Economic Commission
for Africa

Assessing the Efficiency and Impact of National Anti-Corruption Institutions in Africa

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GOVERNANCE AND PUBLIC ADMINISTRATION DIVISION

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Abbreviations

ADB	Asian Development Bank
ACC	Anti-Corruption Commission
ACEC	Anti-Corruption and Economic Crimes Act
AGR	African Governance Report
AUCPCC	African Union Convention on Preventing and Combating Corruption
AU	African Union
CHRAJ	Commission for Human Rights and Administrative Justice
CPA	Corrupt Practices and Other Related Offences Act
CPI	Corruption Perception Index
CPIB	Corrupt Practices Investigation Bureau
DSO	Directorate of Special Operations
ESRF	Economic and Social Research Foundation
ECOWAS	Economic Community of Western African States
EFCC	Economic and Financial Crimes Commission
FACEIT	Front against Corrupt Elements in Tanzania
FCPA	Foreign Corrupt Practices Act
FEAC	Federal Ethics and Anti-Corruption Commission
FIU	Financial Intelligence Unit
GCB	The Global Corruption Barometer
GACC	Ghana Anti-Corruption Coalition
GDP	Growth Domestic Product
GFV	Fifth Global Forum
GPAD	Governance and Public Administration Division
IACAC	Inter-American Convention against Corruption
ICAC	Independent Commission against Corruption
ICPC	Independent Corrupt Practices and Other Offences Commission
IGG	Inspector General of Government
IPI	Integrity Perceptions Index
KACC	Kenyan Anti-Corruption Commission
KICAC	Korea Independent Commission against Corruption
MLA	Mutual Legal Assistance
NCPS	National Crime Prevention Strategy

NDPP	National Director of Public Prosecutions
PCA	Prevention and Combating of Corruption
PCB	Prevention and Combating of Corruption Bureau
POBO	Prevention of Bribery Ordinance
SADC	Southern Africa Development Bank
SAPs	Structural Adjustment Programmes
SFO	Serious Frauds Office
SIU	Special Investigations Unit
SMG	Seoul Metropolitan Government
TI	Transparency International
UNCAC	United Nations Convention against Corruption
UNCTOC	UN Convention against Transnational Organized Crime
UNECA	United Nations Economic Commission for Africa

Foreword

Across the world corruption is a major societal problem. In spite of its universal prevalence, corruption has proven to be particularly harmful to the African continent. Besides poverty and unemployment, corruption according to the African Governance Report (2005) is the most serious national problem confronting African countries. Corruption in Africa has led to the diversion of scarce state resources for personal uses, widespread unemployment, inequitable distribution of wealth, and the erosion of moral values. In a nutshell, it has subverted the common good for private gain. Also often ignored in the corruption discourse, but equally lethal in its impact, is private sector corruption, including money laundering and tax evasion.

In recent years, many African governments have introduced fairly comprehensive reform packages aimed at tackling the scourge of corruption in their respective countries. Some of these countries have gone as far as ratifying international and regional anti-corruption Conventions such as the United Nations Convention against Corruption and the African Union Convention on Preventing and Combating Corruption and Related Offences. Most countries have established one form of anti-corruption agency or the other in the last decade or so, or at least strengthened previously existing anticorruption bodies. While some success stories have been recorded over the years, the overwhelming conclusion seems to be that the anti-corruption measures and policies of African countries still trail behind the scourge of corruption. This conclusion is evidenced by the ECA's African Governance Report II (2009) where the incidence of corruption dipped by two points against the 2005 study.

Against this background, the Economic Commission for Africa (ECA) commissioned this study as part of its broader mandate at promoting good governance and sustainable socioeconomic development on the continent. This study examines, in considerable detail, the workings of national anti-corruption institutions in selected African countries with a view to understanding the main challenges they are facing in effectively tackling corruption. The study analyzes the internationally applicable standards for the establishment and running of anti-corruption institutions, highlighting national policy and legislative gaps preventing African countries from realising the goal of significantly reducing the incidence of corruption and making recommendations as to how best to move beyond the current impasse. By and large, the study identifies practical measures that can be implemented across the continent to ensure that national anti-corruption institutions are as effective as possible in combating corruption.

The publication was prepared by the Governance and Public Administration Division of UNECA. The team was led by Mr. Said Adejumobi, Chief, Public Administration Section and comprised of: Guillermo Mangué, Kaleb Demeksa, Guy Ranaivomanana, Rebecca Benyam, and ECA Publication services. Assistance was also provided by Gedion Gamora and Boris Ephrem

Tchoumavi. A team of independent experts drawn mostly from the leadership of national anti-corruption institutions in Africa, members of parliament and civil society reviewed the draft document at an Ad Hoc Experts group meeting that took place in Kigali, Rwanda 16-17 February 2009. The comments and observations made by the experts contributed significantly to improving the paper.

It is my candid expectation that the data and information contained in this study will prove valuable to decision-makers, planners and researchers on sharing knowledge and experiences across the continent in order to eradicate corruption on the continent.

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Section I: Introduction

1.1 Understanding Corruption

The Asian Development Bank (ADB) defines corruption as involving "behaviour on the part of officials in the public and private sectors in which they improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them". [1] A shorter version utilized by the ADB is "the abuse of public or private office for personal gain". This definition, unlike other definitions which emphasize public sector corruption[2] ("the use of public office for private gain"[3]) properly attends to the problem of corruption in the private sector and the role of the private sector in public sector corruption.

An exhaustive list of behavior that would qualify as corrupt is probably impossible. Illustrative guides though usually favoring the bias of the author(s) can be useful. One such guide provides the following list:

i. The design or selection of uneconomical projects because of opportunities for financial kickbacks and political patronage;
ii. Procurement fraud, including collusion, overcharging, or the selection of contractors, suppliers, and consultants on criteria other than the lowest evaluated substantially responsive bidder;
iii. Illicit payments of "speed money" to government officials to facilitate the timely delivery of goods and services to which the public is rightfully entitled, such as permits and licenses;
iv. Illicit payments to government officials to facilitate access to goods, services, and/or information to which the public is not entitled, or to deny the public access to goods and services to which it is legally entitled;
v. Illicit payments to prevent the application of rules and regulations in a fair and consistent manner, particularly in areas concerning public safety, law enforcement, or revenue collection;
vi. Payments to government officials to foster or sustain monopolistic or oligopolistic access to markets in the absence of a compelling economic rationale for such restrictions;
vii. The misappropriation of confidential information for personal gain, such as using knowledge about public transportation routings to invest in real estate that is likely to appreciate;

[1] See http://www.adb.org/documents/policies/anticorruption300.asp
[2] See World Bank website at www.worldbank.org; Transparency International Website http://www.transparency.org;
[3] C. W. Gray & D. Kaufmann, 'Corruption and Development', Finance and Development, March 1998, at 7.

viii. The deliberate disclosure of false or misleading information on the financial status of corporations that would prevent potential investors from accurately valuing their worth, such as the failure to disclose large contingent liabilities or the undervaluing of assets in enterprises slated for privatization;
ix. The theft or embezzlement of public property and monies;
x. The sale of official posts, positions, or promotions; nepotism; or other actions that undermine the creation of a professional, meritocratic civil service;
xi. Extortion and the abuse of public office, such as using the threat of a tax audit or legal sanctions to extract personal favors;
xii. Obstruction of justice and interference in the duties of agencies tasked with detecting, investigating, and prosecuting illicit behavior.[4]

A common refinement introduced into the corruption discourse is that between "Grand" and "Petty" Corruption. Grand corruption meaning, the large scale plundering of public resources by high government officials, while petty corruption refers to the taking of small individual payments, routinely, as bribes or kickbacks by usually lower public officials. A distinction is also drawn between systemic corruption, which permeates the entire system of government or specific units of it and individual corruption which occurs in isolated situations. Systemic Corruption also tends to eventually develop- organized systems of its own creating a further distinction with ad-hoc or sporadic corruption.

1.2 Background

From the America to Africa, Europe to Asia and elsewhere across the globe, corruption, is an embarrassingly ingrained societal phenomenon. In spite of its universal prevalence, corruption has proven to be particularly harmful on the African continent. As the former United Nations Secretary General, Kofi Annan, once said, "Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid."[5] Corruption in Africa has led to the diversion of scarce state resources for wasteful or inefficient purposes, widespread unemployment, inequitable distribution of wealth, and the corrosion of societal morality. In a nutshell, it has subverted the common good for private gain. Also often ignored in the corruption discourse, but equally lethal in its impact, is private sector corruption, including money laundering and tax evasion.

[4] See http://www.adb.org/documents/policies/anticorrupton/anticorrupt300.asp
[5] See excerpt of statement made by the former UN Secretary General, Kofi Annan, to the General Assembly of the United Nations Convention against Corruption: http://www.unodc.org/unodc/en/corruption/index.html (accessed 23 October 2008).

In recent years, a significant number of African governments have introduced fairly comprehensive reform packages aimed at tackling the scourge of corruption in their respective countries. Some of these countries have gone as far as to ratify international and regional anti-corruption Conventions such as the United Nations Convention against Corruption[6] and the African Union Convention on Preventing and Combating Corruption and Related Offences.[7] Most countries have established one form of anti-corruption agency or the other in the last decade or so, or at least strengthened previously existing bodies. While some success stories have been recorded over the years, the overwhelming conclusion seems to be that the anti-corruption measures and policies of African states still trail behind the scourge of corruption. This conclusion becomes even more irresistible after an examination of the findings of recent surveys and studies carried out on the state of corruption in Africa and beyond. Some of the surveys and studies are referenced in this report.

1.3 Objectives

Corruption is widely accepted as one of the major obstacles to Africa's development. Indeed, it has been described as "literally the antithesis of development and progress".[8] However, in spite of this recognition, it continues to be prevalent in most African societies. This report will examine, in considerable detail, the workings of national anti-corruption institutions in some African countries with a view to understanding their challenges in effectively tackling corruption. The report will take on a descriptive and prescriptive approach in identifying internationally applicable standards for the establishment and running of anti-corruption institutions, highlighting national policy and legislative gaps preventing African countries from realising the goal of significantly reducing the incidence of corruption and making recommendations as to how best to move beyond the current impasse. By and large, the report's main objective is to identify practical measures that can be implemented across the continent to ensure that national anti-corruption institutions are as effective as possible in combating corruption.

[6] As at 12 July 2009, the Convention had been signed by 140 States and ratified by 136 States. Bearing in mind that there are 192 Member States in total, it means that there are still 52 States which are yet to sign and 56 States yet to ratify the Convention. See Doc. A/58/422, available at http://untreaties.org (accessed 12 July 2009).

[7] As at 13 April 2009, the Convention had been signed by 43 African States and ratified by 29 African States. With 53 AU Member States in total, it means that there are still 10 African States which are yet to sign and 24 African States yet to ratify the Convention. See List of Countries which have Signed, Ratified/Acceded to the African Convention on Preventing and Combating Corruption, http://www.africa-union.org/root/au/Documents/Treaties/List/African%20Convention%20on%20Combating%20Corruption.pdf (accessed 12 July 2009).

[8] See the address by Olusegun Obasanjo, the former President of Nigeria, at the inauguration of the Chairman and members of the Independent Corrupt Practices and Other Related Offences Commission (ICPC) on 29 September 2000.

1.4 Structure

The study is a synthesis in five sections of field and desk research on the various issues relating to anti-corruption commissions. This section presents first an overview of the context of the discourse on anti-corruption measures and their efficacy, followed by a review of recent literature on anti-corruption measures in Africa.

In Section two, the study reviews the main international anti-corruption instruments especially in relation to the establishment and operation of national anti-corruption institutions. International and continental conventions covered include: the United Nations Convention against Corruption; the United Nations Convention against Transnational Organized Crimes; the African Union Convention on Preventing and Combating Corruption and Related Offences; and the Framework for Commonwealth Principles on Promoting Good Governance and Combating Corruption. Additionally, regional instruments are also reviewed in light of their ability to impact upon the operation of national anti-corruption institutions. The regional instruments assessed in this study are the SADC Protocol against Corruption, the ECOWAS Protocol on the Fight against Corruption and the Great Lakes Protocol against the Illegal Exploitation of Natural Resources.

Section three of this study is dedicated to an assessment of the scale and dimension of the problem of corruption within the African continent. To this end, it was found necessary to rely on representative data and statistics collected by various organizations, including the World Bank (Governance Indicators)[9] and Transparency International (Global Corruption Barometer Survey).[10] Various statistics and other data collected on corruption in Africa were analyzed in this section to obtain a clear image of its scale and dimension in Africa in all its ramifications.

