Rwanda and South Africa's anti-corruption programmes: A comparative study

by

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Declaration

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Abstract

Despite South Africa's written commitment to fight corruption, its anti-corruption programme has failed to reduce the level of corruption as confirmed by Transparency International's Corruption Perception Index and the World Bank's Control of Corruption Indicator. Failure to improve South Africa's success in combating corruption will have a negative effect on the achievement of sustainable social and economic development and the reduction of poverty and inequality.

In order to determine which areas of South Africa's anti-corruption programme must be addressed to improve its success in fighting corruption, a comparative analysis of Rwanda and South Africa's anti-corruption programmes was done. Rwanda was chosen due to its perceived successful anti-corruption programme and the fact that scholars suggest that it can be used for peer learning. The strengths and weaknesses of the two programmes were analysed against the extent of corruption, anti-corruption legislative and institutional frameworks, compliance with the mandatory articles of the United Nations Convention against Corruption (UNCAC) Chapters II and III with a focus on Articles 5 and 6, as well as the level of political will to fight corruption using Brinkerhoff's (2010) seven factors. The study was conducted using the document analysis method.

The study found that South Africa complies with the mandatory articles of UNCAC, has the best anti-corruption legislation in Africa and a comprehensive decentralised institutional framework. However, in reality the country's anti-corruption institutions are not sufficiently independent and free from political interference and are not adequately resourced in terms of material needs and skilled staff. There are serious concerns over the poor co-ordination of South Africa's anti-corruption programme, the overlapping mandates of anti-corruption institutions and poor public awareness of the anti-corruption programme. Accountability and civil participation were also identified as weaknesses. The study also quantifiably proved that South Africa has a low level of political will to fight corruption. The application of credible sanctions, continuity of effort, public commitment and allocation of resources and the learning and adaptation

factors of political will were identified as serious weaknesses in South Africa's fight against corruption.

If South Africa implements the recommendations of this study, corruption will decrease, the National Development Plan Vision 2030's goals will become more attainable which will lead to lower levels of poverty and inequality. The end result will be that South Africa will be able achieve its envisioned goals of sustainable social and economic development.

The contributions of the findings of this study are twofold regarding the existing literature on successfully combating corruption. Firstly, it provided proof of the importance of the implementation of UNCAC through principles such as proper co-ordination, participation of civil society, integrity, independence, transparency, accountability and the sufficient allocation of material and human resources. Secondly, South Africa's level of political will to combat corruption was quantifiably measured for the first time.

Opsomming

Ten spyte van Suid-Afrika se skriftelike verbintenis om korrupsie te beveg, bevestig Transparancy International se korrupsie persepsie indeks en die Wêreldbank se beheer van korrupsie aanwyser dat die teenkorrupsie program nie daarin geslaag het om die vlak van korrupsie te verlaag nie. As Suid-Afrila nie daarin slaag om meer suksesvol in die bevegting van korrupsie te wees nie, sal dit die bereiking van volhoubare sosiale en ekonomiese ontwikkeling, sowel as die velaging van armoede en ongelykheid negatief beïnvloed.

Om vas te stel op watter aspekte van Suid-Afrika se teenkorrupsie program daar gefokus moet word vir beter sukses, is 'n vergelykende analise van Rwanda en Suid-Afrika se teenkorrupsie programme gedoen. Daar was op Rwanda besluit as gevolg van die land se oënskynlike suksesvolle teenkorrupsie program en omdat geleerdes voorstel dat Rwanda gebruik word vir eweknie leerdery. Die sterk- en swakpunte was geanaliseer op grond van die mate van korrupsie, die wets- en institusionele raamwerke, nakoming van die verpligte artikels van hoofstuk II en III van die Verenigde Nasies se Kovensie teen Korrupsie (VNKTK) met 'n fokus op Artikels 5 en 6, asook die vlak van politieke wil om korrupsie te beveg gemeet aan die hand van Brinkerhoff (2010) se sewe faktore. Die dokument analise metode was gebruik om die studie doen.

Die studie het bevind dat Suid-Afrika voldoen aan die verpligte artikels van die VNKTK, dat die land die beste teenkorrupsie wetgewing in Afrika het, sowel as 'n uitgebreide, gedesentraliseerde institusionele raamwerk. Die werklikheid is egter dat die land se teenkorrupsie instellings nie behoorlik onhafhanklik en vry van politieke inmenging is nie en ook nie voldoende voorsien is van materiële benodighede en geskoolde personeel nie. Daar is groot bekommernis oor die swak koördinering van Suid-Afrika se teenkorrupsie program, die oorvleueling van die mandate van die instellings en swak openbare bewustheid van die teenkorrupsie program. Verantwoordbaarheid en siviele deelname aan die program was ook as 'n swakhede geïdentifiseer. Die studie het ook kwantifiseerbaar bewys dat Suid-Afrika se politieke wil om korrupsie te beveg laag is. Die toepassing van geloofwaardige strawwe, die aaneelopendheid van die poging, openbare verbintenis, die voorsiening van hulpbronne en die leer- en

aanpassingsfaktore van politieke wil was geïdentifiseer as erge swakhede in Suid-Afrika se bevegting van korrupsie.

As Suid-Afrika die aanbevelings van hierdie geskrif implementeer, sal korrupsie verlaag, die Nasionale Ontwikkelingsplan Visie 2030 se doelwitte sal meer haalbaar word, wat tot laer vlakke van armoede en ongelykheid sal lei. Die eindresultaat sal wees dat Suid-Afrika sy voorsienbare doelwitte van volhoubare sosiale en ekonomiese ontwikkeling sal behaal.

Die bevindinge van hierdie geskrif dra tweevoudig by tot huidige literatuur oor suksesvolle bevegting van korrupsie. Eerstens het dit die belangrikheid van die implementering van die VNKTK deur beginsels van behoorlike koördinering, die deelname van die burgerlike samelewing, integriteit, onhafhanklikheid, deursigtigheid, verantwoordbaarheid en voldoende toekenning van materiële en menslike hulpbronne bewys. Tweedens was dit die eerste keer dat Suid-Afrika se vlak van politieke wil om korrupsie te beveg kwantifiseerbaar bewys was.

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CHAPTER 1
INTRODUCTION AND BACKGROUND

1.1   Background

Corruption, commonly known as the abuse of power for private gain, is a worldwide phenomenon that is seen as an obstacle for social and economic development. This widely accepted "cost of corruption" is strengthened by Africa's poor performance on various international corruption measurement indices and the dominance of African countries on the list of least developed countries as published by the United Nations Committee for Development Policy in March 2018 (United Nations, 2018:1).

For Africa to prosper as a continent, its countries should include the eradication or limitation of corruption as a strategic development priority. The African Governance Report (United Nations Economic Commission for Africa, 2005:148) stated that in Ethiopia "corruption was the most important problem that households face after poverty" and that this was the same for many African countries, "with corruption ranked among the top three problems behind poverty and unemployment". The African Governance Report II (United Nations Economic Commission for Africa, 2009:12) confirmed the link between corruption and poverty by stating that corruption was still the "single most important challenge to the eradication of poverty, and general socioeconomic development in Africa.". The importance of successfully combating corruption is underscored by the fact that Sub-Saharan Africa is by far the poorest region in the world and has more poor people than all the other regions of the world combined (World Bank, 2016:4). Target 12.a.5 of Goal 12 of the United Nations Economic Commission for Africa's (2015:49) Africa Regional Report on the Sustainable Development Goals confirms that corruption is still an obstacle to development and prosperity on the continent by stating that public sector corruption must be cut by "50 per cent by 2020, and 80 per cent by 2030". The negative impact of corruption has thus been identified as a major stumbling block to the sustainable growth and development of African countries as far back as 2005 and remains a major challenge on the continent. This would suggest that African countries are not succeeding in their efforts to combat corruption effectively.

In order to combat the problem of corruption, African countries have implemented various international, regional, sub-regional and country-specific anti-corruption instruments. Examples of anti-corruption initiatives are the signing and ratification of instruments such as the Southern Africa Development Community Protocol against Corruption (2001), the Economic Community for West African States Protocol on the Fight against Corruption (2001), the United Nations Convention against Corruption (2003) and the African Union Convention on Preventing and Combating Corruption (2003). The United Nations Convention against Corruption (UNCAC) serves as an international legal framework for governments and citizens to refer to in making efforts to strengthen their governance institutions and to tackle the corruption problem.

As countries are different in their development, political systems, legal systems, approach to governance and levels and extent of corruption, different countries will employ different approaches and methods to combat corruption. This is evident from the tone in which UNCAC was written in that, besides for certain mandatory articles, it is left up to the signatories to decide on effective ways to counter corruption within their country's laws, rules and regulations. There are, however, international best practices or key aspects that positively influence the success of anti-corruption strategies or programmes. Shah and Schacter (2004:40) concur with the notion that corruption cannot be eradicated by a one-size-fits-all approach, but also state that general guidelines should be followed when drafting anti-corruption strategies or policies.

Besides the implementation of the mandatory and guiding aspects of UNCAC, good governance and political will are often cited as key elements to successful anti-corruption programmes. Hussmann (2007:15) and Heinrich and Hodess (2011:19) agree with the importance of good governance as a key to combating corruption, and the African Governance Report IV (United Nations Economic Commission for Africa, 2016:XII) clearly identifies the link between good governance, anti-corruption measures and development, as well as acknowledging that poor governance leads to corruption. Various authors have identified political will as critical for the implementation and sustainment of successful anti-corruption programmes (Brinkerhoff, 2000; 2010; United Nations Development Program, 2014; Quah, 2015;

2017a; Ankamah and Manzoor e Khoda, 2017; Oyamada, 2017). These authors agree with Kukutschka (2014:4) that a lack of political will is often cited as the reason for the failure of anti-corruption programmes and that it is a prerequisite for starting and sustaining successful anti-corruption programmes.

Through the implementation of, and in accordance with the prescripts of international, regional and national protocols, many African countries have established national anti-corruption institutions and legislation in an attempt to eradicate, decrease or at least contain the level of corruption. Notwithstanding these efforts and measures, the spread of corruption has continued in most countries and thus remains a threat to the achievement of Africa's development goals.

South Africa seems to fall into this category as it has identified corruption as a threat to the country's development goals (National Planning Commission, 2012:25), established national anti-corruption institutions and legislation, but is failing in its efforts to successfully combat corruption, as indicated by South Africa's performance on corruption measurement indices over the period 2007 to 2017. The selection of the evaluation period to determine South Africa's progress in fighting corruption was influenced by Rowher (2009:25) and Galtung (2010:122) who warn against year-to-year comparisons for individual countries using Transparency International's (TI's) Corruption Perception Index (CPI) as it can be influenced by a one-off negative event, as well as the fact that the progress on anti-corruption reform takes time to manifest. A longer evaluation period was thus selected to ensure the validity of statements regarding the perceived success of a country's anti-corruption programme.

According to TI's CPI, which measures perceptions of public sector corruption in countries across the world, South Africa's score out of 100 (100 being no corruption) has steadily declined over the period 2007 to 2017 with a score of 51 in 2007 to 43 in 2017 (Transparency International, 2018). The World Bank's Worldwide Governance Indicators (WGI), which measure the quality of various aspects of governance in public, private and non-governmental organisations, have control of corruption as one of the six factors that they measure. The results of the measurements are expressed as a country's percentile ranking of all the countries in the world from zero to one hundred, where zero is the lowest ranked and 100 the highest ranked. At the time of

this study the WGI results were only available up to 2017 and therefore the evaluation period was set between 2007 and 2017 in order to compare the CPI and WGI scores. According to the WGI, South Africa's score for the control of corruption was 64 in 2007 and 57 in 2017 (World Bank, 2018).

When one examines available literature on anti-corruption success stories globally and in Africa, Rwanda is often mentioned for the vast improvements the country has made in terms of good governance and anti-corruption measures. The most noteworthy aspect of Rwanda's approach to good governance is their control of corruption with the country's political will to fight corruption as the key to their anti-corruption success (Kukutschka, 2018:8). Other scholars (Chêne and Mann, 2011; Bozzini, 2013; Riak, 2013; Oyamada, 2017; Quah, 2017a) agree with Kukutschka, with some suggesting that the Rwandan approach to fighting corruption be used as a guideline or template for other countries to improve their success in the fight against corruption. Regarding Rwanda's anti-corruption success, Open Society Foundations (2017:VII) states that "there are certainly opportunities for peer learning and best practices that other AU member states could gain from Rwanda".

Compared to TI's CPI scores over the same period as that of South Africa's, Rwanda improved their score from 28 in 2007 to 55 in 2017. In terms of the WGI's control of corruption factor, Rwanda scored 58 in 2007 and 72 in 2017. These scores reflect a big improvement in both the CPI and the WGI control of corruption measurements as can be seen in Table 1.1 (Table1.1 reflects the annual scores of Rwanda and South Africa for the period 2007 to 2017). An analysis of global corruption indices trends in countries of the Sub-Saharan African region confirms Rwanda as the biggest winner. Rwanda's improvements in their CPI and WGI control of corruption scores are well above scores reflected for other African countries and confirm Rwanda as a current leader in combating corruption on the African continent (USAID, 2013:331).

Table 1.1: Rwanda and South Africa's CPI and WGI Control of Corruption scores from 2007 to 2017

		2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Rwanda	CPI	28	30	33	40	50	53	53	49	54	54	55
	WGI (Control of Corruption)	58	60	61	68	68	72	73	75	73	73	72
South Africa	CPI	51	49	47	45	41	43	42	44	44	45	43
	WGI (Control of Corruption)	64	63	63	62	59	55	56	55	58	61	57
Sources: Transparency International, 2018 and World Bank, 2018												

Rwanda's political will to initiate and sustain its anti-corruption efforts has been identified as perhaps the biggest contributor to its success in fighting corruption (Chêne, 2008; Bozzini, 2013; Pillay & Khan, 2015; Open Society Foundations, 2017; Oyamada, 2017; Quah, 2017a), whereas South Africa seems to lack the political will to fight corruption (Republic of South Africa, 2003; Dintwe, 2012; National Planning Commission, 2012).

Based on the negative impact that corruption has on sustainable social and economic development and South Africa's apparent inefficient attempt to fight corruption, this study compares Rwanda's anti-corruption programme with that of South Africa by focussing on the extent of corruption, the countries' anti-corruption legislation and institutions, their compliance with UNCAC, as well as their political will to fight corruption in order to determine how South Africa can be more successful in the fight against corruption.

1.2   Rationale

Even though studies have been done on Rwanda and South Africa's anti-corruption programmes, to the best of the researcher's knowledge, a comparison of the two countries' anti-corruption programmes in terms of compliance with UNCAC and political will to fight corruption has never been conducted. Thus, this study aims to fill this gap in existing literature in order to improve the knowledge base and the effectiveness of South Africa and Africa's anti-corruption measures, thereby stimulating economic and social development in South Africa and on the continent.

From South Africa's point of view, the need to improve its control of corruption has never been more urgent, as the country faces allegations of systemic corruption and state capture. This does not bode well for a country that already struggles with high levels of unemployment, poverty and inequality (National Planning Commission, 2012:25). It would thus be in the interest of South Africa's economic and social development to compare its anti-corruption programme with that of Rwanda in order to determine whether there are specific aspects of Rwanda's anti-corruption programme that makes it stand out above that of South Africa, as well as whether there are unique challenges to South Africa's efforts to fight corruption. If indeed detected, the information could be used to strengthen the anti-corruption initiatives of not only South Africa, but also other African countries in order to minimise the level of corruption on the continent and thereby increasing the level of economic and social development.

1.3   Problem statement

Rwanda and South Africa both have a zero tolerance policy towards corruption as reflected, amongst others, in Rwanda's Anti-Corruption Policy (Republic of Rwanda, 2012a:2) and South Africa's National Development Plan Vision 2030 (National Planning Commission, 2012:65). Both countries have signed UNCAC and have implemented anti-corruption programmes in order to strive towards their goal of zero tolerance towards corruption. Through its anti-corruption efforts, Rwanda has made giant leaps up the rankings of international corruption measurement tools, such as TI's CPI and the WGI (control of corruption), whereas South Africa's scores have decreased.

The National Planning Commission's Diagnostic Report, released in June 2011, identified high levels of corruption as one of nine primary challenges facing the development of South Africa (National Planning Commission, 2012:25). Corruption was seen as such a major challenge to the development of South Africa that an entire chapter (Chapter 14) was dedicated to successfully fighting corruption in South Africa's National Development Plan Vision 2030. However, despite this focus, South Africa has not been able to demonstrate that it is winning the fight against corruption and some might argue that South Africa is losing the fight against corruption with the

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Minister of Economic Development, Ebrahim Patel, estimating that corruption in the public sector costs South Africa 27 billion rand per annum (Corruption Watch, 2017:24).

Should the current situation persist, it will not only have a negative impact on the achievement of South Africa's vision for 2030, but will directly affect the poorest of the poor through corruption's positive link to increased poverty and inequality. South Africa cannot afford this if it dreams of being a stable country with sustainable growth and development. Therefore, there is a definite need to investigate why South Africa is failing to effectively address the threat of corruption, despite a corruption-free society being one of the country's main objectives in the National Development Plan Vision 2030 (National Planning Commission, 2012:447).

1.4   Research questions

The purpose of this study is to compare the Rwandan and South African anti-corruption programmes in order to determine how South Africa can improve its anti-corruption success. Therefore, the following research questions relevant to this study, are presented below.

The primary research question is: Which areas of South Africa's anti-corruption programme must be addressed to improve its success in fighting corruption? The secondary research questions are: (a) What is the driving force behind Rwanda's perceived successful anti-corruption programme; and (b) Can it applied to improve South Africa's anti-corruption success?

1.5.   Research objectives

The research objectives are to compare Rwanda and South Africa's anti-corruption measures in order to identify the strengths and weaknesses of their anti-corruption campaigns. The comparison includes

- the extent of corruption,

- the anti-corruption legislative framework,

- the anti-corruption institutional framework,

- compliance with the mandatory articles of UNCAC Chapters II and III with a focus on Articles 5 and 6, and

- the level of political will (using Brinkerhoff's (2010) seven factors of political will).

1.6   Research method

The chosen research method was document analysis, which is a form of qualitative research in which documents are reviewed or evaluated in a systematic way by the researcher to solve a specific research topic or question (Bowen, 2009:27). Both printed and digital material can be used and it includes a wide range of documents. According to Bowen (2009:29), document analysis is particularly appropriate for case studies, as non-technical literature such as reports is a potential source of empirical data for case studies. Merriam (quoted in Bowen 2009:29) stated that "Documents of all types can help the researcher uncover meaning, develop understanding and discover insights relevant to the research problem". Bowen also affirmed the use of document analysis for cross-country research and specifically where document analysis is the only viable source of information. In terms of the available time and funds to complete the research, document analysis was the only viable research option available.

1.7   Research methodology

Two main documents were used as the basis for the comparative analysis of Rwanda and South Africa's anti-corruption programmes, namely UNCAC and Brinkerhoff (2010). In order to objectively compare the two countries' compliance with UNCAC's preventative and criminalisation and law enforcement measures as contained in Chapters II and III of the Convention, the mandatory articles were used as the basis of comparison. For the measurement of political will, the aspects of political will as developed by Brinkerhoff (2010) were used.

In order to find responses to actions required under Chapters II and III of UNCAC, each applicable article was evaluated against available information contained in scholarly articles, anti-corruption evaluation reports, annual reports, national anti-corruption policies, national development policies and anti-corruption laws. This was done in separate chapters as Chapter 3 deals exclusively with Rwanda and Chapter 4 with South Africa. The countries' compliance with the compulsory articles was measured firstly in terms of whether it had been implemented. Secondly, with an emphasis on Articles 5 and 6, the implementation of the compulsory articles was evaluated against the principles of implementation as contained in Articles 5 and 6. Article 5 requires that anti-corruption policies must be properly co-ordinated and reflect the principles of the participation of civil society, integrity, transparency and accountability. Article 6 requires that anti-corruption bodies make citizens aware of the country's anti-corruption measures, have the necessary independence and be free to do their work effectively and without unnecessary influence. It also encourages countries to ensure that anti-corruption bodies have the necessary resources and skilled staff to ensure their success, in other words, to have the capacity to perform their duties effectively. The comparison of the results was done in Chapter 5.

In order to measure the level of political will to fight corruption in Rwanda and South Africa, respectively, the seven indicators developed by Brinkerhoff (2010) were used. The seven indicators are locus of initiative, analytical rigour, mobilisation of support, application of credible sanctions, continuity of effort, public commitment and allocation of resources, as well as learning and adaptation. The *locus of initiative* indicator refers to at what level of government or society the input or origin for an anti-corruption programme lies. The higher up in government it lies, the stronger the political will. The *degree of analytical rigour* refers to how in-depth the analysis of the corruption problem was done in order to ensure an effective anti-corruption effort. The better the understanding of the problem, the higher the demonstrated political will will be. *Mobilisation of support* deals with the ability of the programme initiator to harness support for the anti-corruption programme. If the reform process is done in isolation, the political will will be lower than if all relevant stakeholders were involved. The *application of credible sanctions* relates to the identification and enforcement of suitable sanctions for non-adherence to laws and regulations across all levels of society. The inconsistent application of sanctions will point to a lower political will.

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Continuity of effort relates to the continued focus on the outcome of the reform process and the allocation of suitable resources to sustain it. A simple launch of an anti-corruption programme without the necessary resources will indicate an unwillingness to address the problem of corruption. The *Public commitment and allocation of resources* factor measures the extent to which the decision-makers make the anti-corruption programme and its objectives public and allocate sufficient resources to achieve the objectives. The *learning and adaptation* indicator refers to the level of monitoring that is done to determine the efficiency of the efforts and to make changes where necessary.

The accurate measurement of political will is subjective and difficult. In order to evaluate the seven factors used to measure the political will of Rwanda and South Africa to employ successful anti-corruption programmes, a wide range of documents were used to assess the political will. Documents used include scholarly articles, anti-corruption evaluation reports, annual reports, national anti-corruption policies and national development policies. The results of the measurement of political will were expressed as either high, medium or low per factor. An overall political will score was then allocated based on the results of the assessment.

1.8   Data collection

To achieve the research objectives and adequately answer the research questions, data was mainly collected from official government documents (legislatory and regulatory publications, anti-corruption policies, development policies and annual reports), published research articles, publications by non-government organisations involved in anti-corruption programmes and UNCAC. As indicated under the research method, the document analysis method was used and in line with this method, both printed and digital materials were used.

1.9   Data analysis

The analysis of the data collected, as described earlier, was guided by the qualitative research design, the research questions and the research objectives. The results of data analysis are reported on in Chapters 5 and 6.

1.10   Ethical consideration

In undertaking this study, this researcher will ensure that ethical requirements are complied with and in line with the university policy.

1.11   Chapter division

Chapter 2 (literature review) discusses the definition, typology, types and cost of corruption, UNCAC focusing on Chapters II and III, selected aspects of successful anti-corruption programmes focusing on the implementation of UNCAC, good governance and political will, as well as the measurement of corruption through the CPI, WGI and political will.

Chapter 3, a country case study on Rwanda, analyses Rwanda's anti-corruption programme in terms of the extent of corruption, anti-corruption legislative framework, anti-corruption institutional framework, compliance with UNCAC and political will.

Chapter 4, a country case study on South Africa, analyses the country's anti-corruption programme in terms of the extent of corruption, anti-corruption legislative framework, anti-corruption institutional framework, compliance with UNCAC and political will.

Chapter 5 is a comparative analysis of the two countries' case studies to identify the strengths and weaknesses in Rwanda and South Africa's anti-corruption programmes and political will to implement their anti-corruption programmes with a view to identifying ways to improve South Africa's success in fighting corruption.

Chapter 6 deals with the conclusion and recommendations of the study.

CHAPTER 2
LITERATURE REVIEW

2.1   Introduction

In order to understand the context of the study, a basic overview of corruption and its consequences, UNCAC, aspects of successful anti-corruption programmes and the measurement thereof is needed.   The literature review addresses challenges pertaining to the general definition of corruption and why certain definitions were accepted. It is important to grasp the essence of the corruption definition as it links up with the measurement of corruption. The next level grouping of corruption after the broader definition is discussed under the typology of corruption and a further breakdown to certain types of corruption is briefly touched upon. The typology and types of corruption need to be understood as it affects the readers' understanding of the extent of corruption, as well as elements to be addressed in anti-corruption laws. The section on the cost of corruption aims to explain how corruption affects countries and their citizens and why scholars are trying to understand and improve ways to combat it. The section on UNCAC explains the compulsory articles of the Convention that need to be implemented by signatories with an emphasis on Articles 5 and 6. An understanding of the basics and principles of UNCAC is needed as a basis for the development of anti-corruption programmes. Ways to improve success in fighting corruption are discussed under aspects of successful anti-corruption programmes. The measurement of corruption and why certain measurement tools are preferred are discussed in the latter part of the chapter.

2.2   Defining corruption

2.2.1   General definition

As corruption and the cost thereof post a serious challenge to good governance and sustainable development, correctly defining corruption is important in order to develop effective responses to fighting corruption, as well as effectively measuring the level of corruption and progress made through anti-corruption practices. Defining corruption

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has become a major topic of discussion in literature, as scholars and anti-corruption practitioners cannot agree on a single accepted definition for the term corruption. This stems not only from the development of definitions from different fields of study (economics, social and political science perspectives), but also from a wide range of variables such as cultural, social and political borders that could influence the definition (Philp, 2006:45-49). Most definitions can be covered by the three-pronged typology as described by Heidenheimer and Johnston (2002:3-14). They argue that corruption is defined through public office-centred, market-centred or public interest definitions. Brown (2006:61) discusses the three different approaches in detail, but the common threat is that there is an individual (or group) that enriches him/herself at the expense of other legitimate recipients of goods or services through an action or actions that are unlawful or contrary to acceptable norms and practices. The debate around the definition is not so much about whether it exists or not, but rather about whether it captures the essence of the corrupt deeds correctly in terms of scope, location and origin.

Kurer (2005:224) differentiates between various definitions of corruption in terms of whether they are subjective or objective, where subjective refers to public opinion definitions (what is considered corrupt by the broader public) and objective refers to public office definitions which are more centred on laws and regulations. According to Kurer (2005:225) "the most common 'objective' type of definitions today are public office definitions" which entails that "corrupt actions violate rules of public office and are motivated by private gain". What makes this approach to defining corruption practical is the fact that violating or breaking a rule should be relatively easy to determine and measure.

Banerjee, Mullainathan, and Hanna (2012:6) define corruption as the "breaking of a rule by a bureaucrat (or an elected official) for private gain". This definition also stems from the public office-centred definition and is meant to include all forms of corruption. In Banerjee et al.'s (2012:6) defense of their approach to defining corruption, it is argued that "breaking a rule" includes everything from bribery and nepotism to stealing time. What makes Banerjee et al.'s definition attractive is that it caters for variations in the law across different sectors or countries. Thus, the measurement of corruption will not be limited by strict definitions of what is and what is not a corrupt act. The fact

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that the definition speaks to rule breaking also takes away subjective judgments on moral and ethical issues, which eliminates the role that culture plays in corruption perception as argued by certain scholars. In Banerjee et al.'s definition of bureaucrat, the authors argue that a bureaucrat is any public service employee and not just elected government employees. The use of the "breaking of a rule by a bureaucrat for private gain" definition, should allow for more objective measurement of corruption.

Two of the most widely used and commonly known definitions of corruption are those used by Transparency International and the World Bank that also produce two of the most widely used and commonly known corruption measurement tools. Transparency International defines corruption as "the abuse of entrusted power for private gain" and the World Bank defines it as "the abuse of public office for private gain". Both have been widely criticised for being too general, not covering the entire range of accepted corrupt acts and even for being heavily based on Western values and governance. The debate about these two definitions covers aspects such as what is entrusted power, what is public office, when is it abuse (whose rules) and what constitutes gain. Both definitions have also been defended and their contribution to the greater cause of corruption prevention has been praised. Brooks, Walsh, Lewis and Kim (2013:18), in their discussion on the definition of corruption, agree with Johnston (2005:11) that a broad definition of corruption might not be ideal, but it may be the most suitable or viable option. However, the purpose of this study is not to judge the validity of different definitions and different approaches to defining corruption, but rather to evaluate two countries on their corruption prevention programmes. As the two countries' success in fighting corruption will be measured by using the WGI and CPI, the two institutions' definition of corruption is accepted without discussing the details of the available criticism or limitations of the their definitions.

