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John Hatchard: Combating Corruption. Legal Approaches to Supporting Good Governance and Integrity in Africa, Edward Elgar Publishing, Cheltenham, UK / Northampton, MA, USA, 2014, 416 pages, hardback, 95.00 £; ISBN 978-1-78100-436-4

“Every dollar that a corrupt official or a corrupt business person puts in their pocket is a dollar stolen from a pregnant woman who needs health care; or from a girl or a boy who deserves an education; or from communities that need water, roads, and schools,” World Bank President *Jim Yong Kim* only recently emphasised during an anti-corruption event in Washington, D.C., pointing out that „[i]n the developing world, corruption is public enemy number one.“¹ His words neatly illustrate that since corruption has been identified in the international debate as the major obstacle to good governance having severe detrimental effects on economic, social and democratic development,² the necessity to fight corruption remains until today an important factor in development policy. Over the past fifteen years, several international and regional legal instruments with the objective to combat corruption have emerged, which led in turn to major changes in national legislation around the globe. However, the ‘cancer of corruption’³ is far from being defeated - as we can still observe, in practice, cases of corporate bribery and looting of state assets, especially within African states.

Against this background, *John Hatchard’s* book *Combating Corruption: Legal Approaches to Supporting Good Governance and Integrity in Africa* addresses a highly relevant and topical subject. With his work *Hatchard* seeks to contribute to the discussion on how to effectively fight corruption on national and transnational level and, in particular, on how to ensure that the numerous international good governance obligations are fulfilled in practice (p. 2). As the title suggests, the author puts emphasis, on the one hand, on the legal issues surrounding the strategies to combat corruption through good governance mechanisms and, on the other hand, on the African perspective on this subject. The objective of the book is to give a comprehensive overview of the current status of the implementation of the legal anti-corruption/good governance obligations placed upon African states by analysing the laws and institutions that have been enacted in this regard and by presenting numerous examples of good and bad practice in their application (pp. 7-8). For this work, *Hatchard*,

- 1 Remarks by World Bank Group President *Jim Yong Kim* at the “Speak Up Against Corruption” Event on 19 December 2013 in Washington, D.C., <http://www.worldbank.org/en/news/speech/2013/12/19/world-bank-group-president-jim-yong-kim-corruption-event> (last accessed on 31 May 2014).
- 2 Since the mid 1990s, social scientists have devoted much attention to the examination of the causes and consequences of corruption and its impact on development. See, in particular: *Susan Rose-Ackerman*, *Corruption and Government: Causes, Consequences, and Reform*, Cambridge 1999.
- 3 To use the famous words of former World Bank President *James D. Wolfensohn*, Annual Meetings Address, 1 October 1996.

barrister and law professor in the UK, draws not only on his research background in criminal and constitutional law with a regional focus on the Commonwealth and Anglophone Africa, but also his consulting experience in the field of anti-corruption, good governance and human rights as well as his personal experiences from working and living in southern Africa.

The book at hand contains twelve chapters and – after two introductory chapters – broadly follows in terms of structure the four good governance ‘pillars’ as they derive from the *United Nations Convention Against Corruption* and the *African Union Convention on Preventing and Combating Corruption*: (i) prevention, (ii) investigation and prosecution of corruption-related offences, (iii) international cooperation, and (iv) asset recovery.

Regarding, first, the aspect of preventing corruption, the author explores the most common strategies to maintain integrity in the public service, namely the operation of codes of conduct as a means to address conflicts of interest among public officials, the regulation of election campaign financing, and the control of public sector finances (Ch. 3). Chapters 4 and 5 discuss, inter alia, the role of constitutions and constitutional oversight bodies in upholding good governance principles by outlining, on the one hand, the increasing tendency of victims to use human rights protection mechanisms to combat corruption, and on the other hand, the constitutional limits to the effective implementation of anti-corruption strategies, i.e. immunities and fundamental rights of presumed offenders.