Section four is dedicated to the review of national frameworks on anti-corruption. It is therefore focused on a critical examination of the activities, efficacy and performance of national anti-corruption institutions in African countries. To this end, it was necessary to review the national legislations which established these institutions and identify the trends in relation to different aspects of corruption and the efficacy of the anti-corruption institutions in combating them. The Section further evaluates other governance structures and other institutions, including non-state actors, which support anti-corruption efforts. These structures include the judiciary, parliamentary committees, non-governmental human rights organizations, the media and ombudsmen. It will also explore the convergence/divergence of the activities of these structures with those of anti-corruption commissions.

An aspect of Section four is the assessment of available best practices on anti-corruption measures. In April 2007, The Fifth Global Forum (GFV) on Fighting Corruption and

[9] See the World Bank Governance Indicators,
http://www.worldbank.org/wbi/governance/pubs/govmatters3.html.
[10] See Transparency International Corruption Perception Index,
http://www.transparency.org/policy_research/surveys_indices/gcb/2007.

Safeguarding Integrity took place in Johannesburg, South Africa. A notable practice mentioned during the conference is the use in Korea of an Integrity Perceptions Index (IPI) to chart public perception of government institutions. According to Geo-Sung Kim, the Commissioner of Korea's Independent Commission against Corruption, public institutions have paid attention to the IPI since its creation in 2002 and doubled their efforts to improve the situation. Statistics show that Korea's overall integrity score has increased for four years on end.[11] Section five concludes the report with a series of recommendations.

1.5 Methodology

The fieldwork essentially involved a study of a sample of five anti-corruption institutions in Africa namely – the Zambian Anti-Corruption Commission (the ACC) the Tanzanian Prevention and Combating of Corruption Bureau (PCB), The Ethiopian Federal Ethics and Anti-Corruption Commission (FEAC), the Ghanaian Commission for Human Rights and Administrative Justice (CHRAJ) (also the Ghanaian Serious Frauds Office) and the Nigerian Independent Corrupt Practices and Other Offences Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC).

The Institutions were selected with an eye on getting as varied and as diverse experiences in and approaches to the anticorruption effort as possible. The writer conducted personal interviews with the heads of these institutions during the course of the visits to the institutions. The interviews revolved around uses of operational application of the legislations establishing the institutions, relationships with government especially issues of operational independence notably appointments, tenure of major functionaries of the institutions, funding and processing of the decision to investigate and/or prosecute cases of corruption.

The interviews also sought to ascertain what the officials of these institutions considered their most daunting challenges and their perceptions of their achievements and failures as well as the philosophical directions and strategies of these institutions and how well those approaches worked. Civil Society activists, members of professional associations and the press were also randomly interviewed with a view to getting some balance to the views of officials of the institutions studied.

[11] G. Kim, 'Korea's Integrity Perceptions Index', Sub-Theme 2: Taking Stock through Monitoring and Evaluation Workshop on "Monitoring the Prevalence of Corruption", a presentation at the Global Forum V Conference on Fighting Corruption and Safeguarding Integrity, 2nd -6th April 2007,
http://www.globalforum5.gov.za/dynamic/dynamic.aspx?pageid=386&tabval=7&tabfield=language_id

1.6 Review Of Recent Literature

Between 1999 and 2004, there was a growing convergence among researchers and policy makers to the effect that the most important state asset is a non-corrupt government institution capable of contributing to social, economic and democratic development.[12] This brief review focuses on key literature published in the last five years with coverage of the perception of anti-corruption commissions (ACCs) in Africa and contemporary discourse on ACCs.

1.6.1 The Perception of Anti-Corruption Commissions in Africa

According to U4, an anti-corruption resource centre, anti-corruption commissions in general have "with one or two exceptions, been a disappointment both to the people of developing countries and to their development partners."[13] This sentiment is echoed by a number of observers, including Atuobi, who in 2007 specifically argued that across West Africa the country-level institutions are best described as "ineffective, juxtaposed with the rising level of corruption in the region".[14] Proponents of the view that African anti-corruption commissions are inefficient and unsuccessful have cited lack of resources and political will as among the major causes of failure.

It is also fairly consistently noted in relevant literature that absence of comprehensive national strategies and review mechanisms for anti-corruption efforts, as generally required by anti-corruption conventions, remain drawbacks. Citing the example of Algeria in its recent study, Transparency International (TI) noted that, "The country study found that the reports of the preventive body of the government *(Organe national de lutte contre la corruption)* [had] not been made public and the Algerian Government [had] refused to put into practice an international monitoring mechanism[15] to review the implementation of the UNCAC."[16] The Norwegian Development Agency, NORAD, has also expressed dissatisfaction with the Zambian Anti-corruption commission's inability to meet its reporting requirements.[17]

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[12] Kaufmann, D., *Governance Redux: The Empirical Challenge*, Washington, World Bank (2004); de Soto, H., *The Mystery of Capital*, London, Bantam Press (2001); World Bank, *Anti-Corruption in Transition: A Contribution to the Policy Debate*, Washington: World Bank (2000).

[13] Robert Williams and Alan Doig, '*U4 Brief: Achieving Success and Avoiding Failure in Anti-Corruption Commissions: Developing the Role of Donors*', January 2007,
http://www.u4.no/document/u4-briefs/u4-brief-1-2007-anti-corruption-commissions.pdf (accessed 28 September 2008).

[14] S. Atuobi, '*Corruption and State Instability in West Africa: An Examination of Policy Options',* KAIPTC Occasional Paper No 21, December 2007,
http://www.kaiptc.org/conflict_prevention/conflict_prevention.asp?id=5&rID=1 (accessed 28 September 2008), p. 22.

[15] For a better understanding of the international monitoring mechanism, see Chapter VII of the UNCAC (discussed later in the report).

[16] See Transparency International, '*Towards Effective Anti-Corruption Tools in Africa: Strengthening international and regional anti-corruption conventions*', TI Study with Nine UNCAC and AU Convention Implementation Reviews (Algeria, Burundi, Kenya, Liberia, Nigeria, Sierra Leone, South Africa, Togo and Uganda), at
http://www.transparency.org/news_room/in_focus/2007/uncac_africa (accessed 22 October 2008).

[17] Alan Doig, David Watt and Robert Williams, '*Measuring 'success' in five African Anti-Corruption Commissions – the cases of Ghana, Malawi, Tanzania, Uganda & Zambia*', U4 publication, May 2005, http://www.u4.no/themes/aacc/finalreport.pdf (accessed 28

However, Doig, Watt and Williams are of the view that the expectations of anti-corruption commissions in Africa are unrealistic as they are expected to carry out Herculean tasks in a short life cycle. In their 2007 study, they observed that an effective and successful anti-corruption commission "requires organizational maturity based on consistent, sustained organizational development". They argue that these are exactly the characteristics missing in the life cycle experience of anti-corruption commissions in Africa.[18] It has also been argued that African anti-corruption commissions have been forced to adopt a model, notably the Hong Kong model, which is not necessarily a perfect fit for the political and economic conditions of each country. Doig, Watt and Williams put the issue succinctly when they noted that:

> *Attempts to replicate the Hong Kong success have been made regardless of prevailing political, social and economic conditions and the resources available to an ACC. All African ACCs subsist in conditions far less propitious and with much scarcer resources and capabilities than the ACC prototype. In effect, African ACCs have been consigned to a form of existence that not only constrains, but almost guarantees their inability to attain achievable levels of success.*[19]

This view is also supported by Jon Quah who recently carried out a regional study on the national integrity systems of eight countries in East and Southeast Asia and Hong Kong. In his overview report, he made the following observation: "As combating corruption is expensive and requires a substantial investment in manpower and other resources, a country with a higher GDP per capita would be able to channel more resources for its anti-corruption strategy."[20] He illustrated his point with examples from two of the least corrupt territories in the world, Singapore and Hong Kong. According to Quah, in the mid-2000s, Singapore and Hong Kong had a population of about 4.5 million and 6.9 million people and GDP per capita of about US$25,000 and US$23,000 respectively. In 2005, Singapore's Corrupt Practices Investigation Bureau (CPIB) had a staff of 83 persons and a budget of US$7.26 million, while Hong Kong's Independent Commission against Corruption (ICAC) had 1,194 staff members and a budget of US$85 million. It stands to reason therefore that the poorer a country, particularly countries whose political leaders lack the political will to fight corruption, the more constrained the country will be in combating corruption. Ehsan has also noted that lack of political will is characteristic of failing anti-corruption agencies in developing countries, including Bangladesh.[21]

In trying to explain the failure of anti-corruption initiatives in many developing countries,

September 2008), p. 36.

[18] *Id*., at p. 5.

[19] *Id*., at p. 6.

[20] Jon S. T. Quah, '*The National Integrity Systems: Transparency International Regional Overview Report – East and Southeast Asia 2006*', published by Transparency International (2007), pp. 3-4.

[21] M. Ehsan, '*When Implementation Fails: The Case of Anti-Corruption Commission (ACC) and Corruption Control in Bangladesh*', Asian Affairs, Vol. 28, No. 3, 40 – 63, July – September 2006.

Anwar Shah developed a model in which he classified developing countries into three broad categories – high, medium and low – reflecting the incidence of corruption. The model is based on the assumption that countries with high corruption have a low quality of governance, while those with medium corruption have fair governance and those with low corruption have good governance. Based on the model, Shah was able to conclude that "because corruption is itself a symptom of fundamental governance failure, the higher the incidence of corruption, the less an anti-corruption strategy should include tactics that narrowly target corrupt behaviours and the more it should focus on the broad underlying features of the governance environment."[22] He went on to suggest that in societies where governance is weak, anti-corruption agencies are prone to being misused as tools of political victimization.

According to Ndikumana, in order to root out corruption in Africa, anti-corruption agencies should only be introduced as part of a broader, more comprehensive reform package to fight corruption. The author backed up this assertion with illustrations from areas where institutional engineering has proven to be successful in the past, while stressing that success was made possible by the simultaneous implementation of a range of other reforms to support newly established agencies. In Singapore, for example, higher public wages, rotation of bureaucrats, streamlining, simplification and publication of rules and procedures in government service and other mechanisms for reducing opportunities for corruption, were introduced concurrently as part of the country's anti-corruption reform package.[23]

Similarly, Hong Kong's integrity system does not rely solely on its watchdog agency, the ICAC. According to Cheung, extensive measures in terms of civil service modernization and public sector reform were introduced in the city in the 1980s. The city's Audit Commission was also made independent in the 1980s, while the 1990s saw the establishment of new, independent institutions such as the Ombudsman, Equal Opportunity Commission and the Privacy Commissioner. Together with a vigilant mass media, vibrant civil society and independent judiciary, these measures have helped to create a conducive environment for an effective integrity system in Hong Kong.[24]

Writing generally on the effectiveness of anti-corruption commissions, Heilbrunn has noted that the key elements for an effective anti-corruption commission are: (a) independence; (b) existence of laws necessary for its success and mechanisms for enforcement; (c) a clear reporting mechanism; and (d) a clear reporting hierarchy.[25] For Quah, the most important pre-requisite

[22] Anwar Shah, '*Tailoring the Fight against Corruption to Country Circumstances*', in 'Public Sector Governance and Accountability Series: Performance Accountability and Combating Corruption' (2007) Anwar Shah (ed.), http://siteresources.worldbank.org/INTWBIGOVANTCOR/Resources/Tailoring.pdf, pp. 243-4.

[23] See Leonce Ndikumana, '*Corruption and Pro-Poor Growth Outcomes: Evidence and Lessons for African Countries*', Working Paper Series of the Political Economy Research Institute of the University of Massachussetts Amherst (2006), pp. 26-7.

[24] Anthony Cheung, '*Evaluation of the Hong Kong Integrity System*', in Leo Huberts, Frank Anechiarico and Frederique Six (eds.), 'Local Integrity Systems: World Cities Fighting Corruption and Safeguarding Integrity' (The Hague: BJu Legal Publishers, 2008), p. 105 at pp. 108-9.

[25] John R. Heilbrunn, *'Anti-Corruption Commissions: Panacea or Real Medicine to Fight Corruption?'*, Stock No. 37234 World Bank Institute, p. 1 at pp. 6-7 (2004). See also Jon S. T. Quah, '*Anti-Corruption Agencies in Four Asian Countries: A Comparative Analysis*', 8(2) International Public Management Review, 2007, p. 73 where the author identified the following six preconditions

in fighting corruption is political will.[26] Others add financial autonomy and support across the board, most essentially with societal buy-in.[27] Lawal put the matter succinctly when he stated that, "until the public at large is convinced that corrupt practices do not pay, they will continue".[28] A strong civil society is also believed to be very important in helping to reduce the costs of corruption, particularly where it provides its members with the space and organizational capabilities required to act against corrupt activities.[29]

1.6.2 Contemporary Discourse on Anti-Corruption Commissions

A number of recent of publications have raised questions about the most practicable set-up for ACCs to enable them effectively tackle the menace of corruption in its totality. In the choice between instituting single and multiple anti-corruption agencies to fight corruption, one study suggests that reliance on single, independent anti-corruption agencies is a better approach so long as there is political will to tackle corruption. With examples drawn from China, Cambodia, Vietnam and the Philippines, the study concluded that using multiple anti-corruption agencies to curb corruption can be ineffective as they sometimes lead to resource and effort dilution, turf wars and lack of proper coordination between agencies.[30]

In relation to the international dimensions of the phenomenon, there is a school of thought that argues that placing undue emphasis on country-specific anti-corruption mechanisms ignores the necessity for regional mechanisms to combat cross-country corruption.[31] In commenting on the rapid creation of ACCs across West Africa, Atuobi has noted that the proliferation of national ACCs ignores the need to combat corruption at a regional level. He further argued

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to having an effective anti-corruption agency: (a) the agency must be incorruptible; (b) it must be independent from the police and from political control; (c) there must be comprehensive anti-corruption legislation; (d) the agency must be adequately staffed and funded; (e) it must enforce anti-corruption laws impartially; and (f) the concerned government must be committed to curbing corruption.