Besides academics and international organisations, international and regional governance authorities have also developed definitions of corruption as a generic term or for specific types of corruption. As this study analyses anti-corruption programmes in two African countries, the approach to the definition of corruption by the United Nations at a global level and the African Union and Southern African Community Development (SADC) at a regional and sub-regional level will be mentioned as background to later discussions in the study.

UNCAC, as adopted in 2003, does not define corruption as a concept or through a general definition. Even though Brooks et al. (2013:14) give a description of corruption according to UNCAC, it is in fact UNCAC's definition or description of bribery of national public officials as found in Article 15(b) of the Convention. Instead of being limited by a single definition of corruption, the Convention rather describes certain corrupt acts that should be criminalised under Chapter III of the Convention. Amongst others, UNCAC describes acts such as bribery by public and private officials (Articles 15, 16 and 21), embezzlement (Articles 17 and 22), trading in influence (Article 18), abuse of functions (Article 19) and illicit enrichment (Article 20). In order to ensure the correct application and use of the term "public official", as found in many of the articles describing corrupt acts, the Convention clearly and in great depth defines "public official" in Article 2(a). To summarise Article 2(a), one could say that UNCAC defines "public official" as a person who holds a legislative, administrative, or executive office, or provides a public service, including employees of private companies under government contract.

The African Union Convention on Preventing and Combating Corruption, as adopted in 2003, has the same approach as that of UNCAC in that it does not provide a single or generic definition of corruption. Even though the acts of corruption are not individually listed as in UNCAC, nine corresponding acts of corruption are listed under Article 4 which deals with the scope of application of the Convention. The African Union Convention on Preventing and Combating Corruption does not describe "public official" in the same detail as UNCAC, but nonetheless defines it in Article 1 as "any official or employee of the State or its agencies including those who have been selected, appointed or elected to perform activities or functions in the name of the State or in the service of the State at any level of its hierarchy." (2003:4).

Unlike the international and regional conventions against corruption, the Southern African Community Development's (SADC) Protocol against Corruption (2001) does define corruption in Article 1 as "any act referred to in Article 3 and includes bribery or any other behaviour in relation to persons entrusted with responsibilities in the public and private sectors which violates their duties as public officials, private employees, independent agents or other relationships of that kind and aimed at obtaining undue advantage of any kind for themselves or others." (2001:2). Article 3 of the Protocol

then discusses in a similar manner as UNCAC and the African Union's version the different acts of corruption. Just like the African Union Convention on Preventing and Combating Corruption, the SADC Protocol does not list the acts by name as in UNCAC. The SADC Protocol also defines public official and sees it as "any person in the employment of the State, its agencies, local authorities or parastatals and includes any person holding office in the legislative, executive or judicial branch of the State or exercising a public function or duty in any of its agencies or enterprises." (2001:3).

From UNCAC to the SADC Protocol against Corruption, the above-mentioned conventions and protocol address an increasingly smaller target group (global to sub-regional). However, the all three documents more or less address the same issues in terms of what constitutes corruption and who exactly the "public official" is. Even though this study will focus on Rwanda and South Africa's responses to UNCAC, it is encouraging to know that the regional and sub-regional documents are in line with the international convention and as such the enforcement of these documents in terms of execution will not be contrary to the overarching convention.

2.2.2 Typology of corruption

As with the definition of corruption, authors and scholars have come up with an array of terms to describe the typology of corruption. Terms found in literature vary from grand corruption, political corruption, corporate corruption, administrative corruption, petty corruption, systemic corruption, state capture and even noble-cause corruption.

Jain (2001:73) describes three types of corruption based on the type of decision that is influenced by corruption and the level or position of the decision maker. According to the author, corruption can then be classified under three overarching types of corruption, namely grand corruption, bureaucratic corruption and legislative corruption. Grand corruption, according to Jain (2001:73), is when the political elites use their power to change or manipulate policies to benefit either themselves or small groups of people instead of the greater population. Bureaucratic corruption is described as when bureaucrats have corrupt relationships with either their supervisors or the public, whereas legislative corruption is explained as being a type of corruption

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which aims to change or influence the behaviour of voters to obtain a specific goal (Jain, 2001:75).

United Nations Development Program (2008a:6) describes corruption typologies based on the idea of grand (also political) or petty corruption which will be determined by the magnitude of the corrupt act or the position of the person responsible for the corrupt act. In May's (2012:6) summary of typologies, grand corruption will occur if big amounts of money is involved and/or the responsible person is part of the political elite. For corruption to be classified as petty the amount of gain should not be too big and/or it must be committed by administrative personnel. May (2012:6) clarifies the names given to the different typologies of corruption by grouping political corruption and state capture under grand corruption and administrative corruption under petty corruption. Rose-Ackerman and Palifka (2016:7) also describes corruption within the parameters of grand and petty with a similar understanding of what constitutes grand and petty corruption.

According to Sandgren (2005:273), corruption will be petty when bribes are paid at the interface of service delivery, such as to policemen, medical staff or teachers. Grand corruption will involve bigger amounts being paid as bribes in connection with big projects. The author also sees political corruption as grand corruption, but sees it as a serious type of grand corruption as it may negatively influence democracy. Sandgren (2005:273) also identifies state capture as a type of grand corruption which occurs when a company influences the legislation of the state. Brooks et al. (2013:22) describe state capture as "the ability of an individual or organisation to influence the content of law.". Hellman and Kaufmann (2001) define state capture as "the efforts of firms to shape the laws, policies, and regulations of the state to their own advantage by providing illicit private gains to public officials".

In the UN Anti-Corruption Toolkit, published by the United Nations Office on Drugs and Crime (2004:10), grand corruption is defined as "corruption that pervades the highest levels of a national Government, leading to a broad erosion of confidence in good governance, the rule of law and economic stability", whereas petty corruption is described as involving the exchange of small amounts of money and the granting of minor favours related to minor positions.

The typology of corruption in essence deals with the who, what, where and why of acts of corruption. Ferguson (2017:33) suggests a useful tool for the description of corruption based on the 4 W's. If one applies the 4 W's to a corruption problem, the magnitude, scope, frequency and level of the corrupt acts and those perpetrating it, it should become clearer whether it is grand or petty, political or state capture. The scope and frequency of corruption in terms of how common it is in a country leads to another classification of corruption being either systemic or sporadic. According to the U4 Anti-Corruption Resource Centre's explanation of corruption terms, corruption is systemic when it is "an integral part of a state's economic, social and political system, and where most people have no alternatives to dealing with corrupt officials.". Sporadic corruption is the opposite of systemic corruption and can be said of countries where the incidence of corruption is low and irregular. Unlike systemic corruption, sporadic corruption will not have a crippling effect on a country's level of governance or economy.

Despite the various names given to accurately classify corruption in terms of its typology, it is felt that the exact name that is allocated to corruption in a specific area or country is of less importance than a proper understanding of the scope of the problem in order to treat the symptoms and causes.

2.2.3 Types of corruption

A breakdown of corruption beyond a general definition and/or the typology of corruption leads to specific acts of corruption. Even though there might be differences in the exact wording used to describe acts of corruption by different authors, organisations or legal experts, there is a general consensus on which acts can be classified as corruption. An in-depth discussion of the various types of corruption will not be done, however, an adaptation of what is seen as corruption according to Rose-Ackerman and Palifka (2016:8), whether grand or petty, is depicted in Table 2.1.

Table 2.1: Types of corruption

Bribery	The explicit exchange of money, gifts in kind, or favours for rule breaking or as payment for benefits that should legally be costless or allocated on terms other than willingness to pay.
Extortion	Demand of a bribe or favour by an official as an essential condition for doing his or her duty or for breaking a rule.
Exchange of favours	The exchange of one broken rule for another.
Nepotism	Hiring a family member or one with close social ties, rather than a more qualified, but unrelated applicant.
Cronyism	Preferring members of one's group – racial/ethnic, religious, political, or social – over members of other groups in job-related decisions.
Judicial, accounting, electoral, and public service fraud	All of these types can happen without an actual bribe being paid for example intentional deception regarding profits, manipulation of election results, providing students with the correct answers before an examination (to ensure funding), etc.
Embezzlement	Theft from the employer by the employee.
Kleptocracy	An autocratic state that is managed to maximize the personal wealth of the top leaders.
Influence peddling	Using one's power of decision in government to extract bribes or favours from interested parties.
Conflicts of interest	Having a personal stake in the effects of the policies one decides.
Adapted from Rose-Ackerman and Palifka (2016:8) *Corruption and governance: Causes, consequences and reform, 2nd edition*	

2.3 Cost of corruption

Why is corruption or the prevention thereof important or what are the possible consequences of corruption? Why is so much energy spent on understanding the topic of corruption and the prevention thereof?

Corruption is a worldwide phenomenon that is seen as an obstacle to sustainable economic, political and social development, something the Organisation for Economic Co-operation and Development (OECD, 2014:2) argues applies to developing, emerging and developed economies. It also affects the poorest of the poor as

empirically proven by Gupta, Davoodi, and Alonso-Terme (2002:40) who provided evidence that high and rising corruption increases income inequality and poverty.

According to a 2014 background brief on the rationale for fighting corruption by CleanGovBiz, an initiative led by the OECD, corruption increases the cost of doing business, leads to waste or the inefficient use of public resources, excludes poor people from public services, perpetuates poverty, corrodes public trust, undermines the rule of law and ultimately delegitimises the state (OECD, 2014:2). According to the International Monetary Fund's 2016 staff discussion note titled "Corruption: cost and mitigating strategies", corruption affects core government functions which can lead to a dysfunctional tax revenue system, causing wasteful public spending and lower revenue which can result in budgetary constraints which in turn will affect the quality of public service delivery (International Monetary Fund, 2016:5). The Carnegie Endowment for International Peace (2014) brings another perspective to the cost of corruption as they argue that corruption is an unrecognised threat to international security. Corruption, therefore, impacts society as a whole by lowering the standard of living and quality of life of citizens through the negative impact it has on the quality of governance and service delivery which directly impacts a government's ability to provide for, care for and protect its citizens.

Due to the secretive nature of corruption and the many forms in which it manifests, it is extremely difficult to quantify the monetary value of losses ascribed to corruption. The International Monetary Fund (2016:5) states that the 2015 estimate for the annual global cost of bribery (not all forms of corruption) was between 1.5 and 2 trillion US dollars which is about 2 percent of the Global Gross Domestic Product. The OECD's 2014 estimate of the global cost of corruption was put at 5 percent of the Global Gross Domestic Product with a value of 2.6 trillion US dollars and an estimation of 1 trillion US dollars paid in bribes (OECD, 2014:2). Even though the OECD and International Monetary Fund publications were timewise published relatively close to one another, there is a significant difference in the estimated value for global bribes paid (0.5 to 1 trillion US dollars). However, even if one accepted the lower figure as estimated by the OECD to be correct, it is still a significant amount of funds that was misappropriated.

When focussing more specifically on Africa, it becomes clear from various international corruption measurement indices that Africa is perceived as the most corrupt region in the world. The United Nations Economic Commission for Africa (UNECA) already identified this in their first African Governance Report (2005:148), which stated that in Ethiopia "corruption was the most important problem that households face after poverty" and that this was the same for many African countries, "with corruption ranked among the top three problems behind poverty and unemployment". The African Governance Report II (United Nations Economic Commission for Africa, 2009:12) states that "corruption remains the single most important challenge to the eradication of poverty and the creation of predictable and favourable investment environment and general socioeconomic development in Africa.". Target 12.a.5 of Goal 12 of the United Nations Economic Commission for Africa's (2015:49) 2015 Africa Regional Report on the Sustainable Development Goals confirms that corruption is still an obstacle to development on the continent by stating that public sector corruption must be cut by "50 per cent by 2020, and 80 per cent by 2030". The direct link between corruption and the lack of economic transformation of Africa is again confirmed in the 2016 African Governance Report IV. The link between corruption and development is strengthened by the dominance of African countries on the list of least developed countries, as published by the United Nations Committee for Development Policy in March 2018 (United Nations, 2018:1). The problem of corruption and ways to combat it should therefore be a strategic development priority for Africa if it is to prosper as a continent.

In terms of the perceived cost of corruption in Africa, the African Governance Report IV (United Nations Economic Commission for Africa, 2016:20) states that "yearly, an average of between $859 billion and $1.06 trillion flows out of Africa by corrupt means" and that "as far back as the 1990s, the African Union estimated that every year over $148 billion was stolen from the continent by its leaders, which represents 25 per cent of annual GDP lost to corruption". These figures, when compared to the global estimates, confirm that corruption is indeed a huge challenge on the African continent and that the perception from various international corruption measurement indices about the high level of corruption on the African continent is maybe not just a perception, but indeed a reality.

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The importance of understanding corruption and how to counter it effectively is thus well founded if one looks at the damage it does to sustainable development and growth as a whole, as well as the fact that in an already divided world in terms of income or wealth, corruption increases income inequality and poverty. If the evil of corruption can be countered effectively, it will alleviate the additional burden placed on millions of poor people in the world who have to find the means that they do not possess to obtain basic services like effective medical care, quality education, access to food and water, police protection, and access to employment.

2.4   United Nations Convention against Corruption

In order to combat the growing problem of corruption on a global scale, UNCAC was adopted by the United Nations through General Assembly Resolution 58/4 of 31 October 2003. UNCAC serves as an international legal framework for governments and citizens to refer to in making efforts to strengthen their governance institutions and to tackle the corruption problem. Africa as a continent implemented its own measures to counter corruption through the adoption of a regional and various sub-regional and country specific protocols. As this study focusses on UNCAC in order to gain a better understanding of the rationale behind the implementation of anti-corruption programmes at country level, as well as the measurement thereof, the details of the African regional and sub-regional anti-corruption measures will not be discussed.

The purpose of UNCAC as stated in Article 1 of the Convention is to "promote and strengthen measures to prevent and combat corruption more efficiently and effectively", to "promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery" and to "promote integrity, accountability and proper management of public affairs and public property" (United Nations, 2004:7).

UNCAC, Chapter II deals with preventive measures and Article 5 specifically with preventative anti-corruption policies and practices at national level. Article 5.1 states that "Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule

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of law, proper management of public affairs and public property, integrity, transparency and accountability." (United Nations, 2004:9).

The preventative measures of Chapter II state that countries should implement effective anti-corruption policies (Article 5) and ensure the existence of structures or organisations to fight corruption (Article 6). It is important to note that Article 5 does not only require that anti-corruption policies must be created, but also addresses aspects of good governance that must be considered when implementing the policies. These include proper co-ordination, the participation of civil society, integrity, transparency and accountability. The same applies to Article 6(1) which requires the anti-corruption bodies to make the public aware of the anti-corruption measures in a country and Article 6(2) which describes the Convention's desire that the structures that must fight corruption in a country should have the necessary independence and be free to do their work effectively and without unnecessary influence. It also encourages countries to ensure that anti-corruption bodies have the necessary resources and skilled staff to ensure their success.

In terms of UNCAC Article 6, the Convention does not state that an anti-corruption body must by established, as it recognises that the responsibilities and functions of an anti-corruption program might already be executed by existing entities. It does, however, require of states to "establish or maintain an anti-corruption body or bodies entrusted with preventive functions" (United Nations, 2006:21). Thus, it does not prescribe what kind of anti-corruption body a country must have as it is widely accepted that countries are unique in their levels of corruption and approaches to combating it within a local governance context.

According to Chêne (2012:2), the anti-corruption bodies referred to in Article 6 are "independent publicly funded … with a specific mission to fight corruption by means of preventive and repressive strategies". In 2008 the Organisation for Economic Co-operation and Development created a typology of anti-corruption agencies that classified them as either multi-purpose, law enforcement, or preventive, policy development and co-ordination institutions (Wickberg, 2013:2). Quah (2017b:6) classifies anti-corruption agencies into two types, Type A and Type B, where a Type A anti-corruption agency focusses "exclusively on the performance of the anti-

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corruption functions of investigation, prosecution, education and awareness-raising, prevention and co-ordination" and a Type B agency performs "both anti-corruption and non-corruption-related functions". Quah (2017b.:3) further states that countries have the option to not establish any type of anti-corruption agency, but to rather strengthen existing structures to fight corruption, such as in New Zealand, but warns that this approach is not feasible in countries with "high levels of corruption and poor governance". Chêne (2012) describes two different approaches to Article 6 as centralised and decentralised, where a centralised approach will be equal to Quah's Type A anti-corruption agency and a decentralised approach would be either a Type B agency or where the anti-corruption capacity was absorbed into already existing institutions. Literature agrees that the type of anti-corruption agency or approach followed in implementing Article 6 is not the determining factor for success. Chêne (2012), Wickberg (2013) and Quah (2017b) agree that the level of political will, level of independence, capacity, and the ability to effectively co-ordinate anti-corruption functions between institutions play an important role in the success or failure of anti-corruption agencies. Quah (2017b:15) warns of two potential risks in establishing anti-corruption agencies, namely that it can be used to attack political opponents or only be a paper tiger when it lacks the necessary powers and resources to effectively combat corruption. The latter occurs when agencies are created in response to external pressure and generally lack a demonstrated will to fight corruption.

Besides the mandatory Articles 5 and 6, Chapter II of UNCAC contains other compulsory Articles that countries must comply with. Article 7 deals with the public service or sector of countries, and the essence of the article is that the public service must be governed based "on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude". Article 8 deals with codes of conduct for public officials and amongst others deals with codes of conduct, disciplinary measures when the codes of conduct are contravened, establishing ways to report corruption, as well as declarations of interest and conflict of interest. Article 9 deals with transparent procurement and sound financial management within the public sector, and Article 11 addresses the requirement for independence within the judicial and prosecuting systems or authorities. Article 12 is about preventative measures for the private sector with again a strong emphasis on integrity, transparency and accountability, whilst Article 13 discusses the importance of the participation of society

in corruption prevention measures and the importance of their voice in the decision-making process.

UNCAC's proposed preventative measures in the fight against corruption are clear about what should be done within the laws and legal system of each country. Articles 5 and 6 clearly identify the need for countries to ensure that they have sufficient anti-corruption laws and policies in place and that there is a mandated anti-corruption entity or entities to ensure that the anti-corruption objectives are met. It also states how the laws and institutions must be implemented and function. The rest of the preventative measures share a common theme that will become more prominent during the evaluation of South Africa and Rwanda. This common theme is the promotion of the participation of society in anti-corruption measures, a reflection of the principles of the rule of law, proper management of public affairs, proper management of public property, independence, integrity, transparency and accountability.

UNCAC Chapter III deals with criminalisation and law enforcement and the duty (within their own legal framework) of signatory states to criminalise certain acts and put certain laws and policies in place. The acts that should be criminalised have already been discussed under the definition of corruption and will not be repeated in this section. Policies and laws that should be enacted under Chapter III include the protection of witnesses, experts and victims (Article 32), the protection of whistle blowers (Article 33), as well as the compensation of victims of corrupt acts (Article 35) and the seizure and confiscation of assets (Article 31).

The mandatory actions that UNCAC expects from signatories under Chapter II and III, according to Hechler (2017:8), can be found in Table 2.2.

Table 2.2: Summary of UNCAC Chapters II and III mandatory actions for signatories

Chapter	Article	Description
II	6	Ensure the existence of a body or bodies to prevent corruption.
	9	Create a public procurement system based on transparency, competition, and objective selection criteria with legal recourse for violations.
	10	Enhance transparency in public administration by such measures as publishing information and simplifying procedures for attaining access to such information.
	11	Prevent corruption among members of the judiciary through measures such as rules of conduct.
	12	Measure to address corruption in the private sector.
	13	Promote participation of civil society in fight against corruption through, for example, ensuring effective access to information.
	14	Institute a comprehensive regulatory scheme to prevent money laundering and consider creating financial intelligence unit to receive, analyze, and disseminate reports of suspicious transactions.
III	15	Outlaw the offering or soliciting of a bribe by a national public official.
	16	Outlaw the promise, offering or giving of a bribe to a foreign public official.
	17	Outlaw embezzlement.
	23	Outlaw money laundering.
	25 & 26	Ensure the obstruction of corruption investigations, and attempts to commit corrupt acts are criminal offenses.
	29	Provide a long statute of limitations for bribery and other corrupt acts and provide for its suspension when an offender has evaded prosecution.
	30	Make sure the penalties for corrupt acts reflect the gravity of the offense, that immunities for public officials are not overbroad, and that if there is discretion to prosecute, it is exercised with due regard for the need to deter corruption.
	32	Take measures to ensure protection for whistle blowers.
	31 & 35	Establish procedures to freeze, seize, and confiscate the proceeds of corrupt acts and permit those injured by corrupt acts to initiate an action for damages.
	40	Remove any obstacles posed by bank secrecy laws to investigating corruption.
Adapted from Hechler (2017:8) *UNCAC in a nutshell*.		

2.5 Selected aspects of successful anti-corruption programmes

As countries are different in their development, political systems, legal systems, approach to governance, and levels and extent of corruption, different countries will employ different approaches or methods to combat corruption. This is evident from the tone in which UNCAC was written in that, besides for certain mandatory articles, it is left up to the signatories to decide on effective ways to counter corruption within their country's laws, rules and regulations. There are, however, international best practices or key aspects that positively influence the success of anti-corruption strategies or programmes. Shah and Schacter (2004:40) concur with the notion that corruption cannot be eradicated by a one-size-fits-all approach, but also state that general guidelines should be followed when drafting anti-corruption strategies or policies.

2.5.1 Good governance

Article 5 which deals with the preventative measures seems to have a direct link to issues of good governance. The United Nations Legislative guide for the implementation of the United Nations Convention against Corruption (United Nations, 2006:15) states that the prevention of corruption will be more effective "in environments that minimize opportunities, encourage integrity, allow for transparency, enjoy strong and legitimate normative guidance and integrate the efforts of the public sector, the private sector and civil society together". It also highlights the importance of policies that promote good governance as one of the key elements of successful anti-corruption programmes. Hussmann (2007:15) agrees with the importance of good governance by not only identifying the importance of integrity, transparency and accountability in the fight against corruption, but also identifying it as key elements of good governance that are important for sustainable development. The African Governance Report IV (United Nations Economic Commission for Africa, 2016:XVI) confirms this by stating that "Transparency and accountability are essential requisites in ensuring good governance and, in turn, reducing corruption.". According to Heinrich and Hodess (2011:19), good governance, including transparency, accountability and integrity, has become key to preventing corruption. The African Governance Report IV (United Nations Economic Commission for Africa, 2016:XII) also clearly identifies

the link between good governance, anti-corruption measures and development, as well as acknowledges that poor governance leads to corruption.

What is good governance or governance in general? Similar to the definition of corruption, there is no agreement or a single acceptable definition of what is meant by governance. Instead of dealing with a range of broad definitions, only the definition used by Kaufmann, Kraay and Mastruzzi (2010) for the basis of the World Bank's Worldwide Governance Indicators will be stated. According to the authors, governance is defined as "(a) the process by which governments are selected, monitored and replaced; (b) the capacity of the government to effectively formulate and implement sound policies; and (c) the respect of citizens and the state for the institutions that govern economic and social interactions among them." (Kaufmann et al., 2010:4).

In the design of the WGI, two measures of governance were allocated to each of the three areas in the definition, leading to a total of six dimensions of governance, namely voice and accountability, political stability and absence of violence/terrorism, government effectiveness, regulatory quality, rule of law and control of corruption. For the purpose of this study, Kaufmann et al.'s definition of governance is accepted, as well as the six indicators of good governance as found in the WGI. More details about the questions asked under each of the indicators, as well as arguments for and against the use of the WGI will be addressed under the discussion on the measurement of corruption.

2.5.2 Political Will

According to literature, the political will of governments to commit to anti-corruption efforts plays a major role in the success and sustainability of anti-corruption programmes. The 2013 Kuala Lumpur Statement on Anti-Corruption Strategies as issued by the United Nations Office on Drugs and Crime states that political will is a "necessary condition of an effective anti-corruption strategy development process." (United Nations Office on Drugs and Crime, 2013a:2). The United Nations Development Program (2014:43) identified a lack of political will by governments as a major risk to the implementation and success of its Global Anti-Corruption Initiative 2014-2017.

According to the United Nations Economic Commission for Africa (2016:27), under the role of government institutions in fighting corruption, political will and commitment are critical for the effectiveness of anti-corruption agencies. Hussmann (2007) on various occasions mentions how the absence of initial and/or continued political will negatively affects the outcome of anti-corruption efforts. Quah (2015:12) found that political will was the "critical factor responsible for the success of Singapore and Hong Kong in curbing corruption". According to Kukutschka (2014:4), a lack of political will is often cited as a reason for the failure of anti-corruption programmes and that it is a prerequisite for starting and sustaining successful anti-corruption programmes. Camerer (2008:1) also identifies the "necessary political leadership and will" as a condition that is necessary to ensure credible and long term corruption reforms.

Brinkerhoff (2000) was one of the first scholars to write about political will and how to attempt to measure it. According to Brinkerhoff (2000:242), political will can be defined as the "commitment of actors to undertake actions to achieve a set of objectives … and to sustain the costs of those actions over time.". The author explains that the commitment to undertake actions should come from elected or appointed leaders and senior government officials. United Nations Development Program (2008b:230) describes political will as the "demonstrated and credible intent of political actors to attack perceived causes or effects of corruption at a systemic level.". Quah (2015:12) defines political will as "the extent of committed support among key decision makers for a particular policy solution to a particular problem", a view that is shared by Ankamah and Manzoor e Khoda (2017:2). From the above definitions of political will, there must first be a problem that needs to be solved or fixed, or an undesirable state or level of something that needs to be changed, in this case corruption, for the political will to be demonstrated. High level actors must then decide on a desired end state and how to get there. These decision makers must support the action plan by making the necessary resources available to ensure the successful implementation and sustainment of the plan. In terms of anti-corruption programmes and policies, it is thus important for the decision makers to be at higher levels in government or an organisation, to be actively involved in the programmes and to make the necessary resources available to not only launch such a programme, but to also sustain it.

2.5.2.1   Measuring political will

Brinkerhoff (2000) laid the foundation for other studies in the field of the role and measurement of political will in the fight against corruption, but the essence of his work remains the foundation of subsequent studies. Due to the wide use of the fundamental aspects of Brinkerhoff's work, the work of writers such as Malena, Quah, and Ankamah and Manzoor e Khoda will not be discussed in detail, but the differences will be highlighted.

Political will, which in this study refers to the intent of role-players in a society to establish and enforce anti-corruption programmes, is a complex concept that is difficult to measure. According to Brinkerhoff (2000:241), political will can only be measured after an action has occurred and is done indirectly and retrospectively.   The measurement of political will should not be expressed as an absolute, but rather on a continuum in terms of the degree of presence of political will (Brinkerhoff, 2010:242).

Brinkerhoff (2000:242) identifies five characteristics or indicators of political will, namely (a) locus of initiative, (b) degree of analytical rigour, (c) mobilisation of support, (d) application of credible sanctions and (e) continuity of effort. In addition to the five indicators, Brinkerhoff (2000:243) also identifies certain environmental factors that can have an influence on anti-corruption efforts and thus influence the perceived level of political will. The identified environmental factors are regime type, extend and nature of corruption, vested interests, civil society and the private sector, donor-government relations, and social, political and economic stability. For the purpose of this study, the environmental factors will not be discussed further, but the mentioned indicators will be clarified through a short description.

Locus of initiative refers to at what level of government or society the input or origin for an anti-corruption programme lies. The higher up in government it lies, the stronger the political will. *Degree of analytical rigour* refers to how in-depth the analysis of the corruption problem was done in order to ensure an effective anti-corruption effort. The better the understanding of the problem, the higher the demonstrated political will will be. *Mobilisation of support* deals with the ability of the programme initiator to harness support for the anti-corruption programme. If the reform process is done in isolation,

the political will will be lower than if all relevant stakeholders were involved. *Application of credible sanctions* relates to the identification and enforcement of suitable sanctions for non-adherence to laws and regulations across all levels of society. The inconsistent application of sanctions will point to a lower political will. *Continuity of effort* relates to the continued focus on the outcome of the reform process and the allocation of suitable resources to sustain it. A simple launch of an anti-corruption programme without the necessary resources will indicate an unwillingness to address the problem of corruption.

