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Foreign Corrupt Practices Act in Africa

Compliance Strategies Given the Sub-Saharan Region's Unique Cultural and Governmental Intricacies

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Thomas R. L. Best, Attorney, **Steptoe & Johnson**, Washington, D.C.
Herbert A. Igbunugo, Shareholder, **Igbunugo Partners Int'l Law Firm**, Minneapolis
Obiamaka P. Madubuko, Partner, **McDermott Will & Emery**, New York

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DOING BUSINESS IN SUB-SAHARAN AFRICA: WITH NEW OPPORTUNITIES COMES RISKS AND PITFALLS UNDER THE FOREIGN CORRUPT PRACTICES ACT (FCPA)

By: Herbert A. Igbanugo, Esq.

I. INTRODUCTION

Now, more than ever, enforcement of the U.S. Foreign Corrupt Practices Act (FCPA) is a top priority for the U.S. Department of Justice (DOJ) and U.S. Securities and Exchange Commission (SEC) as they strive to prevent U.S. companies, employees, and agents from engaging in bribery of foreign government officials to obtain or retain business in overseas markets. By any measure, 2008 was a brutal year in FCPA enforcement and the trend has continued upward in 2009. This surge is especially problematic for U.S. companies seeking to expand their business and grow their target market in Sub-Saharan Africa (SSA), where fresh and unique opportunities abound, but an endemic culture of bribery, illegal gratuities, economic extortion, and other corrupt practices continue to flourish.

In today's global market, U.S. companies interested in foreign business opportunities can no longer afford to ignore the SSA region, particularly when the African Growth and Opportunity Act (AGOA) and other initiatives have spawned new investment and infrastructural development in the African continent.¹ But with the U.S. government's aggressive enforcement

* Herbert A. Igbanugo, an African Internationalist/Specialist is the founding shareholder of Igbanugo Partners Int'l Law Firm, PLLC (Igbanugo Partners), a Minneapolis-based law firm devoted to the practice of International Trade Law with a narrow focus on Sub-Saharan Africa. He is admitted to practice in Minnesota and New York, as well as before numerous U.S. Federal District Courts, the Second, Third, Fourth, Fifth, Seventh, Eighth and Ninth Circuit Courts of Appeals, the U.S. Court of International Trade, and the U.S. Supreme Court. His SSA practice includes legal affairs/project managing/liaison counsel work, Corporate Social Responsibility (CSR), the Foreign Corrupt Practice Act (FCPA), governmental interest advocacy, and arbitration matters within SSA.

¹ See African Growth and Opportunity Act (AGOA), Summary of AGOA I, available at http://www.agoa.gov/agoa_legislation/agoa_legislation.html

of the FCPA and the global media's eagerness to report on corporate corruption scandals, it has become more imperative for companies to establish strong and well-calibrated anti-corruption policies before they venture into this region to conduct business. *Nonetheless, strict FCPA compliance policies are likely to prove ineffective if they fail to account for the cultural factors enabling corruption in SSA in the first place. Local custom is perhaps the greatest challenge in avoiding liability under the FCPA.* To open and close a business deal in SSA, there is tremendous pressure on investors and local subsidiaries of multinationals to play the local game: that is, follow practices and customs that are engrained throughout the region, but are often downright illegal under the FCPA and the domestic laws of the SSA countries.

As the international community strengthens its commitment to stricter enforcement of international trade laws and policies outlawing corruption, the DOJ is expected to hold accountable the U.S. companies that engage in international bribery. Focusing corporate expansion into new remote markets whose business cultures historically may have condoned, and in some instances, encouraged paying bribes, has likely contributed to the renewed attention to FCPA enforcement. Equally important is the hindsight afforded by almost three decades of FCPA enforcement activity, which has tended to point to some industries, such as government procurement, big pharmaceuticals, defense, construction, oil, etc., as having had more than their fair share of problems relating to corruption. This is at least partly because of their size, high manpower, dependency on government contracts, and their inclination or infinite desire to operate in emerging markets.

II. FCPA OVERVIEW

The FCPA is a product of the Watergate years, when the U.S. government started to grow increasingly uncomfortable with some U.S. companies' practice of bribing foreign officials to "grease the wheels" of commerce. Specifically, the U.S. Congress enacted the FCPA in 1977 in response to an SEC investigation that uncovered illegal payments by certain U.S. companies to foreign politicians, political parties and officials. The SEC found that the payments were made to secure unfair advantage over other competing entities for contracts and provision of certain services in the foreign countries. Stated bluntly, bribes were being paid to foreign government officials to facilitate favorable action.

The FCPA was designed to level the playing field and for American businesses to be seen by the rest of the world as fair, transparent and imbued with the ability to achieve their goals internationally on merit rather than through corruption. The legislation also gave the U.S. the high moral ground to implore and push other countries to put in place similar anti-bribery legislation.

A. Anti-Bribery Provisions of the FCPA

In general, the anti-bribery provisions of the FCPA prohibit U.S. companies and their officers, directors, employees, agents and any stockholder acting on behalf of the company, from bribing foreign officials for the purpose of influencing decisions to obtain business contracts or business advantage.² Bribery involves paying, offering, promising to pay (or authorizing to pay or offer) money or anything of value to a foreign official, a foreign political party or party

² Foreign Corrupt Practices Act 1977, 15 U.S.C. § 78, *available at* <http://www.usdoj.gov/criminal/fraud/docs/statute.html>

official, or any candidate for foreign political office.³ The term “foreign official” in the FCPA includes officers or employees of a foreign government, officials of a public international organization, or any person acting in an official capacity.⁴ Indirect payments that pass through overseas intermediaries (agents, consultants and distributors) and then end up with the foreign official for a corruptive purpose also violate the FCPA.⁵

Individuals who are citizens, nationals, or residents of the United States are also considered “domestic concerns.”⁶ Finally, officers, directors, employees, agents and stockholders of issuers and domestic concerns are subject to the FCPA as well.

Foreign corporations and foreign subsidiaries of U.S. corporations are not subject to the FCPA unless they are issuers, have their principal place of business in the United States or commit acts in violation of the FCPA while in the U.S.⁷ In contrast, issuers and domestic concerns may be vicariously liable for the acts of foreign corporations and subsidiaries.⁸ Furthermore, foreign individuals who act as agents or employees of issuers or domestic concerns are subject to the FCPA.⁹ Finally, U.S. citizens or residents who violate the FCPA on behalf of foreign corporations may be liable as domestic concerns.¹⁰

In order to prove a violation of the anti-bribery provisions of the FCPA, the government must establish:

³ U.S. Department of Justice, Lay-Person’s Guide to FCPA, Foreign Corrupt Practices Act, Antibribery Provisions (hereinafter referred to as DOJ Lay-Person’s Guide, *available at* <http://www.usdoj.gov/criminal/fraud/docs/dojdocb.html>).

⁴ *Id.*

⁵ *Id.*

⁶ *See* 15 U.S.C. § 78dd-2(h)(1)(A).

⁷ *See* R. Witten and K. Parker, *Complying with the Foreign Corrupt Practices Act*, § 2.02 (Matthew Bender 2007)

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

- (a) a payment of (or an offer, authorization, or promise to pay) money or anything of value, directly, or through a third party;
- (b) to (i) any foreign official, (ii) any foreign political party or party official, (iii) any candidate for foreign political office, (iv) any official of or a public international organization, or (v) any other person “knowing” that the payment or promise to pay will be passed on to one of the above;
- (c) the use of an instrumentality of interstate commerce (such as telephone, telex, facsimile, email, or the mail) by any person (whether U.S. or foreign), or an act outside of the U.S. by a domestic concern or U.S. person, or an act in the U.S. by a foreign person in furtherance of the offer, payment or promise to pay;
- (d) for the corrupt purpose of influencing any official act or decision of that person, inducing that person to do or omit to do any act in violation of his/her lawful duty, securing any improper advantage, or inducing any person to use his/her influence with a foreign government to affect or influence any government act or decisions; and
- (e) in order to assist the company in obtaining or retaining business or in directing business to any person or to secure an improper advantage.¹¹

The FCPA also carves out narrow permissible payments and contains two affirmative defenses to liability under the anti-bribery provisions. It is important to note, however, that these ameliorative measures do not prevent the allegations and/or charges from being brought in the first instance, which your organization does not need at all. It simply means you may interpose them as affirmative defenses after you have been targeted.

B. Permissible Payments and Affirmative Defenses

1) "Facilitating" Payments Exception (e.g., Grease Payments, Gifts or Tips):

One limited exception to the anti-bribery provision is payments to foreign officials to facilitate or expedite performance of a “routine governmental action,” which are actions

¹¹ See 15 U.S.C. § 78dd-1(a); 15 U.S.C. 78dd-2(a); 15 U.S.C. § 78dd-3(a).

ordinarily and commonly performed by a foreign official.¹² The statute lists the following examples: obtaining permits, licenses, or other official documents; processing governmental papers, such as visas and work orders; providing police protection, mail pick-up and delivery; providing telephone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or actions of a similar nature.¹³ Routine governmental action does not include a decision by a foreign official to award new business or to continue business with a particular party.¹⁴

2) Promotional or Marketing Expenses Affirmative Defense (e.g., Entertainment)

A company or person charged with violating the anti-bribery provisions may assert as a defense that the payment or promise of payment was a reasonable and bona fide expenditure, incurred by or on behalf of a foreign official, to promote or demonstrate a product or to execute a contractual obligation.¹⁵

3) Payments Lawful Under Foreign Laws Affirmative Defense

A company or person charged with violating the anti-bribery provisions may assert as a defense that the payment or promise of payment was lawful under the written laws and regulations of the foreign country.¹⁶

C. The Accounting Provisions

The FCPA also contains two interrelated accounting provisions; one requiring the keeping of accurate books and records, and the other requiring the maintenance of adequate internal controls. The record-keeping and internal controls provisions of the FCPA only apply to

¹² 15 U.S.C. § 78dd-1 (b).

¹³ 15 U.S.C. § 78dd-1 (f) (3) (A)(i)-(v). *See also* DOJ Lay-Person's Guide.

¹⁴ 15 U.S.C. § 78dd-1 (f) (3) (B).

¹⁵ 15 U.S.C § 78dd-1 (c)(2)(A)-(B).

¹⁶ 15 U.S.C § 78dd-1 (c)(1).

issuers. Issuers and their employees or agents are required to “make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions” of their assets.¹⁷ The accounting provisions apply to issuers, regardless of whether they have foreign operations and whether bribery is involved. Reasonableness, rather than materiality, is the threshold standard.

