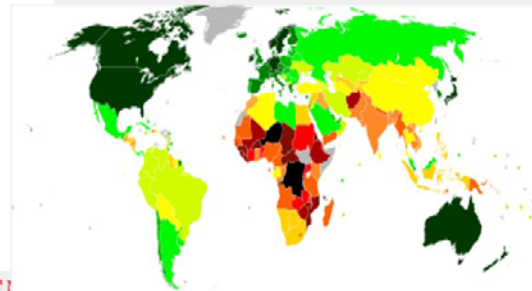
How extensive is bribe-paying?



Corruption: the Global Picture



Perspective on Human Development: UNDP's Human Development Index (Composite based upon Education, Life Expectancy & Income per Capita)



WHAT DOES CORRUPTION LOOK LIKE?

The hand that **pays**: an ordinary citizen on her way to pay a bribe to every public official she will have to encounter in town to sell her produce



Continued on next page >

The "Big Boys", and the "hand that gives": Lesotho Highlands Water Project



Canadian Acres International was debarred by the World Bank for bribery of LHWP's executive, Masupha Sole. \$1 million in bribes from Lesotho Highlands Project Consortium, led by a French firm. Legal institutions in Lesotho have been commended for their management of the case.

Guinea-Bissau: The hand that receives



PARIS, July 8 2012 (Reuters) From Bugatti and Bentley to Ferrari, Porsche and Maserati, nine luxury cars seized from the son of Equatorial Guinea's president as part of a money-laundering investigation fetched 2.8 million euros (\$3.6 million) at an auction in Paris.

Anecdotes

- Ethiopia – para-party monopolies
- Nigeria -- Two babies' names – one five-months-old and another one-year-old – were recently found on public office payrolls in Nigeria.
- Mozambique – anti-corruption – yes, but with a caveat – need to assure that both Frelimo and Renamo “share”...
- Duru's dilemma – honesty at home, corruption beyond the gates – son accuses father and mother of hypocrisy
- Sierra Leone – returning graduates bought off with free houses...
- Goma – road-block performance-standards for police & military

WHAT'S WRONG WITH BRIBERY AND CORRUPTION?

- REDUCES NATIONAL WEALTH BY DISTORTING THE MARKET
- DIVERTS RESOURCES FROM PUBLIC SERVICE PROJECTS
- UNETHICAL – ABUSE OF POWER
- UNDERMINES THE DEMOCRATIC PROCESS
- CAN DAMAGE THE ENVIRONMENT

International Efforts to Curb Corruption

- OECD Convention Against Corruption
- UN Convention Against Corruption
- United States FCPA
- United Kingdom
- Canada

OECD Convention Against Corruption

- establishes legally binding standards to criminalize bribery of foreign public officials in international business transactions and provides for a host of related measures that make this effective. It was the first international anti-corruption instrument focused on the 'supply side' of the bribery transaction. The 34 OECD member countries, including Canada, and four non-member countries - Argentina, Brazil, Bulgaria, and South Africa - have adopted this Convention

FCPA Overview: Two primary components:

- **(1) Anti-bribery provisions**
 - Prohibits bribery of foreign gov't officials to obtain/retain business
 - Applies to US citizens, companies, certain foreign companies
- **(2) The books & records provisions**
 - Maintain accurate books records
 - Maintain internal controls to ensure accurate books & records

FCPA Overview: Elements

- **Corruptly offering or paying**
- **"Anything of value"**
- **To a "foreign gov't official"**
- **Either directly or indirectly with (presumed) knowledge (i.e. willful blindness or conscious disregard)**
- **To influence/secure an important advantage through an act or omission**
- **To obtain/retain business**

Continued on next page >

FCPA Overview

- **Exceptions**
 - Facilitation/grease payments)
- **Defence**
 - Reasonable expenses related to contract perf. Or product/facility demonstration
- **Penalties**
 - Imprisonment for bribery & records violations
 - Monetary fines for individuals and companies

FCPA Investigations (1979-2020)

- **323 firms investigated**
- **220 public firms prosecuted**
- **Including:**
 - Halliburton, PIAT, Chiquita, Monsanto, Statoil, Siemens.....