As regards the second ‘pillar’, the criminalisation of corruption, *Hatchard* sheds light on the practical challenges to the effective investigation and prosecution of corruption-related offences, the difference in scope between these offences, and the controversial issue of concluding deals, meaning the dropping of criminal charges in exchange for the return of looted state assets (Ch. 6). Furthermore, Chapter 7 deals with the question of the necessity and the potential mandate of independent anti-corruption commissions, whilst Chapter 8 discusses the appropriate balance between judicial independence and judicial accountability and the particular challenge to combat corruption within the judiciary. In the following chapter, the author highlights the importance to equally target the private sector with regard to the prevention and criminalisation of corruption (Ch. 9). *Hatchard* emphasises that persuading multi-national corporations to refrain from corruption in their business activities is a major and foremost transnational challenge. Nevertheless, he offers a set of strategies to make further progress in combating corruption in the corporate sector, namely through the use of ‘gentle persuasion’ (i.e. development of international *soft law* standards), ‘forceful persuasion’ (i.e. prosecution of offending companies and their senior officials in the victim state, de facto implementation of the *OECD Convention on Combating Bribery* in the home states, use of civil remedies) and ‘persuasive threats’ (i.e. debarment from future projects).

With regard to the third and fourth ‘pillars’, international cooperation and asset recovery, Chapter 10 outlines the challenges posed to African states to effectively combat the laundering of the proceeds of corruption through the international financial system, and the role of the Financial Action Task Force in this regard, whilst Chapter 11 points out the im-

portance to prevent public officials from enjoying their proceeds of corruption by developing effective legal assistance mechanisms, and recovering the looted state assets.

The final chapter summarises the main argument of the book: that the ‘art of persuasion’ is fundamental to develop the necessary political will - on both national and transnational level - to ensure that the anti-corruption laws and institutions in place actually work in practice (Ch. 12).

Hatchard’s work is the result of a comprehensive research project that processed a large amount literature in the field of corruption, legislation and judicial decisions from a great number of African states as well as numerous reports drafted by international organisations (e.g. UN, World Bank, OECD) and non-governmental organisations (e.g. Transparency International, Global Witness, Human Rights Watch), not to forget his personal anecdotes and experiences. In terms of research method, the book follows a legal approach to discuss and compare the different good governance laws and institutions that have been developed on national level in African states in response to the obligations stemming from the international anti-corruption conventions. In order to illustrate his findings, *Hatchard* draws upon a series of case studies from the African context. For example, he refers on several occasions to the Lesotho Highlands Water Project case as a success story, where the government of Lesotho had the necessary political will and international support to successfully prosecute those foreign companies responsible for paying bribes in the procurement process regarding a major dam project (pp. 245-254). In contrast, the Anglo Leasing affair in Kenya highlights the practical challenges to carry out effective investigations against senior public officials when these prerequisites are missing, i.e. when there is no political will in the administration, and when court proceedings are used to undermine the gathering of evidence located abroad (pp. 313-314).

However, from a methodological viewpoint, the chosen legal approach with reference to selected case studies has some substantial deficits. First, the laws, institutions and cases analysed throughout the book stem almost exclusively from Anglophone African countries, which seems to result rather from practical reasons (e.g. common law background, previous experience) than theoretical considerations (pp. 7-8). This is problematic because an African cross-country comparative analysis in order to produce significant results needs to take into account the legal and practical situation in the Francophone African countries and the particularities of civil law jurisdictions (e.g. the differences in criminal procedural law). Second, since the domestic laws and cases were selected with the purpose to illustrate the (non-)implementation of the corresponding international legal provisions, they are not representative for the actual situation in these countries in terms of corruption. Instead of simply providing examples of good and bad practice, it would have been preferable, for instance, to mirror these findings with the Transparency International Corruption Perception Index (CPI) and the development of the latter over time, especially when the given examples correspond with the perceived level of corruption, as it is the case for Lesotho and

Kenya.⁴ Finally, if the objective of the book is to sketch out best practices in implementation of the international anti-corruption obligations within African states, the chosen legal approach is only of limited use. Instead, the author should have referred more frequently and directly to empirical findings on the effectiveness of the various good governance instruments in practice.

