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Governmental corruption in Africa: Sierra Leone as a case study

A criminal justice perspective

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Abstract. This paper examines the definition and context of official corruption in the emerging African nation of Sierra Leone. Historical, legal and sociological studies of the development of Sierra Leone and corruption within that nation are reviewed, as well as the content of official judicial inquiries into administrative corruption. These investigations and studies are supplemented with data from the primary author's experiences as a prosecutor and judge in Sierra Leone. Predisposing factors which facilitate corruption are identified and a variety of policies aimed at reform are discussed.

Governmental corruption in Sierra Leone conceptualized

Analyzing the phenomenon of governmental corruption in Sierra Leone, Kpundeh recently noted that nation has “endured a pattern of corruption remarkable in its depth and extent” (1993). Conceptualizing governmental corruption in any society is a formidable task rendered complicated by its amorphous and complex nature. It seems to defy definition mainly because of the inexhaustiveness of its categories as can be deduced from a document jointly prepared by the United Nations Economic Commission for Africa and the African Association for Public Administration and Management, defining “unethical behavior” at the governmental level as encompassing: bribery, corruption, abuse of office, patronage, nepotism, conflict of interest, influence peddling, using of official position for personal pleasure, favors to relatives and friends, divided loyalty, slowness, late-coming, partiality, partisanship, absenteeism, insubordination, misuse of government property, leaking or misusing government information and “engaging in any unsanctioned activity” (1992). Corruption can also be characterized as the intentional noncompliance with the principle that personal or family relationships ought not to play a role in economic decisions by private agents or government officials (Tanzi, 1996). Due to its diverse, grotesque and subtle manifestations, governmental corruption in third world countries cannot be explained in terms of a single

theory as to its predisposing factors. Hence, the quest in this article for a plurality of causes.

In the context of the Sierra Leone experience, governmental corruption may be defined as “behavior of public officials which deviates from accepted norms in order to serve private ends” (Huntington, 1990). Based on this conceptual framework the authors propose to undertake a preliminary study of the predisposing factors for this disturbing phenomenon in the African nation of Sierra Leone. Despite the lack of a consistent and systematic body of study on governmental corruption in Sierra Leone, it is common knowledge that it is prevalent in that country. All the empirical indicators point overwhelmingly to this conclusion. Four key sources of data will be the basis of this preliminary study. First, historical, sociological, political and legal studies about the country will be relied upon. Second, the only known sociological study on administrative corruption will be examined. Third, the findings of Judicial Commissions of Inquiry into governmental corruption will be noted. Fourth, the primary author’s official interpretations of empirical indicators on the subject of corruption in the public service during his tenure of office in the 1970s and 1980s in Sierra Leone, first, as State Attorney and second, Judge of the High Court respectively will be offered.

Sierra Leone’s political economy

To explore the roots and understand the dynamics of governmental corruption in Sierra Leone, it is necessary to provide a brief profile of the country’s political economy. Sierra Leone’s political evolution during the first thirty-three years of independence was dominated variously by the practice of some measure of multi-party democracy, “the overthrow of constitutional governments, supersession of pre-existing constitutions, the setting up of arbitrary military and civilian regimes, and a carefully orchestrated transition from constitutional monarchy in 1971 to executive presidency with a potential for the concentration of power in a single institution climaxed in 1978 by the adoption and entrenchment of a one-party system of government” (Thompson, 1997). Forebodingly, it was during the fourteen years of one-party rule in that country that governmental corruption was most rampant and that it reached peak levels. Presently, a civilian government pledged to eradicating corruption is in power following multi-party elections in 1996.

Sierra Leone has had a checkered socio-economic history. In the nascent years of its independence (the 1960’s) the country exhibited the profile of an open developing economy with three-fourths of the population relying for its livelihood on crop production largely for subsistence and at low levels of productivity. Use of money was low in comparison with other developing economies with comparable per capita income. Indigenization has not