Brinkerhoff (2010:3) added two more indicators of political will, namely public commitment and allocation of resources, and learning and adaptation. The *public commitment and allocation of resources* factor measures the extent to which the decision-makers make the anti-corruption programme and its objectives public and allocate sufficient resources to achieve the objectives. The *learning and adaptation* indicator refers to the level of monitoring that is done to determine the efficiency of the efforts and to make changes where necessary.

Malena (2009:18) identifies more or less the same indicators as Brinkerhoff, with the exception that the indicators of political will are described as indicators of "genuine political will" or "lack of political will". The lack of political will indicators are in essence the absence of actions that form genuine political will. Quah (2015:13) identifies five indicators based on the work of Brinkerhoff. The indicators are comprehensive anti-corruption legislation, adequately resourced anti-corruption agencies with operational autonomy, impartial enforcement of anti-corruption laws, the absence of the use of corruption as a tool to win political battles, and the sustainment and monitoring of anti-corruption efforts. Ankamah and Manzoor e Khoda (2017:2) used four indicators in their model to evaluate political will, namely origin of the initiative, comprehension and extent of the analysis, credible sanctions, and resource dedication and sustenance.

The mentioned indicators, regardless of the author, by themselves do not point to the presence or absence of political will. Instead, it should be seen as a collective, where the individual measurements together form an indicator that illustrates the level of political will to design, implement and sustain effective anti-corruption measures (Brinkerhoff, 2000:243). Thus, a low score on a couple of indicators does not reflect

the absence of political will and, likewise, a high score for one or two indicators does not point to a strong political will.

The accurate measurement of political will is subjective and difficult, but nonetheless the template for the measurement of political will in the fight against corruption is and has been used in efforts to identify reasons for the success or failure of anti-corruption programmes across the world. Regardless of the difficulty in accurately measuring political will, there is no doubt that the identified indicators will impact the success of any reform policy whether it is in the fight against corruption or the fight against HIV/AIDS.

It is by no means claimed that the establishment of anti-corruption agencies, the development of anti-corruption policies, good governance and the presence of political will are the only factors that will determine the success of anti-corruption programmes, however, they are most definitely very important aspects of the success of any anti-corruption programme. According to Open Society Foundations (2017:VII), some of the common reasons given for ineffective anti-corruption programmes include the lack of political will, the absence of a national strategy, insufficient or ineffective legal frameworks and poor co-ordination between anti-corruption agencies.

2.6   Measuring corruption

The results of corruption measurements, whether as part of general governance surveys or in isolation, should be important to countries, as they are used by the international community to assess the feasibility and risk to invest in a country or to donate funds for development (United Nations Economic Commission for Africa 2016:VIII). Thomas (2010:32) highlights the importance of governance indicators as they are used by the United States' Millennium Challenge Account, donor agencies, donor countries, and risk rating agencies to decide on whether to invest in or donate funds to a specific country. Improving corruption and governance indicator scores should thus be important factors to consider, especially for developing countries relying on foreign aid and investment for their development.

Just as there is no single accepted or correct definition of corruption, the measurement of corruption and anti-corruption programmes also comes in many forms. It ranges from established international indicators like TI's CPI and the World Bank's WGI to newer measurement tools like TI's Global Corruption Barometer and Global Integrity's Global Integrity Index, to national measures like the Kenyan Bribery Index and local measurements like community scorecards. As with the challenge of defining corruption, academics and institutions have widely debated the advantages and disadvantages of various forms and methods of measuring corruption. Whereas the correct definition of corruption obviously will impact on what is being measured, the debate around the correct measurement of corruption not only deals with what (all types of corruption or not) should be measured, but also with how (objective or subjective) and at what level (national or lower, public vs private, all institutions or specific institutions). Probably the biggest challenge in accurately measuring corruption is the fact that corruption by nature does not want to be discovered. This is affirmed by Dogan and Kazacigil (in Galtung 2010:100) who state that "there cannot be statistics on a phenomenon which by its very nature is concealed".

According to Brooks et al. (2013:28), the measurement of corruption can be divided into two categories, namely objective and subjective measurements. Objective measurements are those that are usually quantitative in nature and verifiable. Examples of objective measurements of corruption could be the amount of whistle blowing reports received or the amount of convictions for cases of corruption. Even though such measurements might be quantifiable, it does not necessarily accurately measure the level of corruption as whistle blowing does not indicate a guilty verdict and a guilty verdict or successful prosecution might be more a reflection of the effectiveness of the legal system than corruption itself. Subjective measurements use perception or experienced-based surveys to indicate levels of corruption. An obvious critique of this type of measurement is that the perception of corruption will be different depending on the individual's understanding of corruption, cultural orientation, whether the individual is part of the community being assessed, or recent corruption scandals. Based on the advantages and disadvantages of both objective and subjective types of corruption measurement, a third type of measurement has evolved, namely composite or aggregate indicators, which combine various objective and subjective indicators to give one composite indicator. These aggregate measurements often use

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large amounts of sources which are reworked or remodeled in order to give a single score. Kaufmann et al. (in Brooks et al., 2013:29) claim that such indices "provide a much more sophisticated approach to corruption assessment". According to Galtung (2010:104), the use of aggregate indices is the best way to measure corruption at a macro level, and Brooks et al. (2013:29) name some of the advantages of aggregate indicators as the broad country coverage, and a reduction in the margins of error and bias that might be present in individual indicators or measurements.

The CPI and WGI are both aggregate indicators and have received some valid criticism. The details of all the criticism will not be discussed as the use of the chosen indicators will be discussed later in this study. For more details on the criticism, see Andersson (2017:58) and Heinrich and Hodess (2011:21). It has to be stated that counter arguments to the critique of the two indicators have convincingly been made by scholars including Kaufmann and Lambsdorff.

When searching for measurements that can assist in cross-country comparison of anti-corruption performance over time, the CPI and WGI are often the only two measurements of corruption and governance that were conducted in both countries over the same period. This is no coincidence, as Rose-Ackermann and Palifka (2016:15), like many others, refer to the CPI as the "popular measure of corruption", Heinrich and Hodess (2011:20) refer to the CPI and WGI as the "most noteworthy examples" of cross-country indices, and according to Brooks et al. (2013:29), the CPI and WGI are two of three aggregate indices that dominate corruption measurement. Even though there have been attempts to move away from the big aggregate indices with more focussed objective measurements, it became unpopular due to the short time span and limited coverage (Trapnell & Recanatini, 2017:480).

Just as an in-depth discussion on the critique of the various corruption measurement instruments was not done, neither an in-depth critique of the CPI or WGI will be performed. An in-depth discussion on the methodology of both indices will also not be done for the purpose of this study. However, a general overview of what is being measured and how it is scored will be done for both the CPI and WGI.

2.6.1 Corruption Perception Index

The CPI, as the name states, is a composite perception-based index which ranks countries in terms of the degree to which corruption is perceived to exist among public officials and politicians. The data used are gathered from corruption-related data from expert and business surveys carried out by a variety of independent and reputable institutions. The CPI reflects views from around the world, including those of experts who are not living in the countries evaluated. The surveys ask questions relating to TI's definition of corruption (abuse of entrusted power for private gain) or questions relating to the strength of anti-corruption policies, thereby covering both the political and administrative side of corruption. The CPI ranges from a maximum score of 100 to a minimum score of 0 where 100 represent almost no corruption, and 0 represents very high levels of corruption. In the annual publication of the CPI, countries are ranked according to their score out of 100 from least to most corrupt. Even though there is criticism about the validity of the perceptions used to inform the CPI, Trapnell and Recanatini (2017:481) confirm that though the CPI is not an accurate measurement of corruption, "perceptions can signal a fundamental dis-trust in the system, which may be attributable to corruption or other institutional weaknesses". It should be noted that a country's ranking should not be the main focus when assessing the CPI, but rather the score obtained (Lambsdorff, 2006:83). This is important to consider when assessing the effectiveness of any country's anti-corruption programme because it is possible for the ranking to change without the actual score changing. Rowher (2009:45) and Galtung (2010:122) also warn against year-to-year comparisons for individual countries as they can be influenced by a one-off negative event, as well as the fact that the progress on anti-corruption reform takes time to manifest. However, both authors agree that the use of the CPI to compare a country's progress can be done over longer periods with Galtung (2010:122) suggesting a four to five year period interval. In terms of its use for cross-country comparison, Hawthorne (2013:7) maintains that the CPI is "widely regarded as the most important and most reliable comparative corruption indicator available", and Olken (2009:950) and Banerjee et al. (2012:45) strongly agree with the use of the CPI for cross-country analysis. Andersson and Heywood (2009:757) refer to the CPI as the "most valuable tool available that compares corruption between countries".

2.6.2 Worldwide Governance Indicators

The WGI is also a composite measurement tool used to measure aspects of governance, including corruption, for 215 countries. According to Kaufmann et al. (2010:2), the WGI only use perceptions-based governance data sources. The data sources include "surveys of firms and households, as well as the subjective assessments of a variety of commercial business information providers, non-governmental organizations, and a number of multilateral organizations and other public-sector bodies" (Kaufmann et al., 2010:5). These sources report the views and experiences that citizens, entrepreneurs and experts have of the quality of various aspects of governance in public, private and non-governmental organisations (United Nations Economic Commission for Africa, 2016:32). The WGI capture six governance factors or dimensions, being voice and accountability, political stability and absence of violence, government effectiveness, regulatory quality, rule of law, and control of corruption. The aggregate scores for the six dimensions for a country are expressed as the country's percentile ranking of all the countries in the world from zero to one hundred, where zero is the lowest ranked and 100 the highest ranked. Under the "Control of Corruption" dimension, the World Bank includes several indicators which measure the extent to which public power is exercised for private gain, including petty and grand forms of corruption, as well as "capture" of the state by elites and private interests. A more detailed version of what the six different governance factors measure and how they relate to the three aspects of governance as defined by Kaufmann et al. (2010:4) can be found in Table 2.3.

Table 2.3: Description of individual WGI

Definition	Indicator	Description
The process by which governments are selected, monitored, and replaced	Voice and Accountability	Capturing perceptions of the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media.
	Political Stability and Absence of Violence/Terrorism	Capturing perceptions of the likelihood that the government will be destabilized or overthrown by unconstitutional or violent means, including politically-motivated violence and terrorism.
The capacity of the government to effectively formulate and implement sound policies	Government Effectiveness	Capturing perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies.
	Regulatory Quality	Capturing perceptions of the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development.
The respect of citizens and the state for the institutions that govern economic and social interactions among them	Rule of Law	Capturing perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence.
	Control of Corruption	Capturing perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests.
Adapted from Kaufmann, D., Kraay, A and Mastruzzi, M. (2010:4). *The Worldwide Governance Indicators: Methodology and Analytical Issues.*		

As the WGI, like the CPI, is a perception-based survey, it has received similar criticism to that of the CPI, but with additional questions about the blanket application of inherently Western governance principles on the world in general, as well as the fact that so much depends on the scores obtained by different countries. The criticism of the WGI, just as with the CPI, is to be expected, as the results play an important role in the funding of development projects, donor funds and aid projects by the international community. Arndt and Oman (2006; 2010), Thomas (2010) and Knack

(2006) are some of the principle critics of the WGI and its uses. Some of the issues raised by the critics touch on the lack of a common definition of governance, the lack of transparency regarding the sources used to construct the WGI, a hidden bias in the methodology used to obtain the final scores, the fact that it does not suggest ways to correct areas of concern, and unsuitability for cross-country assessment over time. In response to the criticism against the use of the WGI, Kaufmann et al. (2007; 2010) have defended the design, methodology and use of the WGI and confirmed their confidence in the WGI as a measurement of governance.

2.7   Summary of literature review

The review of the literature has established that even though there is much debate about the correct general definition of corruption, most definitions can be classified as either public office-centred, or market-centred or public interest definitions, with public office definitions being the most common. The two most widely used and commonly known definitions of corruption are both public office definitions. TI defines corruption as "the abuse of entrusted power for private gain" and the World Bank defines it as "the abuse of public office for private gain". These two definitions were accepted as correct for the purpose of the article. It was established that UNCAC does not specify corruption, but instead defines acts of corruption. The African Union Convention on Preventing and Combating Corruption and the Southern African Community Development's Protocol against Corruption follow a similar approach and were found to be in line with UNCAC.

In terms of the typology of corruption, grand (includes political corruption and state capture) and petty corruption (includes administrative corruption) are the most commonly used descriptions of the various ways in which corruption manifests in terms of origin, magnitude, frequency and effect. In terms of the scope and frequency of corruption, it can also be classified as systemic or sporadic corruption.

The various types of corruption, even though not an exhaustive list, were presented in Table 2.1. The types of corruption listed include bribery, extortion, nepotism, cronyism, embezzlement, conflicts of interest, judicial, accounting, electoral, and public service fraud.

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It was established that worldwide corruption impedes sustainable economic, political and social development resulting in a lower quality of life for the citizens of countries affected by high levels of corruption. The negative effects of corruption have also been proven to affect the poorest of the poor. In Africa, the high level of public sector corruption is seen as one of the main risk factors to the attainment of the continent's Sustainable Development Goals. It is seen as an obstacle to the eradication of poverty and the general socioeconomic development of Africa. Due to the secretive nature of corruption, it is difficult to quantify in terms of the monetary value. The 2015 cost of bribes paid worldwide was estimated at a minimum of 1 trillion US dollars and the 2016 estimate cost of money flowing out of Africa per annum due to corruption was put at between 859 US dollars and 1.06 trillion US dollars.

The purpose of UNCAC was discussed in terms of its preventive measures, the criminalisation of corruption and law enforcement. UNCAC serves as an international legal framework for governments and citizens to refer to in making efforts to strengthen their governance institutions and to tackle the corruption problem. Even though there are certain articles of the Convention that require mandatory implementation by signatories, the Convention respects and reflects that countries are sovereign and governed according to different systems and principles. The common theme of UNCAC is the promotion of the participation of society in anti-corruption measures, a reflection of the principles of the rule of law, proper management of public affairs, proper management of public property, integrity, transparency and accountability. The establishment of anti-corruption agencies and the development of anti-corruption policies in line with UNCAC were established as important for the success of anti-corruption programmes.

In terms of selected aspects of successful anti-corruption programmes, writings on the successful implementation of anti-corruption initiatives highlight the importance of good governance and the presence of political will to successfully fight corruption. The definition of governance as developed by Kaufmann et al. (2010:4) was accepted as it forms the basis of the WGI which was used to establish the progress over time for the country comparison in this study. Transparency, accountability and integrity were found to be important aspects to address within the concept of governance.

Brinkerhoff's (2000) groundbreaking work on political will was used as the foundation for further discussions. Political will was therefore defined as the commitment of actors to undertake actions to achieve a set of objectives and to sustain the costs of those actions over time (Brinkerhoff, 2000:242). The measurement of political will was discussed against the work of Brinkerhoff (2000). It was established that the accurate measurement of political will is subjective and difficult, but that the Brinkerhoff template for the measurement of political will can and has been used successfully. According to the original work by Brinkerhoff (2000:242), political will can be measured by five characteristics or indicators, namely the locus of initiative, degree of analytical rigour, mobilisation of support, application of credible sanctions and the continuity of effort. This was later expanded to include public commitment and allocation of resources and learning and adaptation.

Regarding the measurement of corruption and governance, the use of aggregate measurement tools was accepted despite some criticism specifically about the objectivity of the results. The use of the CPI and WGI was explained based on their suitability to measure corruption and governance at a macro level and their suitability and accuracy for cross-country analysis over time. The use of the results of these measuring instruments to determine the success or failure of countries' anti-corruption programmes over time can thus be done with a high level of confidence.

CHAPTER 3
RWANDA'S ANTI-CORRUPTION PROGRAMME

3.1   Introduction

Rwanda made international headlines in 1994 when mass killing of between 800,000 and one million Tutsis and moderate Hutus occurred over a 100 days period between April and July as part of a civil war that had been ongoing in the country since 1990. After peace was brokered by the international community, Rwanda endorsed a new Constitution in May 2003 and held its first multiparty elections in September 2003. Today, the country is a republic with a multiparty democratic system of governance.

In 2000, Rwanda launched its Vision 2020 which was aimed at fundamentally transforming the country into a middle-income country by 2020 (Republic of Rwanda, 2000:11). Pillar one of the Rwanda Vision 2020 sets the country the goal of achieving good governance and being a capable state by 2020 (Republic of Rwanda, 2000:13). Republic of Rwanda's (2000:30) Vision 2020 also identifies corruption as a historical problem and the need to fighting it in order to achieve the set goals.

According to Bozzini (2013:6) Rwanda's control of corruption plays an important part in the country's governance agenda and has been so successful in countering corruption that Rwanda is seen as "a success story in the fight against corruption" and a model for other countries.

According to TI's CPI, Rwanda's score out of 100 (100 being no corruption) has improved from 28 in 2007 to 55 in 2017 (Transparency International, 2018). In terms of the WGI's control of corruption factor (where zero is the lowest ranked and 100 the highest ranked), Rwanda scored 58 in 2007 and 72 in 2017 (World Bank, 2018). These scores confirm Bozzini's view of Rwanda's success in the fight against corruption and as a leader in combating corruption on the African continent (USAID, 2013:331).

This chapter on Rwanda's anti-corruption programme will discuss the extent of corruption in the country, Rwanda's anti-corruption legislative framework and anti-corruption institutions, compliance with UNCAC, as well as the country's political will to fight corruption.

3.2   Extent of corruption

The true extent of corruption in Rwanda is not known. Bozzini (2013) argues that the Rwandan government's lack of transparency, restrictions on the role of civil society in anti-corruption programmes, the lack of press freedom and the close link between government and government-owned businesses make it difficult to assess the true picture of corruption in Rwanda. Oyamada (2017:254) confirms these concerns and identifies them as future challenges for Rwanda's fight against corruption.   As confirmation of the lack of knowledge of the true extent of corruption in Rwanda, Chêne (2008:6) states that the Office of the Rwandan Ombudsman argued that legally there is nothing that makes the publication of corruption cases involving top government official compulsory and thus very little is known about corruption at that level.

As a result of these challenges, Bozzini (2013:9) states that the Rwandan people are mostly concerned about bribery as it can affect their daily lives directly which leaves other forms of corruption out of the public debate. Even though Bozzini (2013:22) claims that there is no evidence that the Rwandan state has been captured, the author does warn about the potential risk that the blurring of lines between the government, the ruling party and the private sector holds for the country. According to Bozzini (2013:27), due to the overwhelming majority of the ruling party in all aspects of Rwandan life, political corruption remains a concern due to the risk of preferential treatment and influence. Open Society Foundations (2017:5) confirms this concern and states that the extent of grand corruption, specifically nepotism and favouritism, is difficult to estimate, but that "nepotism may be significant within the private sector in Rwanda".

Despite Rwanda's remarkable improvement in its perceived level of corruption and control of corruption scores, Open Society Foundations (2017:3) states that "State and non-state actors widely agree that corruption in Rwanda is still a cause for concern.".

Republic of Rwanda (2012a:5) confirms this as it identifies corruption in public finance management, public procurement, human resource management, traffic police, justice sector, land service offices, customs, the issuing of licenses and construction permits, law enforcement, regulatory institutions, and the private sector as potential risks for the country's anti-corruption drive. The most common types of corruption within these sectors include the embezzlement of public funds, fraudulent procurement practices, nepotism and the general abuse of office and power.

According to Open Society Foundations (2017:3), Transparency International Rwanda's Bribery Index indicated that 67.2% of citizens perceived corruption to be low in 2011 and 17.9% perceived it as moderate in 2013 (the 2011 version did not have moderate as a choice). The corresponding scores for 2017 were 39.1% for the low perception of the level of corruption and 24.6% for the moderate perception of the level of corruption (Transparency International Rwanda, 2017:15). The low perception of the level of corruption in Rwanda has thus decreased by 28.1 percentage points between 2011 and 2017 while the medium score increased by 6.7 percentage points between 2013 and 2017. These scores indicate a move to a higher perceived level of corruption in Rwanda despite the countries perceived gains in the fight against corruption.

In terms of encountering a bribe whilst interacting with a service provider, the score increased from 12.6% in 2012 to 23.9% in 2017 (Transparency International Rwanda, 2017:17). Of these encounters, the traffic police (11.67%), electricity (9.19%), private sector (9.06%), universities (8.22%) and local government (7.78%) were the sectors most prone to bribery. Though these bribes are mostly administrative (petty) in nature, the Rwanda Energy Group (REG), a government-owned holding company, has been admonished by the Auditor-General for "reckless expenditure of public monies, flouting tendering and procurement procedures, breaching recruitment policies and mismanagement of projects" (Transparency International Rwanda, 2017:21).

In terms of trends over time in key institutions like the police, local government, judiciary and private sector, Transparency International Rwanda (2017:24) made the following observations. Whilst bribery in connection with the police service remained around 8% between 2010 and 2017, it increased in the other three institutions. The

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prevalence of bribes at local government increased from 0.5% to 4.9%, from 0.6% to 4.7% in the judiciary, and from 3.2% to 7.3% in the private sector.

In terms of the total monetary value of the bribes paid in 2017, Transparency International Rwanda (2017:26) reported that local government (30%) and the police (28%) made up 58% of the value with banks (14%) and the Rwandan Revenue Authority (11%) other noticeable contributors to the total value of bribes paid in 2017. Local government bribes reported in 2017 included bribes for forest harvesting permits, awarding of tenders, getting GIRINKA cows, execution of judgments, construction/renovation permits, and livestock veterinary treatment (Transparency International Rwanda, 2017:23).

Regarding the reporting of corruption by the Rwandan population, the 2017 Rwandan Bribery Index shows that a staggering 85% of people who encountered corruption would not report it (Transparency International Rwanda, 2017:28). The main reason for the low level of corruption reporting is that citizens have a low expectancy that the reported case will be resolved (action taken).

3.3   Anti-corruption legislative framework

Rwanda has ratified the United Nations Convention against Corruption, as well as the Africa Union Convention on Preventing and Combating Corruption. It has also signed the East African Community Treaty which takes a strong stance against corruption (Open Society Foundations, 2017:7). As signatories to the international and regional treaties, Rwanda is expected to enact certain provisions into their domestic law.

According to Open Society Foundations (2017:8), Rwanda implemented their international anti-corruption obligations through a "robust legal framework and national guidelines, which are part of the sophisticated institutional infrastructure". Chêne and Mann (2011:7) and Open Society Foundations (2017:8) state that Rwanda has a strong and comprehensive legal framework to deal with corruption.

Rwanda's 2012 National Anti-Corruption Policy is currently the overarching policy for the co-ordination of the anti-corruption programme.   Besides stating Rwanda's

approach to fighting corruption, the policy also identifies the Office of the Ombudsman as the institution responsible for the effective implementation of the policy. According to Republic of Rwanda (2012a:3), the Rwandan National Anti-corruption Policy represents Rwanda's commitment under Vision 2020, a vision that aims to achieve sustainable development and uplift the people of Rwanda through good governance and preventing and fighting corruption. Republic of Rwanda (2012a:6) states that the vision of the anti-corruption policy is to "make Rwanda a country free of corruption while promoting integrity and good governance". It is noteworthy that the first objective listed in the Rwandan National Anti-corruption Policy is that of effective political leadership, an important part of Rwanda's success against corruption that will be discussed later in this chapter. The policy is applicable to everyone from government institutions, government run businesses and projects, provincial administrations, the private sector, civil society and normal citizens (Republic of Rwanda, 2012a:6).

In Rwanda, corruption is defined under Organic Law number 01/2012/OL of 02/05/2012, which establishes the penal code. This law also establishes what is punishable in terms of corrupt acts. Article 633 of the law defines corruption as follows:

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

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

e. requiring, receiving or accepting to receive a gift in cash or any other illegal benefit for the provision of a service in an unlawful way or to be rewarded once the service is provided or the act is done either by the recipient or an intermediary (Republic of Rwanda, 2012b:516).

Organic Law number 01/2012/OL of 02/05/2012 also clearly defines public service, civil servant and public entities as done in UNCAC. For the detailed definition of these concepts, see Republic of Rwanda (2012b:518).

A concern that has been raised by the Office of the Ombudsman of Rwanda and highlighted during a 2013 review of Rwanda's implementation of the United Nations Convention against Corruption, is that the Rwandan definition of corruption does not include embezzlement (theft from the employer by the employee) as a crime that can be prosecuted under anti-corruption legislation. As such, the Office of the Ombudsman, which is the prime anti-corruption institution in the country, has no jurisdiction to investigate cases of embezzlement (Open Society Foundations, 2017:7).

Open Society Foundations (2017:8) states that a full list of laws and legal provisions with an anti-corruption element in Rwanda includes the following:

- The Constitution of the Republic of Rwanda of 2003, modified in 2015;
- Organic Law No. 01/2012/OL of 02/05/2012, instituting the penal code;
- Law No. 76/2013 of 11/09/2013, determining the mission, powers, organisation and functioning of the Office of the Ombudsman;
- Organic Law No. 61/2008 of 10/09/2008 on the leadership code of conduct;
- Law No. 23/2003 of 07/08/2003, on the prevention, suppression and punishment of corruption and related offences;
- Law No. 47/2008 of 09/09/2008, on preventing and penalizing the crime of money-laundering and financing terrorism;

- Law No. 12/2007 of 27/3/2007, on public procurement as modified and complemented by Law No. 05/2013 of 13/02/2013;
- Law No. 35/2012 of 19/09/2012, relating to the protection of whistle blowers;
- Law No. 04/2013 of 08/02/2013, relating to access to information; and
- Organic Law No. 037/2006 of 12/09/2006, on state finances and property (2017:8)

Through Rwanda's signing of UNCAC, the country has affected a comprehensive anti-corruption legal framework. It defines corruption, public service, civil servant, public entities and states which acts are punishable under the anti-corruption legislation. It also establishes the Office of the Ombudsman as the country's anti-corruption agency and addresses key anti-corruption aspects such as codes of conduct, public procurement, state finances, access to information and the protection of whistle blowers. One critique of the Rwandan anti-corruption legislative framework is that embezzlement is not considered a crime punishable under anti-corruption legislation. Rwanda's comprehensive anti-corruption legal framework will be useless if they cannot be enforced by credible institutions. The following section analyses institutions responsible for enforcing the law.

3.4   Anti-corruption institutional framework

Rwanda's anti-corruption legal framework supports a sophisticated institutional infrastructure lead by the Office of the Ombudsman of Rwanda. The anti-corruption institutional framework can be divided into enforcement institutions and oversight institutions (Republic of Rwanda, 2012a:7) and as such gives Rwanda a decentralised approach to addressing corruption.

The Office of the Ombudsman is an independent public institution which was established in 2003 through article 182 of the Constitution with its mission, powers, organisation and functioning being dictated by Law No. 76/2013 of 11/09/2013 (Office of the Ombudsman of Rwanda, 2015:4). The Office of the Ombudsman is the most important part of Rwanda's anti-corruption institutional framework in terms of preventing and combating corruption (United Nations, 2013:2). It is a Type B anti-

corruption agency as it performs both corruption and non-corruption-related functions (Quah, 2017a:279) or, as stated by Office of the Ombudsman of Rwanda (2015:5), the fact that it handles cases related to the traditional role of an ombudsman and acts as an anti-corruption agency, gives the Office of the Ombudsman of Rwanda a hybrid character.

The mandate of the Office of the Ombudsman is wide-ranging in terms of anti-corruption measures, but the interpretation of the application of the laws governing the mandate results in the mandate being difficult to implement (Open Society Foundations, 2017:17). Office of the Ombudsman of Rwanda (2015:4) lists the following anti-corruption functions to be executed, as provided by the laws governing the institution.

- Act as a link between the citizen and public and private institutions.
- Prevent and fight injustice, corruption and related offences in public and private entities.
- Receive and examine complaints and mobilise institutions to resolve them.
- Co-ordinating the National Council against corruption and injustice.
- Receive annually declaration of assets from persons determined by the law.
- Receive annually declarations of assets of political organisations and verify their origin and use.
- Advise Cabinet and institutions on strengthening and improving policy of preventing, fighting and punishing corruption.
- Follow up the implementation of the policy of prevention and fighting injustice and corruption.
- Follow up the respect of the leadership code of conduct of senior officials.
- Sensitise the population and train employees of public and private institutions to refrain from corruption.
- Sensitise the population to work together with public and private institutions to build the country and dare to denounce bad practices based on injustice, corruption and related offences.
- Contribute to strengthening good governance.

- Make public list of persons definitively convicted for corruption.
- Advise public and private institutions as to the improvement of the quality of services delivered to the population.
- Follow up the enforcement of the law relating to access to information.