Penalties

- **Petroleo Brasileiro SA: \$1.78 billion**
- **Goldman Sachs: \$1 billion**
- **Ericsson: \$1.6 billion**
- **Titan Corporation: \$28.5 million**
- **Baker Hughes: \$44 million**
- **Siemens: \$1.6 billion**

Canadian Companies Prosecuted Under FCPA

- **Westport and Nancy Gougarty** – SEC charged this Canadian issuer and its former CEO Gougarty with bribing a Chinese government official in violation of the FCPA along with related violations of the books and records and internal accounting controls provisions. Westport and Gougarty agreed to pay more than \$4.1 million to settle the charges. (9/27/19)
- **Kinross Gold** – The Canada-based gold mining company agreed to pay a \$950,000 penalty to resolve FCPA violations arising from its repeated failure to implement adequate accounting controls of two subsidiaries in Africa. (3/26/18)

UK, Australia

Serious Fraud Office investigates Glencore over suspected bribery

The Glencore company, which is the world's largest commodity trader, says it will cooperate.



The UK's Serious Fraud Office has launched an investigation into suspicions of bribery at mining and commodity trading group Glencore.

BHP helps launch bribery prevention hub to avoid foul play



BHP and a number of other global companies, government and not-for-profit organisations have launched a bribery prevention network to help businesses address bribery and corruption.

The alliance is headed by Global Compact Network Australia, which is the local network of United Nations Global Compact and offers free resources to Australian companies to manage bribery and corruption risks.

The network's members include BHP, Australian Federal Police, Attorney General's Department, Transparency International Australia, Hogan & Hartson, Commonwealth Bank, KPMG Australia, Alstom and the Australia Africa Minerals & Energy Group.

Canada

- Similar to FCPA, except disallows facilitation payments
- Canada originally criticized for slow implementation
- Stronger implementation over the past three years
- Next OECD peer review in June 2023 by Austria & New Zealand

Canada slowly pushes for corporate transparency as part of anti-corruption push

The Canadian Press
Last Modified
Apr 21, 2019 • April 21, 2019 • estimate read • Join the conversation



Canada : Recent Convictions

• On December 18, 2019, **SNC-Lavalin Construction Inc. (SLCI)** pleaded guilty to fraud in relation to payments made to secure construction contracts in Libya. The company was fined of \$280 million.

• On December 15, 2019, **Mr. Sami Bebawi (former SNC-Lavalin executive)** was found guilty by the Quebec Superior Court of fraud, corruption of a foreign public official. He was sentenced to 8 years and 6 months of imprisonment.

Canada Extractives

- **Griffiths Energy International Inc.**, a privately-held oil and gas company based in Calgary, pleaded guilty on January 22, 2013 to one count of bribery was sentenced on January 25, 2013 to pay a financial penalty of \$10.350 million.
- **Niko Resources Ltd**, a publicly-traded company based in Calgary, pleaded guilty to one count of bribery. It was fined \$8.26 million plus a 15% victim fine surcharge, for a combined total of \$9.499 million.

Continued on next page >

SSHRC-Project on the Demand & Supply Sides of Corruption

- McGill University, Montreal (Canada)
- UQAC, Chicoutimi (Canada)
- University of East Anglia (UK)
- Kedge School of Business (France)
- African Centre for Parliamentary Affairs (Ghana)

Research Objectives

- developing a holistic understanding of corruption dynamics and bridging its many faces in the field;
- developing guidelines for corporations, governments & parliaments to deal with corruption more effectively.

Preliminary Findings

10 tensions or contradictions

1: Definition of Corruption

- BROAD: "Abuse of public office for private gain"
- vs
- NARROW: "Illegal payment to a public official for corporate or personal benefit"

2: Cost of Corruption

- SOCIO-ECONOMIC: "Through corruption the state is losing effectiveness, efficiency and resources"

vs

- CORPORATE: "Cost of bribe + management time"

3: Corporate Tensions

- OFFICIAL CORPORATE POLICY against corruption

vs

- ON THE GROUND REALITY to give bribes to get business

4: Assessing Corruption Risk

- RECOGNITION of the need to assess corruption risk

vs

- IN REALITY, few corporations actually do so

4: Assessing Corruption Risk

- RECOGNITION of the need to assess corruption risk

vs

- IN REALITY, few corporations actually do so

Continued on next page >

5: Size of company & Corporate Policies/Practices

- LARGE & INTEGRATED mining companies often have sophisticated compliance systems
- vs
- SMALLER ("junior") exploration, & development companies generally do not
- BUT
- Corruption is a PROBLEM for both

9: Small Scale/Artisanal Mining

- ORIGINALLY seen as a safety net & cash generating alternative for local people
- ...HAS EXPANDED greatly in recent years, with adverse environmental & safety concerns. Now often illegal

6: Host Country Law and Practice

- MOST AFRICAN COUNTRIES have laws against corruption
- vs
- MOST fail to implement these laws