been a feature of Sierra Leone's modern economy. Mining, a small modern manufacturing sector, and organized trade are largely foreign dominated. In 1969 primary production of unprocessed crude materials – minerals and crops – occupied 80 percent of the active population, furnished 90 percent of export earnings, and accounted directly for more than 50 percent of the gross domestic product. The money economy was strongly dependent on foreign trade (Kaplan et al., 1976). In the mid 1970s it seemed as if the country's economic performance might improve. Sierra Leone embarked on its first comprehensive development plan under generally favorable conditions. But there were some major drawbacks: diamond earnings, its main source of foreign exchange, were on the decline, and iron ore mining which had been second in importance, had ceased altogether. Another serious drawback was of an external nature. It was the exacerbating effect of world wide inflation on the imbalance in external trade and payments generated by (1) rising consumption and (2) government deficit spending. In addition, recession in the industrial countries had depressed export prices and threatened to slow down the foreign investment needed to revive the crucial mining sector (Kaplan et al., 1976). As the country entered the 1980's, the profile was one of severe economic retrogression and decline. There were recurrent over-expenditure by the government, widespread illicit mining of diamonds, continuing foreign ownership of mining companies engaged in the production of bauxite, rutile, and iron ore, decline in agricultural production, shortage of essential foodstuffs, a marked rise in imported goods, escalation of prices of basic necessities, and massive international indebtedness. These trends continued into the 1990's with the attendant lowering of the morale in the labor force whose wages declined in terms of purchasing power. There was also a severe depression in the living standards of the population until a military junta overthrew the civilian government in April 1992 alleging widespread corruption, financial malpractices and indiscipline in the public service. The majority of Sierra Leoneans today continue to live below the subsistence level. These have been ominous trends for a nation with only a population of 3.7 million and an area of 27,925 square miles and tremendous potential for agricultural development and economic prosperity. The country is endowed with rich natural and mineral resources and much human expertise. Present indications are that there has just begun a massive socioeconomic reconstruction process in the country following the restoration of civilian rule. It is hoped that the results of this process will be positive.

Modernization as a primary predisposing factor for governmental corruption in Sierra Leone

As a nation, Sierra Leone began its transition from a traditional society to a modern state with the advent of colonialism. Established as a colony and protectorate of the British Crown in 1808 and 1896 respectively it remained under British colonial tutelage until April 27, 1961 when it became an independent sovereign nation. At independence the country possessed some of the key infrastructural features associated with a modern state: a modern economic structure, a constitutional system of western orientation, a legal system largely patterned after the English common law tradition, an educational system essentially of British orientation, a public service modeled after the public service in England, and national defense and internal security institution organized along modern lines. But alongside this image of modernity were the forces of traditionalism embedded in the country's social system. Up till the present time, there has not yet emerged for the majority of Sierra Leoneans the idea of a national society. No single social structure has yet evolved that encompasses all Sierra Leoneans. The law has failed to provide the needed impetus for such a desirable and positive change.

Sierra Leone's culture is heterogeneous, the major cultural division being between the Creoles (or Krios) and the indigenous peoples belonging to diverse cultural groups. The legal effect of this cultural differentiation is that Sierra Leoneans are either "natives" or "non-natives". A "native" is a citizen of Sierra Leone who is a member of a race, tribe, or community settled in Sierra Leone (or the territories adjacent thereto), other than a race, tribe or community (a) which is of European or Asiatic or American origin, (b) whose principal place of settlement is the Western Area. The term "non-native" is used to designate association with long residence and property interests in the Western Area; some consanguineous or affinal tie with established Krio or Creole families; affiliation with Christianity and Western education; and the practice of monogamous statutory marriage (Harrel-Bond and Rijinsdrop, 1974; Thompson, 1996). At the time of this writing, nothing has been done to reform this aspect of the law.

Sierra Leone's blend of cultures and historical background have enormous implications for the process of modernization reflecting, in a significant way, the underlying tension between both the phenomena of traditionalism and modernism. Most Sierra Leoneans still live in a rural environment where rights, duties, and liabilities are defined mainly by customary norms and values, and where social conformity and cohesion are emphasized. Primary loyalty is to the immediate kinship group, and solidarity among kin remains a foremost social value. Control of behavior is exercised through a sense of reciprocity that links an individual's social and emotional rewards with

fulfillment of his obligations to the group. By contrast, the western-cultured Krio or Creole community is essentially individualistic, with emphasis being on personal effort and success. Ties among the immediate family provide the strongest cohesive factor (Kaplan et al., 1976). Obligations towards one's family within the traditional social system do not derive from normative prescriptions embodied in statute law or common law.