In addition, issuers are required to “devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances” that transactions and assets are properly maintained.¹⁸ The FCPA defines the term “reasonable assurances” to mean “such level of detail and degree of assurance as would satisfy prudent officials in the conduct of their own affairs.”¹⁹

Several factors are considered when determining the adequacy of a system of internal controls, including: (i) the role of the board of directors; (ii) communication of corporate procedures and policies; (iii) assignment of authority and responsibility; (iv) competence and integrity of personnel; (v) accountability for performance and compliance with policies and procedures; and (vi) objectivity and effectiveness of the internal audit function.²⁰

Criminal liability under the accounting provisions may only be imposed where a person “knowingly” circumvented or failed to implement a system of internal accounting controls or “knowingly” falsified any book, record or account. Civil liability, however, may arise for issuers if their books fail to adequately represent an improper payment, even though the falsification, for

¹⁷ See 15 U.S.C. § 78m(b)(2)(A).

¹⁸ See 15 U.S.C. § 78m(b)(2)(B)(i)-(iii).

¹⁹ See 15 U.S.C. § 78m(b)(7).

²⁰ See SEC Statement of Management on Internal Accounting Controls, Exchange Act Release NO. 34-16877, 1980 WL20857, *12-13 (6 June 1980).

example, occurred at a subsidiary with no evidence of involvement by the parent.²¹ The test used by the SEC as to whether to impose civil liability on the parent is that of control.²²

III. OTHER ANTI-CORRUPTION LEGISLATION TO LEVEL THE PLAYING FIELD

In the world marketplace, business thrives on competition. Corruption has been a part of the playing field in Africa, much to the detriment of the Continent and it does not bode well for Africa or for U.S. businesses operating in that region. Bribery and corruption tilt the playing field and create unfair advantages for those willing to engage in unethical and illegal behavior. Corrupt practices penalize companies that play fair and seek to win contracts through the quality and pride of their products and services. As we proceed through the 21st Century, more people throughout the world are rejecting the notion that corruption is an inevitable part of doing business.

To ensure that companies from other countries are held to the same standards over the years, the U.S. has sought to push their trading partners to institute similar legislations. The U.S. and its thirty-three major trading partners comprising the *Organization of Economic Cooperation and Development* (OECD) signed the OECD Convention to combat bribery of foreign public officials in international business transactions in 1997. The primary reason for the U.S. to push for this agreement was to avoid handcuffing American businesses and allow them to compete fairly on a level playing field with businesses from other countries where businesses had no such controls or restrictions. Before the convention to combat bribery, some businesses from the OECD countries were allowed to deduct some payments made to foreign officials and politicians as legitimate business expense.

²¹ *Id.*

²² *Id.*

Because most of the signatories to the convention are predominantly European, the level playing field sought by the U.S. globally was limited. To expand the reach of this worthwhile anti-corruption campaign, the U.S. and member states of the Organization Of American States entered into an agreement in March 29, 1996 called the *Inter-American Convention Against Corruption*.

On a global level, the United Nations entered the anti-corruption crusade with its own *United Nations Convention Against Corruption* on December 14, 2005.²³ While the United Nations Convention had universal acceptance, there were still countries that voiced objections to certain provisions of the convention on political, sociological and economic grounds. Most countries including, the United States, could not agree to enforcement issues such as which court would have jurisdiction for enforcement of the convention. Other objections hinted on loss of territorial integrity of the member states. While all members agreed corruption was a problem and something needed to be done to eliminate or reduce its spurious impact in global business, there was not a universal voice on how to attack the problem.

The 1998 Amendments implemented the OECD Convention and made five conforming changes to the FCPA: First, payments made to secure "any improper advantage" -- language used in the OECD Convention -- were added to the FCPA's prohibitions. Second, the FCPA's coverage was extended to include all foreign persons who commit an act in furtherance of a foreign bribe while in the United States. Third, the FCPA's definition of foreign officials was expanded to include employees and representatives of public international organizations. Fourth, jurisdiction was extended over the acts of U.S. businesses and nationals involved in illegal payments that take place wholly outside the United States. Finally, the distinction was eliminated

²³ UN Convention Against Corruption, Oct. 31, 2003.

between U.S. nationals and non-U.S. nationals, making all employees or agents of U.S. businesses subject to both civil and criminal penalties under the FCPA.

Corruption costs Africa some \$175 billion per year and adds significantly to import/export costs for U.S. companies in terms of costs of transportation, production, labor, regulation and all other aspects of doing business.²⁴ Other foreign countries' high tolerance for corruption makes it extremely difficult for U.S. companies to compete in SSA, while complying with stringent FCPA requirements. U.S. companies must compete with, for example, Chinese and Indian companies, which are among the worst culprits for paying bribes in developing countries. Transparency International (TI) places China and India at the top of its Bribe Payers' Index of 30 exporting nations.²⁵ These companies are more likely to pay bribes in less developed countries where anti-corruption institutions are weak, such as Africa, than in highly industrialized ones.²⁶

As a condition of joining the World Trade Organization (WTO), China was required to become a signatory to the UN Convention Against Corruption and pass new anti-corruption laws that, to a large extent, are similar to the FCPA. Nevertheless, Chinese companies' involvement in corrupt business practices in this region as well as others worldwide is well documented since China's complex anti-bribery laws are not usually enforced. For example, the Royal Institute of

²⁴ Corporate Council on Africa: *The U.S. and Africa – Business Partners in Development* (Policy recommendations from the American Private Sector for the Obama Administration) (presented March 4, 2009).

²⁵ BBC News, *China and India 'top bribe list'*, <http://news.bbc.co.uk/2/hi/business/5405438.stm> (last visited October 20, 2008).

²⁶ Global Policy Forum, *China's Rise: Hope or Doom for Africa*, June 16, 2007, <http://www.globalpolicy.org/security/natres/generaldebate/2007/0611chinaresources.htm> (last visited October 20, 2008).

International Affairs in London estimates that 70 percent of China's timber imports from SSA is illegal.²⁷

The U.S. government's strong enforcement of anti-corruption laws, in contrast to the Chinese and Indian governments' high tolerance for corruption, means that U.S. companies are not operating on a level playing field when it comes to doing business and investing in SSA. At the same time, U.S. companies cannot use the prevalence of corruptive practices by other foreign companies as a defense against FCPA violations.

Moreover, the recent increase in anti-corruption initiatives in China will likely fuel FCPA enforcement actions. In a major change that began in 2006, the enforcement of anti-bribery laws in the private sector is now a major government enforcement priority.²⁸ For example, three senior directors in the State FDA were prosecuted after they accepted bribes in excess of \$800,000, primarily from Chinese companies, to approve fake or inadequately tested drugs, resulting in the deaths or severe illnesses of many people. The head of the Chinese Food & Drug Administration was executed for his role in the scheme. Still, for the most part, firms from other countries are more prepared to pay bribes to obtain business opportunities, which in turn fuels the temptation for U.S. companies to engage in corrupt practices in order to compete with other foreign companies.

²⁷ *Id.*

²⁸ Jeffrey Harfenist, UHY Advisors FLVS, Inc, *U.S. Companies Could Be Implicated As China Aggressively Prosecutes Bribe Recipients - Part I*, The Metropolitan Counsel, <http://www.metrocorpocounsel.com/current.php?artType=view&artMonth=October&artYear=2007&EntryNo=7280> (last visited October 28, 2008).

IV. FCPA RISKS AND PITFALLS IN SUB-SAHARAN AFRICA (SSA)

Whether a company is entering a new market, contemplating an international joint venture, investing in a foreign business, or acquiring a company abroad, an appropriate level of due diligence on the foreign entity, its agents, business partners and intermediaries is universally acknowledged as crucial.

The first question facing U.S. domestic entities operating in SSA is the depth of due diligence to be undertaken. Various factors determine what is required within this due diligence equation to satisfy the FCPA, including: the reputation of the foreign entity and of the country in which it operates; how the U.S. and SSA entities were introduced, especially if a foreign official was involved; the U.S. domestic entity's own reputation for compliance and good standing with the relevant regulatory agencies; and whether the SSA entity is, or has ever been, on the radar screen of any risk level indicated by these factors.

Next, the U.S. entity must develop a plan for its own due diligence investigation. At a minimum, it ought to include database research, industry inquiries, and contacts with the U.S. Embassy and other American government agencies within the SSA entity's country. These should include: document reviews, source inquiries, and more intensive, in-country interviews with current and former employees of the SSA entity, its business partners, and relevant government officials. The investigation should seek to: determine the expertise, competence and reputation of the SSA entity, as well as relationships with foreign officials and their family members; develop an understanding of the company's business and/or corporate social responsibility models and compliance culture; and develop background information regarding corporate management and its structure.

Another challenge is locating essential or pertinent information. Unlike in the U.S., detailed information may not be a matter of public record. Knowing what information or data is available and where it is kept can, unfortunately, dictate the thoroughness of the effort. This makes skilled culturally fluent investigators all the more important. International due diligence can be challenging, but it need not deter investments abroad or entry into new SSA markets. In fact, even if compliance-driven, these investigations can provide decisive information on important investment considerations, thereby providing lasting business benefits.

Corruption has adversely affected the economic and social development of African states more than any other group of countries or region of the world. The continent's leaders "concerned about the negative effects of corruption and impunity on the political, economic, social and cultural stability of African States and its devastating effects on the economic and social development of the African people," led to the African Union's adoption of the *Convention on Preventing and Combating Corruption*.²⁹ Although individual countries, political and trading blocks have enacted anti-corruption legislations, the United Nations Convention against Corruption is the first that involved all UN member states including SSA nations.

The combination of cultural, historical, economic, and social factors in SSA will continue to create a "perfect storm" for FCPA violations, underscoring the crucial need for U.S. companies doing business in that treacherous region to proactively assess their risks and institute compliance measures calculated to effectively mitigate those risks. The objections to the UN Convention against Bribery and Corruption show that while most SSA countries view corruption as a problem in global business, each country's views and attitudes towards the practice are different.

²⁹ African Union Convention on Preventing and Combating Corruption, 2nd Ordinary Session Assembly of the Union, Maputo, July, 2003.

Against this background, the question then becomes how do United States businesses operate in SSA and stay true to the mandate of the FCPA? The answer appears or seems simple because the United States could point to the FCPA as controlling U.S. businesses. They could also point to the UN and the AU Anti-Corruption Conventions as similar initiatives that run parallel to the FCPA. The limitation of the UN convention, however, is that there were too many objections by member countries on specific articles and there was no consensus for instance on Article 44 regarding extradition.³⁰ In addition, objections regarding dispute resolution, specifically arbitration and the jurisdiction of the International Court of Justice as the venue for disputes, has limited the effectiveness of the Convention.³¹

Furthermore, Article 21 of the AU Convention specifically states that the AU Convention (10) “shall in respect to those State Parties to which it applies, supersede the provisions of any treaty or bilateral agreement governing corruption and related offenses between any two or more State Parties.” This considerably muddies the water for businesses from countries doing business in SSA who are not part of the AU. The limitations of the UNCAC and the AU Convention makes enforcement of the FCPA difficult as it relates to businesses with local agents in SSA countries who do not have extradition treaties with the US or objected to Article 44 of the UNCAC or adheres to the AU Convention on corruption.