10: Multiple Stakeholders yet Piecemeal Approach

- DEMAND side of corruption
- SUPPLY side of corruption
- MULTIPLE STAKEHOLDERS
 - Host & home governments
 - Parliaments
 - CSOs
 - Corporations
- COALITION required to work towards a common goal

7: Corporate Social Responsibility

- MANY MINING COMPANIES see CSR as a means to fight corruption & promote local good will
- vs
- MANY AFRICAN officials and CSOs see CSR as self-serving and even contributing to corruption

Research Conclusions

- Corporations need to be more proactive
- Threat of investigation, fines, imprisonment
- Better understanding needed of *what* corruption is and *why* it occurs
- Junior companies, especially, need assistance in developing corporate anti-corruption programs

8: Local Chiefs and Governments

- MINING COMPANIES often do not fully appreciate local customs & traditions...
- ...especially the traditional concept of paying (modest) tributes to tribal chiefs as a token of respect

Overall Conclusions

- Corruption is harmful to societies and corporations
- Canadian mining companies are "between a rock and a hard place"
- Mining companies run the risk of prosecution in Canada for overseas bribery
- Junior companies, especially, need assistance in developing corporate anti-corruption programs
- CSR is not sufficient
- Compliance and training is important: Case Study

Continued on next page >



The Role of Parliament in Curbing Corruption

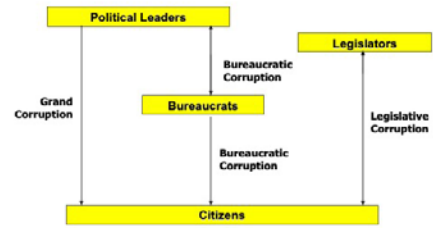
PowerPoint

THE ROLE OF PARLIAMENT IN CURBING CORRUPTION

- (1) Some general thoughts on Corruption
- (2) Research Project (i): Corruption & Parl. Oversight
- (3) Research Project (ii): The Role of Parliament in Curbing Corruption at the National Level
- (4) Case: Caribbean (Trinidad & Tobago and Grenada)



Types of Corruption

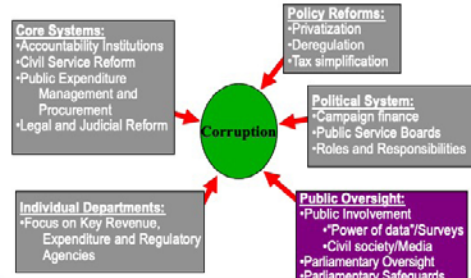


What is Corruption?

Q How can we define corruption?



A Strategy for Combating Corruption (D. Kaufmann)



What is Corruption?

Short Definition

“The abuse of public office for private gain”

What scholars are saying

- **CORRUPTION**
 - Corruption hinders development
 - Multi-faceted strategies required
 - Key component: legislative oversight
 - But little research on how and why
- **LEGISLATIVE OVERSIGHT**
 - Oversight tools (internal, external)
 - Contextual factors
 - But little research on the impact of oversight

Types of Corruption

- **Petty Corruption**
 - small bribes (often for survival because of low pay)
 - mainly what the public encounters
 - **Effect:** burden on the poorest, increases cynicism and erodes confidence in government
- **Grand Corruption**
 - Corruption at highest levels involving “big money”
 - Invisible to the public and often hard to prove
 - **Effect:** curbs & distorts investment & development
- **Looting – State Capture**
 - Political and vested interests run the state primarily for the benefit of those in power and their entourage

What Theories Can Explain Corruption?

Q What theories can help us understand the complexities of corruption?

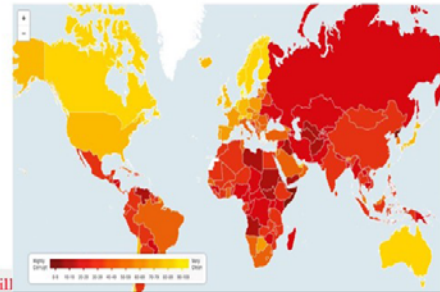


Continued on next page >

Types of Corruption

- **Petty Corruption**
 - small bribes (often for survival because of low pay)
 - mainly what the public encounters
 - **Effect:** burden on the poorest, increases cynicism and erodes confidence in government
- **Grand Corruption**
 - Corruption at highest levels involving “big money”
 - Invisible to the public and often hard to prove
 - **Effect:** curbs & distorts investment & development
- **Looting – State Capture**
 - Political and vested interests run the state primarily for the benefit of those in power and their entourage

Corruption: the Global Picture



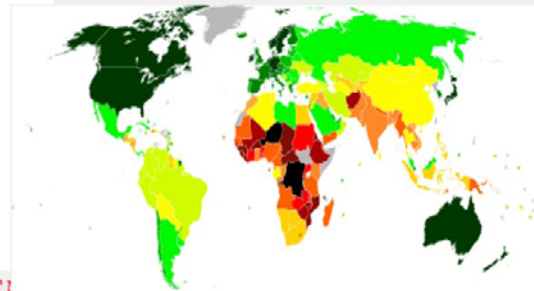
How does bribe-paying happen?