Theorizing about governmental corruption and its empirical dimensions in Sierra Leone should focus on the element of cultural heterogeneity and the corresponding clash between modern culture and traditional culture as predisposing influences. Modernization in Sierra Leone has involved a change in the basic values of the society. In particular, it has meant, on the one hand, a gradual acceptance by the various groups within the society of universalistic and achievement-based norms, the emergence of loyalties and identifications of individuals and groups within the nation, the spread of the assumption that Sierra Leoneans have equal rights against the state and equal obligations to the state, and, on the other, the persistence of culturally-structured norms. This is an important facet of the shift from a collectively based traditional society to an urban society with a distinct accent on individualism. In the context of the ongoing clash between the modernizing influences and traditional culture, behavior which was acceptable and legitimate according to traditional norms becomes unacceptable and corrupt when viewed from a modern perspective (Huntington, 1990). This is particularly noteworthy in societies where family or other kinds of relationships are very strong and especially where existing moral or social codes require that one must help one's family and friends. The expectation in such cases that the public employee will routinely apply arms's-length principles in his or her relations with friends and relatives is unrealistic (Tanzi, 1995). This is especially true of cultures structured around the extended family system as opposed to those based on the nuclear family unit. Since the attainment of independence by Sierra Leone there has evolved a new norm in traditional culture whereby the status of family members who acceded to political leadership or became members of the higher echelon of the public service began to be measured in terms of the degree of affluence reflected by their lifestyles. And so, a politician or senior public employee who did not, for example, own a Mercedes-Benz car or other prestigious automobile was unlikely to be held in high esteem by his relatives or supporters even though he may be a person of integrity.

Corruption, as a by-product of modernization, often blurs the distinction between the official roles of public officers and their personal interests. This becomes extremely complex and troubling when the rationalization is applied to the office of the President. Where the culture of the society fails to make a clear demarcation between the role of the Head of State or Government as

a private person and his or her role as a public figure it may be viewed as an affront to the integrity of the office to accuse the holder of corruption. In Sierra Leone, every Head of Government, since independence has been designated and venerated as “Father of the Nation”, a characterization which confers upon the office and the holder some measure of patrimonial infallibility rendering him immune from criticism (Thompson, 1997) or any suggestion of corrupt or improper conduct (a point to be addressed fully later).

Modernization is a primary predisposing factor for governmental corruption also in the sense that it contributes to the creation of new sources of wealth and power, the relation of which to politics is undefined by the dominant traditional norms of the society and in which the modern norms are not yet accepted by the dominant groups within the society. In Sierra Leone, the rise of the new governing elite after independence was accompanied by a corresponding creation of new avenues of wealth and power with enormous possibilities for widespread corruption within the public service over which they had gained ascendancy. In addition, in emergent democracies modernization invariably leads to the creation of governmental bureaucracies with an increase in governmentally regulated activities and the potential for massive and rampant corruption. In the 1980's governmental corruption reached peak proportions in Sierra Leone with the consolidation of one-party rule and the evolution of a very powerful and highly centralized party bureaucracy demanding obedience to the pernicious doctrine of personal greed and unjust enrichment. One implication of this trend was that it put beyond the pale of official scrutiny the financial malpractices of those who espoused and practiced such an ideology. Hence the Herculean dimension of governmental corruption in Sierra Leone during the 1980s and early 1990s.

The extent of governmental corruption in Sierra Leone: Kpundeh's study (1994)

Some scholars (e.g. Kpundeh, 1994) have attributed the phenomenon of administrative corruption in Sierra Leone to lack of political accountability. Highlighting its pervasiveness, Kpundeh observes:

The pervasive nature of corruption in almost every kind of activity, and the reluctance of the nation's leaders to systematically fight this widespread malaise, allowed questionable practices to continue and eventually become an institutionalized way of life for Sierra Leoneans. Consequently, the culture of corruption enabled the governing class to attain economic domination, and the whole bureaucratic structure was converted into an instrument of self-endorsement by prominent civil servants (1994).

This is a grave indictment of the country's political and administrative institutions and those who wielded power during the period under review. In the past three decades corruption in Sierra Leone emanated from the executive and permeated the core of the entire body politic (Thompson, 1997). The doctrine of patrimonial infallibility, ascribed to every Head of State and Government by the Sierra Leone populace, precluded the possibility of official review of their public conduct for improprieties committed while in office, thereby providing a catalyst for corruption.

In his well-documented study of the attitudes to corruption in Sierra Leone, Kpundeh found that 55 percent of the 300 respondents selected from various parts of the country rated corruption as a problem second only in importance to the rebellion going on in the country at the time. Another key finding was that 89 percent agreed that bribery was harmful while 74 percent of those interviewed personally felt a lot of pressure at work to engage in what they perceived to be corruption. A further finding was that 80 percent agreed with the suggestion that there are two interpretations of law in Sierra Leone – one for the rich and one for the poor. The study also showed that 55 percent of those interviewed agreed that politicians were members of the most corrupt “profession” and that Sierra Leoneans believe politicians are mainly responsible for their current problems and that they have contributed significantly to draining the country's resources for personal gains. One major finding was that 86 percent of the respondents stated that there was a great lack of trust in the integrity of government officials and that they were corrupt. In addition, the study revealed that 80 percent agreed that laws were needed to ensure that dishonest public officials were judged more harshly than private citizens (Kpundeh, 1994). These are quite significant findings. They, however, merely reflect a tip of the iceberg.