[26] Jon S. T. Quah, '*The National Integrity Systems: Transparency International Regional Overview Report – East and Southeast Asia 2006*', published by Transparency International (2007), p. 10.

[27] See Lilian Ekeanyawu, '*Strengthening Actions for Implementation of Anti-Corruption Measures: The Implementation Puzzle*', a presentation at the Global Forum V Conference on Fighting Corruption and Safeguarding Integrity, 2nd -6th April 2007, http://www.globalforum5.gov.za/dynamic/dynamic.aspx?pageid=386&tabval=7&tabfield=language_id (accessed 28 September 2008).

[28] G. Lawal, '*Corruption and Development in Africa: Challenges for Political and Economic Change*', 2(1) Humanity & Social Sciences Journal, 2007, p. 1.

[29] Michael Johnston and Sahr J. Kpundeh, '*Building social action coalitions for reform*', in Michael Johnston, ed., 'Civic Society and Corruption: Mobilizing for Reform' (Lanham: University Press of America, 2005), pp. 162–163. See also Akingbolahan Adeniran, '*Anti-Corruption Measures in Nigeria: A Case for Selective Intervention by Non-State Actors*', 19 King's Law Journal, 2008, p. 57, at pp. 73-5.

[30] Jon S. T. Quah, '*The National Integrity Systems: Transparency International Regional Overview Report – East and Southeast Asia 2006*', published by Transparency International (2007), p. 6.

[31] See Africa Development Bank Group, '*Combating Corruption in Africa Issues and Challenges*', Concept Note Paper for the 2006 Annual Meeting, Ouagadougou, Burkina Faso, p. 7.

that as "corruption is a major contributing factor promoting state fragility and violent conflict in the sub-region",[32] regional mechanisms should be put in place.

Other writers have even gone further to suggest that there are more benefits to having a global anti-corruption mechanism in place of several regional ones. In comparing the United Nations Convention against Corruption (UNCAC) with African regional and sub-regional instruments, there are writers who are of the view that regional instruments, such as the African Union Convention on Preventing and Combating Corruption (AUCPCC), are limited in their scope and ability to impact anti-corruption measures. According to Snider and Kidane, for example:

> *International corrupt practices, particularly the movement of illicitly obtained assets that have a significant impact on Africa's economy, involves States on other continents that the AU Corruption Convention cannot bind. The full benefits of the AU Corruption Convention can only materialize if there is a corresponding obligation on the part of destination countries.*[33]

In a recent comprehensive study of the local integrity systems of seven world cities, Huberts, Anechiarico, Six and van der Veer found that the policies, practices and actors at the local government level that aim to fight corruption and safeguard integrity do not operate in isolation. They called for further research focusing on the interrelationships of integrity systems at the international, national and local levels.[34] International instruments are particularly useful in providing a framework for addressing cross-border issues. A major setback to recent advances made in efforts to internationalize the fight against corruption is the failure by most African governments to take these international instruments seriously. Some studies have shown significant gaps in local laws of several countries in their reflection of the standards proposed in the anti-corruption instruments most relevant to the continent as a whole, such as the UNCAC and AUCPCC.

Even where convention standards are met, implementation remains a challenge. The TI nine-country study mentioned earlier noted that despite the introduction of the concept of illegal enrichment (a feature of both Conventions), as well as measures for judicial cooperation, Algeria has yet to implement measures to put these provisions into effect. The report also indicated that although Sierra Leone established its anti-corruption Commission in 2000, interference with the Judiciary continues. On Uganda, the report acknowledged that certain

[32] S. Atuobi, '*Corruption and State Instability in West Africa: An Examination of Policy Options',* KAIPTC Occasional Paper No 21, December 2007,
http://www.kaiptc.org/conflict_prevention/conflict_prevention.asp?id=5&rID=1, p. 22.
[33] T. Snider and W. Kidane, '*Combating Corruption Through International Law in Africa: A Comparative Analysis*', 40 Cornell Int'l L.J, 748 - 749.
[34] Leo Huberts et al, '*Local Integrity Systems Analysis and Assessment*', in Leo Huberts, Frank Anechiarico and Frederique Six (eds.), 'Local Integrity Systems: World Cities Fighting Corruption and Safeguarding Integrity' (The Hague: BJu Legal Publishers, 2008), p. 271 at p. 288.

legislative and policy measures had been implemented including the Prevention of Corruption Act and the Leadership Code Act, but other measures such as protection of witnesses, seizures and certification of property and financial records require reinforcement.[35]

Viewed as a development issue, recent studies have focused on the impact of corruption on Africa's poor. In 2006, the African Development Bank contended that Africa is no more corrupt than other regions in the world; however, due to widespread poverty the impact of corruption is worst in Africa.[36] Indeed, the burden of corruption, measured as a fraction of income paid in bribes, is greater with poorer households. A major critique of anti-corruption measures and ACCs is the general perception that they largely adopt a top-down approach without consideration of the need for pro-poor measures considering the impact of corruption on the poor. This area is often not captured by corruption measures. Plummer argues that "there is currently no index that creates a measure that is remotely adequate or useful in the development of a targeted pro-poor anti-corruption strategy, and there is a worrying trend and interest in some indicators that measure policy, laws and institutional presence and not their efficacy."[37]

A specific example is the malice of corruption in the water sector. Plummer contends that "corruption, in all its forms, directly decreases access to and quality of water assets, management and services and increased costs."[38] The indirect result is the diversion of resources away from the water sector and the reduction in the contribution of water to livelihoods. Plummer advocates for an adequate measure to capture the complete picture of the impact of corruption on the poor including the ways corruption functions as part of the coping strategies of the poor. She notes:

> *A measure that provided information on the poor would be one disaggregated by income and other non-income dimensions to draw out differing perceptions and disproportionate impacts on the poor. It would be constructed without bias to public-private interactions or any other part of the value chain, instead capturing the areas of corruption experienced by the poor versus the non-poor. This would pick up corruption in informal delivery, rural supply chains and community management, as well as formal delivery systems.*[39]

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[35] See Transparency International, '*Towards Effective Anti-Corruption Tools in Africa: Strengthening international and regional anti-corruption conventions*', *supra*.

[36] Africa Development Bank Group, '*Combating Corruption in Africa Issues and Challenges*', Concept Note Paper for the 2006 Annual Meeting, Ouagadougou, Burkina Faso, p. 5; See also G. Lawal, '*Corruption and Development in Africa: Challenges for Political and Economic Change*', Humanity & Social Sciences Journal 2(1), 2007, pp. 1-7.

[37] J. Plummer, '*Making Anti-Corruption Approaches Work for the Poor: Issues for Consideration in the Development of Pro-poor Anti-corruption Strategies in Water Services and Irrigation*', Swedish Water House Report Nr. 22. SIWI, 2007, p. 17.

[38] *Id.*, at p. 10.

[39] *Id.*, at p. 17.

In conclusion, the overview of recent literature has shown that there is general discontent in relation to the efficiency of national commissions and the efforts of governments to properly combat corruption. Furthermore, as the level of corruption in a country is widely accepted as having a direct effect on its development potential, an anti-corruption initiative should ideally be seen as a development project. As a result, unless a pro-poor anti-corruption strategy is adopted by ACCs in Africa, they will continue to be seen as having failed to make a positive impact on the lives of the majority of the continent's population.

Section II: Framework for Anti-Corruption Institutions in International Instruments

2.1 The Use of International, Regional and Sub-Regional Anti-Corruption Instruments in Combating Corruption

It is a bit too early to assess the effectiveness of international anti-corruption instruments in combating corruption since the earliest complete instrument applicable to the African continent only came into operation in 2005. African countries may however draw from the experience of their counterparts in the Americas where the Inter-American Convention against Corruption (IACAC) has been in operation since 1996. Like most of the other international instruments, the IACAC deals with the prevention, criminalization and investigation of corrupt acts and establishes a legal framework to facilitate cooperation among its State Parties.

A study conducted primarily to address the impact of the IACAC in the Latin American countries of Honduras, Trinidad and Tobago, Guatemala and Jamaica, found that "neither the ratification date of the IACAC nor implemented anti-corruption measures [seemed] to have improved corruption perception in the time period reflected (1996 – 2002)".[40] The author nevertheless concluded that the IACAC constituted an important step in the fight against corruption, stressing that it should however be seen as part of a systematic and multidimensional approach to tackling the issue with emphasis on both prevention and law enforcement.

This section of the report will be primarily concerned with the following anti-corruption instruments: the UN Convention against Corruption (UNCAC);[41] the AU Convention on Preventing and Combating Corruption (AUCPCC);[42] ECOWAS Protocol on the Fight against Corruption (ECOWAS Protocol);[43] the SADC Protocol against Corruption (SADC Protocol);[44] the Framework for Commonwealth Principles on Promoting Good Governance

[40] Giorleny D. Altamirano, '*The Impact of the Inter-American Convention against Corruption*', 38 University of Miami Inter-American Law Review 487 at 537 (2006-2007).

[41] The United Nations Convention against Corruption, adopted on 31 October 2003 by the UN General Assembly (entered into force on 14 December 2005). Available at http://www.unodc.org/art/docs/Convention%20against%20corruption%202003.pdf (accessed 28 September 2008).

[42] The African Union Convention on Preventing and Combating Corruption, adopted on 11 July 2003 at Maputo (entered into force on 5 August 2006), 43 *International Legal Materials* 1. Available at http://www.africaunion.org/root/au/Documents/Treaties/Text/Convention%20on%20Combating%20Corruption.pdf (accessed 28 September 2008).

[43] The ECOWAS Protocol on the Fight against Corruption, adopted at the 25th Summit of Heads of State and Government of ECOWAS (signed on 21 December 2001, but has not yet entered into force). Available in French at http://www.sec.ecowas.int/sitecedeao/francais/protocoles/PROTOCOLE-SUR-LA-CORRUPTION-FR-Accra-Oct-01-Rev5.pdf (accessed 28 September 2008).

[44] The SADC Protocol against Corruption, signed by the Heads of State and Government of the SADC at Blantyre on 14

and Combating Corruption (Commonwealth Framework);[45] the UN Convention against Transnational Organized Crime (UNCTOC);[46] and the Great Lakes Protocol against the Illegal Exploitation of Natural Resources (Great Lakes Protocol).[47] These instruments are especially important in that they establish common standards for domestic institutions and systems for combating corruption at national level. They are helpful tools that can be used to generate pressure on governments to meet internationally recognized standards and measures for dealing with the menace of corruption.

Taking the example of the UNCAC, Article 63 provides for the establishment of a Conference of the States Parties to the Convention to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in the Convention and to promote and review its implementation. It is the body specifically tasked with periodically reviewing the implementation of the Convention by the States Parties. In order to carry out this function and achieve its objectives, the Conference of the States Parties is required to come up with appropriate rules of procedure and agreed upon activities, procedures and methods of work, *inter alia*, for reviewing the implementation of the Convention. In furtherance of the objectives of the Convention, each State Party is required by Article 63, paragraph 6 to provide the Conference of the State Parties with information on its programmes, plans and practices, as well as on legislative and administrative measures to implement the Convention.

At the first session of the Conference of the States Parties held in 2007, it was decided in resolution 1/2 that a self-assessment checklist should be used as a tool to facilitate the provision of information on the implementation of the Convention.[48] Pursuant to this resolution, a self-assessment checklist was prepared by the Secretariat to the Conference and distributed to States Parties and signatories in mid-2007.[49] The checklist contains questions intended to elicit information on whether States have adopted measures specified therein as required by the Convention. The scope of the checklist covers such thematic areas as: (a) prevention; (b) criminalization and law enforcement; (c) international cooperation; and (d) asset recovery. The answers to be provided by respondents range from 'yes', to 'yes, in part' and 'no'. For

August 2000 (entered into force on 6 July 2005). Available at http://www.osisa.org/files/transparency_cd/LAWS/SADC%20Protocol%20Against%20Corruption.pdf (accessed 28 September 2008).