It is not a defense to FCPA enforcement, however, to argue that a business cannot be done in the foreign country without bribing officials or that competitors from other countries are engaging in bribery. But what is considered a bribe in the U.S. may be considered a customary requirement or showing gratitude in SSA. International investors must recognize that customary practices are different in SSA and that an intimate knowledge of the local culture and customs is

³⁰ United Nations Convention Against Corruption Article 44.

³¹ United Nations Convention Against Corruption Article 66.

key to understanding the grey areas and walking across them with an extra set of eyes in the back of your head.

Difficult socio-economic conditions have, for the most part, caused what may be described as corruption in the U.S. to become the “ordinary course of doing business” in most African countries. The pervading concept and/or justification being that as the *“right hand washes the left hand, the left hand must also necessarily wash the right hand.”* For example most land transactions involving “stool lands” in Ghana require that a traditional ruler (local chief) have to approve the sale. To do that what is described as a “knocking fee,” “drinks” or “gift” to introduce the buyer to the chief is required. In most situations these gifts are rounded to an amount of money. A verbal “thank you” sometimes is not enough for services rendered or to be rendered. For instance, one may be required politely to “buy a pen” in Nigeria if you need a signature from a government official to move the ball along. And offering the pen in your pocket, even if a Montblanc, will not suffice. The question then becomes where must the line be drawn in such instances. The U.S. business may be handcuffed by the provisions of the FCPA and may lose out or face road blocks on the deal if it appears that they are even questioning the appropriateness of such a custom, creating a conflict between socio-economic rudeness and the rule of law.

As the U.S.’s fifth largest source of imported oil and blessed with other plentiful natural resources, Nigeria should be one of the most successful developing countries, but in reality it is one of the poorest. The pervasive culture of corruption in Nigeria has crippled the economy and stunted its growth. The military governments of the 1980’s and 1990’s contributed to the

common belief among ordinary citizens that they must use any means necessary to reach their economic goals.³²

If corruption is engrained in a society and very much part of the cultural norm, it is easier for individuals to engage in corrupt behavior. A Global Poverty Research Group (GPRG) study on Culture and Corruption states:

[W]hen the private returns to corruption are high or, due to weak institutions, the likelihood or consequences of detection are limited, individuals are more inclined to act corruptly. Further, because finding a partner with whom to engage in a corrupt transaction and escaping detection or punishment becomes easier as the proportion of individuals who are corrupt increases, multiple equilibria involving different levels of corruption are likely to exist.”³³

Many economists believe that cross-cultural differences (social, psychological and cultural factors) play a minor role in corruptive practices and that the key to reducing corruption is redesigning the country’s formal institutions, but as applied to the high-context cultures of SSA countries, I do beg to disagree.³⁴ The GPRG study, however, notes that different levels of corruption across countries are at least, to some extent, attributable to internalized social norms and that “corruption is, in part, a cultural phenomenon.”³⁵

Political atmosphere may also create difficulty for American companies doing business in SSA under the FCPA. Unfortunately, political instability is still rampant in many areas of SSA. The negative effects of political corruption are particularly strong in the African continent

³² See Smith, Daniel Jordan, *A Culture of Corruption: Everyday Deception and Popular Discontent in Nigeria*, Princeton University Press.

³³ Abigail Barr & Danila Serra, Center for the Study of African Economies, University of Oxford, *Culture and Corruption*, March 1, 2006, Economic and Social Research Council (ESRC), Global Poverty Research Group (GPRG), at 4, available at <http://www.gprg.org/pubs/workingpapers/pdfs/gprg-wps-040.pdf>.

³⁴ *Id.* at 5.

³⁵ *Id.* at 24.

because of the pervasive nature of corrupt practices in the political arena coupled with the abject poverty across the region.³⁶

There are improvements in this area, but wherever there is instability, the rule of law is an after-thought, and corruption becomes part of the culture. While businesses from other countries, especially Europe and Asia, operate relatively successfully in this environment, it may be difficult, if not impossible for American businesses to do the same due to the provisions and restrictions of FCPA. That is not to say European and Asian countries do not have anti-corruption legislations; they may just be comfortable or familiar with the custom and social issues in that part of the world.

V. NEW OPPORTUNITIES IN SUB-SAHARAN AFRICA (SSA) & RECENT FCPA ENFORCEMENT ACTIVITY

Despite the problems stated, there is a wind of change blowing across SSA that is now creating a promising atmosphere for American businesses. There is unprecedented relative peace and political stability in most parts of SSA and there has been relatively peaceful democratic change of governments in Ghana, Nigeria, South Africa, Senegal, Uganda, Botswana, and Tanzania, to mention a few. But that is not to say that elections creating these changes were considered highly free and fair.³⁷

In almost all cases, opposition parties complained that there were massive corruption and vote rigging. Regardless, the fact that there were elections at all is considered an improvement from the past where military and civilian dictatorships, coupled with one party system of government, was the order of the day. Almost all SSA countries have signed on or ratified the UNCAC and the AU Convention. The mandate for the AU to set up what is called the African

³⁶ Roy, Saberi, Corruption and Culture – Part 1, *Global Politician*, 2/26/2008, available at <http://globalpolitician.com/24180-culture>.

³⁷ United States Dept. Country Report on Human Rights Practices, (2007)

Peer Review Mechanism's (APRM) Country Review has now been honored.³⁸ In addition to the UNCAC, some of these countries have actually enacted legislation and created agencies to combat corruption.

For instance, the criminal code in Ghana criminalizes bribery, and there is a Whistleblower Act to protect whistleblowers from reporting corruption. The Ghana Commission on Human Rights and Administrative Justice (CHRAJ), The Office of Accountability, and The Serious Fraud Office (SFO) are the agencies established to enforce corruption legislation in Ghana. Nigeria enacted the Corrupt Practices and Related Offenses Act of 2000 to police corruption. The Independent Corrupt Practices and Other Related Offenses Commission (ICPC) oversees corruption enforcement in Nigeria. South Africa also enacted legislations to combat corruption. There is The Prevention and Combating of Corruption Act, which criminalizes corruption. There is the "Whistleblower Act" or Protected Disclosure Act; Promotion of Access to Information Act and others. The Anti-Corruption Agency, The National Prosecution Authority (NPA) and The Auditor-General of South Africa (AGSA) are the agencies that oversee and enforce corruption legislation in South Africa. Senegalese President Abdoulaye Wade was elected in 2000 based on a strong anti-corruption stance.³⁹ Corruption is criminalized in Senegal, and the Commission nationale de lutte contre la non-transparence, la corruption et la concussion (CNLCC) is an agency of the Senegalese government that was created in 2003 to investigate corruption complaints. Customs officials in Senegal are rotated every 3 years to limit the possibility of corruption. Simply put, almost all Sub-Saharan African governments have some sort of anti corruption legislation and related agencies to enforce these laws.

³⁸ 37th Summit of the Organization of African Unity (OAU), July 2001.

³⁹ Global Advise Network, Senegal Country Profile.

Despite these efforts, the public perception of corruption in SSA is very high. Very few influential people or top officials have been prosecuted under any of the anti-corruption legislations. Even when prosecuted and incarcerated, top officials and influential private figures tend to successfully slither away from confinement after the dust settles, and people no longer watching with interest, again via corrupt practices. Cultural issues, overlapping authority, discrimination within and outside the complex quota system for public offices have left the governments in SSA with little power to govern, and they are systematically undermined by corrupt public officials, the military and the patronage networks.

Against this background, it is very difficult for U.S. companies to effectively operate in SSA countries and stay true to the FCPA. When local or even some expatriate employees of U.S. entities and their affiliated concerns in SSA are placed in situations where their very integrity is tested by the offer of a significant bribe, they will almost always ask themselves two basic questions – (1) will I get caught? and (2) does the bribe in question trump my job? Another ethical dilemma emanates in situations where employees may believe that improper payments are essential for them to make their quota or achieve stated bottom tier corporate goals.

Briefly described below are relatively recent FCPA enforcement matters arising out of the SSA region:

□ On February 6, 2007, three subsidiaries of Vetco International agreed to pay a combined \$26 million in criminal fines to settle charges that they had paid \$2.1 million to Nigerian customs officials to avoid payment of customs duties and obtain the release of goods and equipment.⁴⁰

The companies made 378 separate payments over two years in relation to work providing

⁴⁰ Press Release, Dept. of Justice, Aibel Group Ltd. Pleads Guilty to Foreign Bribery and Agrees to Pay \$4.2 Million in Criminal Fines (Nov. 21, 2008), available at <http://www.usdoj.gov/opa/pr/2008/November/08-crm-1041.html>.

engineering services and subsea construction equipment for a Nigerian deepwater drilling project.⁴¹

□ In February 2007, Baker Hughes paid the largest combined criminal and civil fine, up to that date, to resolve a Justice Department criminal investigation and SEC enforcement action involving improper payments to officials in Nigeria, Kazakhstan, Angola, Indonesia, Russia and Uzbekistan. Baker Hughes entered into a deferred prosecution agreement, which required the appointment of a monitor and agreed to pay an \$11 million criminal fine, disgorgement, and prejudgment interest of \$23 million together with a \$10 million civil penalty.⁴²

□ On July 25, 2007, two former executives of ITXC pleaded guilty to charges that they had conspired to make corrupt payments to employees of foreign-state owned and foreign-owned telecommunications carriers in Nigeria, Rwanda, and Senegal.⁴³

□ In July 2007, Jason Steph, a former manager of a Nigerian based subsidiary of Willbros Group, Inc., an oil and gas service corporation, was indicted in connection with payments to a Nigerian official at the Nigerian National Petroleum Corporation and the Peoples Democratic Party.⁴⁴

□ In September 2007, Stephen Head, a former president of Titan Corporation's operations in Africa, was sentenced to six months incarceration and a \$5,000 fine after pleading guilty to charges in connection with a \$3.5 million payment to officials in Benin.⁴⁵

⁴¹ See http://www.usdoj.gov/opa/pr/2007/February/07_crm_075.html.

⁴² Press Release, SEC Charges Baker Hughes with Foreign Bribery and With Violating 2001 Commission Cease-and-Desist Order (April 16, 2007), available at <http://www.sec.gov/news/press/2007/2007-77.htm>.