The mandate is extensive, but with only 78 staff members it is probably difficult to fully execute the mandate (Quah, 2017a:281). In order to achieve its mandate and execute the allocated functions, the Office of the Ombudsman has a corruption prevention unit, fighting against corruption special unit, preventing and fighting injustice unit, declaration of assets unit, monitoring of incompatibilities and interdictions of senior officials unit, court judgment review unit and an administration and finance unit (Office of the Ombudsman of Rwanda, 2015:5).

The corruption prevention unit analyses corruption related information, conducts surveys, conducts corruption awareness campaigns, does audits, organises the national annual anti-corruption week and co-ordinates the Secretariat of the National Advisory Council (Office of the Ombudsman of Rwanda, 2015:5). According to Open Society Foundations (2017:20), the Office of the Ombudsman utilises the media (radio, television and websites) extensively in its anti-corruption campaigns and to promote its mandate. It also makes use of popular national artists to communicate anti-corruption messages, a quarterly magazine, anti-corruption debates at universities and football competitions with an anti-corruption theme.

The fighting against corruption special unit mainly investigates corruption cases received by the Office of the Ombudsman. Open Society Foundations (2017:16) states that investigations are normally conducted by the police's Criminal Investigation Department and the prosecution of corruption related cases by the National Public Prosecution Authority (the Office of the Ombudsman does not prosecute any offences). It also highlighted the fact that only corruption falls under the mandate of the Office of the Ombudsman and that the Criminal Investigation Department investigates all economic-related crimes including corruption, embezzlement, fraud, and forgery. Note that the Rwandan definition of corruption does not allow for embezzlement to be prosecuted under anti-corruption legislation, something that the

Office of the Ombudsman has voiced its dissatisfaction with repeatedly (Open Society Foundations, 2017:7).

The preventing and fighting injustice unit analyses injustice cases, makes recommendations on disputes, organises cybercafé activities (used for whistle blowing), works with schools and university anti-corruption clubs and conducts awareness training (Office of the Ombudsman of Rwanda, 2015:6).

According to Open Society Foundations (2017:6), the declaration of assets unit receives and verifies annual declaration of assets from people and political organisations as determined by law, the monitoring of incompatibilities and interdictions of senior officials unit monitors the implementation of the leadership code of conduct, as well as access to information. The court judgment review unit reviews final decisions in respect to injustice cases and the administration and finance unit's function is to provide support to the other units in order for them to function optimally.

There are several other institutions that play a role in Rwanda's anti-corruption programme. The main body responsible for the co-ordination of the anti-corruption effort is the National Anti-Corruption Advisory Council. According to United Nations (2013:2), the National Anti-Corruption Advisory Council is made up from representatives from the Office of the Ombudsman (chairmanship), the National Public Prosecution Authority, the Supreme Court, the National Intelligence and Security Service, the Rwanda National Police, the Ministry of Local Government and the Ministry of Justice. The purpose of the Council is to "facilitate the exchange of information on corruption between the various anti-corruption institutions in order to prevent collusion and to determine their collective tasks and responsibilities" (Open Society Foundations, 2017:6).

Institutions that have a mandated anti-corruption function over and above their other duties are the Rwanda National Police (Criminal Investigation Department), the National Public Prosecution Authority, the Auditor General of State Finances, National Bank of Rwanda, the Financial Intelligence Unit (money-laundering and of the financing of terrorism), the Rwanda Public Procurement Authority and the Independent Review Panel on Public Procurement (United Nations, 2013:2). Oyamada (2017:252)

and Chêne and Mann (2011:8) also list the Rwanda Revenue Authority as an institution that has an anti-corruption function over and above its normal functions.

3.5   Compliance with UNCAC

Rwanda's anti-corruption measures cover the scope of UNCAC in that it addresses the prevention, investigation and prosecution of corruption, as well as asset recovery. The country's implementation of UNCAC was reviewed in 2013 and the detailed findings of the review are found in United Nations (2013). As the review focussed more on Chapter III of UNCAC, this section focusses more on the country's compliance with the preventative measures as contained in Chapter II of UNCAC.

Some of the successes and good practices mentioned in the 2013 review are the work done by the Office of the Ombudsman in "preventing corruption and raising awareness of corruption" and the "system of declaration and verification of assets" (United Nations, 2013:9). The review also praises the role of the National Anti-Corruption Advisory Council in co-ordinating the activities of the different anti-corruption institutions in order to avoid confusion regarding their roles and activities. The publication of a list of people convicted of acts of corruption on the website of the Office of the Ombudsman of Rwanda was also highlighted as a positive aspect as it helps the public service to not appoint such persons.

The review identified some challenges with the implementation of UNCAC in Rwanda. United Nations (2013:9) mentions that there are discrepancies between Law No. 23/2003 of 07/08/2003, on the prevention, suppression and punishment of corruption and related offences and the Convention. This is attributed to the fact that the Rwandan anti-corruption law was published before UNCAC. The review, however, states that Rwanda has identified the shortcomings and was in the process of addressing the discrepancies. One of these discrepancies refers to the act of embezzlement (Article 17), where Rwandan law does "not provide for acts benefiting a third person or entity" and "embezzlement of property in the private sector was only partly covered" (United Nations, 2013:4). The other shortcoming refers to Law No. 47/2008 of 09/09/2008, on preventing and penalizing the crime of money-laundering and financing terrorism. The review found that Article 25 (obstruction of justice) was

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not fully adhered to as the interference in the production of evidence was not specifically catered for, and that confiscation measures should be supplemented (United Nations, 2013:5).

3.5.1 Preventative measures

In terms of the preventative measures found in *Chapter II* of UNCAC, Rwanda complies with Article 5 of UNCAC which states that countries should implement anti-corruption policies and practices. Even though the country has implemented anti-corruption measures, part of Article 5(1) refers to the participation of civil society and transparency in anti-corruption measures. This, as will be discussed later in the chapter, seems to be lacking in Rwanda's implementation of Article 5. Rwanda complies with Article 6 as it has established an anti-corruption agency and has structures in place to fight corruption. The country has strong corruption awareness campaigns, but this will be discussed under the section dealing with political will. Article 6(2) describes the Convention's desire that the structures that must fight corruption in a country should have the necessary independence and be free to do their work effectively and without unnecessary influence. According to Bozzini (2013:16) and Oyamada (2017:257), the independence of the Office of the Ombudsman, the Office of the Auditor General and the judiciary in general is a cause for concern. According to Article 7, the public service must be governed based "on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude" (United Nations, 2004:10). The Rwandan government has introduced a merit system for the appointment of public servants, as well as making their salaries more competitive (Oyamada, 2017:252). However, transparency in Rwanda is low as confirmed by the WGI. Rwanda has only been able to improve their WGI score for voice and accountability (which points to transparency) from 11 in 2007 to 16 in 2017 (World Bank, 2018). According to Bozzini (2013:24), "the government provides the public with scant information on the national government's budget and financial activities" which makes it difficult for "citizens to hold the government accountable for its management of the public's money". Bozzini also states that it is noteworthy that Rwanda is the least corrupt country in East Africa, yet is the region's least transparent. Rwanda ranked 156th out of 180 countries in the world for press freedom according to Reporters Without Borders' Press Freedom Index for 2018 (SA ranks third in media

freedom, 2018). Rwanda implemented Article 8, as codes of conduct for public officials, ways to report corruption, as well as policies on the declaration of interest are in place. The country accedes to Article 9 as it has approved laws governing procurement and financial management within the public and private sectors, but the limited transparency in the country makes it difficult to measure the effectiveness of these policies (Bozzini, 2013:24; Oyamada, 2017:254). The same applies to Article 10 (public reporting), as Rwanda has an access to information law, but the implementation thereof is questionable. As previously stated, there are concerns about the independence of certain government institutions in Rwanda. However, legally Rwanda is in line with Article 11 (independence of the judicial and prosecuting systems) as the independence within the judicial and prosecuting systems are written into the law (Chêne, 2008:4; Chêne & Mann, 2011:8). Rwanda conforms to Article 12 which is about preventative measures for the private sector as the Rwanda Anti-Corruption Policy applies to the private sector (Republic of Rwanda, 2012a:6). Legally Rwanda adheres to Article 13 which highlights the importance of civil society in a country's anti-corruption process (Republic of Rwanda, 2012a:9). However, Bozzini (2013:15) states that non-government organisations and civil society in Rwanda play a limited role in Rwanda's fight against corruption. Rwanda accedes to Article 14 (prevention of money laundering) as stipulated in Law No. 47/2008 of 09/09/2008 on preventing and penalizing the crime of money-laundering and financing terrorism.

3.5.2   Criminalisation and law enforcement

The Criminalisation and Law Enforcement Articles contained in *Chapter III* of UNCAC are covered by Rwanda's strong and comprehensive legal framework to deal with corruption. Rwanda complies with all the compulsory Articles (as listed in Table 2.2), but only partly with Articles 17 (embezzlement) and 25 (obstruction of justice) as previously mentioned. In terms of Article 30(1), which deals with the gravity of sanctions imposed on people found guilty of corruption, Oyamada (2017:255) is of the opinion that the application of sanctions is skewed and in certain cases too severe. This will be dealt with under the discussion on political will in section 3.6.

3.5.3   Summary of compliance with UNCAC

In terms of the mandatory actions that UNCAC expects from signatories under Chapters II (preventative measures) and III (criminalisation and law enforcement) of the Convention, Rwanda adheres to all the Articles besides that of Articles 17 and 25. In terms of preventative measures, Rwanda legally adheres to all the Articles in Chapter II, but there are concerns over issues relating to transparency, independence and the role of civil society in the country's anti-corruption programme. The application and gravity of sanctions for corruption related offences under Chapter III are also a concern.

3.6   Political will

Rwanda's political will to initiate and sustain its anti-corruption efforts has been identified as perhaps the biggest contributor to its success in fighting corruption (Chêne, 2008; Bozzini, 2013; Pillay & Khan, 2015; Open Society Foundations, 2017; Oyamada, 2017; Quah, 2017a).

The *locus of initiative* factor of political will refers to at what level of government or society the input or origin for an anti-corruption programme lies. The higher up in government it lies, the stronger the political will. Open Society Foundations (2017:2) states that the anti-corruption programme is frequently linked to the President, Paul Kagame, who became president after the 2003 elections. He is credited for his firm stance against corruption which led to the country's robust institutional architecture, as well as the denouncement of corruption at all levels. According to Oyamada (2017:258), President Kagame has "continuously positioned anti-corruption policies as a priority of his development plans since assuming office". Rwanda's anti-corruption programme thus originated from the very top echelon of government. Bozzini (2013:27) confirms Rwanda's top-down approach to fighting corruption. This factor scores high in the assessment.

The *degree of analytical rigour* refers to how in-depth the analysis of the corruption problem was done in order to ensure an effective anti-corruption effort. The better the understanding of the problem, the higher the demonstrated political will will be. No

proof could be found that Rwanda did a fully-fledged analysis of the extent of corruption in the country before embarking on its anti-corruption drive. Republic of Rwanda (2012a:7) confirms that Rwanda did not know the true extent, the forms or the causes of corruption in the country when drafting its anti-corruption policy. However, Quah (2017a:279) posits that corruption "was widespread in Rwanda under the late President Juvénal Habyarimana (5 July 1973 to 6 April 1994)" and that this had a strong influence on President Kagame's zero tolerance for corruption and the establishment of the Office of the Ombudsman. This factor scores low in the assessment.

Mobilisation of support deals with the ability of the anti-corruption programme initiator to harness support for the programme. If the reform process is done in isolation, the political will will be lower than if all relevant stakeholders were involved. Article 13 of UNCAC discusses the importance of the participation of civil society in corruption prevention measures and the importance of their voice in the decision-making process. According to Bozzini (2013:15), non-governmental organisations and civil society in Rwanda play a limited role in Rwanda's fight against corruption as they have limited independence from political power. Rwanda's anti-corruption programme is seen as a very top-down approach which "is unlikely to be sustainable in the long term, as it stems from a number of individual leaders rather than being rooted in strong institutions, transparency mechanisms and citizen participation" (Bozzini, 2013:27). Even though civil society may not play an active role in the role out of Rwanda's anti-corruption programme, Office of the Ombudsman of Rwanda (2015:12) acknowledges that to "effectively fight corruption in the country, the youth as the future leaders have to be fully involved in the process." In this regard, the creation of anti-corruption clubs at schools and universities is encouraged and many awareness campaigns are held. These include an anti-corruption week, youth anti-corruption days and anti-corruption football competitions (Open Society Foundations, 2017:4). This factor scores low in the assessment, due to the fact that the absence of a strong civil society and non-governmental organisations may hamper the continued success of Rwanda's anti-corruption programme.

The *application of credible sanctions* relates to the identification and enforcement of suitable sanctions for non-adherence to laws and regulations across all levels of

society. The inconsistent application of sanctions will point to a weaker political will. As stated, Rwanda has strong anti-corruption laws and institutions and there is no doubt that people are held accountable for corrupt actions. Kukutschka (2018:9) states that Rwanda implements its zero tolerance for corruption at all levels of the public sector and that 503 members of the judiciary were dismissed in 2004, "allegedly for corruption and incompetence related matters". Chêne (2008:4) refers to several high-ranking officials who had been forced to resign, were dismissed or prosecuted during 2005 and 2006. Chêne and Mann (2011:6) state that public servants found to be corrupt are dismissed at all levels of public service. As an example, the authors refer to the dismissal of 62 police officers in 2007. Transparency International Rwanda (2017:20) reports that 198 police officers were dismissed in 2017. Chêne and Mann (2011:6) share Kukutschka's statement of "allegedly for corruption and incompetence related matters", as the authors state that it is difficult to determine whether the prosecution of senior officials is "legitimate or politically motivated". Bozzini (2013:15) concurs that the law is mostly applied to lower levels when stating that "individual cases of corruption often make the headlines, but politically sensitive issues, or cases involving the top leadership of the country, are completely missing." The author also argues that the legitimacy of convictions of senior government officials is hard to determine, as little is known about these cases due to low levels of media freedom in Rwanda. According to Oyamada (2017:255), there seems to be a skewed application of corruption related sanctions. The author uses statistical data from 2010 to 2015 to illustrate how the vast majority of corruption convictions (71%) are for small bribes up to US$62 and that businessmen only accounted for 5.1% of corruption related cases. The author also argues that the sentences handed down for petty corruption are too severe by using a five-year jail sentence for a US$0.62 bribe, a five-year jail sentence for a US$2.50 bribe and a 15-year jail sentence for a bribe of US$21 as examples. Bozzini (2013:16) states that "while it is true that anti-corruption laws and policies are vigorously enforced and punishments are harsh, it remains questionable whether this also applies to top politicians, well-connected entrepreneurs or high-ranking army officers." Oyamada (2017:257) is of the opinion that the Rwandan government is more eager and determined "to curb administrative corruption than it is to tackle political corruption". Rwanda's political will to consistently enforce sanctions across all levels of society is questionable as it seems to be more focussed on petty corruption. When sanctions are applied to higher levels of government and society, it is often not clear

whether there are ulterior motives (political) for such sanctions. The application of sanctions for petty corruption also appears to be unsuitable for the level of crime committed, even though it can be argued that it serves as a deterrent to abstain from corruption. This factor scores low in the assessment.

Continuity of effort relates to the continued focus on the outcome of the reform process and the allocation of suitable resources to sustain it. A simple launch of an anti-corruption programme without the necessary resources will indicate an unwillingness to address the problem of corruption. The government of Rwanda, and more specifically the President, consistently reminds the administration of the zero tolerance to corruption at all levels (Open Society Foundations, 2017:2). Oyamada (2017:258) states that President Kagame continues to prioritise Rwanda's anti-corruption policies as a key to his development plans under Vision 2020. Under his leadership, the effectiveness of the anti-corruption programme has been reviewed and the programme is widely communicated to all levels of society. Top politicians also often include integrity and the zero tolerance to corruption when they address the public (Bozzini, 2013:7). The lack of transparency in the country is rightfully questioned, especially when one considers the continuity of effort. The fact that Rwanda's WGI score for voice and accountability only improved from 11 to 16 between 2007 and 2017 raises serious concerns when considering that Rwanda made enormous improvements in the scores of all the other WGI factors over the same period, as illustrated in Table 4.1 (World Bank, 2018). If all other governance issues improved substantially under the leadership of President Kagame, it would seem fair to assume that the low levels of transparency and media freedom in Rwanda are a deliberate strategy by President Kagame and his government. Even though one should probably praise Rwanda for the continuity of effort in keeping transparency very low over time, it begs the question: What is Rwanda hiding from its citizens and the world, and why? In terms of the allocation of resources, Open Society Foundations (2017:14) states that the budget of the Office of the Ombudsman has been declining since the financial year 2011/12, something that has been highlighted to higher authority. Even though the Office of the Ombudsman staff members are well qualified and appointed on merit, the institution's post structure is not enough for the workload that it receives. The Office of the Ombudsman thus struggles to meet its objectives and mandated functions with "its limited financial and human resources" (Open Society Foundations,

2017:16). This factor scores medium in the assessment, as there is a continued focus on the outcome of the reform process, but the allocation of suitable resources is hampering the effectiveness of the reform process. The perceived determination to keep transparency as low as possible also negatively impacts the score.

Table 3.1: Rwanda's WGI scores for 2007 and 2017

WGI Factor	Rwanda	
	2007	2017
Voice and Accountability	11	16
Political Stability and Absence of Violence/Terrorism	32	48
Government Effectiveness	50	63
Regulatory Quality	27	61
Rule of Law	35	59
Control of Corruption	58	72

Source: World bank 2018

Public commitment and allocation of resources measures the extent to which the decision-makers make the anti-corruption programme and its objectives public and allocate sufficient resources to achieve the objectives. Rwanda's strong focus on communicating the anti-corruption policy and the zero tolerance to corruption has already been highlighted. Besides extensive use of all kinds of media and organising awareness campaigns, the government's goals in terms of its zero tolerance policy are often communicated by members of the government, including the President. Unfortunately, it seems as if the necessary resources are not provided to fully execute the country's anti-corruption programme. The Rwandan government should, however, be complimented for introducing a merit system for the appointment of public servants, as well as making their salaries more competitive, in line with Article 7 of UNCAC (Oyamada, 2017:252). Unfortunately, there are still concerns about the independence of the Office of the Ombudsman, the Office of the Auditor General and the judiciary, something that is emphasised in Articles 6 and 7 of UNCAC (Bozzini, 2013:16; Oyamada, 2017:257). This factor scores medium in the assessment, as there is a clear will to make the anti-corruption programme and its objectives public, but once again the allocation of suitable resources is hindering the achievement of the anti-corruption programme, even though the country has introduced a merit system and

increased the salaries of its employees. The concerns about the independence of certain anti-corruption institutions also negatively affect this indicator of political will.

The *learning and adaptation* indicator refers to the level of monitoring that is done to determine the efficiency of the efforts and to make changes where necessary. Rwanda's compliance to UNCAC was reviewed in November 2013 and United Nations (2013) mentions various improvements that Rwanda had made or was in the process of making in order to increase the effectiveness of its anti-corruption drive. Rwanda's anti-corruption policy specifically refers to the importance of assessing and reviewing the effectiveness of the anti-corruption programme and policy (Republic of Rwanda, 2012a:16). The country's drive to improve its anti-corruption legislative framework is evident from the fact that, at the time of writing, an updated version of Law No. 23/2003 of 07/08/2003 on the prevention, suppression and punishment of corruption and related offences had been submitted to parliament for approval. This factor scores high in the assessment.

3.7   Conclusion

The true extent of corruption in Rwanda is not known due to low levels of reporting and low levels of transparency and press freedom. Despite Rwanda's remarkable improvement in the perceived level of corruption in the country, bribery has been increasing and corruption is still a cause for concern. The country's anti-corruption campaign focusses mainly on petty corruption even though there is a definite risk of grand corruption due to the blurring of lines between the government, the ruling party and the private sector.

Rwanda started their anti-corruption programme after corruption was identified as a key area to address in its Vision 2020 which was launched in 2000. The country has a strong and comprehensive legal framework to deal with corruption which follows a decentralised approach. The National Anti-Corruption Policy is the overarching policy for the co-ordination of the anti-corruption programme. Besides stating Rwanda's approach to fighting corruption, the policy also identifies the Office of the Ombudsman as the institution responsible for the effective implementation of the policy. There are ten legal documents that govern Rwanda's fight against corruption that address key

anti-corruption aspects such as codes of conduct, public procurement, state finances, access to information and the protection of whistle blowers.

Rwanda has a sophisticated institutional infrastructure led by the Office of the Ombudsman of Rwanda as a Type B anti-corruption agency. Besides the Office of the Ombudsman, nine other institutions have anti-corruption functions. They are the National Anti-Corruption Advisory Council, the Rwanda National Police (Criminal Investigation Department), the National Public Prosecution Authority, the Auditor General of State Finances, National Bank of Rwanda, the Financial Intelligence Unit, the Rwanda Public Procurement Authority, the Independent Review Panel on Public Procurement and the Rwanda Revenue Service.

A review of Rwanda's implementation of UNCAC indicated that the country has a high level of compliance to the Convention, but pointed out that embezzlement needs to be addressed as a crime punishable under anti-corruption legislation, as well as address its compliance with Article 25 (obstruction of justice). In terms of preventative measures, there are concerns over issues relating to transparency, independence and the role of civil society in the country's anti-corruption programme. The application and gravity of sanctions for corruption related offences under Chapter III of UNCAC are also a concern.

According to Brinkerhoff's seven factors of political will, Rwanda displays a medium level of political will in its fight against corruption. The locus of initiative for the anti-corruption programme and the learning and adaptation factor of political will are high. The application of credible sanctions, continuity of effort, public commitment and allocation of resources are medium, whereas the degree of analytical rigour and mobilisation of support are low.

In response to the first secondary research question of "what is the driving force behind Rwanda's perceived successful anti-corruption programme?", the following has been determined. Rwanda has a solid foundation for fighting corruption in its strong and comprehensive legal framework to deal with corruption. It has a National Anti-Corruption Policy which is the overarching policy for the co-ordination of the anti-corruption programme. The Office of the Ombudsman, a Type B anti-corruption

agency, is the most important part of Rwanda's anti-corruption institutional framework in terms of preventing and combating corruption and has a wide-ranging mandate in terms of anti-corruption measures. From a strategic level, Rwanda has one body that is responsible for the co-ordination of the anti-corruption effort of all the institutions with an anti-corruption output, being the National Anti-Corruption Advisory Council. In terms of the implementation of UNCAC, the country has strong corruption awareness campaigns that widely communicate the anti-corruption programme to all levels of society. Rwanda displays a medium level of political will in its fight against corruption. The learning and adaptation factor is seen as one of the strengths of Rwanda's political will to fight corruption. Even though the public commitment and allocation of resources factor scored medium, Rwanda's public awareness campaigns are seen as very positive.

In spite of Rwanda's anti-corruption success, there can be no doubt that President Kagame, if he so wishes, could address the areas for improvement (transparency, freedom of the media, independence of anti-corruption institutions, involvement of civil society and aspects of political will) in order for Rwanda to improve their fight against corruption.

CHAPTER 4
SOUTH AFRICA'S ANTI-CORRUPTION PROGRAMME

4.1   Introduction

South Africa had an atrocious history of human rights abuses where non-white citizens were denied the right to vote and a system of racial segregation known as apartheid was enforced. However, after years of struggle, South Africa held its first democratic elections on 27 April 1994 and endorsed its new Constitution in October 1996. The country is a constitutional democracy with a multi-party system.

After an initial euphoria that gripped the country after the 1994 elections and the Mandela era, issues such as high levels of corruption, poor governance and poor service delivery have become regular features in the media, despite claims of the country's good governance and sound fundamentals (Pillay & Khan, 2015:7). In order to address key issues hampering the growth and development of South Africa, the National Development Plan Vision 2030 was launched in 2012. It is a comprehensive document which has growth and development and the reduction in levels of poverty and inequality at its core. Widespread corruption was identified as one of nine challenges that the country would have to address to reach its goals for 2030 and was seen as important enough to dedicate an entire chapter to the achievement of South Africa's zero tolerance to corruption (Chapter 14). It acknowledges that corruption in South Africa originated prior to 1994, but that it has to be addressed in order to achieve sustainable development (National Planning Commission, 2012:446).

According to TI's CPI, South Africa's score has decreased over the period 2007 to 2017 with a score of 51 in 2007 and 43 in 2017 (Transparency International, 2018). South Africa's average CPI score for the evaluation period is 45. According to the WGI (World Bank, 2018), South Africa's score for the control of corruption was 64 in 2007 and 57 in 2017. The WGI thus mirrors the CPI scores and confirms the general perception that South Africa is not making any inroads in its fight against corruption.

This chapter on South Africa's anti-corruption programme will discuss the extent of corruption in the country, South Africa's anti-corruption legislative framework and anti-corruption institutions, compliance with UNCAC, as well as the country's political will to fight corruption.

4.2   Extent of corruption

National Planning Commission (2012:446) states that corruption in South Africa is high. World Bank Group (2018:105) identifies corruption as the biggest governance constraint for the effective implementation of the government's policies, whilst Pillay and Khan (2015:23) state that South Africa suffers from a corruption epidemic which has led to a "moral implosion in the populace". The fact that the media refers to the level of corruption in South Africa as epidemic, endemic, systemic and institutionalised is a clear indication that corruption in the country is perceived to be widespread and significant.

The rise in the level of corruption has not only led to a significant increase in the number of service delivery protests (see http://www.municipaliq.co.za), but also gave rise to mass marches against corruption. On 07 April 2017 approximately 60,000 people marched to the Union Buildings in Pretoria and 100,000 to Parliament in Cape Town as part of the Save South Africa campaign (Corruption Watch, 2017:12). This was followed by more than 100,000 people who marched to the Union Buildings on 12 April 2017 calling for then President Zuma to step down amid allegations of large scale looting of state coffers in the country.

According to Open Society Initiative for Southern Africa (2017:4), corruption "has become part and parcel of politics in South Africa" and that it is having a negative effect on the "effectiveness and legitimacy of state institutions including institutions of democracy". According to Cronin (in Majila, Taylor & Raga 2014:230), corruption has "escalated significantly in South Africa over the past decade; threatening democratic achievements" and "undermining the capacity of the state to advance socio-economic transformation".

These statements have a flavour of state capture to it, something that has been dominating the corruption discourse in South Africa over the last couple of years. South Africa's previous Public Protector, Advocate Thuli Madonsela, stated in 2015 that corruption in the country was becoming aggressive (Open Society Initiative for Southern Africa, 2017:223) as talks of large scale corruption at state-owned enterprises like the Passenger Rail Association of South Africa, South African Airways, the South African Broadcasting Corporation, Transnet and Eskom started making headlines. This concern is shared by Republic of South Africa (2016:11), which stated that the African National Congress' Committee on state-owned enterprises was concerned about an increase in corruption in these companies. As nobody has been criminally charged or found guilty, the "detail" of the alleged state capture in South Africa will not be discussed, but the fact that there is serious concern about the matter cannot be denied. Advocate Madonsela completed an investigation into state capture in October 2016 and after the publication of the Gupta-Leaks (http://www.gupta-leaks.com/) in June 2017, the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State was ordered by President Cyril Ramaphosa in 2018 (https://www.sastatecapture.org.za/). According to media reports, large scale looting of state funds occurred through a network of high ranking government officials, state-owned enterprises leadership and an Indian family with business interests in South Africa. The previous Minister of Finance, Pravin Gordhan, has estimated that more than 100 billion rand could have been lost due to state capture and Corruption Watch (2017:24) states that the National Prosecuting Authority is trying to recover 50 billion rand believed to have been gained illegally through state capture. The cost could be a lot more if one considers that "empirical evidence suggests that an increase in corruption in South Africa between 2001 and 2016 reduced investment by JSE-listed firms by 10.5 percent over that period" (World Bank Group, 2018:42).

Apart from the allegations of state capture, Open Society Initiative for Southern Africa (2017:222) claims that South Africa lost 700 billion rand to corruption between 1994 and 2014. This estimate has been questioned in terms of its accuracy, but even halve of that would still represent a shocking figure. Tamukamoyo (2013:12) stated that the South African National Treasury was estimating a loss of 30 billion rand per annum from the government's procurement fund due to corruption and fraud. The Minister of

Economic Development, Ebrahim Patel, estimated that corruption in the public sector costs South Africa 27 billion rand per annum (Corruption Watch, 2017:24).