[45] The Framework for Commonwealth Principles on Promoting Good Governance and Combating Corruption, agreed upon by the Commonwealth Heads of Government in Durban, South Africa, 1999. Available at http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7BC628DA6C-4D83-4C5B-B6E8-FBA05F1188C6%7D_framework1.pdf (accessed 28 September 2008).

[46] United Nations Convention Against Transnational Organized Crime (UNCTOC), done at Palermo, 12-15 December 2000 (entered into force on 29 September 2003), 40 I.L.M. 353; G.A. Res. 55/25, U.N.GAOR, 55th Sess., Annex, Agenda Item 105, U.N. Doc A/RES/55/25 (2000), Entered into force on 29 September 2003.

[47] The Great Lakes Protocol against the Illegal Exploitation of Natural Resources of 30 November 2006. Available at http://www.icglr.org/common/docs/docs_repository/protocolienr.pdf (accessed 28 September 2008).

[48] Conference of the States Parties to the United Nations Convention against Corruption, 'Report of the Conference of States Parties to the United Nations Convention against Corruption on its first session, held in Amman from 10 to 14 December 2006, CAC/COSP/2006/12, resolution 1/2, para. 1 (27 December 2006).

[49] Conference of the States Parties to the United Nations Convention against Corruption, 'Self-Assessment of the Implementation of the United Nations Convention against Corruption', CAC/COSP/2008/2, paras. 7-13, p. 3 (7 December 2007).

each provision of the Convention to be reviewed, a software package housing the checklist offers clickable links to reference material and to a summary of the main requirements against which compliance could be assessed. However, the information provided through the checklist is not cross-checked for either its accuracy or veracity, thereby necessitating the need for a complementary means of monitoring the implementation of the Convention.[50]

In resolution 1/1 which was also adopted at the first session of the Conference of the States Parties, an open-ended intergovernmental expert working group was established to make recommendations on the appropriate mechanisms or bodies for reviewing the implementation of the Convention and on the terms of reference of such mechanisms or bodies.[51] The Conference reiterated at its second session in resolution 2/1 that any mechanism established to assist the Conference "in the effective implementation of the [Convention] should:

(a) be transparent, efficient, non-intrusive, inclusive and impartial;
(b) not produce any form of ranking;
(c) provide opportunities to share good practices and challenges;
(d) complement existing international and regional review mechanisms in order that the Conference may, as appropriate, cooperate with them and avoid duplication of effort."[52]

In the same resolution, the Conference of the States Parties also decided that the review mechanism should reflect, *inter alia*, the following principles:

(a) Its objective should be to assist States Parties in the effective implementation of the Convention;
(b) It should be non-adversarial and non-punitive and should promote universal adherence to the Convention;
(c) It should identify at the earliest stage possible, difficulties by parties in the fulfillment of their obligations under the Convention and good practices adopted by States Parties to implement the Convention.[53]

As at the time of writing this report, the Working Group was still preparing terms of reference for a review mechanism for consideration and possible adoption by the Conference of the States Parties at its third session to be held in Qatar in November 2009. Whenever they are

[50] *Id.*, paras. 24-29, pp. 6-8.
[51] Conference of the States Parties to the United Nations Convention against Corruption, 'Report of the Conference of States Parties to the United Nations Convention against Corruption on its first session, held in Amman from 10 to 14 December 2006, CAC/COSP/2006/12, resolution 1/1, para. 2 (27 December 2006).
[52] Conference of the States Parties to the United Nations Convention against Corruption, 'Report of the Conference of States Parties to the United Nations Convention against Corruption on its Second Session, held in Nusa Dua, Indonesia, from 28 January to 1 February 2008, CAC/COSP/2008/15, resolution 2/1, para. 2 (27 February 2008).
[53] *Id*, resolution 2/1, para. 3.

finalized, the terms of reference will undoubtedly reflect the broad principles enunciated above. The adoption of the terms of reference should lead to the introduction of a standardized review mechanism aimed at promoting the effective implementation of the Convention.

2.2 International Guidelines for the Establishment and Operation of Anti-Corruption Institutions

Shortly, it will be seen from various international instruments, in varying degrees, that there are certain internationally prescribed minimum requirements for the establishment and operation of anti-corruption institutions in Africa. Undoubtedly, in order to become an effective anti-corruption institution, most if not all of these requirements must be met by the institution. The various requirements are discussed below under the following sub-heads:

2.2.1 Independence

According to Professor Udombana, "the first and, perhaps, the greatest challenge to the fight against corruption in Africa is how to secure the independence of institutions charged with the implementation of the various anti-corruption laws."[54] The Commonwealth Framework expressly makes the requirement of independence a prerequisite to the effectiveness of anti-corruption institutions. Paragraph 21 of the Framework provides that, "Independent anti-corruption agencies such as ombudsman offices, inspectors-general, and anti-corruption commissions can be effective if they are genuinely free from being influenced by the executive branch of government and where there is a strong judiciary in place."

A recent World Bank publication has identified four different categories of anti-corruption institutions on the basis of their functions and the branch of government to which they are accountable. The first category is the universal model of anti-corruption agencies which combines investigative, preventative and communicative functions. The second category is described as an investigative model and is characterized by a small and centralized investigative commission. Both models are organizationally accountable to the executive arm of government. The third category, the parliamentary model includes commissions that report to legislative committees and are independent from the executive arm of government. The fourth category is called the multi-agency model and it involves a collaborative effort by multiple agencies to reduce corruption.[55] Each model, depending on other administrative dynamics would experience varying degrees of independence. As pointed out by Alberto Ades and Rafael Di Tella, "the

[54] Nsongurua J. Udombana, *'Fighting Corruption Seriously? Africa's Anti-corruption Convention'*, 7 Singapore Journal of International and Comparative Law 447 at 479 (2003).
[55] John R. Heilbrunn, *'Anti-Corruption Commissions: Panacea or Real Medicine to Fight Corruption?'*, Stock No. 37234 World Bank Institute 1, 6-7 (2004).

idea behind this requirement of independence is that it is the only way the public will have confidence in such a body and will contribute with information and support to its success."[56]

The UNCAC contains the most comprehensive provisions on the requirement of independence. Article 6(2) of the UNCAC provides:

> *Each State Party shall grant [preventive anti-corruption body or bodies] the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.*

As if to emphasize the importance of independence, Article 36 is largely repetitive in relation to anti-corruption law enforcement bodies:

> *Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.*

From the foregoing, it becomes obvious that the drafters of the UNCAC conceived of the requirement of independence as going far beyond the mere establishment of a separate unit or institution for combating corruption. Some of the questions that require answers in assessing the degree of independence of an anti-corruption institution are: *Is the institution protected from undue influence? What safeguards have been put in place for the appointment and removal of the head of the institution? What safeguards have been put in place to ensure the appointment of well-trained and qualified professional staff of integrity? Is the institution given sufficient powers to carry out its mandate? How predictable or stable is the budget of the institution?*

Although slightly less detailed when compared to the UNCAC, the AUCPCC contains provisions similarly reinforcing the need to have independent anti-corruption institutions. In the first place, Article 5(3) mandates State Parties to undertake to "establish, maintain and strengthen independent national anti-corruption authorities or agencies". Article 20 further provides in paragraphs 4 and 5:

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[56] Alberto Ades & Rafael Di Tella, '*The New Economics of Corruption: a Survey and some New Results*', 45 Political Studies 496, 508 (1997).

> *The national authorities or agencies shall be allowed the necessary independence and autonomy to be able to carry out their duties effectively (Paragraph4). State Parties undertake to adopt necessary measures to ensure that national authorities or agencies are specialized in combating corruption and related offences by, among others, ensuring that the staff are trained and motivated to effectively carry out their duties (Paragraph 5).*

Other relevant international instruments have similar provisions. The ECOWAS Protocol in Article 5(h) provides for the establishment and consolidation of "specialized anti-corruption agencies with the requisite independence and capacity that will ensure that their staff receives adequate training and financial resources for the accomplishment of their tasks." In the same vein, Article 4(g) of the SADC Protocol provides for the adoption of measures which will create, maintain and strengthen "institutions responsible for implementing mechanisms for preventing, detecting, punishing and eradicating corruption."

Other international instruments dealing with sister offences, such as money laundering and the illegal exploitation of natural resources, further highlight how important it is to tackle corruption within the public sector as this may hold the key to successfully dealing with the offences they are concerned with. For example, the UNCATOC provides as follows in Article 9(2):

> *Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions.*

In recognizing the importance of independence, Article 10(b) of the Great Lakes Protocol also provides that each Member State must undertake to "establish independent specialized bodies responsible for combating the illegal exploitation of natural resources and to strengthen the capacity of such bodies to enable them to discharge their responsibility effectively."

In view of the magnitude of the problem of corruption in Africa, experience has shown that the requirement of independence cannot be overemphasized.[57] As corruption in African societies is particularly rampant within the various government agencies, one has to wonder how corruption can seriously be tackled by an anti-corruption institution if it is still to be answerable to the same government officials partaking in corruption. *De facto* independence is manifested by the guarantee of a secure tenure for the head of the anti-corruption institution and by the maintenance of a qualified and well-trained workforce. Independence also depends on the

[57] This is discussed later in the report.

degree to which the budgetary allocation of the body is insulated from political interference and ability to ensure the provision of resources required for the body to carry out its day to day functions effectively. Finally, independence entails clarity in the definition of the role and scope of activities of the body.

2.2.2 Jurisdiction, Powers and Scope of Activities of the Institutions

This issue is closely linked to the requirement of independence. The point has already been made that one of the factors likely to have a positive impact on the independence or otherwise of an anti-corruption body is the degree to which the body is given a clear mandate deriving from an unambiguous set of rules defining its powers and functions. A newly established anti-corruption body may become preoccupied with unnecessary territorial struggles or end up duplicating efforts if its role is not clearly spelt out vis-à-vis other institutions involved in the fight against corruption. Should there be possible areas of overlap of functions, newly established and pre-existing anti-corruption bodies must be guided by legislative or policy documents prescribing how both institutions should collaborate with each other.

An anti-corruption institution may solely perform an investigative role. It may additionally have a prosecutorial, preventative and or an educational mandate. Irrespective of the mandate, however, the important thing is to have it clearly spelt out to avoid possible conflict between newly established bodies and other institutions with similar mandates. For example, if an anti-corruption institution is to be vested with prosecutorial powers, the institution's enabling legislation must additionally address the nature of the relationship between it and the concerned country's Attorney-General or Prosecutor-General as the latter is usually constitutionally vested with the power to prosecute. In this regard, Article 3 of the UNCAC recommends that : "Each State shall take such measures as may be necessary to encourage in accordance with its domestic laws, cooperation between, on the one hand, its public authorities as well as its public officials, and on the other hand, its authorities responsible for investigating and prosecuting criminal offences"

The UNCAC recommends perhaps the most comprehensive actions for the prevention of public sector corruption most of these are obvious but have hardly found a place in anti-corruption policy or legislation. The UNCAC and to a lesser degree the AUC make quite far reaching recommendations on actions for the prevention of public sector corruption. These include merit driven appointments in the public sector, capacity building, adequate remuneration, code of conduct for public officials and public procurement rules. Beyond all, the role must be realistic and anti-corruption bodies must be provided with adequate human and financial resources to enable them achieve all functions ascribed to them.

As a comprehensive definition of corruption continues to be elusive, defining the crimes over which a newly established body is to have jurisdiction may prove particularly problematic. Many of the international and regional instruments however contain a list of various crimes

which may aptly be brought under the umbrella of corrupt conduct. In the UNCAC, for instance, there are at least ten clearly defined acts of corruption, including bribery of national public officials (article 15), trading in influence (article 18), and abuse of functions (article 19), illicit enrichment (article 20) and concealment (article 24). With the exception of the offence under article 15, all the other examples given relate to non-mandatory offences under the Convention. The AUCPCC also has a list of nine acts of corruption under article 4(1), including offering, soliciting or accepting a bribe, illicit enrichment and diversion by a public official of state property. These two conventions offer the most comprehensive set of proscribed acts which may amount to corruption.

As with the UNCAC and AUCPCC, article 6(3)(a) of the ECOWAS Protocol proscribes the act of illicit enrichment. According to this provision:

> *A significant increase in the assets of a public official that he cannot reasonably explain in relation to his lawful earnings shall be considered an illicit enrichment and an act of corruption for the purposes of this Protocol among those State Parties for which it is a criminal offence.*

The definition of "illicit enrichment" in the UNCAC (article 20) and AUCPCC (article 1) is similar to the one reproduced above. It is however conspicuously absent from the SADC Protocol. It must be said that the crime is one of the more controversial provisions of these conventions in that it requires a shift in the burden of proof from a prosecutor to an accused person once it is established that there has been a significant increase in the accused person's assets where the increase cannot reasonably be explained in relation to his or her lawful earnings. It is no wonder therefore that under article 20 of the UNCAC, the criminalization of illicit enrichment is expressly made subject to the constitution and fundamental principles of State Parties which elect to criminalize it.