⁴³ See <http://www.usdoj.gov/opa/pr/2008/September/08-crm-772.html>

⁴⁴ Press Release, Dept. of Justice, Former Executive of Willbros Subsidiary Pleads Guilty to Conspiring to Bribe Nigerian Government Officials (Nov. 5, 2007), available at http://www.usdoj.gov/opa/pr/2007/November/07_crm_888.html.

⁴⁵ See *United States v. Head*, No 3:06 Crim. 01380-BEN (S.D. Cal. Sept. 28, 2007).

- In September 2007, Paradigm B.V. entered into a non-prosecution agreement in connection with payments to officials in Nigeria and four other countries pursuant to which it agreed to “pay a \$1 million penalty.”⁴⁶
- On September 3, 2008, a former officer and director of Kellogg, Brown & Root, Albert Stanley, pleaded guilty to DOJ charges that he had conspired to violate the FCPA over a ten-year period. As the head of a KBR predecessor company, Stanley helped manage a joint venture that build liquefied natural gas production facilities in Nigeria. Between 1994 and 2005, Stanley approved payments of over \$180 million to outside consulting firms with the intention that the funds be used to bribe Nigerian government officials to obtain engineering, procurement and construction contracts valued at more than \$6 billion.⁴⁷

VI. MUNDANE CONSEQUENCES OF FCPA VIOLATIONS

Violations of the FCPA’s antibribery provisions may result in the following substantial penalties:

- Criminal penalties of up to \$2 million for corporations and other business and up to \$100,000 for officers, directors, stockholders, employees, and agents. Actual fines may be much higher under the Alternative Fines Act – up to twice the benefit the corrupt payment was intended to elicit. Criminal penalties also include imprisonment for up to five years.
- Financial penalties, brought by the U.S. Attorney General or the SEC, of up to \$10,000 against any firm as well as any officer, director, employee, or agent of the firm, or stockholder acting on behalf of the firm. Additional penalties, including disgorgement of

⁴⁶ Press Release, Dept. of Justice, Paradigm B.V. Agrees to Pay \$1 Million Penalty to Resolve Foreign Bribery Issues in Multiple Countries (Sept. 24,2007), available at http://www.usdoj-gov/opa/pr/2007/September/07_crm_751.html.

⁴⁷ See <http://www.usdoj-gov/opa/pr/2008/September/08-crm-772.html>.

profits obtained through corrupt business practices, may also be levied in an SEC enforcement action. The U.S. Attorney General or the SEC may also bring a civil action to enjoin any act or practice of a firm that appears to violate the antibribery provisions.

- Debarment from doing business with the Federal government, ineligibility to receive export licenses, and suspension or debarment from the securities business or from certain federal agency programs.
- Private causes of action under the Racketeer Influenced and Corrupt Organizations Act (RICO), or actions under other federal or state laws, which could inflict treble damages.

The brutal cost of the Siemens case is a very good example that must be committed to memory for the proposition that companies that ignore this law only do so at their own peril. No matter what light is held to it, the consequences to Siemens are catastrophic at best. Siemens agreed to pay fines totaling \$1.34 billion to settle the bribery probe.

- Includes \$800 million find for FCPA violations payable to the U.S. Department of Justice and SEC.
- Appointment of a Monitor to sit at Siemens headquarters and oversee its operations and compliance.
- Conducting an extensive internal investigation directed by outside legal counsel.
- Replacing nearly all of its top leadership team, including the CEO and General Counsel.
- Expanding its compliance program to include more than 500 full-time compliance personnel.

- Implementing a process of improvements and remediation efforts costing hundreds of millions.
- Agreeing to an outside Monitor for a period of four years.
- Paying more than \$300 million to outside legal counsel and accounting fees.
- Paying more than \$100 million on documentation collection, review, processing and storage.
- Paying more than \$150 million for remediation efforts by outside PwC consultants.
- Paying \$1.34 billion in fines plus the salaries of 500 compliance personnel.

VII. TIPS TO REDUCE RISKS AND EXPOSURE UNDER THE FCPA IN SUB-SAHARAN AFRICA.

1. **Liaise with culturally competent personnel in the worthwhile endeavor to combat corruption.** U.S. based corporations must first arm themselves with internal controls and be very cautious about local agents and the roles that they are permitted to play. Continuous education of SSA employees in FCPA and other anti-bribery regimes is critical to the effort. Said education must also take place in their native languages in order to bear fruit. A foreign language compliance-training regime may not sufficiently focus on the special problems of SSA and is likely to be doomed from the start.
2. **Pay foreign national employees by U.S. wage standards, which will certainly kill the incentive to engage in corrupt practices.** Additionally, companies operating in SSA need to have in place a proactive, top-down, bottom-up anti-corruption control policy involving tailored to audience training, how employees are rewarded, and their general behavior to address any vulnerability to bribery.

3. **With respect to U.S. expatriates, do not tie financial incentives and bonuses to striking business deals as this represents the “kiss of death” in so many ways.** Seek to develop wages or a pay structure that is based on the amount of work performed and not the size of the prime contract. U.S. based companies doing business in the region must make allowances for constraints inflicted on their associates in SSA and acknowledge that they are playing in an uneven field so that accommodations should be made realizing that they may lose business opportunities to remain compliant with the FCPA.
4. **The U.S. government should work closer with the United Nations to put much more pressure on other foreign governments to enforce anti-corruption laws, etc.** In this regard, the U.S. must add anti-corruption conditions to U.S. trade preference programs, work with the AU to install a full set of shark’s teeth in its convention against corruption, place increased focus in U.S. foreign assistance on anti-corruption technologies, encourage creation of independent organizations with enforcement and prosecution authority (e.g. Economic & Financial Crimes Commission [EFCC] very much feared in Nigeria) and provide additional funding for USAID’s 2005 initiative to empower the local media and civil society in SSA to play a “watch dog” role.
5. **Be watchful or alert to the following “unusual suspects” of fraudulent schemes prevalent in many parts of SSA:**
 - Cash payments or “greasing the wheels” with cash to expedite business transactions has been standard practice in SSA since the colonization of African nations by the Europeans. It is often justified by a saying that the “left and right hand must necessarily wash one another.” Even though most SSA countries are

now attempting to reverse this custom by enacting anticorruption laws and seeking to prosecute violators, the problem remains endemic, posing a high risk for companies doing business there.

- ❑ Bribes can be disguised in payments to shell companies – entities with limited or no operations, or limited or no assets that generally lack a bona fide business purposes. Invoices for fictitious services are typically generated and the payments are made to the shell entities in order to pass money to government officials.
- ❑ Bribery payments can also be disguised as payments to agents, distributors, vendors, and other third-party intermediaries, who then channel the funds to government officials. Common schemes include payments that exceed the “stated” or “normal” commission rate for similar goods and services, upfront commissions, and “success fees.”
- ❑ Bribery schemes can also be masked as charitable contributions. Payments are typically “contributed” to a charity that lacks a bona fide charitable purpose, with the funds later funneled to government officials, or made to a legitimate charity, with some benefit later directed to government officials.
- ❑ Bribery can also be masked through fraudulent accounting entries in which payments may appear legitimate in a company’s books and records (for example, as invoices for consulting projects, environmental studies, etc.), though no product or service is actually provided.
- ❑ Payments or other benefits offered to relatives, friends and acquaintances of foreign officials in an effort to gain special benefits or obtain new business also violate the FCPA and must be avoided.

VIII. CONCLUSION

The recent increase in FCPA enforcement has been widely noted and available data on trends in FCPA regulatory settlements show conclusively that settlements with a monetary component are much higher beginning in 2008 - present as compared to the period 2004 – 2008.⁴⁸ Enhanced FCPA enforcement is not expected to slow down under the Obama Administration and compliance is now truly a matter of corporate life and death for U.S. and foreign corporations that are subject to the FCPA. Speaking recently at a conference in Frankfurt, Germany, Mark F. Mendelsohn, Deputy Chief of the Fraud Section at the DOJ, provided a list of the Top Ten Trends for 2009:⁴⁹

1. The level of enforcement is at an all-time high and is likely to remain there.
2. Prosecuting senior company executives in their individual capacities will be a priority.
3. The U.S./ will investigate U.S. and foreign issuers equally, as well as companies operating within U.S. territory.
4. Multi-jurisdictional investigations are on the rise.
5. Informal international cooperation will continue to improve, together with increased mutual legal assistance.
6. The DOJ and FBI are committing more resources to FCPA enforcement, including eight full-time, dedicated FBI Investigators.
7. The DOJ will coordinate, where appropriate, sector-wide investigations, as it has in the oil and gas, medical devices and freight-forwarding industries.
8. The pace of voluntary disclosures is likely to continue.
9. FCPA due diligence will be a regular feature of mergers and acquisitions and transactional work.

⁴⁸ FCPA Settlements: It's a Small World After All, available at http://www.nera.com/publication.asp?P_ID=3710

⁴⁹ See <http://wrageblog.org/2009/01/28/fcpa-enforcement-top-ten-trends-for-2009/>.

10. Increased enforcement of other crimes, alongside FCPA violations, is expected, including money laundering, export controls violations and false accounting.

Although SSA presents considerable business opportunities, it also poses tremendous risks to U.S. companies operating in the region of running afoul of the FCPA. Strict FCPA compliance policies are necessary to prevent and/or correct corrupt practices that are likely to result in severe penalties, including huge corporate fines and prison time for individuals who violate the law. An intimate knowledge of the cultural nuances and economic factors impacting the tendency of employees to succumb to the usual temptations in SSA countries, however, is ultimately the key to navigating “grey areas” that pose the most challenges in FCPA compliance in the region.