Nonetheless, the irresistible inference from Kpundeh's study is that the Sierra Leonean populace was victimized to the level of poverty and powerlessness through administrative corruption. In this regard, the courts could not escape some censure for their contribution to this form of state victimization of the citizenry (Thompson, 1997) in the sense that “of all the manifold causes of Third World poverty and powerlessness, the organized polity can most readily manipulate the law” rendering the law a part of the problem rather than a part of the solution (Seidman, 1992). Predicated upon this reasoning, it may be instructive to provide an overview of law and justice in Sierra Leone in so far as their ineffectiveness may be said to account, in part, for governmental corruption in the country.

Law and justice response to governmental corruption: judicial findings (1993)

As presently organized, the Sierra Leone courts are incapable of controlling governmental corruption. By parity of reasoning, the law, too, will continue to be powerless in this regard in the absence of major substantive and procedural reforms. Whenever the courts have acted to combat governmental corruption in Sierra Leone, it has invariably been inquisitorially and *ex post facto*. A most recent effort in this direction was when the military took over the government on April 29, 1992. Convinced that administrative corruption had been widespread, the military authorities thought it expedient to institute some machinery whereby accountability on the part of public officials for "corruption, mismanagement, and indiscipline in the affairs of government" during 1968–1992 could be established. To this end, three judicial Commissions of Inquiry presided over by judges of the Superior Court of Judicature were set up. Their mandate was mainly to examine the assets, activities and related matters of all persons who were Presidents, Vice-Presidents, Ministers and Deputy Ministers during the period under review to determine whether allegations of corruption, dishonesty, abuse of power for private benefit and financial losses to government occasioned by their conduct could be established (Public Notice No. 172, 1993).

Instructively, the main Commission found, *inter alia*, that during his tenure of office, as Prime Minister and then President of Sierra Leone, Siaka Stevens acquired a sizeable amount of assets (personal and real properties) grossly in excess of his personal emoluments between March 1968 (when he assumed the office as Prime Minister) and November 1986 when he retired from office as President. In addition, it was found that during his tenure of office as President he had acquired, besides a large number of real properties, a fleet of 23 vehicles and huge cash deposits in various banks in Sierra Leone and overseas far beyond his total income in the form of emoluments and traveling allowances paid to him while in office (Report, 1993; Thompson, 1997). Further, the Commission found that several cabinet ministers in the All Peoples' Congress (APC) government had acquired substantial amounts of personal and real properties during the periods they held ministerial offices. It was noted specifically in respect of most of them that they had maintained standards of living incommensurate with their past official emoluments and were in control of pecuniary resources and property disproportionate to their past official emoluments. As if to underscore the magnitude of the permeation of corruption into other key agencies of the executive branch, namely, the Police and the Armed Forces, there was evidence that the Force Commander and Inspector General of Police had maintained standards of living far in excess of their incomes as Ministers of State in the APC government. The latter was

found to have possessed huge questionable assets. There was also evidence that huge sums of money were paid into several banks in his name by anonymous persons, and that “he did maintain a standard of living incommensurate with his past official emolument” (Report, 1993; Thompson, 1997).

The Commission also found, in relation to another group of key public officials, that they too had “maintained a standard of living which was incommensurate with their past emoluments” or “were in control of pecuniary resources and property disproportionate to their past emoluments” or “abused their offices for their private benefit”, or “acted willfully and corruptly in such a manner as to cause financial loss to Government” (Report, 1993; Thompson, 1997). The two other Commissions made similar findings on the part of named public officials and government ministries, departments and agencies resulting in huge financial losses to the Government (Reports, 1993; Thompson, 1997).

Judicial inquisition as a technique of public accountability: questionable efficacy

As a technique of public accountability, the inquisitorial role of the Sierra Leone judiciary, performed through the instrumentality of Commissions of Inquiry, proved somewhat effective in unearthing massive administrative corruption in the country. The courts made appropriate forfeiture of assets and restriction orders. But this was only *ex post facto*. Against the background of actual massive administrative corruption and the potential for such conduct as Sierra Leone treads once more warily the delicate path towards establishing a stable and viable democracy, it is unsatisfactory for law and justice, as instrumentalities for handling governmental corruption, to be applied only *ex post facto*. The problem here is accentuated by the fact that, unlike most western countries, Sierra Leone has to contend with a dual legal system and a plurality of laws, a colonial legacy. This poses a major challenge to the new nations in their legal fields, namely, that of reconciling contradictions in their laws and cultures (Thompson, 1996a). It is a problem that Sierra Leone, as a developing nation, needs to resolve in that the control of governmental corruption can be said to be one area where its disparate impact is evident. In addition, it does have serious implications for the capability of the criminal justice system in dealing with the problem. Sierra Leone criminal law derives from two key sources: customary law and general law which includes the inherited English law. Even though not entirely codified, the substantive criminal law of Sierra Leone is found mainly in statutes inherited from English criminal law and statutes enacted by the Sierra Leone legislature; in contrast, the customary law of crime is wholly uncodified. This means that whereas, under general