2.2.3 Cooperation between National Authorities and Non-State Actors

It is increasingly becoming an accepted fact that corruption, being a deeply ingrained societal vice, requires the collective efforts of both governmental and non-state actors in fighting it. Corruption is a crime which usually occurs with the knowledge and complicity of public officials, the same group of individuals required to tackle the phenomenon. Undoubtedly, participation by the private sector, media and civil society is indispensable as a tool not only in preventing corruption but also in ensuring that the crime is adequately exposed and monitored after it is committed. It is instructive to note that article 39 of the UNCAC provides as follows:

> *Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial*

institutions, relating to matters involving the commission of offences established in accordance with this Convention.[58]

Article 12 of the AUCPCC also requires State Parties to undertake to:

> *(1) Be fully engaged in the fight against corruption and related offences and the popularization of this Convention with the full participation of the media and civil society at large;*
>
> *(2) Creating an enabling environment that will enable civil society and the media to hold governments to the highest levels of transparency and accountability in the management of public affairs.*

Article 5(e) and (i) of the ECOWAS Protocol further acknowledges that in order to effectively tackle corruption, State Parties must take measures to establish and consolidate "participation of civil society and Non-Governmental Organizations in efforts to prevent and detect acts of corruption" and "freedom of the press and the right to information".

2.3 Conclusion

These requirements of independence, having a clearly defined role and mandate and enforcing cooperation with non-state actors should be seen as absolute pre-requisites to the successful operation of any anti-corruption institution, particularly in the politically charged environment of most African countries. In the requirements are the elements necessary for institution building with inbuilt checks and balances.

In spite of these internationally prescribed standards, different countries may nevertheless establish anti-corruption bodies with considerably different characteristics. In other words, there are other factors a country must take into consideration in setting up or operating an anti-corruption unit. As these factors are sometimes country-specific, it goes without saying that the final form of an anti-corruption unit should substantially reflect the unique history, of the country adopting it, in combating corruption. Country models should therefore be spontaneous and should ideally follow a comprehensive survey which enables the country concerned to adopt the model that best suits its needs.

[58] Article 12 of the UNCAC further encourages States Parties to take measures to promote cooperation between law enforcement agencies and relevant private entities. Under article 13, the Convention also requires States Parties to take appropriate measures to promote the active participation of individuals and groups outside the public sector in the prevention of and the fight against corruption.

Section III: Scale, Dimension and Nature of the Problem of Corruption in Africa

3.1 Introduction

Behind only poverty and unemployment, corruption has emerged as perhaps Africa's most important problem. The position of most African States has hardly improved in the last 5 years in Transparency International's Corruption Perception Index (CPI). Since 2005, only Botswana followed by Mauritius and Cape Verde consistently scored above 5 in TI Index, the rest or over 90% of Sub-Saharan African countries are perceived to be corrupt and failed to improve their ranking. Among those countries that scored below 5, again the majority, over 60% falls below 3, a sign of rampant corruption in the continent. Equatorial Guinea, Guinea, Democratic Republic of Congo, Sudan, Chad and Somalia by far had the worst corruption ranking by scoring below 2 in series of TI index.59 ECA's African Governance Report (AGR)60 attributes the increasing level of corruption in Africa to three main factors, namely:

(i) The level of institutional weakness in many African countries, which makes it possible for political leaders and public servants to embezzle national resources and abuse their power without being checked.
(ii) The deteriorating economic fortune and living standards of public servants in many countries, which makes corruption, a viable means of livelihood.
(iii) The role of external actors, foreign companies and private interests who often capitalize on weak institutional mechanisms and poverty in Africa to bribe state officials in order to gain undue advantage or secure political privileges in state policies.

The African Development Forum IV in its consensus statement issued in October 2004 noted that "Corruption continues to pose a serious challenge in many African countries undermining the legitimacy of institutions and entire Governments impeding investor confidence and depriving citizens – women and the poor in particular of essential public services".[61] From a sample of almost 27 countries surveyed for the ECA's African Governance Indicators in 2005, aside from Botswana, Ghana, Lesotho, Mauritius and Morocco, virtually all others surveyed (that is, Benin, Burkina Faso, Cameroun, Chad, Egypt, Ethiopia, Gabon, The Gambia, Kenya,

[59] See the Transparency International Corruption Perception Indexes from 2005 to 2010: http://www.transparency.org.
[60] Economic Commission for Africa: African Governance Report (AGR) 2005, P. 48
+ Annex 1 of AGR (supra) at p. 229.

Malawi, Mali, Niger, Nigeria, Tanzania, Uganda, Zambia and Zimbabwe) scored well under 50% in the index.[62]

Of interest also is what seems to be a "regional dimension" to the perception of the level of corruption in Africa. The Integrity of government and the level of corruption are rated much lower in West and East Africa than in Southern Africa.[63] In the corruption control index,[64] Namibia, Botswana, South Africa, Mauritius and Lesotho, have scores of well over 50 (with Botswana and South Africa having scores over 60 and Namibia having a score over 70). The trend is generally the same for studies done on perceptions of corruption in tax collection in these regions. No clear reasons for the trend have been found, but it is clear that these countries with better scores in corruption control are generally more affluent than their low scoring counterparts.

There is also the possibility that these countries have better and stronger institutions of governance generally. Despite the grim picture of corruption in Africa, there is evidence of serious effort in individual countries to tackle the problem. Nigeria's Economic and Financial Crimes Commission (EFCC), led by its charismatic former chairman, Mallam Nuhu Ribadu, gave a good account of itself from 2003 to 2007 before his controversial removal by the new Nigerian administration. A tribute to its success in prosecuting high profile officials mostly at the State level and the repatriation of millions of dollars of stolen funds is the dramatic movement of Nigeria from a CPI score of 1.4 and a ranking of second from the bottom in 2003, to a much-improved score of 2.7 and a ranking better than 55 other countries from around the world on Transparency International's Corruption Perception Index of 2007.

Zambia's Task Force on Corruption, though an ad hoc body without an enabling law, has significantly energized the anti-corruption war in that country; so has the reengineered Prevention of Corruption Bureau in Tanzania. Ghana, Rwanda and Uganda have also stepped up both action and rhetoric on their anti-corruption war. Many of these examples are themselves subject to several caveats – but at least, by and large they represent some hope in the large junkyard of failed or failing anti-corruption institutions.

In the last two decades, corruption has also become a major issue in foreign aid policies and prioritised within the 'good governance' initiatives of international organizations such as the World Bank and the International Monetary Fund; and has also been placed on the development agenda of other international organizations and several bilateral development agencies.[65] More importantly, many African states themselves have developed several anti-corruption initiatives and institutions. Academic research in the last two decades has contributed significantly to the understanding of causes, effects and prevention of this phenomenon.

[62] Annex 3 AGR 2005 p. 265. The project had a sample of about 27 countries in 2005 and used a 0 -100 scale. The closer to 100 an index scores reflects good governance as perceived by opinion leaders in that country.
[63] AGR op. cit p. 149.
[64] Annex 3 AGR 2005 op. cit p. 265.
[65] Jens Chr. Andvig and Odd-Helge Fjeldstad, et al, '*Research on Corruption - A policy oriented survey*', Final report commissioned by NORAD, December 2000, Chr. Michelsen Institute (CMI) & Norwegian Institute of International Affairs (NUPI), p.6, http://www.icgg.org/downloads/contribution07_andvig.pdf.

There is a growing concern that corruption is the premier obstacle to major development in many countries in Africa. As ECA African Governance Report II, 2009, indicated "corruption remains the single most important challenge to the eradication of poverty, the creation of a predictable and favourable investment and general socio-economic development and governance." Academic and policy-oriented studies on the definition, costs, effects (positive and negative), causes and reforms of corruption have increased greatly since the 1960s.[66] Doig and Riley (1997) argue that its prevalence and longevity cause damaging public and social consequences and because it involves the undermining of public office for private gain, corruption is a focus of inquiry in its own right.[67] Internationally, the subject of corruption has captured renewed interest; one of the reasons being that it has led to the flight of large amounts of capital from a number of developing countries. This is illustrated in the table I below:

Table I: Corruption in Governments

This table illustrates, through estimates, the funds allegedly embezzled by some of the most notorious leaders of the last 20 years. The 10 leaders in the table are not necessarily the 10 most corrupt leaders of the period and the estimates of funds allegedly embezzled are extremely approximate.

Head of government/Estimates of funds allegedly embezzled/GDP per capita (2001)

Mohamed Suharto President of Indonesia, 1967–98 US $ 15 to 35 billion US $ 695
Ferdinand Marcos President of Philippines, 1972–86 US $ 5 to 10 billion US $ 912
Mobutu Sese Seko President of Zaire, 1965–97 US $ 5 billion US $ 99
Sani Abacha President of Nigeria, 1993–98 US $ 2 to 5 billion US $ 319
Slobodan Milosevic President of Serbia/Yugoslavia, 1989–2000 US $ 1 billion n/a
Jean-Claude Duvalier President of Haiti, 1971–86 US $ 300 to 800 million US $ 460
Alberto Fujimori President of Peru, 1990–2000 US $ 600 million US $ 2,051
Pavlo Lazarenko Prime Minister of Ukraine, 1996–97 US $ 114 to 200 million US $ 766
Arnoldo Alemán President of Nicaragua, 1997–2002 US $ 100 million US $ 490
Joseph Estrada President of Philippines, 1998–2001 US $ 78 to 80 million US $ 91

[66] Alan Doig and Stephen Riley, *'Corruption and Anti-Corruption Strategies: Issues and Case studies from Developing Countries'* paper given at the Corruption and Integrity Improvement Initiatives in Developing Countries held at the OECD headquarters in Paris, 24-25 October 1997. Publication of the material was co-sponsored by the UNDP and OECD development centre. At this point, it is worth repeating that corruption has long been identified as a rapidly expanding phenomenon in Africa, possessing the power to undermine both economic and political stability in the region. See Lawrence CockFort, '*Economic Development and Corruption*', in Ayodele Aderinwale, ed., 'Corruption, Democracy and Human Rights in East and Central Africa', published by the Africa Leadership Forum (December 1994), p. 92. See also Leonce Ndikumana, '*Corruption and Pro-Poor Growth Outcomes: Evidence and Lessons for African Countries*', Working Paper Series of the Political Economy Research Institute of the University of Massachussetts Amherst (2006), pp. 15-9.

67 Id.

3.2 Surveys

The World Bank Governance Indicators 1996-2002,[68] illustrate the perception of corruption under the section on 'control of corruption'. Of all the African countries included in the survey, only Botswana is placed among the best possible group of countries in the sense that a mere 25% of all the 199 countries considered for the survey rate the same or better. By contrast, 27 African countries score between 25 and 75%, and 23 countries achieve a percentile rank of below 25% (with Congo, Equatorial Guinea and Nigeria scoring below 5%), which indicates that 75% of all 199 countries are perceived to be less corrupt (the interpretation of the figure lacks clarity).

Of the 180 countries included in the Transparency International 2008 Corruption Perception Index, the majority of African countries were perceived to be among the most corrupt and were therefore in the bottom half of the index.[69] Chad, Guinea, Sudan and Somalia were at the bottom of the list with scores as low as between 1.0 and 1.6 on a scale ranging from zero (high levels of corruption) to ten (low levels of corruption).[70] This perception is supported by AGR's expert survey of opinions on whether the executive in African countries are corrupt.[71] According to the Global Corruption Barometer 2007, [72] on average, all regions around the world, except Africa, are very skeptical about the effectiveness of their government's efforts to fight corruption. Interestingly, Ghana and Nigeria in particular are very high up on the list of countries less critical of government efforts in combating corruption, while Cameroon, South Africa and Senegal are more critical of government efforts in combating corruption.

The Afro Barometer findings have consistently shown that high levels of perceived corruption have a strong negative effect on trust in state institutions, and ultimately on state legitimacy. From the 18 countries surveyed in 2005 and 2006, it was found that across eight categories of public officials,[73] an average of nearly one in three Africans believes that 'most' or 'all of them' engage in corrupt behavior. The police force is considered to be the most corrupt institution with about 45% of respondents saying they believed that corruption is widespread in the institution. The survey found that less than 10% of Cape Verdians think that corruption is widespread among public officials, while more than half of Nigerians believe that a majority of officials are corrupt in all sectors except the courts. The Beninois and Zimbabweans were also found to have highly negative perceptions of their public officials with 51% and 45% of respondents respectively believing that corruption is widespread among the officials. Respondents from Lesotho, Tanzania, Mozambique and Madagascar, however, gave their public officials relatively positive reviews.[74]

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[68] SeetheWorldBankGovernanceIndicators:http://www.worldbank.org/wbi/governance/pubs/govmatters3.html (accessed 1 October 2008).