Despite the growing number of legislative and policy initiatives designed to attract more international investors and developers to SSA, corruption remains epidemic throughout the region. To take advantage of exceptional business opportunities in SSA, while complying with the anti-bribery provisions of the FCPA, U.S. companies must consider the cultural values and economic factors that contribute to the high level of corruption in this region. Without tackling the root causes of corruption, U.S. companies will find it extremely difficult to explore and capitalize on business opportunities in SSA while complying with FCPA requirements. The companies that will ultimately stay out of trouble in this enforcement regime are those much in tune with the localized aspects of the corruption equation. In SSA, corrupt practices are clearly not unconnected to the overall socio-economic variables and related cultural phenomena. Although quite acceptable in SSA, they are nevertheless serious violations of the FCPA, which in the final analysis is what really matters.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Angola	Law of the High Authority Against Corruption, Penal Code 1886, Law of Crimes Against the Economy, Law on Access to Administrative Documents (but see Law on State Secrecy 2002, Law on National Security)	High Authority against Corruption, Office of the Ombudsman, Tribunal de Contas (Auditor)	On October 15, 2009, former governor of Bengo, Isalino Mendes, was found guilty of embezzling public funds; In September 2009, a foreign bridge-building company was convicted of foreign bribery with undisclosed Angolan ministers and officials dating back to 1990.	Signed	Ratified	None	To lower investment risks and provide greater assurance to investors, Angola needs greater progress toward good governance, the rule of law and diminished corruption. Senior officials are widely seen as corrupt, while the government's limited publication of accounting information fuels public suspicions. Angola, encouraged by the IMF, has invited major international accounting firms to conduct regular audits of its largest public companies. The 2002 Audit Law requires audits for all "large" companies, but the lack of a professional accounting oversight body has impeded enforcement. US firms operating in Angola are required to adhere to the Foreign Corrupt Practices Act.
Benin	Articles 166 to 183 of the Criminal Code, in the Criminal Procedures Code and in Articles 18, 19, 35 and 37 of the Beninese Constitution (in French).	The Observatoire de lutte contre la corruption (OLC, in French)	In 2006, a minister and a politician have been indicted and 27 judges have been charged for misappropriation of court fees. In 2007, President Yayi Boni ordered an audit of 60 state-run companies and also an investigation of Beninese embassies abroad.	Ratified	Ratified	None	President Yayi's government has demonstrated a high level of political will to combat corruption in Benin and has moved, in several high-profile cases, against corrupt government officials. Corruption remains a problem in the customs service, with government procurement, and in the judicial system. Investors may encounter numerous attempts to solicit bribes as they begin operations in Benin. While Benin lacks specific anti-corruption legislation, both the offer and receipt of a bribe are illegal in Benin and punishable by a penalty of up to ten years imprisonment.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Botswana	Corruption and Economic Crime Act.	DCEC - The Directorate on Corruption and Economic Crime	The very first Corruption Prevention assignment carried out by the Directorate which identified serious weaknesses in the management structure of a Public Company. Using this information, an investigation into complaints received was conducted and this resulted in the Chief Executive of the Public Company being prosecuted, convicted and imprisoned for offences under the Act.	No action	No action	Restricted	The Government of Botswana is seriously concerned about the increasingly detrimental effects of the growing crime rates which were seen to be limiting the country's development and affecting its social structures, depriving it of considerable revenue, and damaging the country's reputation. Since its inception, DCEC has earned itself respect locally and among those engaged in anti-corruption work elsewhere in the world., DCEC had been actively engaged in the formation of the Southern African Forum Against Corruption (SAFAC), the principal aims of which are to implement the protocol and facilitate training in anti-corruption disciplines. Corruption in Botswana is perceived as present but has not yet been viewed as an obstacle to investment and penalties of such acts are applied proportionately. While there remains a high tolerance for conflict of interest in government/private sector interaction, foreign investor complaints generally focus on the reputed inefficiency and/or unresponsiveness of mid- to low-level bureaucrats in government.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Burkina Faso	Articles 154 to 159 of the Penal Code, Law No. 26 Concerning the Fight Against Money Laundering	Superior Authority of State Control (ASCE), National Ethics Committee (NEC), High Commission of Coordination for the Fight Against Corruption (HCFAC), State General Inspection (SGI), Autorité de Regulation des Marches Publics-ARMP(body to ensure transparency in the bidding process by monitoring the execution of all government contracts), Office of the Ombudsman, Auditor General	The 1998 assassination of investigative journalist and editor of the weekly newspaper <i>L'Indépendant</i> , Norbert Zongo, is still an unsolved case and represents a turning point in the public opinion about corruption and impunity in the country. At the time of his murder, Zongo was investigating a case connecting President Compaoré's brother to the torture and killing of his own chauffeur.	Ratified	Ratified	No report	Although Burkina Faso means "land of the honest men", Transparency International's Corruption Perceptions Index indicates that corruption is still a problem for this West African nation. The main challenges the country currently faces are poor access to information, a weak judiciary, limited enforcement powers of anti-corruption institutions, misappropriation of public funds, and lack of a separation of powers. Civil servants who most commonly engage in corruption include: members of the police force and gendarmerie, customs officials, political groups, justice officials, healthcare workers, educators, tax collectors, and the media. While the government has identified corruption as an obstacle to doing business, the World Bank ranked Burkina Faso as the fourth best Sub-Saharan African country in the area of corruption control, trailing only South Africa, Madagascar and Ghana.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Burundi	Penal Code	Anti-corruption Court, Cour des Comptes' (treasury departments within public institutions), 'Brigade Spéciale Anti-Corruption' (the Anti-Corruption Squad).	October 2009, Burundi's former ambassador to Kenya, Salvator Ntacobamaze, was charged with mismanagement and misappropriation of funds while on duty in Nairobi	Ratified	Ratified	Article 12 de la loi N°1/ 12 du 18 avril 2006 portant mesures de prévention et de répression de la corruption et des infractions connexes (measures for prevention and suppression of corruption and related offenses)	Officially, Burundi has a number of laws and regulations prohibiting corrupt practices such as bribery, nepotism, preferential hiring and promotion and embezzlement. In practice, these measures are rarely enforced. This is largely a result of an under-resourced and poorly trained police force and civil service; there is no evidence of any particular bias for or against foreign investors in the enforcement of these statutes. No major U.S. firms have specifically noted corruption as an obstacle to direct investment in Burundi, although corruption is seen as one of the typical hurdles to be overcome when doing business in the region. Corruption is most pervasive in Burundi in the government procurement sector; the purchase and sale of government property takes place in a non-transparent environment with frequent allegations of bribery and cronyism. Cabinet members, parliamentarians, and anyone appointed by presidential decree have immunity from prosecution on corruption charges, effectively insulating them from accountability.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Cameroon	Penal Code, Code of Penal Procedures 2005	National Anti-Corruption Commission (CONAC), National Agency for Financial Investigations, Superiour State Audit, Court of Auditors of the Supreme Court	On June 11, 2009, the Douala Court of Appeals sentenced Alphonse Siyam Siwe, former Minister of Energy and Water and Director-General of the Autonomous Port of Douala, and two other defendants for life imprisonment on embezzlement; the lower court had previously issued 30-year sentences. Among others accused in the case, one was sentenced to 25 years' imprisonment, eight to 15 years', and one to one year. In addition, the court reversed the Wouri Higher Courts' acquittal of seven defendants and sentenced six to 15 years' imprisonment and one to one year.	Signed	Ratified	None	Corruption is endemic in Cameroon. Cameroon regularly ranks among the most corrupt countries in both Transparency International's index of the private sector's perceptions of corruption and its survey of the public's experiences with corrupt activity. governance of the public procurement process remains problematic. Corruption is a criminal offense in Cameroon, and punishment can include imprisonment (5 years to life) and a fine (\$400 to \$4,000). Sectors with high corruption potential include government procurement, customs, and public health facilities.
Cape Verde	Penal Code, Anti-Money Laundering Pursuant to Law No. 17/VI/2002	High Authority against Corruption	In 2000, former Prime Minister was accused of embezzling approximately \$16,250 (2 million Cape Verdean escudos) in the privatization of ENACOL (a parastatal oil supply firm).	No action	Ratified	Protected	Official corruption carries a criminal penalty of up to 15 years' imprisonment. There were no new reports of government corruption during the year, but the World Bank's 2008 Worldwide Governance Indicators reflected that government corruption was a problem.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Central African Republic	Penal Code and Code of Criminal Procedure, Anti-Money Laundering and Terrorist Financing Act	National Committee to Fight Corruption	January 2008, A court in the Central African Republic's capital, Bangui, sent the director of a private newspaper to prison to await trial on criminal charges in connection with an editorial about a political scandal.	No action	Ratified	By law there is protection protected, however, not in practice.	The law provides criminal penalties for official corruption; however, the government did not implement these laws effectively, and officials often engaged in corrupt practices with impunity. Misappropriation of public funds and corruption in the government remained widespread. The World Bank's worldwide governance indicators reflected that government corruption was a severe problem.
Chad	Penal Code and the Penal Procedure Code (Ordinance n°12 ET 13/PR/MJ of 9 th June 1967), Anti-Corruption Act (Act n°044/PR/2000 of 16th February 2000)	Ministry of Moralization	The Textbook Affair- November 2009, a group of leading officials were accused of taking bribes when they put out a tender for school textbooks. In August 2009, Ministry of State Oversight stated that it had initiated 35 legal cases against 141 government officials charged with embezzlement and misappropriation of public funds during the year.	Signed	No action	Protected	Officials frequently engaged in corrupt practices. The World Bank's most recent Worldwide Governance Indicators reflected that corruption was a severe problem.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Comoros	Penal Code	Union Ministry of Justice	<p>In June 2007 the government arrested several officials of the former regime on charges of corruption. Former government ministers of the union police were tried for stealing administrative property, convicted, sentenced to eight months in prison, and fined \$360 (147,000 Comoran Francs). Former secretary general Abdou was convicted on the same charge and sentenced to four months' imprisonment and fined \$480 (196,000 Comoran Francs).</p>	Ratified	Signed	Restricted	<p>Resident diplomatic, UN, and humanitarian agency workers reported petty corruption was commonplace at all levels of the civil service despite the government's anticorruption campaign.</p>