law, there are laws (both statutory and common law) defining specific criminal offenses there are no comparable customary law definitions of what acts constitute crimes. Therefore, the question what are crimes under customary law cannot be answered with any degree of certainty and specificity. Each body of criminal law has its own distinct underlying value system. This is a consequence of the broader conflict between the process of modernizing influences and the traditional culture.

The legal system of Sierra Leone, accordingly, depicts a machinery of justice whose general law values defining the context of criminality are somewhat at variance with those underlying customary law values as to what is or is not socially acceptable or ethical. The British oriented general law normative scheme continues to be superimposed on a traditionally-based social system rooted in native law and custom. The society, therefore, portrays glaring contradictions in moral and social values embedded in the customary law system in relation to those inherited from the common law tradition even though there is some conscious or unconscious aspiration towards the cultivation of western values (Thompson, 1996a) on the part of significant segments of the population.

Based on this analysis, definitions of concepts like criminality, deviance, corruption, unethical behavior, conflict of interest, abuse of office, patronage and nepotism based on western conceptualizations and intended to apply to cultural or socio-political settings of different orientations ineluctably lead to anomalies and contradictions in societies where the socio-cultural norms and values of the majority are largely non-western. Where there is cultural conflict in a society and the legal norms of one cultural group are extended to cover the territory of another and the cultural concepts foreign to that group are expected to guide the behavior of group members, the result is some mode of adjustment to the conflict (Sellin, 1983). In Sierra Leone, this adjustment has been imperceptibly slow. In the absence of significant advance in this direction, this cultural dichotomy is likely to create a greater scope and newer channels for the continuing exploitation and victimization of the citizenry through governmental deviance with the potential for further erosion of the national fabric of a developing African country now committed to economic progress and development within a pluralistic democratic framework.

It is ironic, however, that a justice system (as Sierra Leone's) so elaborate in organization and sophisticated in application can be so ineffective in combating administrative criminality and deviance of the magnitude that prevailed in the country. Perhaps, an overview of the court system is appropriate at this stage. The country has a dual court system. There are the *general law courts* and the *local or customary law courts*. The judicial system is a five-layered hierarchical structure. At the general law level, the general law courts operate

over the entire territory of Sierra Leone transcending cultural boundaries. The highest court is the Supreme Court, exercising generally appellate jurisdiction in civil and criminal matters. Exceptionally, it has original jurisdiction with regard to: (a) the interpretation and enforcement of the constitution and (b) alleged violations of fundamental rights and freedoms of the individual. At the intermediate level is the Court of Appeal. Its function is exclusively to review decisions of the High Court in civil and criminal matters. Next is the High Court, whose jurisdiction is extensive and covers original, appellate and supervisory powers. Its original jurisdiction is coextensive with that of the U.S. District Courts, the Courts of general jurisdiction at the state level in the U.S., and that of the High Court of Justice in England. The High Court also reviews decisions of magistrates' courts, the lowest adjudicatory bodies in the hierarchy of the general law courts. Magistrates' courts hear and dispose of minor civil and criminal cases within their specific political boundaries. At the local courts level, the Court of Appeal reviews decisions of the High Court, given in either the latter's original, appellate, or supervisory capacities. The Court of Appeal's decisions are reviewed by the Supreme Court. Below the Court of Appeal, the Local Appeals Division of the High Court reviews decision of the District Appeal Court (a magistrates' court with two experts in customary law sitting in an appellate capacity and reviewing decisions emanating from the local or customary law courts, the lowest bodies in the customary system). The original jurisdiction of the High Court, as a general law tribunal, extends to all disputes affecting all segments of the country's population which means that every person resident in Sierra Leone has to conform his/her conduct to the proscriptive requirements of the general law – with the exception of matters exclusively regulated by customary law. The local courts in Sierra Leone adjudicate, on the civil side, family matters and local land disputes. Significantly, too, they hear and dispose of minor criminal cases *per se* and charges of a criminal nature arising out of domestic and local land disputes, if within the scope of their jurisdiction (Thompson, 1996a). The ordinary courts seem ill-equipped to control administrative corruption.