[69] See Table II below

[70] SeeTransparencyInternationalsite:http://www.transparency.org/news_room/in_focus/2008/cpi2008/cpi_2008_table (accessed 1 October 2008).

[71] See Table III below

[72] SeetheTransparencyInternationalCorruptionPerceptionIndex:http://www.transparency.org/policy_research/surveys_indices/gcb/2007 (accessed 1 October 2008).

[73] The categories are: the Office of the President; Members of Parliament; elected local government councillors; national government officials; local government officials; police; tax officials; and judges and magistrates.

[74] See Carolyn Logan, Tetsuya Fujiwara and Virginia Parish, '*Citizens and the State in Africa: New Results from Afrobarometer Round*

A report by the African Union, presented before a meeting in Addis Ababa in September 2002, estimates that corruption costs African economies in excess of US$148bn annually. This includes both direct and indirect costs of corruption, i.e., resources diverted by corrupt acts and resources withheld or deterred due to the existence of corruption. It is believed that the figure increases the cost of goods by as much as 20% and equals the combined GDP of Tanzania, Kenya and Cameroon.[75] Besides, it leads to reduced profits for traders and service providers, in as much as it increases the operational cost of transactions. In a 2002 UN report, it was reported that Africa ranked highest in connection with the transfer of illicit funds and capital flight with an estimated US$400bn or more having been looted and stashed away in foreign countries. Of this amount, an estimated US$100bn or more was from Nigeria alone.[76]

Corruption in the tax system is one of the worst aspects of corruption in African states. The combination of tax evading individuals and companies and corrupt tax officials are a major drain on the revenues of many African countries. In 18 African countries surveyed as part of a survey of experts for the ECA's African Governance Report, over 50% of experts said that tax collection is mostly or always affected by corruption. Corruption in tax collection is also a significant problem. 51% of experts surveyed in 27 African countries said that tax collection is mostly or always affected by corruption. Household surveys conducted in 16 countries also found that tax officials are second to policemen in terms of corruption. An average of 42% of households in the 16 countries said that tax officials demand bribes for services rendered. In Benin, Chad, Gabon, Kenya, Nigeria, Uganda and Zimbabwe, over 50% of households surveyed said that tax officials demand bribes. Only in Namibia and South Africa was this less than 20%. Generally, only in Botswana, Mauritius, Namibia and South Africa did more than 50% have a great deal of confidence in the transparency of the system. More than 50% of experts in Cameroon, Chad, Egypt, Ethiopia, Kenya, Mali, Niger, Nigeria and Uganda had little or no confidence in its transparency.[77]

Transnational bribery is an important feature of the corruption in Africa.[78] Recently, several multinational companies have come under the scrutiny and sanctions of the Foreign Corrupt Practices Act (FCPA) in the U.S., for payments made to Nigerian Public Officials. These include Halliburton Ltd., Siemens, Panalpina, Shell and others.

TI's bribery payers index of 2006 notes that overseas bribery by companies from the world export giants is still common, despite the existence of international anti-bribery laws criminalizing the practice. The 2008 edition of the index describes foreign bribery by emerging export economies

3', A Compendium of Public Opinion Findings from 18 African Countries, 2005-2006 by the Afrobarometer Network, Working Paper No. 61, http://www.afrobarometer.org/round3comp.htm (accessed 25 October 2008), p. 39.

[75] See the following sites: http://news.bbc.co.uk/1/hi/world/africa/2265387.stm and http://www.transparency.org.

[76] 'Global Study on the transfer of funds of illicit origin, especially funds derived from acts of corruption', Ad Hoc Committee for the Negotiation of a Convention Against Corruption, 4th Sess., Agenda, Item 3, at 3, U.N. Doc. A/AC.261/12 (2002).

[77] African Governance Report 2005, pp. 62-63.

[78] See George Moody-Stuart, '*Corruption in Africa: The Role of the North*', in Ayodele Aderinwale, ed., 'Corruption, Democracy and Human Rights in East and Central Africa', *supra*, p. 75.

as "disconcertingly high".[79] Casey Kelso, TI's regional director for Africa, has said that foreign companies that commit the crime of bribery are undercutting Africa's anticipatory efforts and suggested that countries should prosecute them vigorously. See figures and tables below on some facts and figures on corruption in Africa:

Some Facts and Figures on Corruption in Africa

Figure 1 - Corruption Perception Index[80]

Corruption Perception Index 2008

Country rank	Country	2008 CPI score
173	Chad	1.6
	Guinea	
	Sudan	
176	Afghanistan	1.5
177	Haiti	1.4
178	Iraq	1.3
	Myanmar	1.3
180	Somalia	1.0

Corruption Perception Index 2000

Country rank	Country	2000 CPI score
87	Azerbaijan	1.5
	Ukraine	1.5
89	Yugoslavia	1.3
90	Nigeria	1.2

Source: Transparency Internationa

[79] See Transparency International site:
www.transparency.orgbp/surveys_indices/policy/research (accessed 1 October 2008).
[80] See the Transparency International Corruption Perception Indexes: http://www.transparency.org.

Table II: 2008 Corruption Perceptions Index for African Countries

Country	Rank	Score
Botswana	36	5.8
Mauritius	41	5.5
Cape Verde	47	5.1
South Africa	54	4.9
Namibia	61	4.5
Tunisia	62	4.4
Ghana	67	3.9
Swaziland	72	3.6
Burkina Faso	80	3.5
Morocco	80	3.5
Madagascar	85	3.4
Senegal	85	3.4
Algeria	92	3.2
Lesotho	92	3.2
Benin	96	3.1
Gabon	96	3.1
Rwanda	102	3.0
Tanzania	102	3.0
Egypt	115	2.8
Malawi	115	2.8
Mauritania	115	2.8
Niger	115	2.8
Zambia	115	2.8
Nigeria	121	2.7
Sao Tome and Principe	121	2.7
Togo	121	2.7
Eritrea	126	2.6
Ethiopia	126	2.6
Libya	126	2.6
Mozambique	126	2.6
Uganda	126	2.6
Liberia	138	2.4
Cameroon	142	2.3
Kenya	147	2.1
Central African Republic	151	2.0

(Source: Transparency International, Global Corruption Perceptions Index 2008
http://www.transparency.org/policy_research/surveys_indices/gcb/2008, (accessed 30 October 2008)

Table III:

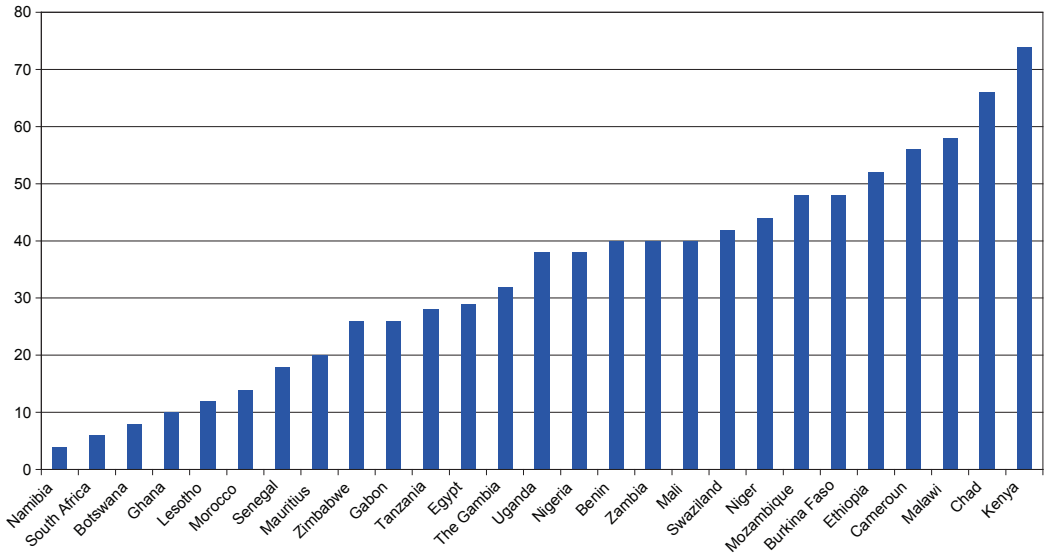

Figure 2 – Countries and Bribery81

Question – In the past 12 months, have you or anyone living in your household paid a bribe in any form? Answer – Yes	31% - 45%	Cameroon, Paraguay, Cambodia, Mexico
	11% - 30%	Ethiopia, Ghana, Guatemala, Lithuania, Moldova, Nigeria, Romania, Togo Bolivia, Czech Republic, Dominican Republic, Ecuador, Greece, Indonesia, India, Kenya, Pakistan, Peru, Russia, Senegal, Serbia, Ukraine
	5% - 10%	Argentina, Bulgaria, Bosnia and Herzegovina, Colombia, Croatia, Kosovo, Luxembourg, Macedonia, Malaysia, Nicaragua, Panama, Philippines, Poland, South Africa, Thailand, Turkey, Venezuela

[81] The Global Corruption Barometer (GCB) of 2005 placed Cameroon, Ethiopia, Ghana, Nigeria, Togo, Senegal and Kenya among countries where a relatively high proportion of families admitted to paying bribes. The TI Global Corruption Barometer assesses the general public's perceptions and experience of corruption. The Barometer asks people about their opinions regarding which sectors of society are the most corrupt, which spheres of life are most affected, whether corruption has increased or decreased in relation to the past, and whether it is likely to be more or less prevalent in future. See http://www.transparency.org/policy_research/surveys_indices/gcb/2005 (accessed 30 October 2008).

3.3 Corruption in Africa – Possible Causes and Dynamics

The point has been made that corruption in Africa is socially embedded in the 'logics' of negotiation, gift giving, solidarity, predatory authority and redistributive accumulation.[82] Thomas and Meagher elaborate on this point by explaining that countries emerging from a history of colonialism often struggle to build a sense of nationhood. According to them, "Where ordinary people do not feel any sense of 'public duty', or where they are honestly unable to identify the 'public' to whom such a duty might be owed, it is not clear that a public exists for whose purposes an office might be used."[83]

For others, the ideological prism offers the explanation. Nwankwo (2002) and Ekeke (1986) argue that the neo-colonialist and capitalist nature of Africa "has made it and its apparatuses serve as a vehicle for mindless corruption and primitive accumulation of wealth".[84] Nwankwo asserts that "the consequence is that both public and private institutions have constituted themselves as instruments that allow certain people in Nigeria to appropriate public money without recourse to probity and accountability."[85]

Neo-colonialism is perceived as a "strategy devised by the departing colonial powers to recoup their loss of direct political control in the emergent nations by consolidating and even enhancing their traditional economic influence and control."[86] Christian Akani (2002) asserts that:

> *Colonialism manipulated and subjected the hitherto autonomous communities in a bid to achieve its primary objective. This was the maximum appropriation of raw materials.... The result was that capitalist etiquette permeated the people especially through colonial education. Its receivers saw themselves more in the guise of the colonisers than their cultural root....*[87]

This inherited capitalist nature from the colonials became a nurturing ground for values, attitudes, skills and mindset that are needed for the maintenance of a capitalist system. This view is supported by writers such as Ekekwe who write that, "Corruption necessarily exists in

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[82] Olivier de Sardan, J.P, "A Moral Economy of Corruption in Africa**?"** in The Journal *of Modern African Studies*, vol.37, no.1, 1999, pp. 25-52.
[83] *Id*.
[84] Dr Arthur Nwankwo*, 'Political Economy of Corruption in Nigeria'*, a Presentation at a two-day conference organized by the Institute for Academic Freedom in Nigeria on 26-27 May 2000, in Corruption in Nigeria: The Niger Delta Experience, ed. Christian Akani, Fourth Dimension, 2002, p.9 at p.10. See also Eme Ekekwe, '*Class and State in Nigeria*', Longman, Lagos, 1986.
[85] *Id*., at p.11.
[86] See Toyin Falola and Julius Ihonvbere (eds.), *'Nigeria and the International Capitalist System,'* London, Lynne Rienner Publishers, 1988, p. 18.
[87] Christian Akani, *'The Nigerian State as an instrument of Corruption'*, in Corruption in Nigeria: The Niger Delta Experience, ed. Christian Akani, Fourth Dimension, 2002, p. 35.

and is encouraged by every capitalist economy, since in such an economic system the drive and competition for private profit and capital accumulation are the motor."[88] Of course, revelations that emerged with the collapse of Socialism were that central planning breeds probably as much corruption as the market economy. Central planning concentrates power in the hands of a few who almost certainly will be prone to abuse it.