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Congo	Criminal Law	The Ethics & Corruption Commission	Two prominent anticorruption and human rights activists, Christian Mounzeo and Brice Mackosso, reported ongoing harassment during the year, following their arrest and convictions in 2006 on embezzlement charges that international organizations and foreign governments alleged were politically motivated. Mounzeo and Mackosso denied the charges and appealed their convictions-which, after an eight-month trial, included 12-month suspended sentences and fines equivalent to US \$600 (300,000 CFA)	Ratified	Ratified	Restricted	According to the World Bank's Worldwide Governance Indicators, government corruption was a severe problem, although the Bank and the International Monetary Fund noted that the government undertook significant reform measures to combat corruption. There was a widespread perception of corruption throughout government, including misuse of revenues from the oil and forestry sectors. Some local and international organizations claimed that government officials, through bribes or other fraud, regularly diverted revenues from these industries into private overseas accounts before the revenues were declared officially. Pervasive lower-level corruption included demands for bribes by security personnel, customs officials, and immigration personnel.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Côte d'Ivoire	Law No. 2005-554 Anti-money laundering, 2005, Criminal Code, Code of Public Procurement	The General Secretariat in charge of good governance, Board of State General Inspectors, Finance Ministry's Inspector General's Office, Cellule Nationale de Traitement des Informations Financieres-CENTIF (financial intelligence unit, responsible for investigating money laundering and terrorist financing)	June, 2006- Police in Côte d'Ivoire have arrested top officials of the Coffee and Cocoa Bourse (BCC), in a widening crackdown on fraud in the cocoa sector. The men are part of a list of 23 people charged with financial corruption by Côte d'Ivoire prosecutors. President Laurent Gbagbo ordered the probe in October 2007, after allegations of the embezzlement of more than 152 million euros, put aside to help develop the sector	Signed	Signed	Restricted	There are domestic laws and regulations to combat corruption but they are neither generally nor effectively enforced. Penalties can range from incarceration to payment of civil fines. There are several governmental entities in charge of fighting corruption, none have been effective in stamping out this growing problem. Many U.S. companies view corruption as a major obstacle to investment in Cote d'Ivoire. Corruption has the greatest impact on judicial proceedings, contract awards, customs, and tax issues. It is common for judges to base their decisions on financial influence. Corruption and the ongoing political/economic crisis have affected the Ivorian government's ability to attract foreign investment. Businesses have reported corruption at every level of the civil service. Some U.S. investors have raised specific concerns about the rule of law and the government's ability to provide equal protection under the law. A local company can not deduct a bribe to a foreign official from taxes.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Democratic Republic of the Congo	Anti- Money Laundering, Anti-Corruption law Article 148bis of Penal Code	Ob-servatoire du Code d'Ethique Professionnelle OCEP (Observatory of the code of ethics of public officials), Ministry of Justice, Auditor General office	In September 2009, the Senate estimated that more than 1.2 billion dollars of gold--approximately 40 tons--was exported fraudulently from the country every year and that, in the east, 80 percent of the minerals extracted were being traded illegally	No action	No action	No report	U.S. businesses often complain about corruption in the DRC, citing it as a principal constraint to doing business in the country. The DRC was rated as the tenth most corrupt country out of 180 nations on Transparency International's 2008 Corruption Perception Index. In principle, there are legal provisions to fight and sanction corruption.. Despite these reform efforts, however, bribery is still routine in public and private business transactions, especially in the areas of government procurement, dispute settlement, and taxation. Bribery is illegal in the DRC and in principle it is investigated and prosecuted. However, law enforcement remains a challenge in this area
Equatorial Guinea	Criminal Law	Presidency and Prime Minister's Office	No corruption cases were prosecuted during 2009; In December 2008, anticorruption activist groups, including the French chapter of AI, filed a lawsuit in Paris against President Obiang and two other African heads of state, accusing them of acquiring luxury homes in France with embezzled public funds.	Signed	No action		Corruption continues to be a severe problem. No corruption cases were prosecuted during the year. Officials by law must declare their assets, although no declarations were published publicly. There was no requirement for officials to divest themselves of business interests in potential conflict with official responsibilities, and no law prohibiting conflict of interest. Most ministers continued to moonlight and conduct businesses they conflated with their government responsibilities.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Eritrea	No specific law, or criminal prosecution	None	2008, there were unconfirmed reports of more serious corruption among military leaders involving illicit trade and the appropriation of houses.	Ratified	Ratified	No report	Eritrea has historically been known as a country with low corruption, but there are indications that corruption does exist.
Ethiopia	The Federal Ethics and Anti-corruption Commission Establishment Proclamations No. 235/2001 and No. A33/2005, Criminal Code 2004	Federal Ethics and Anti-corruption Commission (FEAC), Office of the Ombudsman, Auditor General	March 2010, Dagnachew Kassa, former head of the Administration and Finance Department of the Supreme Court, is sought for a corruption allegation involving over a million Birr worth of illegal purchases of file folders in violation of supply rules	Ratified	Ratified	Article 444 of the Criminal Code, Proclamation No.414/2004 provides legal protection of whistleblowers.	The World Bank's 2008 Worldwide Governance Indicators reflected that corruption remained a serious problem. A combination of social pressure, cultural norms, and legal restrictions somewhat limited corruption. However, government officials appeared to manipulate the privatization process, and state- and party-owned businesses received preferential access to land leases and credit.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Gabon	Act No.002/2003 instituting a Prevention and Repression System against Illegal Enrichment, Act No.0003/2003 Against Unlawful Enrichment	Commission to Combat Illicit Enrichment, Federal Ethics and Anti-Corruption Commission (FEACC)	October 2009, President Ali Bongo Ondimba recalled and ordered the arrest of Philibert Andzembe, the governor of the Central Bank of Central African States, on corruption charges. The government arrested two other officials on the same corruption charges, although the charges against one were dropped. The other accused individuals were under house arrest at year's end. President Ali Bongo Ondimba's chief of staff resigned amid corruption charges associated with the scandal.	Ratified	Ratified	Restricted	There is a lack of accountability and oversight in the government's budget process, which can be seen in other areas of the country's economy. Companies have complained of a lack of transparency in customs and other government administrative affairs. During the past year, there has been an increase in anti-corruption activity on the part of members of civil society. Specifically, several local non-governmental organizations have targeted alleged corruption on the part of high-level government officials, including the President and several Ministers.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Gambia	Criminal Law, Anti-Money Laundering and Counter Terrorism Financing (AML/CFT)	Anti-Corruption Commission, Financial intelligence unit	November 2009, six judiciary officials, were suspended without pay on allegations of embezzlement of court fines, forfeitures, and auctions. Also, Lieutenant Colonel Gibril Bojang, former commander of the presidential guard, was convicted on charges of theft and sentenced to two years' imprisonment and a fine of 1,110,086 dalasis (\$41,100).	Ratified	No action	Restricted	The World Bank's worldwide governance indicators reflected that corruption was a serious problem. The president often spoke against corruption, and leading political and administrative figures faced harsh sentences on charges of corruption and wrongdoing.
Ghana	Criminal Code, Anti-Money Laundering Act 2008, Public Procurement Act 2003	Commission on Human Rights and Administrative Justice (CHRAJ), Serious Fraud Office, Economic and Organized Crime Office, The Office of Accountability, Ghana Audit Service, Public Procurement Authority	In October 2009, the former minister of foreign affairs and former chief executive of the National Investment Bank were indicted on corruption charges for activities that occurred during the previous government. There were reports that government officials pressured businesses to steer contracts toward favored companies and individuals.***	Ratified	Ratified	Whistleblower Act 2006	Corruption in Ghana is comparatively less prevalent than in other countries in the region. However, a few U.S. firms have identified corruption as the main obstacle to foreign direct investment. There is a growing perception in Ghana that government-related corruption is on the rise. However, since 2006, Ghana's score and ranking on the Transparency International Global Corruption Perceptions Index has improved slightly.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Guinea	Money Laundering Act 2003; the Financial Institution Act 2003	Anti Corruption Commission, Public Investment and Control Institutions Management, National Agency to Combat Corruption and Improve Ethical Conduct in Economic and Financial Activities (ANLC)	August 2010, Gambia's former ambassador to France, and permanent secretary at the foreign ministry, William John Joof was charged with corruption and theft relating to abuse of power while he was in office. In March 2009, four former ministers of mines-- Ousman Sylla, Louceny Nabe, Ahmed Tidiane Diallo, and Ahmed Kante-- were arrested for alleged mismanagement of the government's mining fund.	No action	Signed	Protected	Poor governance, which includes corruption, is the most significant barrier to investment in Guinea. The business and political cultures, along with poor salaries, combine to encourage corruption. Business is routinely conducted through the payment of bribes rather than by the rule of law. Though it is illegal to pay bribes in Guinea, there is no enforcement. In practice, it is difficult and time-consuming to conduct business without paying bribes, which as they must comply with the Foreign Corrupt Practices Act, leaves U.S. companies at a disadvantage.
Guinea-Bissau	Criminal Code 1993 - Decreto-Lei no. 4/93 Aprova Codigo Penal Boletim Oficial Republica da Guine-Bissau	Committee against Corruption	2009, Several members of the administrative and financially autonomous FISCAP agency in the Ministry of Fisheries were arrested for embezzlement. However, at year's end no one had been formally charged nor was anyone in custody in connection with this case.	No action	Ratified	Protected	Official corruption and lack of transparency were endemic at all levels of government. Members of the military and civilian administration reportedly assisted international drug cartels by providing access to the country and its transportation facilities. Customs officers frequently accepted bribes for not collecting import taxes, which greatly reduced government revenues. The largely nonfunctional and corrupt judiciary was unable and unwilling to enforce the law and investigate corruption cases. The World Bank's Worldwide Governance Indicators reflect that corruption was a severe problem.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Kenya	Anti-Corruption and Economic Crimes Act 2003, Public Officers Ethics Act 2003, Proceeds of Crime and Money Laundering Bill, Finance Act 2006, Service Commissions Act, Public Procurement and Disposal Act 2005	Kenya Anti-Corruption Commission (KACC), Controller and Auditor General of the Kenya National Audit Office, Public Complaints Standing Committee, Public Procurement Oversight Authority	Goldenberg Affair - A key suspect in Kenya's biggest ever corruption scam said he got ex-president Daniel arap Moi involved in this gold and diamond re-export plan. Kamlesh Pattni, a major shareholder of Goldenberg, told the inquiry into the scandal that Mr Moi was keen to earn foreign currency for Kenya. Mr Moi denies any part in the affair, in which Kenya lost up to \$600m between 1990 and 1993. Kenyan court of appeal judge Samuel Bosire has closed the government probe into the matter.;	Ratified	Ratified	Anti-Corruption and Economic Crimes Act 2003, Witness Protection Act 2006	The IFC's 2007 "Investment Climate Assessment for Kenya" reported that corruption was rated as a "severe" or major obstacle by three-quarters of the firms interviewed. Two-thirds of respondents stated they were expected to pay bribes for government contracts.
Lesotho	Prevention of Corruption and Economic Offences Act, Criminal Procedure and Evidence	Directorate on Corruption and Economic Offences, Auditor General	July 2000, a dozen major international dam-building companies involved in the World Bank funded Lesotho Highlands Water Project (LHWP) in Southern Africa had lavishly bribed at least one top official on the project, allegedly giving nearly US\$2 million in bribes over ten years.	Ratified	Ratified	Restricted	Investors reported that corruption is not a significant factor for foreign investors. Anti-corruption legislation was passed in 1999 and is being implemented through the creation of an autonomous anti-corruption unit.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Liberia	Penal Code, Anti-Corruption Act 2008	Liberia Anti-Corruption Commission, Ministry of Justice	Mr. J.D Slinger was a Commissioner in the Bureau of Maritime Affairs. He was suspended on charges of Financial Impropriety and charged with economic sabotage for embezzling about \$ 3.5 million dollars. While on bail Slinger fled the country and is still at large.	Ratified	Accession	None	The government is tackling corruption, but it remains systemic. In 2008, Transparency International rated Liberia 138th of 179 countries on its corruption perception index, up from 150th place the previous year. The Mo Ibrahim African governance index showed Liberia as "most improved" in 2008, and in the 2008 World Bank Worldwide Governance Indicator Liberia showed more improvement over the past two years in "control of corruption" than any other country in the world. Although corruption is being addressed, travelers may encounter officials who solicit bribes (often euphemistically referred to as "cold water" or "my Christmas").