In consequence, these methodological deficits make it difficult from the outset to build a strong theoretical argument that explains the differences in the levels of corruption between African states. Nevertheless, *Hatchard* develops his central idea of the ‘art of persuasion’ as a guiding principle for combating corruption through law. He argues that the progress made by African states in the fight against corruption depends to a large extent on the political will, and that it is crucial to use the appropriate degree of pressure to persuade private and public actors alike to implement and apply the discussed good governance mechanisms and, ultimately, abstain from corruptive practices. Yet, this seems like a very intuitive conclusion since the idea of the ‘art of persuasion’ can methodologically not derive from the legal approach taken throughout the book. Indeed, as convincing as this main argument may seem at first, it is not breaking new ground. This is because the work in general neglects to take account of the existing social sciences literature on how law can influence the behaviour of different actors. On the one hand, the author does not even attempt to relate his argument with other theoretical concepts about how legal rules can persuade corrupt actors to abstain from corruptive practices.⁵ On the other hand, he does not refer to the existing literature in international relations theory on how states translate international legal obligations into domestic policies, and *Risse*’s ‘spiral model’ in particular, which accounts for the variation in the domestic effects of international norms.⁶ Moreover, to give an example with regard to the fight against corruption, *Abbott* and *Snidal* theoretically explained the interactions between value and interest actors in the international legalisation process,⁷ ideas that can be found in *Hatchard*’s concepts of ‘moral persuasion’, ‘persuasive threats’ and ‘transnational will’.

- 4 According to the Transparency International CPI 2013, Lesotho is ranked 55 out of 177 states, whereas Kenya is ranked 136, with the CPI being relatively stable over the preceding years.
- 5 See, for example, *Lambsdorff*’s principle of the ‘invisible foot’ stating that anti-corruption strategies need to exploit the handicap that corrupt actors cannot credibly promise reciprocity to their corrupt counterparts: *Johann Graf Lambsdorff*, *The Institutional Economics of Corruption and Reform: Theory, Evidence, and Policy*, Cambridge 2007. This idea is reflected in *Hatchard*’s ‘reveal everything’ principle according to which the use of ‘persuasive threats’ can make a significant contribution to convince corrupt actors to reveal information on their transactions with corrupt counterparts (pp. 340-341).
- 6 *Thomas Risse / Kathryn Sikkink*, *The Socialization of International Human Rights Norms into Domestic Practices: Introduction*, in: *Thomas Risse et al. (eds.), The Power of Human Rights: International Norms and Domestic Change*, Cambridge 1999. While the ‘spiral model’ was developed to explain the steps that states must go through to change their norms and behaviour regarding human rights, it may equally apply to international anti-corruption norms.
- 7 *Kenneth W. Abbott / Duncan Snidal*, *Values and Interests: International Legalization in the Fight against Corruption*, *Journal of Legal Studies* 31 (2002), p. 141.

Despite these criticisms, the book with its legal approach and African cross-country perspective gives a comprehensive overview of where we stand today in the fight against corruption on the African continent and reminds us that further efforts of persuasion are needed in order to make the legal strategies work in practice. Against this background, it meets the purpose it set out to achieve in the beginning. It is also worth emphasising that the author's findings support the tendency in the current legal debate on corruption, and in international law in general, that *soft law* is an important instrument and that for enforcement of international obligations transnational cooperation is as important as the scrutinising function exercised by civil society.⁸ However, a more interdisciplinary approach to the subject would have underpinned the main thesis with a sound theoretical basis. Hence, in the end, the book adds conceptually only little to the academic literature on the fight against corruption.

In sum, *Combating Corruption: Legal Approaches to Supporting Good Governance and Integrity in Africa* constitutes a well written, easily accessible and illustrative work with a clear structure despite the complex nature of the issue of corruption. This makes it an interesting handbook predominantly for practitioners in African countries, be it legislators, government officials, journalists or civil society activists. As an extensive compendium of the state of play of the good governance reform process in Africa, *Hatchard's* work will have a share in the global efforts to fight the 'cancer of corruption' in the developing world.

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8 *Anne van Aaken*, Korruption und Entwicklung, in: Philipp Dann / Stefan Kadelbach / Markus Kaltenborn (eds.), *Handbuch Recht und Entwicklung*, Baden-Baden 2014, p. 619.