Even though the previous figures are merely estimates, the Auditor-General's report for the financial year 2016/17 factually states the general financial mismanagement of the South African tax payers' money and public funds in general. The report stated that 901 million rand was lost to fruitless and wasteful expenditure, 41.7 billion to irregular expenditure and 12.8 billion to unauthorised expenditure (Corruption Watch, 2017:25). According to Auditor-General South Africa (2018:5), irregular expenditure at local government level increased by 75 percent from the financial year 2015/16 to 2016/17, whereas fruitless and wasteful expenditure increased by 71 percent (Auditor-General South Africa, 2018:7). This confirms the aggressiveness in corruption and general financial mismanagement that Thuli Madonsela was referring to. These figures are shocking anywhere in the world, but the impact is so much greater in South Africa where every cent should be spent on the alleviation of poverty, unemployment and inequality through efficient, effective and economical government programmes. The previous Minister of Finance, Nhlanhla Nene, told parliament in 2018 that out of 257 municipalities, 112 (44 percent) did not have the funds to honour their service delivery plans for the financial year 2017/18 and that only 14 of those municipalities had approved financial recovery plans (Auditor-General South Africa, 2018:2). This has a direct impact on the level, or lack of service delivery to citizens, and explains the rise in the number of service delivery protests. This illustrates the impact corruption and financial mismanagement can have on a country's national security and level of stability.

Corruption Watch's 2017 Annual Report (Corruption Watch is South Africa's Transparency International Chapter) includes the latest figures regarding more common forms of corruption in South Africa. According to Corruption Watch (2017:31), the organisation received a total of 5,334 complaints or reports in 2017, which represents a 25 percent increase from 2016 and a 124 percent increase from the 2015 reports (2,382). In terms of institutional location, 29 percent of the reports were about national government, 30 percent about provincial government and 22 percent about local government (Corruption Watch, 2017:32). Compared to the 2014 report, the major shift was between the national and provincial governments which had

21 and 42 percent respectively in 2014 (Corruption Watch, 2014:9). Complaints about corruption in the national government is thus rising which is to be expected with the amount of exposure that the alleged state capture is getting.

Corruption Watch (2017:33) states that a breakdown of the reports received in 2017 shows that bribery was the most common form of corruption reported (27 percent), followed by embezzlement (13 percent) and procurement irregularities (12 percent). Compared to the 2014 report, bribery has increased from 18 percent, but procurement irregularities stayed the same. Corruption Watch (2017:33) identified the main areas for corruption in 2017 as schools (15 percent), the South African Police Service (6 percent), traffic and licensing (5 percent), healthcare and housing (both 4 percent). Corruption at schools was also a hotspot in the 2014 report (Corruption Watch, 2014:9).

Corruption Watch (2017:33) states that 37 percent of South Africans knew someone who was asked for a bribe in 2017 and 24 percent knew someone who had actually paid a bribe in 2017. The top two reasons for paying a bribe was reported as avoiding traffic fines (39 percent) and getting a driving license (18 percent), whilst 8 percent of people paid bribes to get a public service. The main reason why people refuse to pay bribes in South Africa is due to religious and moral principles (47 percent), whilst 12 percent stated that they would have paid a bribe if they had the money or cash.

The level of corruption in South Africa is definitely rising, despite the government's efforts to counter it. Besides the allegations and current investigations into state capture, there seems to be general mismanagement of public funds as highlighted by the Auditor-General's report for the financial year 2016/17. The level of corruption in the country can be described as high, with serious financial implications which affect the government's ability to achieve acceptable levels of service delivery to the citizens. Even though corruption is not the only factor affecting the South African government's ability to achieve its goals and objectives for sustainable growth and development, it has become the biggest challenge for the effective implementation of the government's policies.

4.3   Anti-corruption legislative framework

South Africa is a signatory to various international anti-corruption conventions. It has ratified the United Nations Convention against Corruption and the African Union Convention on Preventing and Combating Corruption, as well as signed the Southern African Community Development Protocol against Corruption and the OECD Anti-Bribery Convention. As signatories to the international and regional treaties, South Africa automatically became obliged to adhere to the principles of these documents as the South African constitution "prescribes compliance with international agreements entered into by the republic" (Open Society Initiative for Southern Africa, 2017:229).

It is widely acknowledged that South Africa has comprehensive anti-corruption legislation. As far back as 2003, South Africa's anti-corruption legislative framework was praised for being comprehensive, practical and providing a strong basis from which to combat corruption in all aspects of the public service (Republic of South Africa, 2003:6). This 2003 country corruption assessment report also stated that "South Africa's transparency legislation, with its well-defined legal review program, is among the best in the world" (Republic of South Africa, 2003:6). Chêne (s.a.:3) states that Global Integrity 2007 rated South Africa as the country in Africa with the best anti-corruption legislation and that the provisions of UNCAC have been significantly translated into national legislation. Pillay and Khan (2015:15), in comparing South Africa's anti-corruption legal framework to that of Rwanda, state that South Africa has a "more 'complete' and diversified set of anti-corruption policies". According to the authors, South Africa's anti-corruption legislative framework is "sophisticated and expanded" (Pillay & Khan, 2015:21).

Even though South Africa has a comprehensive anti-corruption legislative framework, it does not have a national anti-corruption strategy to combat corruption. A Public Service Anti-Corruption Strategy was published in 2002 to "give effect to the expressed commitment of Government to fight corruption in the Public Service" and as "a further step towards Government's contribution towards establishing a National Anti-Corruption Strategy for the country" (Republic of South Africa, 2002:6). Even though a draft national anti-corruption strategy was published for comment in 2016,

South Africa still does not have an approved overarching document that co-ordinate the country's anti-corruption programme. This not only negatively impacts on the co-ordination of the anti-corruption measures, but is a serious indictment of South Africa's will to effectively combat corruption.

In the absence of an approved national strategy to combat corruption, the nine strategic considerations (areas for improvement) as identified by the Public Service Anti-Corruption Strategy of 2002 are listed below (Republic of South Africa, 2002:3).

- Review and consolidation of the legislative framework.
- Increased institutional capacity.
- Improved access to report wrongdoing and protection of whistle blowers and witnesses.
- Prohibition of corrupt individuals and businesses.
- Improved management policies and practices.
- Managing professional ethics.
- Partnerships with stakeholders.
- Social analysis, research and policy advocacy.
- Awareness, training and education.

Even though the details of the strategic considerations will not be discussed in this study, it is important to note that issues such as poor co-ordination, unclear mandates, insufficient institutional capacity, publication of offenders, restriction on employment or doing business with the state, accountability, the role of civil society and awareness training were all highlighted as areas that needed to be developed as far back as 2002 (Republic of South Africa, 2002).

The highest national document that spells out South Africa's anti-corruption objectives is the National Development Plan Vision 2030. According to National Planning Commission (2012:447), South Africa must have a "zero tolerance for corruption" by 2030. This will be achieved when South Africa has citizens that do not offer bribes, hold public and private officials to account, has leaders with integrity and high ethical standards, anti-corruption institutions that are well-resourced, independent from

political influence and have the powers to investigate corruption. South Africa's progress towards this vision will be discussed later in this chapter.

The law that deals most directly with corruption in South Africa is the Prevention and Combating of Corrupt Activities Act 12 of 2004. In short, the Act provides for the strengthening of measures to prevent, investigate and combat corruption, defines the offence of corruption in general, as well as specific offences, calls for the establishment of a register for convicted offenders and addresses the duty to report corruption (Republic of South Africa, 2004:2). The Act defines the general offence of corruption in Chapter 2 Article 3 as follows.

> Any person who, directly or indirectly
>
> a. accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or
> b. gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person,
>
> in order to act personally or by influencing another person so to act in a manner
>
> (i) that amounts to the
>
> (aa) illegal, dishonest, unauthorised, incomplete or biased; or
> (bb) misuse or selling of information or material acquired in the cause of the
>
> exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;
>
> (ii) that amounts to
>
> (aa) the abuse of a position of authority;
> (bb) a breach of trust; or
> (cc) the violation of a legal duty or a set of rules,
>
> (iii) designed to achieve an unjust result; or
> (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,
>
> is guilty of the offence of corruption (Republic of South Africa, 2004:16).

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Prevention and Combating of Corrupt Activities Act 12 of 2004 is applicable to all people in South Africa, whether in the private or public sector. For a detailed definition of terms and different offences of corruption, see Republic of South Africa (2004).

Successes and good practices, as identified by the 2013 Country Review Report of South Africa on the implementation of Chapter III and Chapter IV of the United Nations Convention against Corruption, include good asset forfeiture laws and the protection of witnesses and whistle blowers (United Nations Office on Drugs and Crime, 2013b:10). Challenges identified in the report include the non-criminalisation of passive bribery of foreign officials, the non-criminalisation of the abuse of functions by public officials, the holding of public office or holding office in a public enterprise by persons convicted of corruption, and the lack of an anti-corruption strategy to implement and operationalise the country's anti-corruption laws and institutions (United Nations Office on Drugs and Crime, 2013b:10).

According to Corruption Watch (s.a.:6), a full list of South Africa's domestic anti-corruption legislation includes the following:

- The Companies Act 71 of 2008
- The Competition Act 89 of 1998
- The Criminal Procedure Act 51 of 1977
- The Executive Members Ethics' Act 82 of 1998
- The Municipal Finance Management Act 56 of 2003
- The Prevention and Combating of Corrupt Activities Act 12 of 2004
- The Prevention of Organised Crime Act 121 of 1998
- The Promotion of Access to Information Act 2 of 2002
- The Promotion of Administrative Justice Act 3 of 2000
- The Protected Disclosures Act 26 of 2000
- The Public Finance Management Act 1 of 1999
- The Public Service Act 103 of 1994
- The Witness Protection Act 112 of 1998

South Africa has a comprehensive anti-corruption legal framework, which defines and criminalises corruption and addresses issues pertaining to the prevention, detection and prosecution of corruption. The country's asset forfeiture laws and the protection

of witnesses and whistle blowers are praised, but the lack of a national anti-corruption strategy leads to difficulties regarding the effective implementation of the laws.

4.4   Anti-corruption institutional framework

South Africa opted to not create a specialised anti-corruption agency, but to rather strengthen existing institutions to roll out the anti-corruption programme. The debate about whether South Africa should create a specialised anti-corruption agency has been ongoing since the birth of the country's anti-corruption approach (Republic of South Africa, 2002:27) and the matter has even been argued in the Constitutional Court (Glenister v President of the Republic of South Africa and Others). The South African government, within its rights, insists on following a decentralised institutional approach to fighting corruption, as confirmed by the National Development Plan Vision 2030 which argues that political capture of a single agency will compromise the independence of the country's anti-corruption system. It states that South Africa chooses a decentralised institutional approach because it "provides the checks and balances that are essential in the South African context and develops a systemic resilience against interference" (National Planning Commission, 2012:448). Quah (2017b.:3), however, warns against the use of this approach in countries with "high levels of corruption and poor governance". That said, literature agrees that the type of anti-corruption agency or approach followed in implementing Article 6 of UNCAC is not the determining factor for success. Chêne (2012), Wickberg (2013) and Quah (2017b) agree that the level of political will, level of independence, capacity, and the ability to effectively co-ordinate anti-corruption functions between institutions have an important impact on the success or failure of anti-corruption agencies.

According to Open Society Initiative for Southern Africa (2017:228), South Africa's anti-corruption institutional framework is "highly decentralised", consisting of a "network of institutions designed to function in a way that they each contribute towards anti-corruption as an outcome". The core function of these institutions is not to combat corruption, but "repelling corruption is one of the effects of their functions" (Open Society Initiative for Southern Africa, 2017:243). Even though South Africa has a sophisticated and wide range of institutions that play a role in the country's fight against

corruption, the performance of South Africa's anti-corruption institutional framework seems to be unsatisfactory (Open Society Initiative for Southern Africa, 2017:235).

According to Pereira, Lehmann, Roth and Attisso (2012:88), South Africa has 14 agencies with an anti-corruption function and 5 co-ordinating bodies. However, Corruption Watch (s.a.:21) only lists 9 institutions that are mandated to specifically combat and prevent corruption. Institutions not mentioned in Corruption Watch (s.a.) as having a specified anti-corruption mandate are the Department of Public Service and Administration, the National Intelligence Agency, National Treasury, the South Africa Police Service, the South African Revenue Service and the Special Anti-Corruption Unit. The fact that authors disagree on the amount of anti-corruption institutions might be explained by the fact that there are so many institutions that have an anti-corruption output in one way or another. Republic of South Africa (2002:14) probably states it best by saying that only the Special Investigating Unit "has an exclusive (albeit narrow) anti-corruption mandate and none of the existing mandates promote a holistic approach to fighting corruption". This will explain why even international reviews of South Africa's anti-corruption architecture differ on the amount of corruption fighting bodies in the country. The nine institutions, as published by Corruption Watch, are accepted as the institutions with a specified anti-corruption mandate, whereas there are many institutions that contribute towards preventing corruption through the execution of other mandates and objectives. The institutions and their mandates are mentioned below.

The *National Prosecuting Authority* institutes criminal proceedings on behalf of the state. Under the umbrella of the National Prosecuting Authority there are other institutions that are tasked with anti-corruption objectives, like the Specialised Commercial Crime Unit, the Asset Forfeiture Unit and the Witness Protection Unit. The mandate of the *Public Protector* is to investigate any conduct in state affairs or in the public administration of any sphere of government where there is improper behaviour or a failure to uphold the ethical standards of government. The Public Protector is empowered to take appropriate remedial action. The *Directorate for Priority Crime Investigation* falls under the command of the South African Police Service and focusses on serious organised crime, serious corruption and serious commercial crime. It has a preventative, investigative and combative function in

relation to these offences. As stated above, the *Asset Forfeiture Unit* falls under the National Prosecuting Authority.   It is mandated to seize assets used in criminal activities. The *Special Investigating Unit* is probably the institution that is the most focussed on corruption in terms of its mandate. It was established by the President to fight corruption and does so through reporting the outcomes of investigations to the President.   The *Financial Intelligence Centre* looks into suspicious financial transactions and aims to combat money laundering. The *Auditor-General South Africa* is mandated to audit and report on the financial affairs and management of national, provincial and local government institutions. The *Public Service Commission* seeks to enhance governance in the public service and is mandated to manage South Africa's National Anti-Corruption Hotline where anonymous reporting of corruption can be made. The *Independent Police Investigative Directorate* provides independent oversight of the South African Police Service which includes investigating individual acts of corruption and systemic corruption involving the members of the police service.

According to Pereira et al. (2012:89), the bodies that are responsible for co-ordinating South Africa's anti-corruption programme are the *Anti-Corruption Co-ordinating Committee,* the *Anti-Corruption Inter-Ministerial Committee*, the *Anti-Corruption Task Team*, the *Multi-Agency Working Group* and the *National Anti-Corruption Forum*.

Republic of South Africa (2016:5) states that the mandate of the *Anti-Corruption Inter-Ministerial Committee* is to "coordinate and oversee the work of state organs aimed at combating corruption in the public and private sectors" and that it provides strategic direction to the Anti-Corruption Task Team. The *Anti-Corruption Task Team* is South Africa's "central body mandated to give effect to Government's anti-corruption agenda". According to Republic of South Africa (2016:6) the Anti-Corruption task Team consists of representatives from the National Prosecuting Authority, the Asset Forfeiture Unit, the Directorate for Priority Crime Investigation in the South African Police Service, the Special Investigating Unit, the South African Revenue Service, the Office of the Accountant-General and the Chief Procurement Officer in the National Treasury, the Financial Intelligence Centre, the National Intelligence Coordinating Committee, the State Security Agency, the Presidency, the Department of Justice and Constitutional Development, the Department of Public Service and Administration, and the Government Communication and Information System. It is thus a very powerful

committee made up of all the major role-players in the fight against corruption. Pereira et al. (2012:89) state that the function of the *Anti-Corruption Co-ordinating Committee* is to ensure that the Public Service Anti-Corruption Strategy is implemented. The *Multi-Agency Working Group* was established to improve government's procurement system in order to reduce corruption. The *National Anti-Corruption Forum* was established to bring the public sector, business and civil society together to combat corruption (Open Society Initiative for Southern Africa, 2017:234).

South Africa's institutional anti-corruption framework follows a decentralised approach with no single body that is solely mandated to fight corruption. The anti-corruption programme is co-ordinated at inter-ministerial level who gives guidance to the country's Anti-Corruption Task Team. The Anti-Corruption Task Team is mandated to give effect to the Government's anti-corruption agenda and consists of all the major role-players in South Africa's fight against corruption. As there are so many institutions that play a role in South Africa's fight against corruption, it appears that even literature is not entirely sure which organisations are mandated to fight corruption. South Africa's anti-corruption architecture is probably best described by Open Society Initiative for Southern Africa (2017:228) that stated that it is "highly decentralised", consisting of a "network of institutions designed to function in a way that they each contribute towards anti-corruption as an outcome". The effectiveness of this approach will be discussed in the next section.

4.5   Compliance with UNCAC

South Africa's anti-corruption measures cover the scope of UNCAC in that it addresses the prevention, investigation and prosecution of corruption, as well as asset recovery. The country's implementation of UNCAC was reviewed in 2013 and the detailed findings of the review are found in United Nations Office on Drugs and Crime (2013b). As the review focussed more on Chapter III of UNCAC, this section focusses more on the country's compliance with the preventative measures as contained in Chapter II of UNCAC.

4.5.1 Preventative measures

The following observations were made regarding the preventative measures found in *Chapter II* of UNCAC. Article 5(1) of UNCAC states that signatories to the Convention shall "maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability" (United Nations, 2004:9). South Africa complies with Article 5 in so far as it has the best anti-corruption legislation in Africa and that the provisions of UNCAC have been significantly translated into national legislation (Chêne, s.a.:3). Even though South Africa has a comprehensive anti-corruption legal framework, there are aspects of Article 5(1) that seem to be problematic, such as co-ordination, the participation of civil society and accountability.

Poor *co-ordination* of South Africa's anti-corruption measures was identified as an area of concern as far back as 2002 when it was stated that "initiatives to fight corruption are fragmented and hampered by the number of agencies and institutions that attend to corruption as part of a broader functional mandate (Republic of South Africa, 2002:14). The National Development Plan Vision 2030 stated that poor co-ordination and overlapping mandates were hampering the country's ability to investigate and prosecute corruption (National Planning Commission, 2012:448). In the 2013 country assessment report, the lack of an anti-corruption strategy to implement and operationalise the country's anti-corruption laws and institutions was highlighted as a major cause for concern (United Nations Office on Drugs and Crime, 2013b:10). Co-ordination seems to still be a challenge for the country and was referred to as the Tower of Babel by Open Society Initiative for Southern Africa (2017:234). As the Anti-Corruption Inter-Ministerial Committee is there to "coordinate and oversee the work of state organs aimed at combating corruption in the public and private sectors" and to provide strategic direction to the Anti-Corruption Task Team, it would seem as if the lack of co-ordination starts at the highest level of government. The worrying aspect of South Africa's poor anti-corruption co-ordination is that proper co-ordination and working towards a common goal is a constitutional imperative. United Nations Office on Drugs and Crime (2013b:10) states that according to Section 41(1) of the South African Constitution, all spheres of government are required "to

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cooperate with one another in mutual trust and good faith by fostering friendly relations, assisting and supporting one another, consulting on matters of mutual interest and adhering to agreed procedures". South Africa's apparent inability or lack of wilful effort to properly co-ordinate its anti-corruption programme could thus be seen as contradictory to the Constitution's principles for co-operative government and intergovernmental relations.

In terms of the promotion of the *participation of society* in South Africa, it appears as if the idea behind the National Anti-Corruption Forum has not succeeded, as there is insufficient commitment, continuity and no funding (National Planning Commission, 2012:449). Republic of South Africa (2016:14) confirms this by stating that the forum is no longer meaningfully active.

The lack of *accountability* in terms of corruption and/or the uneven application of the law is mentioned in literature on corruption in South Africa. Auditor-General South Africa (2018) heavily criticises local government for the lack of accountability that has led to billions of rand in irregular, fruitless and wasteful expenditure. The report refers to a blatant "disregard for controls and compliance with key legislation" (Auditor-General South Africa, 2018:9). National Planning Commission (2012:446) admits that corruption is thriving in South Africa because "State systems of accountability have been uneven". It further states that transparency is a key element of accountability, but that South Africa suffers from an "endemic lack of compliance" due to "willful neglect" when it comes to adherence to access to information laws and regulations (National Planning Commission, 2012:452). Republic of South Africa (2016:10) states that the implementation or enforcement of South Africa's anti-corruption legislation "remains uneven and, in some cases, weak". Even though South Africa has acceded to Article 5(1) in terms of putting in place the necessary legislation, the country seems to be lacking in some of the values behind the article in terms of co-ordination, participation of civil society and accountability.

Article 6 of UNCAC deals with the establishment of a body or bodies to prevent corruption. As stated earlier, South Africa executed this obligation through a decentralised approach by incorporating an anti-corruption function into already

existing structures. Article 6(1)(a) again refers to the proper oversight and co-ordination of the policies implemented under Article 5.

Adding to the previous discussion about South Africa's lack of *co-ordination*, the unclear and overlapping boundaries of the anti-corruption bodies seem to be a major obstacle to success. Chetty and Pillay (2017:117), in their study on the independence of South Africa and India's anti-corruption agencies, found that South Africa's anti-corruption institutions suffer from "overlapping and conflicting mandates". Adetiba (2016:95) also highlighted the overlapping of mandates and the confusion (purposefully or not) it can cause. It was stated that in the Nkandla case, involving improvements to the then President Jacob Zuma's home, the Public Protector, the Special Investigating Unit and other institutions all investigated and reported on the case. This clearly illustrates the poor demarcation of the mandates of the various anti-corruption bodies in South Africa.

Article 6(1)(b) refers to the effective communication of a country's anti-corruption initiatives. Due to poor public awareness of South Africa's anti-corruption initiatives, awareness, training and education of the public were identified as a strategic consideration in the Public Service Anti-Corruption Strategy in 2002 (Republic of South Africa, 2002:20). To date, this seems to still be a challenge as confirmed by the National Anti-Corruption Strategy discussion document that identifies awareness-raising campaigns as a major issue to be addressed (Republic of South Africa, 2016:16).

Article 6(2) deals with the *independence* of anti-corruption bodies and the fact that they should be free from any undue influence. The article also states that these bodies should have sufficient *material resources* and appropriately *skilled staff*. There seems to be consensus in literature that South Africa fails in this requirement. Republic of South Africa (2016:14) states that "A central issue of concern raised by civil society organisations and the National Development Plan is that the independence of the criminal justice agencies tasked with investigating and prosecuting corruption has not been effectively maintained". This statement is backed up by various references in the document itself and will not be repeated in this study. Republic of South Africa (2016:14) further states that South Africa's anti-corruption bodies require "adequate

safeguards of independence, and adequate resourcing in the form of sufficient budget and the appropriately trained and experienced staff". Adetiba (2016), and Chetty and Pillay (2017) concurred that the South African anti-corruption institutional framework suffers from a lack of independence and that there is political interference in the duties of these organisations. In South Africa, political interference appears to be typical in "cases involving highly placed individuals" (Adetiba, 2016:91). Whilst a lack of resources is admitted in the National Development Plan Vision 2030, Open Society Initiative for Southern Africa (2017:228) blames the lack of adequately skilled staff in the anti-corruption agencies on the government's deployment policy. It states that the "ANC's framework of fielding officials in key government positions has raised concerns regarding the poor quality of skill sets and integrity among some of those deployed" and that it has been identified as a major concern as it affects the "integrity and effectiveness of the public service". According to Majila et al. (2014:235) South Africa's anti-corruption agencies are "functionally and technically incapacitated" and that their employees are inadequately trained. World Bank Group (2018:89) identifies the lack of merit-based appointments for senior civil servants as a reason for the lack of capacity experienced in all sectors of government. It argues that the political interference in these appointments often leads to a high staff turnover, which increases the possibility for financial mismanagement and corruption. Open Society Initiative for Southern Africa (2017:261) also identifies high staff turnover as an area of concern and argues that stability needs to be restored within the justice and crime prevention cluster in order to cull fears that the anti-corruption institutions are not ready to fight corruption. To summarise, even though South Africa complies with the existence of anti-corruption bodies, it appears that in the actual execution of functions it does not comply with Article 6(2) as its anti-corruption institutions are not sufficiently independent and free from political interference and are not adequately resourced in terms of material needs and skilled staff.

According to Article 7, the public service must be governed based "on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude". South Africa scores high in terms of transparency and media freedom, as confirmed by the WGI score for voice and accountability which was 66 in 2007 and 69 in 2017 (World Bank, 2018). Confirmation of the level of press freedom the country enjoys is the fact that South Africa ranked third in Africa and twenty eighth in the world out of

180 countries for media freedom, according to Reporters Without Borders' Press Freedom Index for 2018 (SA ranks third in media freedom, 2018). The merit system for appointment in the public service has already been touched on, however, it should be noted that South Africa does have a merit-based appointment system on paper. The public service has a Toolkit on Recruitment and Selection which encourages "merit-based recruitment for senior civil service positions" (Majila et al., 2014:236). The toolkit is to be used to determine the most competent people for positions within the parameters of affirmative action and equal opportunity policies. South Africa implemented Article 8, as codes of conduct for public officials in different spheres exist and various ways to report corruption have been implemented (amongst other the National Anti-Corruption Hotline and Presidential Hotline). Policies on the declaration of interest are also in place. The country accedes to Article 9, as the country has approved laws governing procurement and financial management within the public and private sectors. The Public Finance Management Act, the Municipal Finance Management Act, Treasury Regulations, the Competition Act, and the Companies Acts are some of the laws that address Article 9, even though these laws appear to be unsuccessful in preventing maladministration and financial mismanagement (Open Society Initiative for Southern Africa, 2017:228). In terms of Article 10 (public reporting), South Africa complies, but as stated earlier, compliance with the law on access to information needs to improve. The independence of the judiciary and prosecuting systems are governed by the constitution, but it is acknowledged by the National Development Plan Vision 2030 that it is affected by political interests (National Planning Commission, 2012, 253). South Africa conforms to Article 12 which is about preventative measures for the private sector as South Africa's anti-corruption laws apply to the private sector. That said, corruption is still mainly seen as a public sector problem in South Africa (Open Society Initiative for Southern Africa, 2017:258). Legally, South Africa adheres to Article 13 which highlights the importance of civil society in a country's anti-corruption process, but as stated earlier, it seems as if the National Anti-Corruption Forum has not succeeded as there is insufficient commitment, continuity and no funding. South Africa accedes to Article 14 (prevention of money laundering) as stipulated in the Prevention of Organised Crime Act 12 of 1998 and the Prevention and Combating of Corrupt Activities Act 12 of 2004.

4.5.2 Criminalisation and law enforcement

The Criminalisation and Law Enforcement Articles contained in *Chapter III* of UNCAC are mostly covered by South Africa's strong and comprehensive legal framework to deal with corruption. United Nations Office on Drugs and Crime (2013b) confirms that South Africa in general complies with all the compulsory Articles (as listed in Table 2.2). However, the review observed that South Africa does not clearly satisfy the provisions of Article 30(7) which deals with the disqualification from holding public office or a position in a state-owned enterprise if found guilty of corruption. Even though the article does not require mandatory action, United Nations Office on Drugs and Crime (2013b:65) recommended that South Africa considers "the adoption of further legislation or procedures to disqualify, for a period of time, persons convicted of Convention offences from holding public office" and "from holding office in a public enterprise". Proof of the lack of disqualification from public employment for individuals found guilty of corruption is found in the National Development Plan Vision 2030 which states that it is "common for officials found guilty of corruption in one department to surface in another" (National Planning Commission, 2012:451).

Though Articles 19 and 20 of UNCAC do not form part of the list of compulsory articles that need to be adhered to, it was interesting to note that South Africa does not fully comply with them. Article 19 deals with the abuse of functions by a public official and Article 20 deals with the illicit enrichment of public officials. United Nations Office on Drugs and Crime (2013b:29) argues that the current local provisions do not consider a contravention of Article 19 to be criminal and recommends that South Africa reconsiders its approach. Illicit enrichment by public officials is not seen as a criminal offence in South Africa and the country was advised to put measures in place to address this issue (United Nations Office on Drugs and Crime, 2013b:30). For a country that has the best anti-corruption legislative framework in Africa (Chêne, s.a.:3) it seems like more than pure coincidence that the abuse of functions or position and illicit enrichment by public officials have not been criminilised and that if found guilty of another form of corruption, there is no law prohibiting the person from holding office in the public service or state-owned enterprises.