Law enforcement problems as predisposing factors for governmental corruption

The judiciary aside, law enforcement problems, too generate opportunities for administrative deviance in Sierra Leone. Some of these problems are, in part, a legacy of colonialism. To understand this aspect, a brief analysis is necessary of the role of the police within the contemporary setting of Sierra Leone society. No meaningful account of African policing in a modern perspective can be complete without some historical insights into the evolution of policing

in Africa. This is true of Sierra Leone. The police in Sierra Leone, like most of their African counterparts, are a product of colonial rule. Contrary to the myth that British colonial legacies of policing in Africa were faithful models of the British paradigm, the Sierra Leone police force, as a colonial institution, was designed to serve and promote British imperialistic interests, of which profit was a key feature. Nor was the advent of independence matched by a transition in Sierra Leone from the colonial policing mentality to one guided by the principles and values of liberal democracy, with appropriate institutional safeguards in relation to the police against conduct amounting to conflict of interests, corruption, abuse of power, favoritism, nepotism or other improper activity not sanctioned by law. Hence, the extremely corrupt nature of the Sierra Leone Police Force, itself a dimension of the culture of corruption that thwarted the country's post-independence political and economic growth. The judicial finding (1993) that the holder of the office of Inspector General of Police from 1978 to 1992 maintained a standard of living far in excess of his income underscores the contention being made that the police were institutionally corrupt.

Other law enforcement constraints which constitute predisposing factors for governmental corruption in Sierra Leone are both resource-related and structural in character. Despite lack of specific supporting empirical evidence, during the period of one-party rule the police especially at the rank and file level, frequently abused their powers of arrest, search and seizure and invariably solicited and accepted bribes or other favors from crime suspects or from agents or relatives in exchange for leniency in enforcing the law. They also executed their duties in a manner that showed strong political biases and other extraneous influences (Thompson, 1996a). These shortcomings were largely attributable to: (1) very low educational level, (2) lack of professional standards and ethics, (3) very low wages, and (4) extremely low morale (Thompson, 1996a). In addition, there was the nagging problem of the politicization of the police, a factor of their relationship with the ruling elite, the chief perpetrators of administrative improprieties.

In many African countries (Sierra Leone being a clear example) the police are inextricably intertwined with the political system. A distinct effect of this has been a marked tendency towards the formation of strong affinities between them and the powerful political and economic groups in those countries. A negative effect of this development is that some high-ranking African police officers enjoy enormous political leverage derived from partisan patronage. Such relationships have always been predisposing influences for corruption. During the period of one-party rule the Inspector General of Sierra Leone exerted considerable political leverage in ways that sometimes not only endangered the fair and objective enforcement of the law

but also generated an environment conducive to corruption within the police establishment. Besides the law enforcement dimension of corruption in the country, certain crimes committed within and against the bureaucracies in Sierra Leone were themselves evidence of corrupt activities in government departments and ministries.

White-collar crime as a species of administrative corruption

Even though it is difficult to construct an accurate crime profile for Sierra Leone due largely to the lack of reliable means of measuring the amount of crime in that developing African nation, it is strongly surmised that since independence crime rates have continued to escalate in the country. Apart from the rise in conventional or street crimes, it is true that white collar, corporate and economic criminality predominate in Sierra Leone. "White-collar crime" here refers to offenses committed by individuals for self-enrichment in the course of their occupations and to offenses of employees against their employers. In this sense, the term is used synonymously with "occupational crime" (Hagan, 1987); "corporate crime", on the other hand, consists of offenses by the corporation itself; and "economic crime" refers to any non-violent, illegal activity which principally involves deceit, misrepresentation, concealment, manipulation, breach of trust, subterfuge, or illegal circumvention (Clifford, 1977). The empirical indicators show that white collar crimes in Sierra Leone became dominant in the 1960s, escalated in the 1970s and reached crisis proportions in the 1980s (Thompson, 1996a). However, defined, white collar, corporate and economic crimes can correctly be perceived as species of corruption depending on the facts and circumstances.

Specifically, over the last two decades there was a marked rise in Sierra Leone in crimes committed within and against the bureaucracies. Such crimes have had detrimental effects on allocation and utilization of public resources, derived from both internal and external sources; and on the nation's socio-economic development particularly in relation to agriculture, housing, trade, health, education and similar projects. In the recent past, such funds have been embezzled practically into non-existence. These brands of criminality assumed epidemic proportions in the 1970s and 1980s culminating in the unearthing by the police of a huge fraud conspiracy within the civil service, later described as the "Vouchergate Fraud Cases" (over which the primary author presided as trial judge) (Thompson, 1996b). Subsequent to that was a similar fraud conspiracy known as the "Milliongate Fraud Case".