But are there peculiarly African predispositions to corruption? Or are motivations for corruption as with its consequences, cross cutting and culture blind? One problem with cultural explanations for corruption is that they easily become justifications. For example, it is said that the extended family system in many Africa countries puts pressure on public officials to find money by all means. Or that a culture of gift taking for good service or favours done is invariably extended to the interactions between the public and the public officer. It is also said that poor compensation of public officers encourages 'innovation' in seeking to make up for the shortfall.

However, the peculiarity arguments are weakened by the fact that many culturally and socially different environments appear to have similar explanations for corrupt behavior. The South Korean Government in 1999 in outlining the reasons for corruption (which it described as a key obstacle to development) noted *inter alia* that, "Cultural environment encourages unreasonable and treatment, cash gifts commonly given during celebrations to express gratitude, excessive gifts usually in the form of cash commonly given to express condolences and congratulations."[89] In addition, the report notes that psychological and attitudinal causes include low level of integrity and ethics in public office, prevalence of egotism, nepotism, regionalism and academic cliques in society, low salaries and poor benefits for public officials, a social structure which supports high-handed personal administration and privileges for former government officials.

These must sound familiar to any interrogator of the corruption problem in Africa. Perhaps the important point then is not only to acknowledge that the story is the same elsewhere but also to note that reforms have worked in those jurisdictions and can work in Africa also.

Additionally, the weakness of law enforcement institutions supporting the administration of justice and the rule of law which in turn reduce the likelihood of detection and sanctions for corruption, and the general absence of accountability, greatly increase corruption in African states.

The challenge for most African states, especially where as is generally the case, corruption is systemic, is the divide between formal and informal rules of behavior. While all African countries have laws, and even Constitutional provisions prohibiting corruption and institutions with clear mandates to investigate and punish, yet the unwritten rules, accepted implicitly by many, is that corruption is acceptable and in fact inevitable. These unwritten and unspoken rules gain credibility from other factors in the system which do not 'add up', and make the formal rules

[88] Eme Ekekwe, *'Class and State in Nigeria'*, Longman, Lagos, 1986, p. 113.
[89] [Statement of South Korean Government on anti-corruption]

derisively hypocritical. For example, judges who sit over cases involving millions of dollars are so poorly paid that they cannot afford even basic medical care for themselves or their families and certainly cannot look forward to a home in retirement. Everyone looks the other way, when miraculously the judge is able to meet all these financial obligations without borrowing! The famous quip credited to a frustrated civil servant exemplifies the cynicism: "They pretend to pay us, so we pretend to work."

But how about poverty itself as an explanation? The argument in favour of its causative place is a difficult one. Especially when corruption is seen as an "integrity" issue and many poor are honest truthful persons. In any event how can poverty explain grand corruption? High officials in already reasonably comfortable circumstances, engaged in incredible plunder must have more credible explanations than poverty. It is possible that the fearsome, do-or-die battles for political power and the dire consequences of loss to the "enemy" fuel the need to build war chests in Africa's thoroughly monetized electoral processes.

In the end, the most sensible explanations are selfish and without redemption, the desire of the individual to better himself financially or politically at the expense of the commonwealth.

Section IV: Activities, Performance and Effectiveness of National Anti-corruption Institutions in Selected African Countries

4.1 National Framework and Institutions on Anti-Corruption

4.1.1 Introduction

This section will examine the activities, performance and effectiveness of national anti-corruption institutions in select African countries. These countries are Tanzania, Nigeria, Zambia, Ethiopia and Ghana. It will also review the national legislations establishing such institutions and the extent to which the relevant instruments in Section 3 have been domesticated or reflected in legislation on anti-corruption. Of the international instruments, emphasis will be placed on the UNCAC and the AUCPCC as they are by far the most comprehensive. Although the field study for this project focused on the National Anti-Corruption Institutions of Tanzania, Nigeria, Zambia, Ethiopia and Ghana, our consideration of legislative and institutional frameworks considers other countries not included in the field study (that is, Kenya, South Africa and Uganda).

The section will begin with a look at the legislative and institutional framework on anti-corruption in these five countries (and three others) with a view to assessing the relative strengths and weaknesses of the countries' anti-corruption laws. The degree to which international standards are reflected in these laws will additionally be ascertained. The section will then go on to discuss constraints and challenges the countries have faced over the years in their bid to tackle corruption. The ultimate aim is to assess how equipped each country's anti-corruption agency or agencies are to fight corruption effectively. The first half of this section will then conclude with a look at efforts made by the countries surveyed to improve cooperation between non-state actors and law enforcement agencies in the fight against corruption. The other half of the section will focus on recent trends and best practices on anti-corruption issues across the continent and even beyond.

4.1.2 Legislative and Institutional Framework

The national legislative framework for the establishment and operation of the anti-corruption agencies to be discussed in this section will be analysed in the same way as the international instruments were in Section II. Essentially, the legislative provisions will be assessed from the following perspectives:

(a) What guarantees of independence have been put in place by the various laws?
(b) How clear and comprehensive are the provisions regarding the jurisdiction, powers and scope of activities of the anti-corruption agencies?
(c) What measures have been put in place to ensure the active participation and cooperation of non-state actors?[90]

The governments of all the five countries that have been selected for the comparative analysis of this section have ratified both the UNCAC and the AUCPCC. However, at the time of writing, except for Tanzania which has enacted many of the provisions of these legislations in its local law none of these countries had enacted either of the conventions into law or otherwise fully domesticated the provisions of the conventions. As will soon be seen below, a significant number of local legislative provisions nevertheless coincide with standards prescribed by the conventions though several gaps still exist across board.

4.1.2.1 Tanzania

The Prevention and Combating of Corruption Act 2007(The PCA) is the principal anti-corruption legislation for the United Republic of Tanzania. It is perhaps the one anti-corruption legislation in Africa which has domesticated the largest number of provisions of the UNCAC and AUCPCC.

The PCA notably, recognises in its preamble, that "Corruption is an obstacle to principles of democracy, good governance and human rights and poses a threat to peace, tranquillity and security in the society". It therefore sets as its objective, the "promotion and enhancement of good governance and eradication of corruption" (section 4 (1)). The PCA establishes the Prevention and Combating of Corruption Bureau (PCB) under section 6 (10) of the Act, as "an independent public body". The Bureau is charged with taking necessary measures for the prevention and combating of corruption in the public and private sectors (section 7), advising on the practices and procedures of public institutions in order to facilitate the detection and prevention of corruption, fostering of public support in combating corrupt practices, cooperating and collaborating with international institutions in the fight against corruption, fostering of public support in combating corruption practices, cooperating and collaborating with international institutions is the fight against corruption, and the investigation and prosecution of offences under the PCA.[91]

The head of the PCB, the Director General and his deputy are both appointed by the President.[92] The law neither provides a specific tenure nor a procedure for removal of these officers. The implication of course is that they serve at the pleasure of the President.

[90] This is dealt with later in the section.
[91] Section 7(1)
[92] Section 6(2)

The PCA also constricts the independence of the PCB. The PCB must submit its estimates of income and expenditure for a given year to the Minister responsible for good governance for approval. The Minister in turn lays the approval report before the National Assembly. This provision is at least a significant hindrance to the independence of the PCB. It will be recalled that articles 6 (2) and 36 of the UNCAC and articles 5(3), and 20(4), (5) of the AUCPCC variously require State parties to grant preventive and specialized anti-corruption agencies the necessary independence in accordance with the fundamental principles of its legal system to enable the body or bodies to carry out its statutory functions effectively and free from any undue influence.[93] However, our interviews with senior officials of the PCB show that the executive has not been known to seek to manipulate or control the PCB by withholding their funds or unduly delaying the processing of its funding requests.

Although, as we have noted, PCA specifically declares the PCB an "independent public body" nothing else in the law seems designed to buttress that declaration. No specific provision is made to protect the members from direct or indirect interference from government or other authorities or power.

The PCB appears to have unfettered investigatory powers; although its prosecutorial powers are subject to the direction of the Director of Public Prosecutions. It is in its offence creating provisions that the PCA most impressively meets with the standards set in both UNCAC and AUCPCC. First, the offence of corruption itself is defined to cover both public and private sector activities. Offences such as bribery of foreign officials,[94] demanding sexual favours as a condition for employment or other preferment,[95] illicit enrichment,[96] Abuse of position,[97] and trading in influence[98] also reflect new thinking in criminalizing corrupt practices prescribed in the Conventions. Declaration of Assets by public officers,[99] confiscation,[100] freezing of assets,[101] protection of informants and witnesses are also important in strengthening the investigation and prosecution of corruption.

4.1.2.2 Ethiopia

The Ethiopian anti-corruption regime is established by the Federal Ethics and Anti Corruption Commission Proclamation of 2001 as subsequently amended by the Revised Federal Ethics and Anti Corruption Commission Proclamation No. 433 of 2005 (FEACCP). The FEACCP establishes the Federal Ethics and Anti-Corruption Commission (FEACC) as an independent body (section 1). The law further assures that the FEACC "… shall be free from any interference

[93] Article 6(2)UNCAC
[94] Section 21
[95] Section 25
[96] Section 27
[97] Section 31
[98] Section 33
[99] Section 26(1)
[100] Sections 27 , 40-44
[101] Section 38,

or direction by any person with regard to cases under investigation or prosecution or to be investigated or prosecuted…."[102]

The FEACC is charged with the responsibility of "exposing, investigating and prosecuting corruption offences and impropriety". 'Exposing' corruption suggests that the commission has a proactive role to play even in gathering intelligence on corrupt practices.

The Commissioner is the Chief Executive Officer of the FEACC and he or she is appointed by the House of Peoples' Representatives (the parliament) upon nomination by the Prime Minister.[103] His deputy is appointed directly by the Prime Minister.[104] The tenure of the Commissioner is for a term of 6 years renewable, according to the law "where necessary".[105]

It is uncertain who decides when it is "necessary" to reappoint a Commissioner or even when it may be "necessary" to do so. That notwithstanding, the Commissioner's tenure is reasonably well protected as he cannot be removed unless he violates the code of conduct, or has shown manifest incompetence and inefficiency, or is no longer able to carry out his functions on account of mental or physical illness.[106] There is no clear indication as to who makes the determination as to whether a Commissioner is manifestly "incompetent" and "inefficient". If it is the Prime Minister's call, then it may give room for executive control or manipulation of the Commissioner. There is some sense in arguing that if the Commissioner is appointed by the legislature (and only nominated by the Prime Minister) then the process leading to a removal should also be the responsibility of the legislature.

The Commissioner's independence is also called to question by the provision on its funding. The proclamation simply says that the "budget of the Commission shall be allocated by the government".[107] It is obvious that this could be an avenue for reining in the Commission if it gets too aggressive, especially against government interests.

The investigative and prosecutorial powers of the Commission with respect to the offences in the proclamation are clearly provided for as the Commission is conferred with powers of investigation and prosecution given to the police and public prosecutor under the criminal procedure code and other relevant laws.

The Commission is also charged with the duty of studying and recommending changes to the working procedures of public institutions and enterprises and ensuring the implementation of those recommendations. In doing so, it may notify the Prime Minister's office or the House of Representatives where there is unreasonable delay or reluctance in implementing its recommendations. The Proclamation also has extensive provisions on investigations. The

[102] Section 4
[103] Section 1
[104] Section 2
[105] Section 14 (1)
[106] Section 14 (2)
[107] Section 21

Commission may on reasonable suspicion of corrupt practices, obtain information on bank accounts of suspected persons and may by order of court, cause such accounts and assets of such persons to be frozen during the course of an investigation. Forfeiture provisions in the event of conviction for corruption and provisions for the disposal of such assets by public auction are also covered by the FEACCP. The FEACC is also empowered to register assets and financial interests of public officers as part of a compulsory asset declaration procedure for public officers.

The Proclamation makes provision for the protection of whistleblowers and rewards for persons who successfully prevent corrupt practices. Although Ethiopia is a signatory to both the UNCAC and AUPCC, the revised Proclamation is still in many respects short of the requirements of the UNCAC and AUPCC. However, the FEACC has presented the draft Conventions to the Council of Ministers for approval. The Council is then to forward the same to Parliament for ratification.

The FEACC makes it clear that it focuses on the detection and punishment of "grand corruption". In outlining its scope, it defines although somewhat vaguely, practices that are regarded as "serious corruption offences". This means:

(a) Corruption offences involving huge amount of money committed in highly strategic public offices and public enterprises;
(b) Corruption offences involving a public official;
(c) Corruption offences which cause or are capable of causing grave danger to the national sovereignty, economy, security or social life.[108]

The offence creating provisions do not go as far as the UNCAC or AUPCC provide. For example, there is no offence of illicit enrichment or any offence of that specie. It would appear however that although the focus seems to be on public sector corruption, there is enough room in "corruption offences which cause or are capable of causing grave danger to the national sovereignty, economy, security or social life" to accommodate at least some corrupt practices perpetrated by private entities or persons.