Perspective on Human Development:

UNDP's Human Development Index

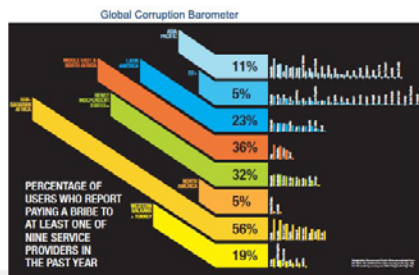
(Composite based upon Education, Life Expectancy & Income per Capita)



HOW MUCH DOES CORRUPTION COST?

WHAT DOES CORRUPTION LOOK LIKE?

How extensive is bribe-paying?



The hand that pays: an ordinary citizen on her way to pay a bribe to every public official she will have to encounter in town to sell her produce



Continued on next page >

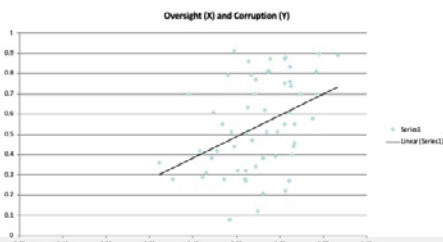
Research Project (2) British Academy, funded by DFID

- RESEARCHERS: Rasheed Draman, Louis Imbeau, Anthony Staddon* and Rick Stapenhurst
- ASSISTANTS: Thomas Cedric Eboutou and Gabriela Thompson
- FIELD WORK: 24 months (2017 and 2018)
- RESULTS
 - published in various articles (JLS, RoundTable, Public Integrity)
 - Anti-Corruption Evidence: The Role of Parliaments in Curbing Corruption (Springer, 2020)
 - Policy Briefs (available at <https://www.mcgill.ca/scs-parliament/>)
- * Many thanks to Anthony, who led the research in the Caribbean

MISSING?

- there is a wealth of knowledge documenting both **current and emerging global good practice**.
- What was missing is the **operationalization of these findings at the country level** and the application of research findings into policy advice

Fairly typical:



Hypotheses

- parliamentary oversight is a key determinant of corruption;
- oversight mechanisms: effective in presidential and semi-presidential countries;
- contextual factors: more important in parliamentary countries;
- national strategies/programs to strengthen parliamentary oversight are transferable across countries with similar forms of government, but not across countries with different forms.

PACs, Control of Corruption & Economic Development*

* Pelizzo, in Stapenhurst, Pelizzo and Jacobs (2014)



Methodology

Mixed-methodological framework

Mixed fixed/flexible research design

Case study framework aimed at empirically verifying the working of these mechanisms :

In other words:

- The effectiveness of PACs explains two-thirds of the variance in corruption between countries
- This in turn explains 88% of the variation of income levels around the world

Analysis

We examined seven countries across Africa, Asia and the Caribbean

The following Case study presents our findings for the Caribbean :

Continued on next page >

The Caribbean: Corruption

Global Ranking 2016	Country	Score (100 = highest possible, 0 = lowest possible)
31.	Barbados	61
24.	Bahamas	66
35.	St. Vincent	60
38.	St. Lucia	60
46.	Grenada	56
58.	Dominica	59
83.	Jamaica	39
101	Trinidad & Tobago	35
108.	Guyana	34 (41)

In 2020: T+T score was 40 (ranked 86th); Grenada score was 53 (ranked 52nd)

Party Composition in Parliament: T&T (2016)

	House of Representatives
People's National Movement (PNM)	23
People's Partnership Coalition (PPC)	18
	Senate
Government nominees	16
Opposition nominees	6
Independent	9

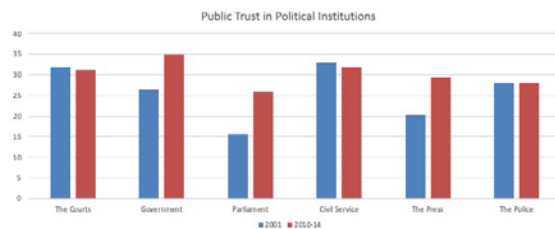
The Context-TRINIDAD & TOBAGO and GRENADA