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Madagascar	Criminal Code	Bureau Indépendant Anti-Corruption (Anti-Corruption Bureau), SAMIFIN (anti-money laundering agency)	2007 Seventeen persons were arrested in connection with the embezzlement of 10.8 billion ariary (approximately \$5.4 million) from the Central Bank in Manakara; the director of the Central Bank and two of his staff subsequently left the country to avoid arrest. At their trial in April, four were acquitted, 10 were released for lack of evidence, and six (including the director, in his absence) were given sentences up to 15 years' imprisonment and fines up to 20 million ariary (approximately \$10,000).	Ratified	Ratified	Restricted	Complicated administrative procedures introduce delays, uncertainties and multiply the possibilities for corruption. Combating corruption is a stated priority of the Malagasy government and senior officials appear to be taking that effort seriously. Giving or accepting a bribe is a criminal act and is sentenced by court.
Malawi	Corrupt Practices Act 1995, Penal Code ,Assets Bill 2002, Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act	Anti-Corruption Bureau (ACB), the Ministry of Trade and Private Sector Development, the Office of the Director of Public Procurement, Business Action Against Corruption (BAAC), Office of the Ombudsman, Auditor General	February 2010, Former Malawi President Bakili Muluzi was arrested on 26 February and initially charged with 86 counts of corruption and abuse of office. He is being accused of allegedly diverting 1.7 billion Malawi Kwacha (about US \$11m [€8.6m]) of donor money into his personal account.	Ratified	Ratified	The Corrupt Practices Act 1995 provides for protection	Although progress has been made addressing the issue, corruption continues to be viewed as a major obstacle to doing business in Malawi. There have been serious allegations of corruption, particularly in the area of customs and excise tax, traffic police, immigration and government procurement. Giving or receiving a bribe -- whether to or from a Malawian or foreign official -- is a crime under section 90 of Malawi's penal code.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Mali	Anti-Corruption Law (in French), the Law Against Crimes of Illicit Enrichment (in French), Penal Code in 2001	Support Unit to the Control Structures of the Administration (CASCA), Auditor General	September 2008, Ahmed Sow, resigned from his position as minister of energy, mines, and water due to corruption allegations stemming from his previous role as the director of the EU's Center for Business Development.	Ratified	Ratified	None	Corruption is considered a crime punishable under the penal code. This notwithstanding, there are widely circulated reports of bribery cases on large contracts and investment projects. Corruption poses an obstacle to FDI. Government officials often solicit bribes in order to complete otherwise routine procedures. Using assessments by the African Development Bank, the World Bank, and the World Economic Forum, Transparency International assigned Mali a score of 3,1 on a 10 to 0 scale, zero representing the lowest score. Corruption seems most pervasive in government procurement and dispute settlement. Paying government procurement agents a five to ten percent commission is common practice.
Mauritius	Prevention of Corruption Act 2002 (amended 2006)	Independent Commission against Corruption, Financial Intelligence Unit	On September 26, 2009, L'Express reported that the ICAC arrested the director of the National Art Gallery for bribing the board chairman to reappoint him as director; he was later released on bail.	Signed	Ratified	Protected	Mauritius is one of Africa's least corrupt countries. Although, overall Mauritius did well in 2008, the TI survey highlighted the highly-publicized dismissal of the former Director of Customs who earlier made allegations of continued high-levels of corruption in the Customs Department. Corruption, however, is not seen as an obstacle to foreign direct investment.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Mozambique	Anti-Corruption Law 2004, Law on Money Laundering 2002 (supplemented by Decree 37/2004), Public Procurement Law	Central Office for Combating Corruption (within Attorney General's Office), Administrative Tribunal (Auditor), Ombudsman's Office, Functional Unit for Procurement Supervision	In March 2009, the investigating magistrate, Octavio Chumba, threw out 48 of the 49 charges against former interior minister Almerino Manhenje, reducing the damages sought from 322 million meticaais (\$12.3 million) to 500,000 meticaais (\$19,000). Manhenje had been charged in September 2008 with embezzlement of 211 million meticaais (\$8.3 million) of state money. Former president Chissano had publicly urged leniency, noting that others had committed worse offenses and remained at liberty; Carlos Cardoso was shot dead in central Maputo while investigating a US\$14 million fraud connected with the privatization of Mozambique's largest bank.***	Ratified	Ratified	Anti-Corruption Law 2004	The World Bank's Worldwide Governance Indicators reflected that corruption was a serious problem, with no change in ranking from 2007. Mozambique's ranking dropped for the first time in 5 years, indicating that corruption in the country is "rampant." Corruption and extortion by police were widespread, and impunity remained a serious problem

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Namibia	Anti-Corruption Act 2003, Tender Board of Namibia Act 16 of 1996	Anti-Corruption Commission, Office of the Auditor General Namibia, Office of the Ombudsman, Tender Board of Namibia	ACC agents arrested the Deputy Director of the Ministry of Environment and Tourism, Sackey Namugongo, on charges of fraud running into hundreds of thousands of dollars. Magistrate Judge Sarel Jacobs sentenced Namugongo to ten years' imprisonment, of which two years were suspended for a period of five years on condition he is not again convicted of corruption committed during the period of suspension.	Ratified	Ratified	Anti-Corruption Act 2003	Transparency International ranked Namibia 61 out of 180 countries in its 2008 corruption perceptions index. The Namibian Government has adopted a policy of "zero tolerance" for corruption. Anti-corruption legislation is in place to combat public corruption. Critics of the anti-corruption campaign charge that the Anti-Corruption Commission narrowly interprets its mandate and focuses on minor cases, with few cases reaching prosecution.
Niger	Criminal Code	Réseau Parlementaire de Lutte contre la Corruption (Parliamentary Network for the Fight Against Corruption), Fight Against Economic and Financial Delinquency (agency set up by current junta)	August 2010, former finance minister Ali Lamine Zene with corruption for suspected embezzlement. The case was brought by arrested after a case was made against him by the Commission to Fight Against Economic and Financial Delinquency.	Ratified	Ratified	Protected	Official corruption occurs, and the Government publicly acknowledges that it is a problem and is making efforts to address it. The problem of corruption is compounded by a poorly financed and trained law enforcement system and weak administrative controls. Bureaucratic processes are slower than American standards, but this is due more to inefficiency and lack of information technology than to corruption.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Nigeria	Corrupt Practices and Other Related Offenses Act 2000, Money Laundering (Prohibition) Act 2004, Advance Fee Fraud and other Fraud Related Offenses Act 2006, Fiscal Responsibility Act 2007, Nigerian Constitution 1999, Code of Conduct Bureau and Tribunal Act 1999, Public Procurement Act 2007, Nigerian Extractive Industries Transparency Initiative Bill 2007, Nigerian Code of Corporate Governance	Independent Corrupt Practices and Other Related Offenses Commission, Economic and Financial Crimes Commission, Code of Conduct Bureau, Public Complaints Commission, Supreme Audit Institution, Office of the Principal Secretary to the President, Bureau of Public Procurement, Budget Monitoring and Price Intelligence Unit, Corporate Affairs Commission, Securities and Exchange Commission	In October 2009, the courts convicted the former Nigerian Ports Authority (NPA) board chairman Bode George and five other commissioners of abuse of public office in the improper awarding of contracts. George was sentenced to 30 months in prison without the option of paying a fine.; The EFCC claimed that approximately 10 former state governors were facing corruption charges in 2009; however, none of the cases had moved forward by year's end.	Ratified	Ratified	No legal protections, but commissions have internal mechanisms to protect whistleblower's identities	Domestic and foreign observers recognize corruption as a serious obstacle to economic growth and poverty reduction. Nigeria has received some positive news on the corruption front. Transparency International in 2008 noted Nigeria's improvement from being the 18th most corrupt country to 58th in its Corruption Perceptions Index. Despite improvements in the Transparency International rankings, reassignment of large numbers of key personnel in the Economic and Financial Crimes Commission (EFCC) and a lack of progress on high-level corruption cases have brought into question the government's commitment to fighting corruption. Some high profile convictions have taken place, such as the prosecution of the former governor of Bayelsa State, and the former Inspector General of Police; however, the sentences handed down have been relatively light.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Rwanda	Law No. 23/2003, 2003	National Tender Board, Anti-Corruption Unit of the Rwanda Revenue Authority, Auditor's General Office, Ombudsman's Office	Theoneste Mutsindashyaka, a senior member of Rwandan Patriotic Front and then state Minister of Education, was prosecuted in 2008 for alleged embezzlement of public funds while he was a provincial governor, convicted, and sentenced to five years. Later he and 56 other senior government officials including RPF cohorts were found to have under-declared their assets and were removed from public institutions and required to refund the stolen funds; In December 2009, the court sentenced Vincent Gatwabyege, former permanent secretary in the Ministry of Infrastructure, to three years in prison for embezzlement of state funds.***	Ratified	Ratified	Protected	The Rwandan government maintains a consistent policy of combating corruption. Although documented reports of corruption are relatively infrequent, the Government is periodically confronted with allegations of misconduct by officials using their office for personal gain. In general, such incidents are investigated, prosecuted and perpetrators punished when found guilty. Enforcement is the same for both foreign and local investors. The Parliament takes an active role in investigating public officials accused of corruption. Some businesses report occurrences of petty corruption in the customs clearing process, but there are limited reports of corruption in transfers, dispute settlement, regulatory system, taxation or investment performance requirements. A local company cannot deduct a bribe to a foreign official from taxes. A bribe by a local company to a foreign official is a crime in Rwanda.