Good practices that were mentioned by the 2013 Country Review Report of South Africa's compliance with UNCAC include good asset forfeiture laws and the protection of witnesses and whistle blowers (United Nations Office on Drugs and Crime, 2013b:10). Besides the issues already addressed, the major concern stemming from the 2013 review was the lack of an anti-corruption strategy to implement and operationalise the country's anti-corruption laws and institutions (United Nations Office on Drugs and Crime, 2013b:10).

4.5.3   Summary of compliance with UNCAC

In terms of the mandatory actions that UNCAC expects from signatories under Chapter II (preventative measures) and III (criminalisation and law enforcement) of the Convention, South Africa adheres to all the Articles. Legally South Africa adheres to all the Articles in Chapter II in terms of preventative measures, but seems to in practice not comply with the provisions of Article 6(2) as its anti-corruption institutions are not sufficiently independent and free from political interference and are not adequately resourced in terms of material needs and skilled staff. There are also serious concerns over the poor co-ordination of South Africa's anti-corruption programme, the overlapping mandates of anti-corruption institutions and poor public awareness of the anti-corruption programme. Accountability and civil participation were also identified as problematic.

4.6   Political will

Despite South Africa's comprehensive legal framework, the very first international assessment of South Africa's anti-corruption programme highlighted the public sector's lack of will to implement and comply with the regulations (Republic of South Africa, 2003:6). According to Dintwe (2012:18), South Africa's political will to combat corruption is "tainted, skewed, inconsistent, minimal and less visible". Chapter 14 of National Planning Commission (2012) refers to South Africa's lack of political will in the fight against corruption and states that it is a requirement to achieve the country's vision of zero tolerance for corruption by 2030. Even though the above statements and a barrage of statements in the South African media mention South Africa's poor political will to fight corruption, no statement has been backed up by an analysis of

political will according to Brinkerhoff's seven factors. Final judgment on South Africa's political will to fight corruption is thus reserved for the end of this section.

The *locus of initiative* factor of political will refers to at what level of government or society the input or origin for an anti-corruption programme lies. The higher up in government it lies, the stronger the political will. The South African anti-corruption initiative originated from government (Republic of South Africa, 2002:6). The initial campaign led to an anti-corruption summit where the public and private sectors committed to fight corruption. From this process, the Department of Public Service and Administration was tasked to take the lead and to come up with a strategy to fight corruption. It also led to the creation of the National Anti-Corruption Forum (inclusive of all sectors of society) which was to create consensus on the country's approach to fight corruption. This forum was operating under the auspices of the Public Service Commission. As South Africa's anti-corruption campaign originated at the top level of government, this factor scores high in the assessment.

The *degree of analytical rigour* refers to how in-depth the analysis of the corruption problem was completed in order to ensure an effective anti-corruption effort. The better the understanding of the problem, the higher the demonstrated political will will be. After the initial launch of South Africa's anti-corruption campaign in 1997, government showed that they were serious about fighting corruption through the formation of a partnership with the United Nations Office on Drugs and Crime in March 2001 (Republic of South Africa, 2003:Foreword) This partnership led to the publication of South Africa's first corruption assessment report in 2003. The report was the culmination of an extensive assessment which entailed "perception and experience surveys among households, public service delivery institutions, and businesses; analysis of legislation and codes of conduct; and data collection on criminal and disciplinary cases related to corruption" (Republic of South Africa, 2003:Foreword). The report discusses in detail what South Africa must work on in order improve its anti-corruption programme. The quality and detail of the Public Service Anti-Corruption Strategy (2002) also prove that a lot of research was done prior to the publishing of the document. In terms of an effective anti-corruption programme, Republic of South Africa (2002:14) identified issues that are still problematic in South Africa's fight against corruption today. These issues include poorly demarcated roles, powers and

responsibilities, poor co-ordination of the anti-corruption effort, accountability of institutions, lack of skilled personnel and poor prevention programmes. However, the fact that these issues have not yet been resolved should not be used to penalise the country in terms or its degree of analytical rigour to shape its programme. This factor scores high in the assessment.

Mobilisation of support deals with the ability of the anti-corruption programme initiator to harness support for the programme. If the reform process is done in isolation, the political will will be weaker than if all relevant stakeholders were involved. Article 13 of UNCAC discusses the importance of the participation of civil society in corruption prevention measures and the importance of their voice in the decision-making process. As already stated, South Africa started the National Anti-Corruption Forum at the beginning of its fight against corruption in order to get consensus from all parts of society on how to address the corruption problem. Unfortunately, it seems as if the idea behind the National Anti-Corruption Forum has not succeeded due to insufficient commitment, continuity and no funding (National Planning Commission, 2012:449). Republic of South Africa (2016:14) confirms this by stating that the forum is no longer meaningfully active. In terms of harnessing support for the anti-corruption programme from the broader public, corruption prevention through civil society and the education of the public on the country's anti-corruption measures were identified as major weaknesses by the 2003 country assessment, and required urgent intervention (Republic of South Africa, 2003:8). Unfortunately, nothing has been done to alleviate this challenge to the success of South Africa's anti-corruption programme as highlighted by calls for action in National Planning Commission (2012:448), Republic of South Africa (2016:12 & 20) and Open Society Initiative for Southern Africa (2017:222 & 260). Even though civil society organisations do play an active role in addressing issues of corruption in South Africa, it is not through the efforts of government, but rather due to the lack of action by government (Republic of South Africa, 2016:7). This factor scores low in the assessment because South Africa started with an all-inclusive approach, but due to a lack of commitment and funding, the National Anti-Corruption Forum became meaningless. The fact that the country has not attended to the identified lack of public awareness and education since 2003 is also inexcusable.

The *application of credible sanctions* factor relates to the identification and enforcement of suitable sanctions for non-adherence to laws and regulations across all levels of society. The inconsistent application of sanctions will point to a lower political will. As stated, South Africa has a comprehensive set of anti-corruption laws and institutions. Chapter 5 of the Prevention and Combating of Corrupt Activities Act 12 of 2004 describes the penalties associated with guilty verdicts for all forms of corruption. Penalties range from fines to life imprisonment, depending on the offence and the level of the court that presided over the matter. Despite the provision for appropriate sentences to deter people from engaging in corruption, it seems that there is consensus that it does not succeed. The reason for this is not that sentences are too lenient, but rather that people perceive that the law will not be applied and as such it no longer serves as a deterrent. National Planning Commission (2016:451) bemoans the fact that there are rules and regulations in place, but that people do not care about them, as corrective action is seldom taken. As stated under the discussion of Article 5, National Planning Commission (2012:446) admits that corruption is thriving in South Africa because "State systems of accountability have been uneven". It further states that transparency is a key element of accountability, but that South Africa suffers from an "endemic lack of compliance" due to "willful neglect" when it comes to adherence to access to information laws and regulations (National Planning Commission, 2012:452). Republic of South Africa (2016:10) states that the implementation or enforcement of South Africa's anti-corruption legislation "remains uneven and, in some cases, weak". According to Tamukamoyo (2013:1), the main reason behind the increase in corruption in South Africa, is the lack of accountability for the perpetrators of corruption. The author quotes a report which states that very few public servants (19 percent) who are found guilty of financial mismanagement actually lose their jobs. The results of Majila et al.'s empirical study in 2014 concluded that the main reason for the failure of South Africa's anti-corruption programme is the "inadequate enforcement of legislation" (Majila et al., 2014:227). Their study further found that political power is being used to protect transgressors from prosecution which results in a lack of fear (Majila et al., 2014:235). Pillay and Khan (2015:22) concur with this and state that South Africa is losing the fight against corruption due to a strong perception that one can get away with corruption because of the lack of action being taken. The authors further argue that the lack of credible and decisive action is especially visible when prominent people in the political, public and private domains

are involved. Republic of South Africa (2016:11) emphasises the lack of sanctions by stating that "public servants and local government employees are not facing appropriate (legislated) sanction for non-compliance". After being briefed on the outcome of 42 serious corruption cases involving more than five million rand per case, the chairperson of the Standing Committee on Public Accounts, Themba Godi, expressed his shock that all 42 of the Anti-Corruption Task Team's corruption convictions ended up with plea bargains (Herman, 2017). In response to the lack of jail time, Mr Godi stated that it "largely defeats the objective of using sentencing as a deterrent against corruption". The fact that South Africa does not have a law that disqualifies people from holding public office or a position in a state-owned enterprise if found guilty of corruption also does not help to deter public servants from engaging in corrupt practices. The lack of credible sanctions has become visible to the general public and has even had an effect on the choice of career for young people. In 2014 the Institute for Security Studies conducted research among young South Africans between the ages of 18 and 24 to get a better understanding of the factors that influence their voting behaviour. Tracey-Temba (2015), who led the research team, reported that the study found that due to the lack of accountability by senior government officials, "some young South Africans see a job in government as an easy way to make money". Lastly, even though National Treasury has a register for tender defaulters, the only entry ever found was "Currently there are no Tender Defaulters", something that seems highly unlikely given the current level of corruption. Based on the evidence provided (which is by a long way not exhaustive), South Africa scores low on the application of credible sanctions factor.

Continuity of effort relates to the continued focus on the outcome of the reform process and the allocation of suitable resources to sustain the process. A simple launch of an anti-corruption programme without the necessary resources will indicate an unwillingness to address the problem of corruption. Republic of South Africa (2002:6) and Open Society Initiative for Southern Africa (2017:233) state that the aim of the South African anti-corruption initiative in 1997 was to produce a national anti-corruption strategy. However, 21 years later the country still does not have an approved strategy, which is a clear indication of the government's lack of political will to address corruption effectively. As alluded to previously, the vast majority of areas of concern identified in the Public Service Anti-Corruption Strategy of 2002 and the

2003 country corruption assessment are still unresolved today and appeared in both the 2012 National Development Plan Vision 2030 chapter on corruption and the 2016 National Anti-Corruption Strategy document for discussion. As stated earlier, the National Anti-Corruption Forum is no longer relevant due to poor commitment and continuity (National Planning Commission, 2012:449). The continued focus on the outcome of a country with zero tolerance for corruption is thus absent in terms of quantifiable achievements to support it. On paper South Africa has such a good anti-corruption design, but as Pityana (in Adetiba 2016:89) posits, "Even the most well-crafted institution will fail if the requisite political will does not exist". Open Society Initiative for Southern Africa (2017:236) goes into detail about leadership issues (high turn-over) at the National Prosecuting Authority, the South African Police Service, the South African Revenue Service and the Special Investigating Unit which are all members of the Anti-Corruption Task Team that is mandated to give effect to Government's anti-corruption agenda. It then concludes that the executive has not provided anti-corruption institutions with the stable leadership it requires to be effective. If the executive is not fully committed to the fight against corruption, "it might constitute a single point failure for the entire anti-corruption framework" (Open Society Initiative for Southern Africa, 2017:238). The poor allocation of suitable resources to execute South Africa's anti-corruption programme was discussed under the compliance with UNCAC. It can be added that the Public Protector has regularly complained about the inadequate budget it receives (Adetiba, 2016:93), something that is confirmed by Open Society Initiative for Southern Africa (2017:245). This factor scores low due to a complete lack of continuity and a lack of suitable resources to execute the anti-corruption mandate.

The *public commitment and allocation of resources* factor measures the extent to which the decision-makers make the anti-corruption programme and its objectives public and allocate sufficient resources to achieve the objectives. South Africa commits to a zero tolerance for corruption in various documents such as the National Development Plan Vision 2030, the Medium Term Strategic Framework 2014–2019 and the National Security Strategy as well as during State of the Nation Addresses. These days, with state capture dominating public conversation, the fight against corruption is actually mentioned regularly in public speeches. However, as stated in the evaluation of the continuity of effort factor, it seems as if the executive branch of

government is in reality not fully committed to the campaign. In reference to statements made by the then President, Jacob Zuma, and Julius Malema (current leader of the Economic Freedom Fighters political party), Open Society Initiative for Southern Africa (2017:260) states that the "idea of some of the politicians in the country that 'corruption is a western thing' will generate national ambivalence towards corruption in the country". Thus, even though the anti-corruption campaign is mentioned in public speeches and in national strategic documents, there are high ranking officials who try to brush corruption under the carpet by denying its existence. "Leaders in government, business and civil society should conduct themselves with integrity and be held to high ethical standards" (National Planning Commission, 2012:454). This is part of the conclusion to the chapter on corruption in South Africa's National Development Plan Vision 2030. It goes on to say that "sanctions must be applied impartially to those who betray public trust or break the law". None of these statements are true in South Africa today, which makes a mockery of the very fact that is penned as a commitment to the citizens of South Africa. According to National Planning Commission (2012:449), political will does not solely refer to "public statements of support, but a commitment to providing sufficient resources and taking action against corrupt officials". Although South Africa's highest document aimed at sustainable growth and development clearly states it, this study has already demonstrated that the exact opposite is true. The lack of financial and human resources, poorly skilled personnel, appointments that are not based on merit and high staff turn-over in leadership positions have all been illustrated. To make the current state worse, it has to be noted that Republic of South Africa (2002:28) already mentioned the lack of resources in 2002. It stated that few institutions had the financial and human resources to carry out their mandates. It mentioned the Independent Complaints Directorate that only had sufficient funds to staff 100 of its 500 posts and the Public Protector who could only fill half of the posts due to financial constraints. Furthermore, the absence of public awareness campaigns and educational programmes on government's efforts to curb corruption is further proof of the lack of public commitment displayed by the South African Government. This factor scores low based on the overwhelming evidence of the lack of public commitment (including the contradictions in published public commitments like the National Development Plan) and the poor allocation of resources.

The *learning and adaptation* indicator refers to the level of monitoring that is done to determine the efficiency of the efforts and to make changes where necessary. South Africa has had numerous assessments of its anti-corruption programme since the birth of the anti-corruption campaign in 1997. This was done locally, in combination with international organisations and, independently, by international organisations. Many of these assessments were referred to in this study, for example the 2002 Public Service Anti-Corruption Strategy, the 2003 Country Corruption Report, the 2012 National Development Plan Vision 2030, the 2013 Country Review Report on South Africa's implementation of UNCAC and the 2016 National Anti-Corruption Strategy discussion document. There is thus no shortage of information on what issues South Africa must address to improve the effectiveness of its anti-corruption programme. However, as stated, the same issues that were identified in 2002 are still relevant today which creates the impression that South Africa has no real desire to improve on its shortcomings. South Africa published the Prevention and Combating of Corrupt Activities Amendment Bill in 2017 which indicates that the country did endeavour to improve its main anti-corruption law. However, the amendments only relate to passive corruption in respect of foreign public officials, unacceptable conduct of whistle blowers and accounting professionals, and an increase in monetary sanctions (Republic of South Africa, 2017:2). Even though the Amendment Bill refers to the 2013 Country Review Report, it does not address any of the concerns raised in connection with Articles 19, 20 and 30(7), as mentioned under the Compliance with UNCAC section. This factor scores low.

4.7   Conclusion

The level of corruption in South Africa is definitely rising despite the government's efforts to counter it. Besides the allegations and current investigations into state capture, there seems to be general mismanagement of public funds and the country's state-owned enterprises. The level of corruption in the country can be described as high, with serious financial implications which affect the government's ability to achieve acceptable levels of service delivery to the citizens. Citizens are giving expression to their dissatisfaction with the lack of service delivery through an increase in service delivery protests which negatively affects national security. Even though corruption is not the only factor affecting the South African government's ability to achieve its goals

and objectives for sustainable growth and development, it has become the biggest challenge for the effective implementation of the government's policies.

South Africa launched its anti-corruption campaign in 1997. Even though the country does not have an approved national anti-corruption strategy, it does have a Public Service Anti-Corruption Strategy which was published in 2002. In the absence of an overarching national policy on corruption, the National Development Plan Vision 2030 (2012) is seen as the highest document detailing the country's zero tolerance for corruption approach. South Africa's anti-corruption legal framework has been described as comprehensive, practical and the best in Africa. There are thirteen laws that are directly aimed at combating corruption and cover key areas such as organised crime, codes of conduct, public procurement, state finances, access to information, whistle blowing and the protection of whistle blowers. The country's asset forfeiture laws and the protection of witnesses and whistle blowers have been praised, but the lack of a national anti-corruption strategy leads to difficulties regarding the effective implementation of the South Africa's comprehensive set of anti-corruption laws.

South Africa does not have a dedicated anti-corruption agency as it opted for a decentralised approach where various existing institutions were strengthened to contribute towards the goal of a corruption-free South Africa. Even though literature warns against this approach in countries with high levels of corruption, it also agrees that the level of political will, level of independence, capacity, and the ability to effectively co-ordinate the anti-corruption functions of institutions are key areas that will determine the success of the anti-corruption effort. The configuration and functioning of the anti-corruption institutions are described as highly decentralised and sophisticated. Due to issues pertaining to the anti-corruption mandates of institutions, international reviews of South Africa's anti-corruption architecture differ on the amount of corruption fighting bodies in the country. However, as the South African Chapter of Transparency International, Corruption Watch's figure of nine institutions was accepted as correct. The institutions are the Financial Intelligence Centre, Special Investigating Unit, Asset Forfeiture Unit, Directorate for Priority Crime Investigation, Public Protector, National Prosecuting Authority, Auditor General South Africa, Public Service Commission and Independent Police Investigative Directorate. There are five bodies that play a co-ordinating role in South Africa's anti-corruption programme. The

highest of these are the Anti-Corruption Inter-Ministerial Committee and the Anti-Corruption Task Team. The Anti-Corruption Task Team is mandated to give effect to South Africa's anti-corruption programme.

The review of South Africa's implementation of UNCAC revealed that the country has a high level of compliance. In terms of the mandatory actions that UNCAC expects from signatories under Chapter II (preventative measures) and Chapter III (criminalisation and law enforcement) of the Convention, South Africa adheres to all the Articles. Legally, South Africa adheres to all the Articles in Chapter II in terms of preventative measures, but seems to in practice not comply with the provisions of Article 6(2) as its anti-corruption institutions are not sufficiently independent and free from political interference, and are not adequately resourced in terms of material needs and skilled staff. There are also serious concerns over the poor co-ordination of South Africa's anti-corruption programme, the overlapping mandates of anti-corruption institutions and poor public awareness of the anti-corruption programme. Accountability and civil participation were also identified as problematic. Even though Articles 19, 20 and 30(7) are not compulsory, South Africa was advised to address the fact that the abuse of power and illicit enrichment by public officials have not been criminilised and that there is no prohibition from holding office in the public service or state-owned enterprises after being convicted of corruption.

According to Brinkerhoff's seven factors of political will, South Africa displays a low level of political will in its fight against corruption. The locus of initiative for the anti-corruption programme and the degree of analytical rigour prior to implementation of the programme scored high. The rest of the factors all scored low according to the assessment. As the two factors that scored high were influenced by actions taken in the late nineties and early two thousand, it was felt that it does not validate a substantial increase in the overall political will of South Africa. In the closing, South Africa's political will to fight corruption is probably best described by Van Schalkwyk (2017:28) who states that South Africa's anti-corruption programme is "commitment-rich but implementation-poor".

This chapter, through the identification of the weaknesses in South Africa's anti-corruption programme, contributed to the aim of the study by answering the primary

research question which was "Which areas of South Africa's anti-corruption programme must be addressed to improve its success in fighting corruption?". South Africa's stagnation and lack of improvement on their CPI and WGI (control of corruption) scores can be attributed to two factors. Firstly, the South African public and local and foreign business' awareness of the rising level of corruption (aided by the high levels of transparency) obviously has an impact on the perception of the level of corruption. Secondly, South Africa's demonstrated lack of political will to effectively and impartially co-ordinate and implement its comprehensive anti-corruption legal and institutional framework, negatively impacts the perception of government's ability to combat corruption successfully. South Africa has the weapons to fight the corruption beast. All it has to do is to gather enough courage (political will) to step onto the battlefield and actively and strategically engage the beast.

CHAPTER 5
COMPARATIVE ANALYSIS OF RWANDA AND SOUTH AFRICA'S ANTI-CORRUPTION PROGRAMMES

5.1   Introduction

Rwanda and South Africa are young democracies that are being rebuilt after periods of suffering - Rwanda experienced genocide in 1994 and South Africa emerged from a system of apartheid in 1994. Rwanda got its new constitution in 2003 and South Africa in 1996.

Both countries have embarked on rebuilding programmes (visions) for a future that will be better for their citizens. Rwanda launched its Vision 2020 in 2000 with the aim of becoming a middle-income country and South Africa launched its National Development Plan Vision 2030 in 2012 to achieve sustainable growth and development in order to reduce the level of poverty and inequality. Corruption was identified as a historical problem in both policy documents and the need to address corruption was acknowledged. In their plans for a better future, Rwanda and South Africa adopted a zero-tolerance approach towards corruption in their visions for the future.

In terms of the success of their anti-corruption programmes, South Africa has been hovering in the mid-forties of the CPI over the period 2007 to 2017 and their WGI (control of corruption) score dropped from 64 to 57, whereas Rwanda increased their CPI score from 28 to 55 and their WGI score from 58 to 72. There is a general perception that South Africa is losing the fight against corruption, whilst Rwanda's anti-corruption efforts are seen as a success story and the country as the leader in fighting corruption on the African continent.

Therefore, this chapter will compare the Rwandan and South African anti-corruption efforts based on the extent of corruption, their anti-corruption legislative and institutional frameworks, compliance with UNCAC in terms of the mandatory articles of Chapters II and III, and their political will to fight corruption. The aim is to compare

the two countries based on the objectives of this study and to identify the strengths and weaknesses of their anti-corruption campaigns based on the country assessments carried out in the previous two chapters. The supportive facts from the country assessments informing the findings in this chapter will not be repeated in detail.

5.2   Extent of corruption

The true extent of corruption in *Rwanda* is not known due to the Rwandan government's lack of transparency (Bozzini, 2013; Oyamada, 2017). Rwandan people mostly associate corruption with bribery as it is encountered at the interface of service delivery and therefore other forms of corruption are mostly kept out of the public debate. There is no factual evidence of grand corruption in Rwanda, but state capture and political corruption remain a concern due to the blurring of lines between the government, the ruling party and the private sector (Bozzini, 2013).

Even though Rwanda is seen as successful in its fight against corruption, corruption remains a challenge in many areas of the public sector. The most common types of corruption include the embezzlement of public funds, fraudulent procurement practices, nepotism and the general abuse of office and power (Republic of Rwanda, 2012a:5). The perceived level of corruption in Rwanda is increasing according to Open Society Foundation (2017). This is confirmed by Transparency International Rwanda (2017) that indicated that the chance of encountering a bribe from a service provider has increased from 12.6% in 2012 to 23.9% in 2017, with the traffic police, electricity, private sector, universities and local government the sectors most prone to bribery. Local government and the police make up the 58% of the total monetary value of bribes paid (Transparency International Rwanda, 2017:26).

The level of corruption in *South Africa* is high and definitely rising, despite the government's efforts to counter it (National Planning Commission, 2012; Majila et al., 2014; Pillay and Khan, 2015; Republic of South Africa, 2016; Open Society Initiative for Southern Africa, 2017; World Bank Group, 2018). There are allegations and current investigations into state capture, concerns over apparent large scale corruption at state-owned enterprises and seemingly general mismanagement of public funds as highlighted by the Auditor-General of South Africa's report for the financial year

2016/17. Billions of rand are reported to be lost due to corruption which negatively affects the government's ability to provide acceptable levels of service delivery to the citizens (Tamukamoyo, 2013; Corruption Watch, 2017; Open Society Initiative for Southern Africa, 2017).

According to Corruption Watch's Annual Reports, a total of 5,334 whistle blowing reports were received in 2017, which represents a 25 percent increase from 2016 and a 124 percent increase from the 2015 reports (2,382). Bribery is the most common form of corruption in South Africa, followed by embezzlement and procurement irregularities. The main areas identified for corruption in 2017 were schools, the South African Police Service, traffic and licensing, healthcare and housing (Corruption Watch, 2017:33).

Based on the available information, the level of corruption in South Africa is much higher than in Rwanda, but the level of corruption is increasing in both countries. Bribery is the most common form of corruption in both countries and it appears to be mostly at the level of service delivery. Due to the lack of transparency in Rwanda, the presence of grand corruption is not known, but in South Africa it seems to be present based on media reports and current investigations into state capture and large scale looting. Both countries thus have rising levels of corruption, but South Africa has the additional challenge of the emergence of grand corruption within government and state-owned enterprises.

5.3   Anti-corruption legislative framework

Chêne and Mann (2011:7), and Open Society Foundations (2017:8) state that *Rwanda* has a strong and comprehensive legal framework to deal with corruption. Rwanda's 2012 National Anti-Corruption Policy is the overarching policy for the co-ordination of the anti-corruption programme and states the country's approach to fighting corruption. The policy is applicable to everyone from government institutions, government run businesses and projects, provincial administrations, the private sector, civil society and normal citizens (Republic of Rwanda, 2012a:6).

Organic Law number 01/2012/OL of 02/05/2012 clearly defines corruption, public service, civil servant and public entities, as well as establishes what is punishable in terms of corrupt acts. A current weakness in the definition of corruption is that embezzlement is not included as a crime that can be prosecuted under anti-corruption legislation (Open Society Foundations, 2017:7). Rwanda has 10 laws that play a role in fighting corruption and cover key anti-corruption aspects such as codes of conduct, public procurement, state finances, access to information and the protection of whistle blowers.

South Africa has a comprehensive anti-corruption legislative framework that has been described as practical, strong, sophisticated, the best in Africa and among the best in the world (Republic of South Africa, 2003; Chêne, s.a.; Pillay & Khan, 2015). Pillay and Khan (2015:15) stated that South Africa has a "more 'complete' and diversified set of anti-corruption policies" compared to that of Rwanda. South Africa does not have an overarching anti-corruption strategy or policy document that describes the country's approach to fighting corruption or the co-ordination thereof.

The Prevention and Combating of Corrupt Activities Act 12 of 2004 defines corruption, as well as specific offences and is applicable to all people in South Africa, whether in the private or public sector. South Africa has 13 laws that directly impact corruption and cover all the general aspects as required by UNCAC. The country's laws on asset forfeiture and the protection of witnesses and whistle blowers have been praised, whilst the non-criminalisation of passive bribery of foreign officials, the non-criminalisation of the abuse of functions by public officials, the holding of public office or holding office in a public enterprise by persons convicted of corruption and the lack of an anti-corruption strategy to implement and operationalise the country's anti-corruption laws and institutions have been identified as challenges (United Nations Office on Drugs and Crime, 2013b:10).

Rwanda and South Africa both have comprehensive anti-corruption legislative frameworks, but on paper South Africa's is considered better. The strength of Rwanda's anti-corruption legislative framework is that there is a National Anti-Corruption Policy that co-ordinates the overall anti-corruption programme and states the country's approach to fighting corruption. South Africa's world class anti-corruption

legislative framework is weakened by the absence of a national anti-corruption strategy or policy, and the lack of a central co-ordinating document is seen as severely limiting to the country's anti-corruption efforts.

5.4   Anti-corruption institutional framework

The *Rwandan* anti-corruption institutional framework can be divided into enforcement institutions and oversight institutions (Republic of Rwanda, 2012a:7) and as such gives Rwanda a decentralised approach to addressing corruption. The Office of the Ombudsman is the most important part of Rwanda's anti-corruption institutional framework in terms of preventing and combating corruption (United Nations, 2013:2). It is a Type B anti-corruption agency as it performs both corruption and non-corruption-related functions (Quah, 2017a:279).

The mandate of the Office of the Ombudsman is extensive. In order to achieve its mandate, the Office of the Ombudsman is divided into seven units that deal with corruption prevention, investigation, as well as co-ordination and compliance (Office of the Ombudsman of Rwanda, 2015:5). The Office of the Ombudsman does a lot of awareness education to inform the general public about the country's anti-corruption campaign and how to blow the whistle on corrupt activities. It also does compliance audits on the implementation of codes of conduct, asset declarations, the implementation of access to information legislation and the implementation of anti-corruption policies. In terms of its investigative mandate, the Office of the Ombudsman mainly investigates corruption cases received by the Office. This is because the police's Criminal Investigation Department is mandated to investigate all economic related crimes including corruption, embezzlement, fraud, and forgery (Open Society Foundations, 2017:16). The Office of the Ombudsman does not prosecute any offences as this function falls solely under the National Public Prosecution Authority (Open Society Foundations, 2017:16).