	TRINIDAD & TOBAGO	GRENADA	
Size of Country	Small	Very Small	Major difference
Population	Ethnically fragmented	Ethnically homogeneous	Major difference
British colonial heritage	Yes	Yes	No difference
Stable Constitutional order	Yes	No	Major difference
Form of Government	Parliamentary	Parliamentary	No difference
Electoral system	FPTP	FPTP	No difference
GDP per capita (US \$)	32,000	13,600	Major difference
Political Parties	2, very strong discipline	2, moderate discipline	Some difference
Trust in Parliament	Very low	Data not available	

Party Composition in Parliament: Grenada (2016)

	House of Representatives
New National Party (NNP)	15
National Democratic Congress (NDC)	0
	Senate
Government nominees	7
Opposition nominees	3
Independent	3

Public Trust in Trinidad and Tobago



Survey Question

(Scale of 1-5, where 1 = very ineffective and 5 = very effective)

Survey Question	Trinidad & Tobago		Grenada	
	Mean Score	Std. Dev.	Mean Score	Std. Dev.
Effectiveness of the PAC (in T&T, all oversight committees)	3.1	1.1	1.9	1.1
Degree of Partisanship Within Committees	3.6	1.0	3.8	1.0
Effectiveness of the Auditor General	3.2	1.1	3.1	1.4
How Effective is Question Period	2.9	1.1	2.3	1.3
Effectiveness of the Ombudsman	2.2	1.6	2.3	1.1
Effectiveness of the anti-corruption agency	2.6	1.6	3.2	1.6

Question

- What is the cause for the improvement in trust in Parliament in T & T
 - Effective communications
 - Code of conduct
 - Declaration of assets
 - Transparency in parliamentary deliberations
- Clerk's long experience: key factor in parliamentary strengthening

Observations

- Both T & T and Grenada have the full gamut of oversight tools. The issue is making these tools effective.
- Recommendations need to be country-specific
- Increased importance of the Senate in terms of oversight
- Establishment of a 'Social Contract' forum in Grenada interesting (meets monthly, chaired by the PM)

Continued on next page >

Committees

- **T&T** strengthened its committee system (regular meetings, public hearings, admin/research support) but effectiveness is limited by part-time MPs and technical support.
- **Grenada:**
 - Joint House-Senate Committees
 - Ministers should be allowed to sit on committees (and chair, but not own departments)
 - Appoint unelected or lay members
 - Admin/research support, e.g. interns

Committees – PAC (Grenada)

- Currently chaired by ranking Opposition Senator (who has competing responsibilities and which makes a bipartisan approach difficult)
- ‘regional’ PAC for smaller countries in the Caribbean or Joint Inquiries?
- AG should be able to hire staff independently and not be dependent on Public Service Commission

Ombuds and Anti-Corruption Agencies

- In T & T and Grenada, public servants and general public are unaware of existence – outreach and public education
- Adequate budgets and financial autonomy
- Establish time frames for agencies to respond to Ombuds/ACA request, introduce non-compliance enforcement
- Grenada’s Draft ATI Law has yet to be passed by the Parliament.

Other Measures

- Tougher codes of conduct, ethics committee (using, for example, CPA benchmarks)
- MPs and integrity commissions (ACAs) should disclose financial assets & business interests
- **TRINIDAD & TOBAGO:** Parliament provides non-accountable funds to MPs for constituency offices
- **GRENADA:** develop links between social contract forum and Parliament and AG

Conclusions

- Issues of oversight in small countries are fundamentally different than in large; lessons learned in UK and Canada largely irrelevant
- Cannot generalize across small countries – lessons not easily transferable
- AG, Ombuds, ACAs must *be* constitutionally independent and must be *perceived* to be independent. Reporting to parliament a first step
- Oversight institutions, including parliaments, must control their own financial and human resources.
- Political will: citizens must demand effective anti-corruption programs!



Between a Rock and a Hard Place:

Presentation to the Kedge School of Business, Marseilles, France

 [Play Video](#)

Contact

McGill School of Continuing Studies

680 Sherbrooke St. West,
Montreal, QC, H3A 3R1

Program information

Tel: 514-398-5454

parl.scs@mcgill.ca

 **Learn more at**
mcgill.ca/scs-parliament



McGill

School of
Continuing Studies

École
d'éducation permanente