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Sao Tome and Principe	Anti-corruption law, Criminal Code, Anti-Money Laundering Act, 2008	Financial Intelligence Unit, The Auditor-General, Ombudsman's Office	2008, several high-level officials, including one former prime minister, were questioned regarding their alleged involvement in the disappearance of millions of dollars from the government's foreign aid fund. The trial resumed on January 30. No high-level officials were tried as they have expansive immunity. However, two administrative officials were convicted and sentenced to nine and seven years in prison, respectively.	Signed	Ratified	No report	Corruption has increased during the past decade in step with greater economic development, and mainly consists of bribery, embezzlement, and mismanagement of public funds.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Senegal	Criminal Code, Penal Code	Commission Nationale de Lutte Contre la non Transparence, le Corruption et la Concussion, Cellule Nationale de Traitement des Information's Financieres du Senegal, General Economics, Finances, Plan and Economic Cooperation Committee, Inspection Generale d'Etat, Government Audit Office, Mediateur de la Republique, Autorite de Regulation des Marches Publics, Commission Nationale des Contrats de l'Administration	Leading politicians faced corruption allegations when they began to challenge the president's dominance within the PDS, the president's political party. Idrissa Seck was dismissed as prime minister in 2004 based on accusations of embezzlement and threatening national security, and former National Assembly president Macky Sall was questioned by police about potential money laundering in January 2009. While all charges against Seck were finally dropped in May 2009 and he began working to reclaim his place in the ruling party, Sall formally resigned from the PDS in 2008, costing him both his seat in the parliament and his position as mayor of Fatick.	Ratified	Ratified	UNCAC	The potential for corruption is a significant obstacle for economic development and competitiveness in Senegal, in spite of the country's anti-corruption laws, regulations, penalties, and agencies. Credible allegations of corruption have been made concerning government procurement, dispute settlement, and decisions by the judiciary and regulatory and enforcement agencies. Transparency International, in its 2008 Perceptions of Corruption Index, ranked Senegal 85 out of 180 countries.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Seychelles	Anti-Money Laundering Act 2006, Criminal Code	Ombudsman's Office	Radovan Krejcir, billionaire native Czech charged with corruption was granted citizenship to Seychelles, dealing in the circle around the then president, France-Albert René. Krejcir escaped with his family to Seychelles, which has no extradition agreements with the Czech Republic. When things got sour with Rene, Krejcir was forced to seek Asylum in South Africa.	Ratified	Ratified	No report	The World Bank's 2009 Worldwide Governance Indicators reflected that corruption was a problem. There were reports of rewards to People's Party supporters in the form of job assistance, land distribution, free building materials, and monetary payments.
Sierra Leone	The Anti-Money Laundering Act, 2005, The Anti Corruption Act, 2008	Anti-Money Laundering Authority, Anti Corruption Commission	April 2010, Afsatu Kabba, the then-Minister of Fisheries and Marine Resources, was charged on 17-counts of indictment for graft and abuse of office. In March, Sheku Tejan Kamara, who was heading the Health and Sanitation ministry was found guilty of awarding contracts to his cronies without opening them up to public tender. He was sentenced to five years imprisonment, but avoided jail by paying the alternative fine of \$40,000.	Ratified	Ratified	Protected	International companies identify corruption as an obstacle to investment, ranking Sierra Leone near other West Africa countries for corruption. Bribes, kickbacks, extortion, and skimming on contracts and payments are common forms of corruption. The Anti-Corruption Act is not used disproportionately against foreigners.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Somalia	No specific law, or criminal prosecution	(Talks of setting up a Anti-Corruption Commission, not in effect as yet)	Local media in southern Somalia do not have access to the information that could potentially incriminate government officials who are involved in corruption and graft. What information there is comes in the form of political accusations by rival politicians against each other. It is not necessarily followed by formal investigations. On Oct. 3, 2007, Supreme Court Chief Justice Yusuf Ali Harun was arrested by presidential guards after the president publicly accused him of corruption, and voted to remove Harun from his constitutional post on charges of graft, but these allegations have never been substantiated. Harun was released after months in detention.	Signed	No action	Article 250, Somali Penal Code protects civil servants	Corruption existed in almost every transaction in the country, and there is no regulatory or penal framework in place to combat it. This is true even in the provision of humanitarian assistance. The 2009 World Bank Worldwide Governance Indicators reflected that corruption was a severe problem.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
South Africa	Prevention and Combating of Corruption Act 2004, Public Finance Management Act of 1999, Promotion of Access to Information Act 2000, Code of Conduct for Assembly and Permanent Council Members, Framework for Supply Chain Management	Special Investigating Unit (SIU), the Auditor-General, the Public Protector (Ombudsman), the Public Service Commission, the South African Police Service (SAPS), and the National Prosecuting Authority (NPA), South African revenue Service, International Complaints Directorate, the Scorpions (dissolved)	Investigations by the Scorpions led to the 2005 conviction of businessman Schabir Shaik, President Jacob Zuma's financial adviser, on charges of paying Zuma a series of bribes totaling about US\$170,000 to secure the success of contract bids by French arms manufacturer Thint; In an arms deal case, former ANC chief whip Tony Yengeni was convicted of corruption and lost his parliamentary seat, but won parole in January 2007 after serving only five months of a four-year prison sentence.	Ratified	Ratified	Protected Disclosures Act	High rates of violent crime are a strain on capacity and make it difficult for South African criminal and judicial entities to dedicate adequate resources to anti-corruption efforts. Parliament voted to disband the South African Police Anti-Corruption Unit and the Directorate for Special Operations (more popularly known as the "Scorpions") and fold its jurisdiction into the National Police in October 2008. South Africa was the second least corrupt country in Africa in 2007; it was the fourth least corrupt country in Africa in 2008. Public perception of widespread official corruption, particularly in the police and the Department of Home Affairs, continued.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Swaziland	Prevention of Corruption Act 2008, The Money Laundering (Prevention) Act 2001, Criminal Code	Anti-Corruption Commission	In 2006 the government commissioned Pricewaterhouse Coopers to conduct a forensic investigation of the Department of Customs and Excise and the Department of Income Tax. The investigation report found that the computer user identifications of seven customs officials had been used to manipulate data to undercharge importers by approximately \$4 million (28.5 million emalangeni). The report recommended disciplinary hearings for several Department of Income Tax employees and the banning of several companies from eligibility for government tenders.	Signed	Signed	Protected	Corruption is not considered a significant obstacle to FDI.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Tanzania	Prevention and Combating of Corruption Act 2007, Public Leadership Code of Ethics, Public Finance Act, Public Procurement Act	Prevention and Combating of Corruption Bureau, Commission for Human Rights and Good Governance, Ethics Commission, Controller and Auditor General, Tanzania Revenue Authority, Public Procurement Regulatory Authority	According to the PCCB, 137 new cases were submitted to the courts during 2009 and 409 old and new cases prosecuted. As of August 2009, there had been 25 convictions and 40 acquittals; In May 2009, a district magistrate was sentenced to 11 years in prison for demanding five million Tanzanian shillings (\$3,700) from a businessman in return for a favorable judgment in his case.	Ratified	Ratified	Prevention and Combating of Corruption Act 2007	Corruption remains a major concern for foreign investors. While giving or receiving a bribe (including bribes to a foreign official) is a criminal offense in Tanzania, the enforcement of laws, regulations and penalties to combat corruption has largely been ineffective.. Some areas where corruption persists include government procurement, privatization, taxation, ports, and customs clearance. The Customs Department, the Port Authority, and the Tanzania Revenue Authority (TRA) remain a great hindrance to importers throughout Tanzania. Unpredictable and lengthy clearance delays and bribes to expedite service are commonplace.
Togo	Loi Relative a la Lutte Contre Le Blanchiment de Capitaux(Anti Money Laundering), Penal Code	Ministry of Justice, Anti-Corruption Committee	In 2007, corruption allegations levied by the Anti-Corruption Committee against the director general of the Social Security Agency was brought before court.	Ratified	Ratified	Restricted	Although Togo has laws on the books that make corruption a crime, it has spread as a business practice in recent years. Government procurement contracts and dispute settlements are more likely to go forward after palms are greased. Giving a bribe, whether to private or government officials, is considered a crime but is often expected.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Uganda	Anti-Corruption Bill 2009, Penal Code, Inspectorate of Government Act 2002, Public Finance and Accountability Act 2003, Leadership Code Act 2002, Public Procurement and Disposal of Public Assets Act 2003, Code of Conducts and Ethics	Inspectorate of Government, Directorate of Public Prosecutions, Anti-Corruption Court, Directorate of Ethics and Integrity, Inter Agency Forum, Auditor General, Uganda Human Rights Commission, Public Procurement and Disposal of Public Assets Authority	On November 15, 2009, a court in Mbarara convicted grade II magistrate Moses Ndifuna of abuse of office for soliciting and receiving a 190,000 shilling (\$100) bribe. Ndifuna, who was sentenced to two years' imprisonment and ordered to refund the money, was released on bail in December pending hearing of his appeal; An army tribunal sentenced a former commander, Major General James Kazini, to three years in prison for stealing funds directed to nonexistent soldiers. He remained free on bail during his appeal.***	Ratified	Ratified	Inspectorate of Government Act	Widespread corruption damages a business environment that would otherwise provide a fairly level playing field for foreign investors. The nature of corruption in Uganda is complex. While outright bribetaking (and requesting) does exist, the misappropriation of government funds and assets, graft, influence peddling, and the flouting of public procurement procedures also occur. Foreign businesses are not specifically targeted for bribes and payoffs; nor are they immune. American firms have noted some difficulties due to lack of transparency and possible collusion between competing business interests and government officials in tendering processes. Reportedly, some foreign businesses have been urged to take on prominent local partners. Government procurement, particularly for defense items, is not transparent. Some American firms, which are bound by the U.S. Foreign Corrupt Practices Act, suspect they have lost tenders to bidders from countries which have not criminalized the paying of bribes to foreign officials.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Zambia	Prohibition and Prevention of Money Laundering Act 2001, Anti-Corruption Commission (ACC) Act 1996	Anti-Corruption Commission (ACC), The Task Force on Economic Plunder (TFEP), The Auditor-General, The Commission for Investigations (CI)	In 2003, Mwanawasa commenced investigations against his predecessor, former President Chiluba, who had his immunity stripped and was then arrested. Chiluba was charged with corruption committed during his term in office in accordance with 168 counts of theft totalling more than USD 40 million of public money. Chiluba's trial started in 2003 and came to an end in August 2009, when he was acquitted from all charges. However, his co-accused were convicted for stealing public funds and were sentence 3 years in prison.	Ratified	Ratified	None	Petty corruption remains common, as low salaries for government employees undermine efforts at reform, and extensive regulations create opportunities for bribes. The issuance of land titles has been singled out as a process particularly susceptible to corruption.

Country	Statutes	Agencies	Cases	African Union Convention on Preventing and Combating Corruption	United Nations Convention against Corruption	Whistleblower Protections	US state department Analysis 2009
Zimbabwe	Anti-Corruption Commission Act 13/2004, Criminal Law Act 23/2004	Anti-Corruption Commission	February 2010, Discovery of mass-scale and systematic looting of resources by Local Councillors of the Chitungwiza Town Council in Zimbabwe. The Councillors have been implicated in illegal and corrupt sale of housing stands and the rampant barter exchange of housing stands for vehicles.	Ratified	Ratified	Prevention of Corruption Act, Chapter 9:16, Section 14 (2) protects whistleblowers	There is widespread corruption in government. Implementation of the government's ongoing redistribution of expropriated commercial farms has substantially favored the ruling party elite and continues to lack transparency. Government officials and police lack sufficient political backing at senior levels of the government to effectively investigate corruption cases. The government prosecutes individuals selectively, focusing on those who have fallen out of favor with the ruling party and ignoring transgressions by members of the favored elite.