Besides the Office of the Ombudsman, the Criminal Investigation Department and the National Public Prosecution Authority, there are six other institutions with anti-corruption functions over and above their other duties. They are the Auditor-General of State Finances, the National Bank of Rwanda, the Financial Intelligence Unit, the

Rwanda Public Procurement Authority, the Independent Review Panel on Public Procurement and the Rwanda Revenue Authority (Chêne & Mann, 2011; United Nations, 2013; Oyamada, 2017). Rwanda thus has a total of nine institutions with an anti-corruption mandate.

The work of the nine anti-corruption institutions is co-ordinated by the National Anti-Corruption Advisory Council. The purpose of the National Anti-Corruption Advisory Council is to "facilitate the exchange of information on corruption between the various anti-corruption institutions in order to prevent collusion and to determine their collective tasks and responsibilities" (Open Society Foundations, 2017:6).

South Africa opted to not create a specialised anti-corruption agency, but to rather strengthen existing institutions to roll out the anti-corruption programme. According to Open Society Initiative for Southern Africa (2017), South Africa has a sophisticated and wide range of institutions that form a highly decentralised anti-corruption institutional framework where none of the institutions have combating of corruption as a primary or sole output. The performance of this design is unsatisfactory according to Open Society Initiative for Southern Africa (2017:235).

There seems to be a disagreement amongst scholars on exactly how many anti-corruption institutions South Africa has, but Corruption Watch (s.a.:21) lists nine institutions that are mandated to specifically combat and prevent corruption (according to Pereira et al., 2012:88 there are fourteen). They are the *National Prosecuting Authority* (includes the Specialised Commercial Crime Unit, the Asset Forfeiture Unit and the Witness Protection Unit), the *Public Protector*, the *Directorate for Priority Crime Investigation,* the *Asset Forfeiture Unit*, the *Special Investigating Unit*, the *Financial Intelligence Centre,* the *Auditor General South Africa*, the *Public Service Commission* and the *Independent Police Investigative Directorate*. Besides the National Prosecuting Authority that prosecutes all cases in South Africa, the Public Service Commission which manages the National Anti-Corruption Hotline and the Asset Forfeiture Unit, all the other institutions investigate corruption. The poor demarcation of the areas of responsibility of these investigative units will be discussed later in this chapter. It is important to note that none of these institutions are tasked with making the public aware of the country's anti-corruption campaign.

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The output of the nine anti-corruption institutions is co-ordinated by five separate bodies that each has a separate output in terms of co-ordination. According to Pereira et al. (2012:89), the bodies that are responsible for co-ordinating South Africa's anti-corruption programme are the *Anti-Corruption Co-ordinating Committee,* the *Anti-Corruption Inter-Ministerial Committee*, the *Anti-Corruption Task Team*, the *Multi-Agency Working Group* and the *National Anti-Corruption Forum.*

As will be discussed under the compliance with UNCAC section, South Africa's anti-corruption institutional framework is struggling to operate effectively, something that with nine separate institutions and five co-ordinating bodies might be expected. When describing South Africa's anti-corruption institutions, Republic of South Africa (2002:14) probably states it best by saying that only the Special Investigating Unit "has an exclusive (albeit narrow) anti-corruption mandate and none of the existing mandates promote a holistic approach to fighting corruption".

Both Rwanda and South Africa follow a decentralised approach to fighting corruption, with Rwanda opting for a Type-B anti-corruption agency and South Africa opting not to have an anti-corruption agency at all. Rwanda has a total of nine anti-corruption institutions that are co-ordinated through a single co-ordinating body. The Office of the Ombudsman is the most important part of Rwanda's anti-corruption institutional framework in terms of preventing and combating corruption and has an extensive mandate. Literature did not indicate any serious challenges with Rwanda's anti-corruption institutional framework. South Africa has a highly decentralised anti-corruption institutional framework and literature does not agree on the exact amount of anti-corruption institutions that form part of the framework. Corruption Watch's figure of nine anti-corruption institutions was accepted for this study. The nine institutions are mainly tasked with investigating corruption, and awareness education does not feature as an output of any of them. The work of the institutions is co-ordinated by five separate bodies. Literature suggests that South Africa's anti-corruption institutional framework is struggling to successfully contribute to the country's fight against corruption. The strength of the Rwandan design seems to lie in the fact that they have one anti-corruption agency that has a broad anti-corruption mandate supported by the other institutions, and the co-ordination of the country's

anti-corruption programme through one body. South Africa's weakness is the poor co-ordination and demarcation of mandates due to the absence of a holistic approach to achieve the end goal, as well as the absence of an awareness education mandate for the any of the institutions.

5.5   Compliance with UNCAC

This section compares Rwanda and South Africa's compliance with the compulsory articles of Chapters II and III of UNCAC (Table 2.2) with a specific focus on Articles 5 and 6 which deal with preventive anti-corruption policies and practices, and anti-corruption bodies, respectively. Only articles where strengths and/or weaknesses were identified will be mentioned.

In terms of Article 5, compliance was done regarding the existence of anti-corruption policies and practices. However, factors such as effectiveness, co-ordination, participation of society, rule of law, transparency and accountability were used to identify strengths and weakness in the implementation of Article 5.

Compliance with Article 6 was based on whether the signatory country had established an anti-corruption body or bodies. In order to identify strengths and weaknesses in the implementation of Article 6, requirements such as oversight, co-ordination, independence from undue influence, and the provision of material and human resources were considered.

Rwanda's anti-corruption measures cover the scope of UNCAC in that it addresses the prevention, investigation and prosecution of corruption, as well as asset recovery. Rwanda complies with *Article 5*, but non-governmental organisations and civil society play a limited role in Rwanda's fight against corruption (Bozzini, 2013:15). Rwanda complies with *Article 6* as it has established an anti-corruption agency and has structures in place to fight corruption. A 2013 review of the implementation of UNCAC praised the work performed by the Office of the Ombudsman in "preventing corruption and raising awareness of corruption" and the "system of declaration and verification of assets" (United Nations, 2013:9). The review also praised the role of the National Anti-Corruption Advisory Council in co-ordinating the activities of the different anti-

corruption institutions in order to avoid confusion regarding their roles and activities. On the negative side, the independence of the Office of the Ombudsman, the Office of the Auditor-General and the judiciary in general is a cause for concern (Chêne, 2008:4; Bozzini, 2013:16; Oyamada, 2017:257). According to *Article 7*, the public service must be governed based "on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude". The Rwandan government has introduced a merit system for the appointment of public servants, as well as making their salaries more competitive (Oyamada, 2017:252). A major weakness that was identified is the Rwandan government's almost complete lack of transparency (Bozzini, 2013; Oyamada, 2017; World Bank, 2018). Rwanda complies with the rest of the compulsory articles of Chapter II, but the independence of government institutions, lack of transparency and the absence of an active civil society in preventative matters remain a common problem.

The Criminalisation and Law Enforcement Articles contained in Chapter III of UNCAC are covered by Rwanda's strong and comprehensive legal framework to deal with corruption. Rwanda complies with all the compulsory Articles (as listed in Table 2.2), but only partly with Articles 17 (embezzlement) and 25 (obstruction of justice). Regarding the act of embezzlement, the law lacks as far as it does "not provide for acts benefiting a third person or entity" and "embezzlement of property in the private sector was only partly covered" (United Nations, 2013:4). Article 25 is not fully adhered to as the interference in the production of evidence was not specifically catered for (United Nations, 2013:5).

South Africa's anti-corruption measures cover the scope of UNCAC in that it addresses the prevention, investigation and prosecution of corruption, as well as asset recovery. South Africa complies with *Article 5* in so far as it has the best anti-corruption legislation in Africa and that the provisions of UNCAC have been significantly translated into national legislation (Chêne, s.a.:3). However, the country is seriously lacking in some of the values behind the article in terms of co-ordination, participation of civil society and accountability. Poor co-ordination of South Africa's anti-corruption measures was identified as an area of concern as far back as 2002 when it was stated that "initiatives to fight corruption are fragmented and hampered by the number of agencies and institutions that attend to corruption as part of a broader functional

mandate (Republic of South Africa, 2002:14). The lack of co-ordination to implement South Africa's anti-corruption legislative was subsequently highlighted by National Planning Commission (2012:448), United Nations Office on Drugs and Crime (2013b:10) and Open Society Initiative for Southern Africa (2017:234). As stated under South Africa's anti-corruption legislative framework, the lack of an anti-corruption strategy to implement and operationalise the country's anti-corruption laws and institutions is seen as the reason for the poor co-ordination. Besides the absence of an overarching anti-corruption policy document, the execution of proper co-ordination by the responsible bodies is also problematic and can be put at the highest level of government (Open Society Initiative for Southern Africa, 2017:234). As highlighted by United Nations Office on Drugs and Crime (2013b:10), South Africa's apparent inability or lack of wilful effort to properly co-ordinate its anti-corruption programme could thus be seen as contradictory to the country's constitutional principles for co-operative government and intergovernmental relations. In terms of the promotion of the participation of society, the forum that was supposed to incorporate society (National Anti-Corruption Forum) is no longer meaningfully active and is seen as a failure due to insufficient commitment, continuity and no funding (National Planning Commission, 2012:449; Republic of South Africa, 2016:14). In terms of accountability and the rule of law, Republic of South Africa (2016:10) states that the implementation or enforcement of South Africa's anti-corruption legislation "remains uneven and, in some cases, weak". Auditor-General South Africa (2018:9) and National Planning Commission (2012:446) also criticise South Africa's implementation of anti-corruption legislation in terms of the lack of accountability and uneven application of laws.

South Africa executed *Article 6* through a decentralised approach by incorporating an anti-corruption function into already existing structures and thus complies with the article. Adding to South Africa's lack of co-ordination, the unclear and overlapping boundaries of the anti-corruption bodies seem to be a major obstacle to success. Chetty and Pillay (2017:117) and Adetiba (2016:95), in their studies on the independence of South Africa's anti-corruption institutions, found that overlapping and conflicting mandates are causing confusion amongst the institutions in terms of their responsibility to fight corruption. In terms of making the ordinary citizens aware of the country's anti-corruption programme, South Africa is failing its people. Awareness,

training and education of the public were identified as a strategic consideration in the Public Service Anti-Corruption Strategy in 2002 (Republic of South Africa, 2002:20), but remains a challenge to date (Republic of South Africa, 2016:16). The independence of South Africa's anti-corruption institutional framework is questionable. Republic of South Africa (2016:14) states that "A central issue of concern raised by civil society organisations and the National Development Plan is that the independence of the criminal justice agencies tasked with investigating and prosecuting corruption has not been effectively maintained". Adetiba (2016) and Chetty and Pillay (2017) concurred that the South African anti-corruption institutional framework suffers from a lack of independence and that there is political interference in the duties of these organisations. South Africa's anti-corruption institutions lack the material and human resources (especially skilled staff) to effectively and efficiently execute their functions (Majila et al., 2014:235; Open Society Initiative for Southern Africa, 2017:228; World Bank Group, 2018:89). South Africa accedes to the rest of the compulsory preventative measures, but issues already mentioned like the role of civil society, accountability, rule of law and the independence of institutions affect them negatively.

The Criminalisation and Law Enforcement Articles contained in Chapter III of UNCAC are mostly covered by South Africa's strong and comprehensive legal framework to deal with corruption. United Nations Office on Drugs and Crime (2013b) confirms that South Africa complies with all the compulsory Articles (as listed in Table 2.2).

In terms of Rwanda's compliance with the compulsory articles of UNCAC, the country adheres to all the Articles besides that of Articles 17 and 25. Rwanda's strengths in fighting corruption are seen as the work done by the Office of the Ombudsman in preventing corruption and raising awareness of corruption and the co-ordination of the activities of the different anti-corruption institutions by the National Anti-Corruption Advisory Council. Weaknesses identified were the limited role that non-government organisations and civil society play in Rwanda's fight against corruption, transparency, and the independence of the Office of the Ombudsman, the Office of the Auditor-General and the judiciary. The Rwandan government's almost complete lack of transparency was identified as the biggest weakness.

South Africa has a strong and comprehensive legal framework to deal with corruption and legally adheres to all the compulsory Articles. The biggest challenge to South Africa seems to be to put into practice what it has on paper. Even though the country complies with Article 6, its anti-corruption institutions are in practice not sufficiently independent and free from political interference and are not adequately resourced in terms of material needs and skilled staff. There are also serious concerns over the poor co-ordination of South Africa's anti-corruption programme, the overlapping mandates of anti-corruption institutions and poor public awareness of the anti-corruption programme. Accountability and civil participation were also identified as weaknesses. The poor co-ordination of South Africa's anti-corruption campaign is seen as the biggest weakness, followed by the independence of its institutions, insufficient material and human resources, and poor public awareness of the corruption campaign.

5.6   Political will

The level of political will to fight corruption in Rwanda and South Africa was measured using the seven indicators of political will, as developed by Brinkerhoff (2010). The seven indicators are locus of initiative, analytical rigour, mobilisation of support, application of credible sanctions, continuity of effort, public commitment and allocation of resources, as well as learning and adaptation. The comparison of the political will of the two countries will be done per indicator of political will, but not in as much detail as in the country specific chapters.

Rwanda's political will to initiate and sustain its anti-corruption efforts has been identified as perhaps the biggest contributor to its success in fighting corruption (Chêne, 2008; Bozzini, 2013; Pillay & Khan, 2015; Open Society Foundations, 2017; Oyamada, 2017; Quah, 2017a).

The locus of initiative factor scored high in the assessment due to the fact that it initiated with Rwanda's President, Paul Kagame, who has also "continuously positioned anti-corruption policies as a priority of his development plans since assuming office" (Oyamada, 2017:258).

The degree of analytical rigour scored low in the assessment because no proof could be found that Rwanda did a fully fletched analysis of the extent of corruption in the country before embarking on its anti-corruption drive. Republic of Rwanda (2012a:7) confirms that Rwanda did not know the true extent, the forms or the causes of corruption in the country when drafting its anti-corruption policy.

Mobilisation of support scored low in the assessment because the absence of a strong civil society and non-governmental organisations may hamper the continued success of Rwanda's anti-corruption programme. Rwanda's anti-corruption programme is seen as a very top-down approach which "is unlikely to be sustainable in the long term, as it stems from a number of individual leaders rather than being rooted in strong institutions, transparency mechanisms and citizen participation" (Bozzini, 2013:27). The fact that the Office of the Ombudsman has a very strong corruption awareness campaign (creation of anti-corruption clubs at schools and universities, anti-corruption week, youth anti-corruption days and anti-corruption football competitions) is overshadowed by the absence of the citizens' voice in the anti-corruption decision-making process.

The application of credible sanctions factor scored low in the assessment. Rwanda has strong anti-corruption laws and institutions and there is no doubt that people are held accountable for corrupt actions. However, the political will to consistently enforce sanctions across all levels of society is questionable, as it seems to be more focussed on petty corruption than political corruption (Bozzini, 2013:15; Oyamada, 2017:255 & 257). When sanctions are applied to higher levels of government and society, it is often not clear whether there are ulterior motives (political) for such sanctions (Chêne, 2011:6; Oyamada, 2017:255; Kukutschka, 2018:9). The application of sanctions for petty corruption also appears to be unsuitable for the level of crime committed, even though it can be argued that it serves as a deterrent to abstain from corruption (Oyamada, 2017:255).

The score for the continuity of effort factor was medium as there is a continued focus on the outcome of the reform process, but the allocation of suitable resources is hampering the effectiveness of the reform process. The perceived determination to keep transparency as low as possible also negatively impacts the score. President

Kagame's leadership in the rollout of Rwanda's anti-corruption programme has already been discussed, but top politicians also often include integrity and the zero tolerance to corruption when they address the public (Bozzini, 2013:7). The lack of transparency in the country is rightfully questioned, especially when one considers the continuity of effort. If one considers that all other governance issues under the WGI improved substantially under the leadership of President Kagame, it would seem fair to assume that the low levels of transparency and media freedom in Rwanda are a deliberate strategy by President Kagame and his government. In terms of the allocation of resources, the Office of the Ombudsman struggles to meet its objectives and mandated functions due to "its limited financial and human resources" (Open Society Foundations, 2017:16).

Public commitment and allocation of resources received a score of medium in the assessment, as there is a clear will to make the anti-corruption programme and its objectives public. However, the allocation of suitable resources is hindering the achievement of the anti-corruption programme, even though the country has introduced a merit system and increased the salaries of its employees. The concerns about the independence of certain anti-corruption institutions also negatively affected this indicator of political will.

The learning and adaptation indicator scored high in the assessment. Rwanda's compliance to UNCAC was reviewed in November 2013, and United Nations (2013) mentions various improvements that Rwanda had made or was in the process of making in order to increase the effectiveness of its anti-corruption drive. Rwanda's anti-corruption policy specifically refers to the importance of assessing and reviewing the effectiveness of the anti-corruption programme and policy (Republic of Rwanda, 2012a:16). The country's drive to improve its anti-corruption legislative framework is evident from the fact that, at the time of writing, an updated version of Law No. 23/2003 of 07/08/2003 on the prevention, suppression and punishment of corruption and related offences had been submitted to parliament for approval.

According to Brinkerhoff's seven factors of political will, Rwanda displays a medium level of political will in its fight against corruption. The locus of initiative for the anti-corruption programme and the learning and adaptation factor of political will are high.

The application of credible sanctions, continuity of effort, public commitment and allocation of resources are medium and the degree of analytical rigour and mobilisation of support is low. As the locus of initiative factor refers to when the anti-corruption programme was launched, the learning and adaptation factor is seen as one of the strengths of Rwanda's political will to fight corruption. Even though the public commitment and allocation of resources factor scored medium, Rwanda's public awareness campaigns are seen as very positive. The mobilisation of support factor is seen as the major weakness in terms of Rwanda's political will to fight corruption.

Republic of South Africa (2003:6), Dintwe (2012:18), National Planning Commission (2012) and a barrage of media reports have criticised *South Africa* for not displaying the necessary political will to successfully fight corruption.

The locus of initiative factor of political will scored high as South Africa's anti-corruption campaign originated at the top level of government (Republic of South Africa, 2002:6).

The degree of analytical rigour scored high in the assessment, despite the fact that areas of concern identified have not been attended to. At the beginning of the South African anti-corruption campaign, an extensive corruption assessment was done and the results were published in 2003. The report was the culmination of an extensive assessment which entailed "perception and experience surveys among households, public service delivery institutions, and businesses; analysis of legislation and codes of conduct; and data collection on criminal and disciplinary cases related to corruption" (Republic of South Africa, 2003:Foreword). Areas of concern that were identified in the report include poorly demarcated roles, powers and responsibilities, poor co-ordination of the anti-corruption effort, accountability of institutions, lack of skilled personnel and poor prevention programmes.

Mobilisation of support scored low in the assessment due to the fact that South Africa started with an all-inclusive approach, but due to a lack of commitment and funding, the National Anti-Corruption Forum became meaningless. The fact that the country has not attended to the identified lack of public awareness and education since 2003 is also inexcusable. In terms of harnessing support for the anti-corruption programme from the broader public, corruption prevention through civil society and the education

of the public on the country's anti-corruption measures were identified as major weaknesses by the 2003 country assessment, and thus required urgent intervention (Republic of South Africa, 2003:8). Unfortunately, nothing has been done to alleviate this challenge to the success of South Africa's anti-corruption programme, as highlighted by calls for action in National Planning Commission (2012:448), Republic of South Africa (2016:12 & 20) and Open Society Initiative for Southern Africa (2017:222 & 260). Even though civil society organisations do play an active role in addressing issues of corruption in South Africa, it is not through the efforts of government, but rather due to the lack of action by government (Republic of South Africa, 2016:7).

The application of credible sanctions factor of political will scored low in the assessment and is one of South Africa's weakest points in terms of the seven factors of political will. South Africa has very good anti-corruption laws, and credible sanctions are provided for in these laws. The main concern is not with the law, but rather with the application of it. When people perceive that the law will not be applied, it loses its power as a deterrent. Building on issues pertaining to the lack of accountability and the rule of law as discussed under South Africa's compliance with UNCAC, the following should be taken as a serious warning to South Africa if it wants to win the fight against corruption. According to Tamukamoyo (2013:1), the main reason why corruption is increasing in South Africa is because of the lack of accountability for the perpetrators. The results of Majila et al.'s empirical study in 2014 concluded that the main reason for the failure of South Africa's anti-corruption programme is the "inadequate enforcement of legislation" (2014:227). Their study further found that political power is being used to protect transgressors from prosecution which results in a lack of fear (Majila et al., 2014:235). Pillay and Khan (2015:22) concur with this and state that South Africa is losing the fight against corruption due to a strong perception that one can get away with corruption because of the lack of action being taken. The authors further argue that the lack of credible and decisive action is especially visible when prominent people in the political, public and private domains are involved. The fact that South Africa does not have a law that disqualifies people from holding public office or a position in a state-owned enterprise if found guilty of corruption also does not help to deter public servants from engaging in corrupt practices.

The continuity of effort factor scored low in the assessment due to a complete lack of continuity and a lack of suitable resources to execute the anti-corruption mandate. Republic of South Africa (2002:6) and Open Society Initiative for Southern Africa (2017:233) state that the aim of the South African anti-corruption initiative in 1997 was to produce a national anti-corruption strategy. However, 21 years later the country still does not have an approved strategy, which is a clear indication of the government's lack of political will to address corruption effectively. As alluded to previously, the vast majority of areas of concern identified in the Public Service Anti-Corruption Strategy of 2002 and the 2003 country corruption assessment are still unresolved today and appeared in both the 2012 National Development Plan Vision 2030 chapter on corruption and the 2016 National Anti-Corruption Strategy document for discussion. The continued focus on the outcome of a country with zero tolerance for corruption is thus absent in terms of quantifiable achievements to support it. Open Society Initiative for Southern Africa (2017:236) goes into detail about leadership issues (high turn-over) at anti-corruption institutions and concludes that the executive has not provided anti-corruption institutions with the stable leadership it requires to be effective. The poor allocation of suitable resources to execute South Africa's anti-corruption programme was discussed under the compliance with UNCAC.

Public commitment and allocation of resources scored low based on the overwhelming evidence of the lack of public commitment and the poor allocation of resources. South Africa commits to zero tolerance for corruption in various high level documents and public speeches. However, in reference to statements made by the then President, Jacob Zuma, and Julius Malema (current leader of the Economic Freedom Fighters political party), Open Society Initiative for Southern Africa (2017:260) states that the "idea of some of the politicians in the country that 'corruption is a western thing' will generate national ambivalence towards corruption in the country". National Planning Commission (2012:454) states that "sanctions must be applied impartially to those who betray public trust or break the law", but this study has already established that the lack of consistency in the application of the law is one of the main reasons why South Africa's anti-corruption programme is failing. Even though there is verbal and written public commitment to impartial treatment, the reality is that it is not true. The lack of financial and human resources, poorly skilled personnel, appointments that are not based on merit, and high staff turn-over in leadership positions have all been

illustrated. To make the current state worse, it has to be noted that Republic of South Africa (2002:28) already mentioned the lack of resources in 2002. The absence of public awareness campaigns and educational programmes on government's efforts to curb corruption are further proof of the lack of public commitment displayed by the South African Government.

The learning and adaptation indicator scored low. South Africa has had numerous assessments of its anti-corruption programme since the birth of the anti-corruption campaign in 1997. This was done locally, in combination with international organisations and independently by international organisations. Many of these assessments were referred to in this study, for example, the 2002 Public Service Anti-Corruption Strategy, the 2003 Country Corruption Report, the 2012 National Development Plan Vision 2030, the 2013 Country Review Report on South Africa's implementation of UNCAC and the 2016 National Anti-Corruption Strategy Discussion Document. There is thus no shortage of information on what issues South Africa must address to improve the effectiveness of its anti-corruption programme. However, as stated, the same issues that were identified in 2002 are still relevant today which creates the impression that South Africa has no real desire to improve on its shortcomings.

South Africa displays a low level of political will in its fight against corruption. The locus of initiative for the anti-corruption programme and the degree of analytical rigour prior to implementation of the programme scored high. The rest of the factors all scored low according to the assessment. As the two factors that scored high were influenced by actions taken in the late nineties and early two thousand, it was felt that it does not validate a substantial increase in the overall political will of South Africa. It is difficult to find something positive about South Africa's political will to fight corruption besides the actions that were taken at the launch of the anti-corruption campaign. The application of credible sanctions, continuity of effort, public commitment and allocation of resources and the learning and adaptation factors of political will are all serious weaknesses.

5.7   Conclusion

The true extent of corruption in Rwanda is not known due to the lack of transparency. The level of corruption in South Africa is much higher than in Rwanda (based on available information), but the level of corruption is increasing in both countries. Bribery is the most common form of corruption in both countries and it appears to be mostly at the level of service delivery. The presence of grand corruption in Rwanda is not known, but in South Africa it seems to be present based on media reports and current investigations into state capture and large scale looting. South Africa's challenge in fighting corruption effectively starts with the magnitude of corruption as it is easier to fight corruption that is not widespread.

Rwanda and South Africa both have comprehensive anti-corruption legislative frameworks, but on paper South Africa's is considered better. The strength of Rwanda's anti-corruption legislative framework is that there is a National Anti-Corruption Policy that co-ordinates the overall anti-corruption programme and states the country's approach to fighting corruption. South Africa's world class anti-corruption legislative framework is weakened by the absence of a national anti-corruption strategy or policy, and the lack of a central co-ordinating document is seen as severely limiting to the country's anti-corruption efforts.

Both Rwanda and South Africa follow a decentralised approach to fighting corruption, with Rwanda opting for a Type-B anti-corruption agency and South Africa opting not to have an anti-corruption agency at all. The strength of the Rwandan design is that it has one anti-corruption agency that has a broad anti-corruption mandate supported by the other institutions and the co-ordination of the country's anti-corruption programme through one body. South Africa has a highly decentralised anti-corruption institutional framework that is struggling to successfully contribute to the country's fight against corruption.   South Africa's weaknesses are poor co-ordination and demarcation of mandates due to the absence of a holistic approach to achieve the end goal, as well as the absence of an awareness education mandate for the any of the institutions.

In terms of Rwanda's compliance with the compulsory articles of UNCAC, the country adheres to all the Articles besides that of Articles 17 and 25. Rwanda's strengths in fighting corruption are seen as the work done by the Office of the Ombudsman in preventing corruption and raising awareness of corruption and the co-ordination of the activities of the different anti-corruption institutions by the National Anti-Corruption Advisory Council. Weaknesses identified were the limited role that non-government organisations and civil society play in Rwanda's fight against corruption, transparency, and the independence of the Office of the Ombudsman, the Office of the Auditor General and the judiciary. The Rwandan government's almost complete lack of transparency was identified as the biggest weakness. South Africa has a strong and comprehensive legal framework to deal with corruption and legally adheres to all the compulsory Articles. The biggest challenge to South Africa is to be able to put into practice what it has on paper. Even though the country complies with Article 6, its anti-corruption institutions are in practice not sufficiently independent and free from political interference and are not adequately resourced in terms of material needs and skilled staff. There are also serious concerns over the poor co-ordination of South Africa's anti-corruption programme, the overlapping mandates of anti-corruption institutions and poor public awareness of the anti-corruption programme. Accountability and civil participation were also identified as weaknesses. The poor co-ordination of South Africa's anti-corruption campaign is seen as the biggest weakness, followed by the independence of its institutions, insufficient material and human resources, and poor public awareness of the corruption campaign.

Rwanda displays a medium level of political will in its fight against corruption. The learning and adaptation factor is seen as one of the strengths of Rwanda's political will to fight corruption. Even though the public commitment and allocation of resources factor scored medium, Rwanda's public awareness campaigns are seen as very positive. The mobilisation of support factor is seen as the major weakness in terms of Rwanda's political will to fight corruption. South Africa displays a low level of political will in its fight against corruption. The application of credible sanctions, continuity of effort, public commitment and allocation of resources and the learning and adaptation factors of political will were identified as serious weaknesses in South Africa's fight against corruption.