Under Sierra Leone criminal law, white collar, corporate and economic crimes may take various forms: larceny by servant, embezzlement, conspiracy to defraud, falsification of accounts, forgery, fraudulent conversion, obtain-

ing money or property by false pretenses, corporate fraud, receiving stolen property, smuggling of diamonds, failure to pay income tax, and evasion or waiver of customs import duties. The penalties for these offenses vary considerably depending on the amount of pecuniary or property loss involved and whether the particular offense is a misdemeanor or felony. Significantly, there is presently no jurisdiction in the ordinary courts of Sierra Leone, in the exercise of their criminal jurisdiction, to make forfeiture of assets or restitution orders in addition to the imposition of criminal sanctions. Their powers to impose fines are limited by statutory maximum. This issue will be addressed in the subsequent section of the article in the context of possible law and justice reforms.

Further analysis and conclusion

Consistent with the underlying theme of this article that multiple predisposing factors rather than a single theory adequately explain the phenomenon of governmental corruption in Africa, Riley cautions against generalizing that corruption is “an outgrowth of African culture” (1993). He offers this classification of governmental corruption in Africa: incidental corruption, systematic corruption, systemic corruption, and personal corruption involving key political figures (1993).

Applying the above classification to Sierra Leone it can be shown that: incidental corruption is exemplified by a public employee in the course of duty who solicits a bribe or favor on a *quid pro quo* basis; systematic corruption is illustrated by government ministries or departments engaging in fraudulent activities with consequential financial losses to the government, which activities themselves may amount to criminal wrongdoings, like conspiracy to defraud, falsification of accounts, and embezzlement; systemic corruption characterizes the widespread and pervasive pattern of wrongdoing transformed into the norm for achieving societal goals and objectives (Caiden and Caiden, 1977); and personal corruption at the level of key political figures finds its most classic application in the blurring of the personal and official roles of the chief executive especially in relation to the utilization and disbursement of government funds designed for national development. The cumulative effect of these trends is the elevation of dishonesty to the level of a new superior norm and the corresponding deprecation of honesty.

In Sierra Leone a strikingly negative feature of the All Peoples Congress administration was the belief (frequently alluded to by the President) that “Da sae wey den tie cow, nar dey e go eat grass” meaning literally that “A cow will graze on land allotted to it for that purpose”. In its extended sense, the meaning translates into an injunction to public servants to seize

the opportunity to maximize personal profit or gain at any cost while the opportunity lasted because opportunity lost cannot be regained. Never before in the history of Sierra Leone has the Head of Government been known to be so overtly supportive of governmental corruption. This, in part, accounted for the unprecedented deterioration of Sierra Leone's economy during APC rule.

Apart from its deleterious effect on the quality of life of the majority of Sierra Leoneans, governmental corruption devastated the country's economy. The country's reliance on the export of unrefined mineral products, mainly, alluvial diamond gems, iron ore, bauxite and agricultural produce such as coffee and cocoa has already been noted. Some of these commodities, notably diamonds, have a high susceptibility of being smuggled abroad. Riley found substantial illicit mining in and smuggling of diamonds from Sierra Leone since the 1950s (1993). Ironically, this negative impact of governmental corruption on the country's economy was given added impetus by the subsequent ambivalence of the political leadership on the issue of corruption: the President frequently reprobated and approbated the doctrine of personal aggrandizement and unjust self enrichment practiced by numerous public employees. In addition, income tax evasion by unscrupulous businessmen aided and abetted by corrupt public officials and the misuse of their authority, on the part of customs officers, in waiving or reducing customs import duties were major contributory factors to the economy's decline during the several years of APC rule. The primary author actually prosecuted a major case involving conspiracy to defraud as a result of a fraudulent waiver of customs import duty resulting in serious financial losses to the government. It is a fair assumption, therefore, that the level of such activities was very high indeed in the 1970s and 1980s.

Governmental corruption in Africa also emanates from defective administration. Sierra Leone is a clear case in point. The World Bank has shed some light on this dimension of the problem by observing that "pervasive or systematic corruption is a symptom of poor governance" (1991). Charlick put the issue squarely in these terms:

While corruption is manifest in every society, and in democratic as well as authoritarian regimes, systematic corruption is a deadly sign that a society can no longer effectively manage its resources for public purposes (1993).