Table 5.1: Summary of findings against the objectives assessed

Objective assessed	Findings	
	Rwanda	South Africa
Extent of corruption	Not known due to lack of transparency, but rising. Presence of grand corruption not known.	High and rising. Grand corruption, including allegations of state capture present.
Anti-corruption legislative framework	Comprehensive. National Anti-Corruption Policy is a strength.	Comprehensive and best in Africa. Absence of national policy hampers co-ordination.
Anti-corruption institutional framework	Decentralised approach with Type B anti-corruption agency. Co-ordination of effort is a strength.	Decentralised approach with no anti-corruption agency. Poor co-ordination and demarcation of mandates and absence of an awareness education mandate for any of the institutions are weaknesses.
Compliance with UNCAC	Do not adhere fully to Articles 17 and 25. Strengths are the Office of the Ombudsman, awareness campaigns and co-ordination. Weaknesses are the role of non-government organisations and civil society, the independence of the key institutions and the almost complete lack of transparency.	Anti-corruption institutional weaknesses are the lack of independence, inadequate resourcing, poor co-ordination, overlapping mandates and poor public awareness. Accountability and civil participation were also identified as weaknesses.
Political will	Medium. Learning and adaptation factor and public awareness are strengths.	Low. Application of credible sanctions, continuity of effort, public commitment and allocation of resources, and the learning and adaptation factors are serious weaknesses.

In response to the second secondary research question of whether the driving force behind Rwanda's perceived successful anti-corruption programme can be "applied to

improve South Africa's anti-corruption success", the following conclusions can be drawn. In terms of the impact of a country's anti-corruption legislative framework, South Africa can learn from Rwanda by developing and implementing a national anti-corruption strategy or policy document that co-ordinates the country's anti-corruption efforts from a national level. South Africa can also learn from Rwanda to improve the efficiency of its anti-corruption institutional framework by reducing the number of co-ordinating bodies from five to one, to assign clear anti-corruption mandates to each of the corruption fighting institutions, as well as to include anti-corruption awareness campaigns as an output of one of the institutions. Even though the role of the Office of the Ombudsman is seen as a strength in Rwanda's fight against corruption, it would not be advisable for South Africa to adopt their approach due to the current high level of corruption in South Africa and the lack of political will to fight it. Rwanda's strengths in their compliance with the compulsory articles of UNCAC that could have been applied to South Africa have already been covered by the implementation of anti-corruption awareness campaigns and better co-ordination of the anti-corruption effort. Under Rwanda's strengths in the political will to fight corruption, South Africa can learn from Rwanda by acting on information at its disposal in order to improve the score for the learning and adaptation factor, as well as institute anti-corruption campaigns to increase their score under the public commitment and allocation of resources factor.

CHAPTER 6
CONCLUSIONS AND RECOMMENDATIONS

6.1   Conclusions

The purpose of this study was to compare the Rwandan and South African anti-corruption programmes in order to determine how South Africa can improve its anti-corruption success. In order to fulfill the purpose of the study, the objectives of the study were to identify the strengths and weaknesses of the two countries' anti-corruption campaigns through a comparison of the extent of corruption in the two countries, their anti-corruption legislative frameworks, anti-corruption institutional frameworks, compliance with the mandatory articles of UNCAC Chapters II and III with a focus on Articles 5 and 6, and the level of political will using Brinkerhoff's (2010) seven factors of political will. The results of the individual country analysis were used to compare Rwanda and South Africa's strengths and weaknesses in their respective anti-corruption campaigns in order to determine what South Africa should do to improve its success in fighting corruption.

In order to find responses to actions required under Chapters II and III of UNCAC, each applicable article was evaluated against available information contained in scholarly articles, anti-corruption evaluation reports, annual reports, national anti-corruption policies, national development policies and anti-corruption laws.   The countries' compliance with the compulsory articles was measured firstly in terms of whether it had been implemented. Secondly, with an emphasis on Articles 5 and 6, the implementation of the compulsory articles was evaluated against the principles of implementation as contained in Articles 5 and 6. Article 5 requires that anti-corruption policies must be properly co-ordinated and reflect the principles of the participation of civil society, integrity, transparency and accountability. Article 6 requires that anti-corruption bodies make citizens aware of the country's anti-corruption measures, have the necessary independence and be free to do their work effectively and without unnecessary influence. It also encourages countries to ensure that anti-corruption bodies have the necessary resources and skilled staff to ensure its success. In other

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words, anti-corruption bodies ought to have the capacity to perform their duties effectively.

In order to measure the level of political will to fight corruption in Rwanda and South Africa, respectively, Brinkerhoff's (2010) seven indicators of political will were used. The seven indicators are locus of initiative, analytical rigour, mobilisation of support, application of credible sanctions, continuity of effort, public commitment and allocation of resources, as well as learning and adaptation. In order to evaluate the seven factors used to measure the political will of Rwanda and South Africa to employ successful anti-corruption programmes, a wide range of documents were used to assess the political will. Documents used include scholarly articles, anti-corruption evaluation reports, annual reports, national anti-corruption policies and national development policies. The results of the measurement of political will were expressed as either high, medium or low, per factor. An overall political will score was then allocated based on the results of the assessment.

This study revealed a number of factors that prevent South Africa from effectively addressing corruption. The main areas identified for improvement are listed below in no particular order.

- The world class anti-corruption legislative framework is weakened by the absence of a national anti-corruption strategy or policy. The lack of a central co-ordinating document is seen as severely limiting to the country's anti-corruption efforts.

- The anti-corruption institutional framework is highly decentralised and weakened by poor co-ordination and demarcation of mandates due to the absence of a holistic approach to achieve the end goal.

- The absence of an anti-corruption awareness education mandate for any of the anti-corruption institutions leads to poor public awareness of the anti-corruption programme.

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- The anti-corruption institutions are in practice not sufficiently independent and free from political interference, and are not adequately resourced in terms of material needs and skilled staff.

- The lack of accountability in terms of corruption and/or the uneven application of the law.

- A lack of civil participation in the anti-corruption programme.

- A low level of political will in its fight against corruption. The application of credible sanctions, continuity of effort, public commitment and allocation of resources, and the learning and adaptation factors of political will were identified as serious weaknesses in South Africa's fight against corruption.

The study was divided into six chapters in order to achieve the aim. The purpose of *Chapter 1* was to provide a general background and research approach to the study which included the rationale for the research, the problem statement, research question and objectives. This chapter also dealt with the research methods and methodology used for this study, as well as data collection, data analysis and the organisation of the study. In the background to the study, the negative effect of corruption on sustainable social and economic growth and development was confirmed, as well as corruption's positive link to increased poverty and inequality. It also established that, according to TI CPI and the WGI's control of corruption factor, South Africa is not succeeding in its efforts to curb corruption while Rwanda is perceived to be achieving success through its anti-corruption campaign.

The rationale for the study was that from South Africa's point of view, the need to improve its control of corruption has never been more urgent, as the country faces allegations of systemic corruption and state capture. This does not bode well for a country that already struggles with high levels of unemployment, poverty and inequality. This study was thus conducted with a view to improve South Africa's economic and social development through an improved or more successful anti-corruption programme.

The problem statement focussed on the fact that whilst both Rwanda and South Africa have zero tolerance policies towards corruption, have signed UNCAC and have implemented anti-corruption programmes in order to strive towards their goal of zero tolerance towards corruption, Rwanda is perceived as being successful in its fight against corruption, but South Africa not. It also highlighted the fact that high levels of corruption had been identified as one of the primary challenges facing the development of South Africa. Corruption was seen as such a major challenge to the development of South Africa that an entire chapter (Chapter 14) was dedicated to successfully fighting corruption in South Africa's National Development Plan Vision 2030. However, despite this focus, South Africa has not been able to demonstrate that it is winning the fight against corruption, and some might argue that it is losing the fight against corruption with annual losses due to corruption estimated at billions of rand. There is thus a definite need to investigate why South Africa is failing to effectively address the threat of corruption, despite a corruption-free society being one of the country's main objectives in the National Development Plan Vision 2030. The research question "Which areas of South Africa's anti-corruption programme must be addressed to improve its success in fighting corruption?" was dealt with throughout the study and will be discussed later in this chapter.

Chapter 2 covered the theory of corruption and its consequences, UNCAC, aspects of successful anti-corruption programmes and the measurement thereof. It contributed to the purpose of the study by laying the platform for the reader to understand the analysis of Rwanda and South Africa's anti-corruption programmes, as well as justifying the use of the CPI and WGI as indicators of progress in the fight against corruption. This chapter addressed challenges pertaining to the general definition of corruption and why certain definitions were accepted. It also looked at the typology of corruption and certain types of corruption. The typology and types of corruption needed to be understood as it affects the readers' understanding of the extent of corruption, as well as elements to be addressed in anti-corruption laws. The cost of corruption explained how corruption affects countries and their citizens, and why scholars are trying to understand and improve ways to combat it. The purpose of UNCAC explained the compulsory articles of the Convention that need to be implemented by signatories with an emphasis on Articles 5 and 6. An understanding of the basics and principles of UNCAC is needed as a basis for the development of

anti-corruption programmes. Ways to improve success in fighting corruption were discussed under aspects of successful anti-corruption programmes, whilst the measurement of corruption and the reason why certain measurement tools are preferred were examined in the latter part of Chapter 2.

The review of the literature established that even though there is much debate about the correct general definition of corruption, the two most widely used and commonly known definitions of corruption are that of TI and the World Bank. TI defines corruption as "the abuse of entrusted power for private gain" and the World Bank defines it as "the abuse of public office for private gain". These two definitions were accepted as correct for the purpose of this study.

In terms of the typology of corruption, grand (includes political corruption and state capture) and petty corruption (includes administrative corruption) are the most commonly used descriptions of the various ways in which corruption manifests in terms of origin, magnitude, frequency and effect. In terms of the scope and frequency of corruption, it can also be classified as systemic or sporadic corruption. The various types of corruption, even though not an exhaustive list, were presented in Table 2.1. The types of corruption listed include bribery, extortion, nepotism, cronyism, embezzlement, conflicts of interest, judicial, accounting, electoral, and public service fraud.

It was established that worldwide, corruption impedes sustainable economic, political and social development, resulting in a lower quality of life for the citizens of countries affected by high levels of corruption. Corruption is not only seen as an obstacle to the eradication of poverty, but also affects the poorest of the poor the most. Even though it is difficult to quantify corruption in terms of monetary value due to its secretive nature, the 2015 cost of bribes paid worldwide was estimated at a minimum of 1 trillion US dollars, and the 2016 estimate cost of money flowing out of Africa due to corruption per annum was put at between 859 US dollars and 1.06 trillion US dollars.

UNCAC serves as an international legal framework for governments and citizens to refer to in making efforts to strengthen their governance institutions and to tackle the corruption problem. The preventative measures of Chapter II of UNCAC state that

countries should implement effective anti-corruption policies (Article 5) and ensure the existence of structures or organisations to fight corruption (Article 6). This should be done through aspects of good governance such as proper co-ordination, the participation of civil society, integrity, independence, transparency and accountability. It also encourages countries to ensure that anti-corruption bodies have the necessary resources and skilled staff to ensure its success. The establishment of anti-corruption agencies and the development of anti-corruption policies in line with UNCAC were established as important for the success of anti-corruption programmes. The implementation of UNCAC should, however, be done with the necessary political will as it has been identified as critical for the implementation and sustainment of successful anti-corruption programmes.

In terms of selected aspects of successful anti-corruption programmes, writings on the successful implementation of anti-corruption initiatives highlight the importance of good governance and the presence of political will to successfully fight corruption. Transparency, accountability and integrity were found to be important aspects to address within the concept of governance. Brinkerhoff's (2000) groundbreaking work on political will was used as the foundation for further discussions on political will, as well as the measurement thereof. Therefore, political will was defined as the commitment of actors to undertake actions to achieve a set of objectives and to sustain the costs of those actions over time (Brinkerhoff, 2000:242).

Regarding the measurement of corruption and governance, the use of aggregate measurement tools was accepted despite some criticism specifically regarding the objectivity of the results. The use of the CPI and WGI was explained based on their suitability to measure corruption and governance at a macro level and their suitability and accuracy for cross-country analysis over time. The use of the results of these measuring instruments to determine the success or failure of countries' anti-corruption programmes over time can thus be done with a high level of confidence.

Chapter 3 analysed *Rwanda's* anti-corruption programme in order to identify the strengths and weaknesses of its anti-corruption campaign by focusing on the extent of corruption, anti-corruption legislative frameworks, anti-corruption institutional frameworks, compliance with the mandatory articles of UNCAC Chapters II and III with

a focus on Articles 5 and 6, and the level of political will using Brinkerhoff's (2010) seven factors of political will. Based on the analysis, the following observations were made.

The true extent of corruption in Rwanda is not known due to low levels of reporting, and low levels of transparency and press freedom. However, indications are that bribery is increasing and that corruption is still a cause for concern. The country's anti-corruption campaign focusses mainly on petty corruption even though there is a definite risk of grand corruption due to the blurring of lines between the government, the ruling party and the private sector.

Rwanda has a comprehensive anti-corruption legislative framework supported by a decentralised institutional approach to fighting corruption. The strength of Rwanda's anti-corruption legislative framework is that there is a National Anti-Corruption Policy that co-ordinates the overall anti-corruption programme and states the country's approach to fighting corruption. In its institutional framework, Rwanda opted for a Type-B anti-corruption agency. The strength of the Rwandan design is that it has one anti-corruption agency that has a broad anti-corruption mandate supported by the other institutions. The fact that the country's anti-corruption programme is co-ordinated through one body is also seen as a strength.

In terms of Rwanda's compliance with the compulsory articles of UNCAC, the country adheres to all the Articles besides that of Articles 17 and 25. Rwanda's strengths in fighting corruption are seen as the work done by the Office of the Ombudsman in preventing corruption and raising awareness of corruption, and the co-ordination of the activities of the different anti-corruption institutions by the National Anti-Corruption Advisory Council. Weaknesses identified were the limited role that non-governmental organisations and civil society play in Rwanda's fight against corruption, the independence of the Office of the Ombudsman, the Office of the Auditor-General and the judiciary, as well as transparency. The Rwandan government's almost complete lack of transparency was identified as the biggest weakness.

Rwanda displays a medium level of political will in its fight against corruption. The learning and adaptation factor is seen as one of the strengths of Rwanda's political will

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to fight corruption. Even though the public commitment and allocation of resources factor scored medium, Rwanda's public awareness campaigns are seen as very positive. The mobilisation of support factor is seen as the major weakness in terms of Rwanda's political will to fight corruption due to the limited role that non-governmental organisations and civil society play in Rwanda's fight against corruption.

In spite of Rwanda's anti-corruption success, the country's anti-corruption programme has definite shortcomings. Seen against the backdrop of the country's remarkable improvement in its CPI and all but one of the WGI scores, it appears as if some of the weaknesses are deliberately being kept as weaknesses. Through the leading role that President Kagame has played in Rwanda's rebuilding process, there can be no doubt that he could, if he so wishes, address the areas for improvement (transparency, freedom of the media, independence of anti-corruption institutions, involvement of civil society and aspects of political will) in order for Rwanda to improve their fight against corruption.

Chapter 3 analysed Rwanda's anti-corruption programme for strengths and weaknesses and contributed to the objectives by answering the first secondary research question which was "What is the driving force behind Rwanda's perceived successful anti-corruption programme?". A more condensed version of what was seen as the driving force behind Rwanda's progress can be found at the end of Chapter 3.

Chapter 4 analysed *South Africa's* anti-corruption programme in order to identify the strengths and weaknesses of its anti-corruption campaign by focusing on the extent of corruption, anti-corruption legislative frameworks, anti-corruption institutional frameworks, compliance with the mandatory articles of UNCAC Chapters II and III with a focus on Articles 5 and 6, and the level of political will using Brinkerhoff's (2010) seven factors of political will. Based on the analysis, the following observations were made.

The level of corruption in South Africa is high and definitely rising, despite the government's efforts to counter it. Besides the allegations and current investigations into state capture, there seems to be general mismanagement of public funds and the country's state-owned enterprises. The level of corruption has serious financial

implications which affect the government's ability to achieve acceptable levels of service delivery to the citizens. Citizens are giving expression to their dissatisfaction in relation to the lack of service delivery through an increase in service delivery protests which negatively affects national security.

South Africa has a comprehensive anti-corruption legislative framework which is considered the best in Africa and one of the best in the world. The country opted for a decentralised approach to fighting corruption, with no anti-corruption agency. South Africa's world class anti-corruption legislative framework is weakened by the absence of a national anti-corruption strategy or policy, and the lack of a central co-ordinating document is seen as severely limiting to the country's anti-corruption efforts. South Africa has a highly decentralised anti-corruption institutional framework that is struggling to successfully contribute to the country's fight against corruption. South Africa's weaknesses are poor co-ordination and demarcation of mandates due to the absence of a holistic approach to achieve the end goal, as well as the absence of an awareness education mandate for the any of the institutions.

In terms of South Africa's compliance with the compulsory articles of UNCAC, the country legally adheres to all the compulsory Articles. Even though the country complies with Article 6, its anti-corruption institutions are in practice not sufficiently independent and free from political interference and are not adequately resourced in terms of material needs and skilled staff. There are also serious concerns over the poor co-ordination of South Africa's anti-corruption programme, the overlapping mandates of anti-corruption institutions and poor public awareness of the anti-corruption programme. Accountability and civil participation were also identified as weaknesses. The poor co-ordination of South Africa's anti-corruption campaign is seen as the biggest weakness, followed by the independence of its institutions, insufficient material and human resources and poor public awareness of the corruption campaign.

South Africa displays a low level of political will in its fight against corruption. The application of credible sanctions, continuity of effort, public commitment and allocation of resources, and the learning and adaptation factors of political will were identified as serious weaknesses in South Africa's fight against corruption.

In their writings on the correct institutional design to effectively fight corruption, Chêne (2012), Wickberg (2013) and Quah (2017b) agreed that the level of political will, level of independence, capacity, and the ability to effectively co-ordinate anti-corruption functions between institutions play an important role in the success or failure of anti-corruption agencies. Many authors have identified political will as critical for the implementation and sustainment of successful anti-corruption programmes and agree that a lack of political will is often the reason for the failure of anti-corruption programmes. From the analysis of South Africa's anti-corruption programme, it is clear that it unfortunately has all the ingredients for an unsuccessful anti-corruption campaign. Chapter 4, through the identification of the weaknesses in South Africa's anti-corruption programme, contributed to the aim of the study by answering the primary research question which was "Which areas of South Africa's anti-corruption programme must be addressed to improve its success in fighting corruption?".

Chapter 5 compared the strengths and weaknesses of Rwanda and South Africa's anti-corruption programmes, as assessed against the objectives, with the aim of answering the second secondary research question which was whether the driving force behind Rwanda's perceived successful anti-corruption programme can be "applied to improve South Africa's anti-corruption success". A summary of the strengths and weaknesses of the two countries' anti-corruption programmes can be found in Table 5.1. The findings of this chapter also contributed to aim of the study by identifying aspects of Rwanda's anti-corruption programme that can assist South Africa in improving its success in fighting corruption.

In response to the second secondary research question, the following conclusions can be made. In terms of the impact of a country's anti-corruption legislative framework, South Africa can learn from Rwanda by developing and implementing a national anti-corruption strategy or policy document that co-ordinates the country's anti-corruption efforts from a national level. South Africa can also learn from Rwanda to improve the efficiency of its anti-corruption institutional framework by reducing the number of co-ordinating bodies from five to one, to assign clear anti-corruption mandates to each of the corruption fighting institutions, as well as to include anti-corruption awareness campaigns as an output of one of the institutions. Even though the role of the Office

of the Ombudsman is seen as a strength in Rwanda's fight against corruption, it would not be advisable for South Africa to adopt their approach due to the current high level of corruption in South Africa and the lack of political will to fight it. Rwanda's strengths in their compliance with the compulsory articles of UNCAC that could have been applied to South Africa are covered by the implementation of anti-corruption awareness campaigns and better co-ordination of the anti-corruption effort. Under Rwanda's strengths in the political will to fight corruption, South Africa can learn from Rwanda by acting on information at its disposal in order to improve the score for the learning and adaptation factor, as well as institute anti-corruption campaigns to increase their score under the public commitment and allocation of resources factor.

The current chapter has drawn conclusions from the information presented in the first five chapters. The rest of *Chapter 6* will deal with recommendations emanating from this study, findings outside the scope of this study, as well as the contributions to the field of study.

6.2   Recommendations

The study was directed by the following primary research question: "Which areas of South Africa's anti-corruption programme must be addressed to improve its success in fighting corruption?". The major shortcoming in South Africa's effort to fight corruption was identified as the poor co-ordination of the anti-corruption measures in terms of the anti-corruption legislative framework, the anti-corruption institutional framework and guiding principles for the implementation of UNCAC. Poor demarcation of the mandates of the anti-corruption institutions, as well as the absence of an awareness education mandate for the any of the institutions were also identified as major weaknesses. It was also found that in terms of South Africa's compliance with Article 6 of UNCAC, its anti-corruption institutions are in practice not sufficiently independent and free from political interference and are not adequately resourced in terms of material needs and skilled staff. Accountability and civil participation were also identified as weaknesses. South Africa's low political will to fight corruption is also a major concern, with a total of five out of the seven factors assessed scoring low.

In view of this study, the following recommendations are made for South Africa to improve its success in fighting corruption:

6.2.1 Single national anti-corruption policy

The preventative measures of Chapter II of UNCAC state that countries should implement effective anti-corruption policies (Article 5) and ensure the existence of structures or organisations to fight corruption (Article 6) that are properly co-ordinated. The absence of a single national anti-corruption policy or strategy has been highlighted as severely limiting South Africa's ability to effectively fight corruption in various reports since 2002. The country will be able to address various weaknesses in its current anti-corruption programme by drafting and implementing a single national anti-corruption policy or strategy.

The national document should clearly identify and address South Africa's approach to fighting corruption, the anti-corruption legislative framework and institutions. It should also clearly articulate the roles, responsibilities and reporting channels of the anti-corruption institutions to ensure that their mandates do not overlap. This will allow for improved co-ordination of the anti-corruption effort which will decrease the cost and increase the effectiveness of corruption prevention, investigation and prosecution. The function of *public awareness education* must be added as an output to one of the institutions in order to address the South African public's poor awareness of the anti-corruption programme. The policy document should also establish a *single co-ordinating body* to manage the country's anti-corruption efforts from a strategic level, as the current five bodies are seen as ineffective and contributing to the poor co-ordination of the anti-corruption effort. This body should also be tasked with including *civil participation* in the anti-corruption initiatives as required by UNCAC as it ensures the continued success of anti-corruption programmes due to the commitment from the general public.

6.2.2 Anti-corruption institutions

Article 6(2) of UNCAC describes the Convention's desire that the structures that must fight corruption in a country should have the necessary independence and be free to

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do their work effectively and without unnecessary influence. It also encourages countries to ensure that anti-corruption bodies have the necessary resources and skilled staff to ensure its success. Even though South Africa complies with the existence of anti-corruption bodies, its anti-corruption institutions are not sufficiently *independent* and free from political interference and are not *adequately resourced* in terms of material needs and skilled staff. As South Africa's anti-corruption institutions are independent and free from political interference on paper, any perceived interference with the investigation and/or prosecution of corruption must be dealt with by the individuals in charge of the various anti-corruption institutions. If the heads of the institutions are prevented from taking action against perceived political interference, the matter should be elevated to ministerial level and the President of South Africa. The reason why this task is coupled to the President, is that the high levels of corruption and current allegations of state capture in South Africa require that an example be set from the very top in order show the country's political will to fight corruption. The Ministers responsible for fighting corruption in South Africa, together with National Treasury, must ensure that the anti-corruption institutions are properly resourced in terms of material needs and skilled staff to effectively carry out their mandates.

6.2.3 Political will

As previously stated, political will is a prerequisite for starting and sustaining a successful anti-corruption programme, and South Africa scored very low on its political will to fight corruption. The improvement of South Africa's score for the *mobilisation of support* factor of political will will not be mentioned here, as the civil participation in the anti-corruption process and the public awareness of the anti-corruption programme are already covered under the single national anti-corruption policy section.

South Africa scored low in the *application of credible sanctions* factor because of the inconsistent application of sanctions which leads to a perception that the anti-corruption laws are not applicable across all levels of society. This study found that political power is being used to protect transgressors from prosecution which results in a lack of fear from the general public. The interference in the prosecution of perpetrators seems to be more apparent when prominent people are involved.

Therefore, the law enforcement agencies and the National Prosecuting Authority must ensure that those involved in corruption are held *accountable* regardless of social or political standing. Any political interference must be reported through the appropriate channels as mentioned in 6.2.2.

South Africa scored low in the *continuity of effort* factor, which relates to the continued focus on the outcome of the reform process and the allocation of suitable resources to sustain it. The lack of resources in terms of material needs and skilled staff has already been discussed under the heading of anti-corruption institutions. For South Africa's anti-corruption campaign to succeed, it must be driven from the highest level of government by leaders who demonstrate the will to fight corruption through their words and actions. This includes ensuring that the country has an anti-corruption programme that is properly co-ordinated, institutions that are properly mandated, truly independent and adequately resourced, sanctions are applied fairly to all members of society, and a public that is well aware of the anti-corruption programme. As mentioned by Open Society Initiative for Southern Africa (2017:238), an executive that is not fully committed to the fight against corruption "might constitute a single point failure for the entire anti-corruption framework".

The *public commitment and allocation of resources* factor measures the extent to which the decision-makers make the anti-corruption programme and its objectives public, and allocate sufficient resources to achieve the objectives. Actions to be taken that will address this factor have already been dealt with.

The low score for the *learning and adaptation* indicator will improve if South Africa's political leadership acts on the information and recommendations of this study, as well as numerous other assessments previously done on various aspects of its anti-corruption programme.

6.2.4 Type B anti-corruption agency

The only strength of the Rwandan anti-corruption system that has not been incorporated into the recommendations to improve South Africa's anti-corruption success is that of the Office of the Ombudsman (a Type B anti-corruption agency). It

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has been established that the success of an anti-corruption programme is not based on the type of approach, but rather factors such as proper co-ordination, independence and political will. Quah (2017b:15) also warns of the potential risks of establishing anti-corruption agencies when they are created in response to external pressure, and lack the will to fight corruption. Based on the current state of corruption and the lack of political will to fight it, it is not recommended that South Africa opt for a single anti-corruption agency at this time in its history.

6.3   Findings outside the scope of the study

There were two concerning issues discovered during the research process that fell outside the scope of this study, and should be taken note of. Even though Articles 19, 20 and 30(7) of UNCAC do not form part of the list of compulsory articles that need to be adhered to, it was interesting to note that South Africa does not fully comply with them. Article 19 deals with the abuse of functions by a public official and Article 20 deals with the illicit enrichment of public officials, but these contraventions have not been criminalised by South Africa. South Africa also does not clearly satisfy the provisions of Article 30(7) which deals with the disqualification from holding public office or a position in a state-owned enterprise if found guilty of corruption. It seems like more than pure coincidence that the abuse of power and illicit enrichment by public officials have not been criminilised and that, if found guilty of another form of corruption, there is no law prohibiting the person from holding office in the public service or state-owned enterprises. It is advised that these lapses in South Africa's current laws be investigated to determine whether it purposely provides a loophole for politicians and people in power to not be held accountable.

The fact that Rwanda's WGI score for voice and accountability only improved from 11 to 16 between 2007 and 2017 raises serious concerns when considering that Rwanda made enormous improvements in the scores of all the other WGI factors over the same period. If all other governance issues improved substantially under the leadership of President Kagame, it would seem fair to assume that the low levels of transparency and media freedom in Rwanda are a deliberate strategy by President Kagame and his government. The reason for using this strategy should be interrogated.

6.4   Contributions to the field of study

The contributions of the findings of this study are twofold regarding the existing literature on successfully combating corruption. Firstly, it provided proof of the importance of the implementation of UNCAC through principles such as proper co-ordination, the participation of civil society, integrity, independence, transparency, accountability and the sufficient allocation of material and human resources. Secondly, South Africa's level of political will was quantifiably measured for the first time.

Finally, this study compared the anti-corruption programmes of Rwanda and South Africa in order to determine how South Africa can improve its anti-corruption success. If South Africa implements the recommendations of this study, corruption will decrease, the National Development Plan Vision 2030's goals will become more attainable which will lead to lower levels of poverty and inequality. The end result will be that South Africa will be able achieve its envisioned goals of sustainable social and economic development.

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