Kpundeh's study and the findings of the Judicial Commissions show conclusively that during the period 1971–1992 those who were in authority in Sierra Leone failed to manage the country's resources effectively for public purposes. Government funds were appropriated by the governing elite and their supporters for personal gain and profit at the expense of the majority of the population. Where there are no adequate institutional safeguards to

buttress democratic governance and public accountability the result is that the predisposing factors for governmental corruption are more likely to be greater than minimal.

Combating governmental corruption anywhere is a formidable task. In the African Region concern for the problem has been expressed by the African Bureau of A.I.D. The Bureau has proposed the practice of “democratic governance” as one possible solution. This approach emphasizes “accountability through open and competitive choice processes, adherence to a standard of integrity of life which limits most flagrant abuses of power and the most egregious costs of opposition, and the notion of sharing power in public policy through the recognition of a legitimate role for plural actors. The underlying assumption here is that efforts to foster “democratic governance” should help address the problem of systematic corruption (African Bureau of AID, 1992; see also Charlick, 1993). Sierra Leone has once again embarked on a process of democratic transformation after the country’s return to political pluralism in 1995. The country more than ever faces the challenge of democratic governance reinforced by effective institutional mechanisms designed to create public accountability and ensure high standards of integrity in public service.

Are there in place such institutional safeguards? There is some positive evidence in this direction: the existing constitution (1991) makes provision for a new extrajudicial machinery – the Ombudsman. Internationally acknowledged as an effective device for curbing governmental abuse of power resulting in human rights’ violations, this Scandinavian institutional model can be a useful technique of public accountability available to developing nations in combating administrative corruption. It is estimated that Ombudsman offices at various levels of government now exist in more than forty countries on most continents (Owen, 1990; Thompson, 1992). The 1991 Sierra Leone Constitution confers upon the Ombudsman powers wide enough to cover investigations of governmental corruption. A jurisdiction of this nature can effectively supplement the authority of the ordinary criminal courts in punishing, for example, conspiracies to defraud. In addition, there is a pressing need for a fundamental restructuring of the civil service, as suggested by Olowu (1993), focusing primarily on the creation of a zone of political indifference and neutrality on the part of the civil service in relation to the political leadership and other levels of government, and of a strict regime of conduct for public officials.

Without some major redesigning of the justice process and key substantive and procedural reforms in the law, it is extremely doubtful whether the ordinary courts, as presently organized, can respond effectively in the foreseeable future to administrative corruption. A major procedural reform, it is suggested, is to grant the criminal courts an unambiguous jurisdiction – which they

do not presently have – to confiscate proceeds of certain types of crime where it is established that those who perpetuate such acts have damaged the moral fabric of society. The rationale behind such a power is threefold:

- 1) that such crimes are highly sophisticated, diverse and rampant,
- 2) they tend to drain the country's economy of much needed revenue, and
- 3) the perpetrators should, in principle, not be allowed to retain and benefit from any portion of their ill-gotten gains.

Forfeiture is a remedy of great antiquity in the law. It has always played a significant role in the struggle against corruption and criminality of huge dimensions involving the violation of proprietary interests. Admittedly, the granting of a forfeiture jurisdiction to the criminal courts will raise a constitutional law question of substantial importance. Most African countries are governed by written constitutions with enshrined fundamental rights and freedoms' provisions, among which are protection for privacy of the home and other property and from deprivation of property without compensation. Without carefully crafted saving clauses, a forfeiture jurisdiction may be held to be inconsistent with such protections or even unconstitutional. Two positive effects that such a jurisdiction would have are: (1) making the courts a possible deterrent to administrative deviance and fraud and (2) equipping them for dispensing not merely legalistic justice (as they presently do) but, in addition, social justice, that is, justice which aims at eliminating from society all forms of inequalities, inequities, improprieties, and injustices.

Governmental corruption, in its most morbid sense, can be perceived as "a viral pathology which is highly contagious, debilitating and costly" (Caiden, 1993). Hence to cultivate a culture of public accountability as a countervailing force against it, it is necessary, in addition to the deployment of the resources of the Ombudsman institution, to incorporate in the Constitution (as the supreme law of the land), a Code of Conduct for Public Officers. This was one of the merits of the 1993 Draft Constitution of Sierra Leone. It provided for such a Code. It concerned mainly issues of conflict of interest and abuse of power. The wisdom of incorporating it in the Draft Constitution stemmed from an explicit acknowledgement that governmental corruption has been the single most dominant and debilitating factor affecting the body politic of that country since independence. Significantly, too, the Law Reform Commission of Sierra Leone needs to be preoccupied with some major law reform projects involving economic and trade legislation which presently lend themselves to either being circumvented or exploited for corrupt and fraudulent purposes, notably, income tax laws, customs laws, import license laws, and investment incentives laws.

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