4.1.2.3 Ghana

Ghana does not have a purpose-established anti-corruption agency. Rather, pursuant to Section 218 (e) of the Ghana Constitution, the Commission on Human Rights and Administrative Justice Act (CHRAJA), Act 456 of 1993, established a Commission on Human Rights and Administrative Justice (CHRAJ) "to investigate complaints of violations of fundamental human rights and freedoms, injustice and corruption, abuse of power and unfair treatment of persons by public officers in the exercise of their duties, with power to seek remedy in respect of such acts or omissions …".

[108] Section 2 (a).

In addition, the Serious Frauds Office (SFO) was established by the Serious Frauds Office Act 1993 designed to deal with certain types of economic and financial crimes such as procurement fraud and in particular to monitor, investigate and prosecute (subject to the consent of the Attorney-General) any offence resulting in serious financial loss to the State.

The anti-corruption functions of the CHRAJ include – investigation of "allegations that a public officer has contravened or has not complied with the Code of Conduct for Public Officers in the Constitution and to investigate all instances of alleged or suspected corruption and the misappropriation of public monies by officials. The Chief Executive Officer of the CHRAJ is the Commissioner and he is expected by the law to be qualified to be a Judge of the Court of Appeal. His deputy is expected to be qualified to be a High Court Judge and both officers appointed by the President in consultation with the Council of State. The procedure for the removal of the Commissioner and Deputy Commissioner is the same as that prescribed by the Constitution for the removal of a Justice of the Appeal Court and the High Court respectively.

Both the Ghana Constitution[109] and the CHRAJA guarantee the independence of the Commission and its commissioners from the interference of, direction and control of any person or authority except as provided by the Constitution. The Commission's independence is strengthened by the constitutional provision which makes the Commissioners' salaries, allowances and pensions payable to, or in respect of persons serving with the commission, a charge on the Consolidated Fund.

Although the anti–corruption function is the remit of the Commissioner, operationally a Director heads the anti-corruption unit of the CHRAJ. The Director reports to the Commissioner. The CHRAJ has wide powers to investigate allegations of corruption. It is subject to the exceptions that it cannot investigate a matter pending before a court or judicial tribunal or involving the government or any international organization, or matter relating to the prerogative of mercy. It is unclear whether a matter is excluded from its investigative purview if the matter was in court before the purported investigation began or whether an action undertaken after an investigation terminates the process. The latter is more open to mischief from a suspect who may wish to use the judicial process to prevent investigation.

The CHRAJA appears to accommodate the power of the CHRAJ to investigate suspected corrupt practices *suo moto* or without a formal complaint being laid before it (section 7(1)(f)). However, the Ghana Supreme Court has recently ruled that the CHRAJ has no power to initiate investigations on its own motion.

The CHRAJA also does not cover the wide range of offences prescribed by the UNCAC or AUPCC although recently the Ghanaian Parliament began a process of identifying the gaps

[109] Section 225

between existing anti-corruption and money laundering legislation and the conventions with a view to passing relevant legislation to close the gaps. The exercise has resulted recently in the passing of an anti-money laundering legislation.

4.1.2.4 Kenya

The Kenyan anti-corruption system is regulated by a series of laws, chief among which is the Anti-Corruption and Economic Crimes Act of 2003 (ACEC Act). This Act was enacted to provide for the prevention, investigation and punishment of corruption, economic crimes and related offences. The Kenyan Anti-Corruption Commission (KACC) was set up pursuant to section 6 of the ACEC Act. The KACC is empowered among other things to investigate any matter that in its opinion raises suspicion that conduct constituting corruption has occurred or is about to occur as well as to examine the practices and procedure of public bodies in order to facilitate the discovery of corrupt practices and to secure revision of methods of work that may be conducive to corrupt practices, to educate the public on the dangers of corruption and economic crimes, and to enlist and foster public support in combating corruption and economic crimes.

Section 8 of the ACEC Act provides for the procedure for the appointment of the Director and Assistant Directors of the KACC. In particular, the President is mandated to appoint a person to the office of Director or Assistant Director after that person has been recommended for the position by an independent Anti-Corruption Advisory Board and approved by the National Assembly. There are no provisions for the removal of the Director or Assistant Directors or provisions prescribing the length of their terms in office. The KACC is given the autonomy to come up with terms and conditions of service to enable it employ staff of the calibre necessary for the proper performance of its functions. By section 7(2), the KACC is empowered to investigate any matter at the request of the National Assembly, the Minister responsible for integrity issues or the Attorney-General, or on receipt of a complaint, or on its own initiative. Furthermore, section 10 of the ACEC Act provides that the Director and the KACC are not subject to the direction or control of any person or authority in the performance of their functions, but are to be accountable to Parliament.

In terms of funding, like the Tanzanian PCB, every year the KACC is required to prepare and submit estimates of the expenditure and revenue of the Commission to the Minister responsible for integrity issues and Treasury for approval. The Act does not provide any procedural or other form of guidance for the approval process, thus leaving it to the discretion of the concerned Minister. The weakness identified in the Tanzanian PCA is of course also relevant here. One can also make the argument that as long as the procedure for removing a Director or an Assistant Director is not specified by law, the tenure of persons occupying either office cannot be said to be secure. This also goes against the spirit of the conventions.

4.1.2.5 Nigeria

The Nigerian anti-corruption regime is regulated mainly by the Corrupt Practices and Other Related Offences Act of 2000 (CPA). Anti-corruption efforts in Nigeria are also supported by other legislation, including the Economic and Financial Crimes Commission (Establishment) Act of 2004 and the Fifth Schedule to the 1999 Constitution establishing the Code of Conduct Bureau. The CPA established the Independent Corrupt Practices and Other Related Offences Commission (ICPC) with a mandate among others to investigate and prosecute persons suspected to have committed an offence under the CPA or any other law prohibiting corruption, to examine the practices, systems and procedures of public bodies with a view to directing and supervising the review of same where they aid or facilitate fraud or corruption, and to educate the public and enlist their support in combating corruption.

The CPA provides that the Chairman of the ICPC and other members of the Commission are to be appointed by the President upon confirmation by the Senate, and may be removed by the President acting on an address supported by two-thirds majority of the Senate.[110] It appears that the President is given considerable latitude in appointing persons to the key offices in the ICPC. In spite of the mandatory language of section 3(6) of the CPA which requires the President to appoint the Chairman and members of the ICPC upon confirmation by the Senate, it is to be presumed that it is the President that has the power to recommend persons to be confirmed by the Senate. The implication is quite significant as it may compromise the independence of the Chairman and members of the ICPC in relation to the President. Added to this is the absence of a provision in the CPA guaranteeing the financial independence of the Commission. It is not legally empowered to access its funding directly from the National Assembly through the budgetary and appropriation process. The end result is that it is not only funded by the Presidency, it also reports to the same office.[111] However, in interviews with the Chairman and some Directors of the Commission, all were categorical that there had been no incident of direct or indirect interference in their work by the government.

However, the Chairman and members have considerable security of tenure. Their tenures are fixed at five years and four years respectively and they cannot be removed from office by their appointor, i.e., the President, except he acts on an address supported by two-thirds majority of the senate.[112] Further strengthening the independence of the Commission, the law specifies that remuneration of the Chairman and members shall be determined by the National Mobilization Allocation and Fiscal Commission.[113]

Based on a reading of section 27 (3) of the CPA, it also appears that the ICPC may act on its own in initiating an investigation. The Commission is empowered to act not only upon receipt of a report or information which gives an officer reasons to suspect that an offence

[110] Section 3(6), (8) of the CPA.
[111] Lilian Ekeanyanwu, "*Review of Legal and Political Challenges to the Domestication of the Anti-Corruption Conventions in Nigeria*", published by Transparency International, March 2006, http://www.transparency.org/news_room/in_focus/2007/uncac_africa (accessed 22 October 2008), p. 19.
[112] Section 3(6)
[113] Section 395 of the CPA

under the CPA has been committed, but also on the basis of information otherwise received by him.[114] Section 3(10) and (14) further guarantees the independence of the ICPC and its officers by providing that they are not to be subject to the direction or control of any authority in the exercise of their functions. The Commission is also given significant autonomy in the appointment, dismissal and setting of the terms and conditions of service of staff. The ICPC's preventive and educational remit is amply provided for and represents a major thrust of the agency's anti-corruption strategy. Interviews with the agency showed a robust, informed and aggressive approach to prevention and education.

The EFCC, is not properly speaking, an anti-corruption institution. However its wide mandate as the "designated Financial Intelligence Unit (FIU) in Nigeria, which is charged with the responsibility of co-ordinating the various institutions in the fight against money laundering and enforcement of all laws dealing with economic and financial crimes",[115] gives it enough authority to intervene in the investigation and prosecution of corruption offences. The Commission is headed by a Chairman, and members most of whom are ex-officio heads of relevant government agencies.[116]

The Chairman and members are appointed by the President and the appointment is subject to confirmation by the Senate.[117] Except for the Chairman and Secretary, other members are part-time members.[118] The Chairman and members of the Commission other than ex-officio members hold office for a period of four years and may be reappointed for a further term of four years and no more.[119] A provision which constricts the independence of the Commission is one which enables the President to remove any member of the Commission for inability to discharge the functions of his office whether arising from infirmity of mind or body or *any other cause* or for misconduct or if the President *is satisfied that it is not in the interest of the Commission or the interest of the Public that the member should continue in office*.[120] The President's power to remove a member, which presumably includes the Chairman, is considerable and may be for subjective reasons. What would "satisfy" the President that it is not in the interest of the Commission or the Public for a member to continue in office is nowhere defined.

Also, section 43 states that the Attorney General of the Federation may make rules or regulations with respect to the exercise of any of the duties, functions or powers of the Commission under the Act. This clearly gives the Attorney General sufficient latitude to interfere in the functioning of the Commission. Where the Attorney General, for political reasons, seeks to interfere in the Commission's affairs, this rule-making power will certainly come in handy.

The EFCC Act also contains provisions on collaboration with government bodies locally and

[114] Section 27 (3)
[115] Section 1 (2) (c)
[116] Section 2 (1)
[117] Section 2 (3)
[118] Section 2 (2)
[119] Section 3 (1)
[120] Section 3 (2). Emphasis by the author.

internationally,[121] maintaining data, statistics, records and reports on persons, organisations, proceeds and properties involved in economic and financial crimes[122] and also on carrying out and sustaining rigorous public enlightenment campaigns against economic and financial crimes within and outside Nigeria.[123]

The Act provides extensively for seizure and forfeiture of assets suspected to be and those established as proceeds of crime.[124] The Act provides for the designation of High Courts, both Federal and State, to hear cases brought under the EFCC Act.[125] Such courts are obliged to give such matters priority over other matters pending before them.[126] The EFCC Act gives considerable independence to the Commission in its funding. It provides that all the monies approved for it annually by the National Assembly must be credited to a fund established for the purpose of receiving the funds.[127]

4.1.2.6 South Africa

Unlike Kenya and Tanzania, but like Nigeria, South Africa does not have a single, main anti-corruption agency. The country operates a multiple agency system. The most significant of the South African Institutions are: the Directorate of Special Operations (DSO or the Scorpions), which is a unit within the National Prosecuting Authority (NPA); the Special Investigations Unit (SIU); and the South African Police Service (SAPS).[128] The DSO was established under the National Prosecuting Amendment Act of 2001 for the effective investigation and prosecution of organised crime, organised corruption, serious and complex financial crimes and racketeering and money laundering. A protracted turf war between the NPA and the SAPS over which body should administer the DSO has now led to the disbandment of the DSO and its merger into the SAPS.[129]

The DSO functioned by adopting a unique methodology which involved combining crime analysis, investigation and prosecution in an integrated manner. The head of the DSO, being a Deputy National Director of Public Prosecutions, reported to the National Director of Public Prosecutions (NDPP) and was appointed by the President. Although this may have compromised the independence of the DSO in relation to the President, the DSO has been viewed as largely successful. It had the support of the President and general populace, relatively

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[121] Section 6 (J) (i)
[122] Section 6 (J) (iv)
[123] Section 6 (p)
[124] Sections 20-26, and Part 4 of the Act
[125] Section 19 (3)
[126] Section 19 (4)
[127] Section 35 (2)
[128] The Open Democracy Advice Centre, 'Country Review of Legal and Practical Challenges to the Domestication of the Anti-Corruption Conventions in South Africa', published by Transparency International, March 2006, http://www.transparency.org/news_room/in_focus/2007/uncac_africa (accessed 22 October 2008), p. 13.
[129] Barry Bearak, 'South Africa: Anticrime Unit Disbanded', New York Times, 23 October 2008, http://www.nytimes.com/2008/10/24/world/africa/24briefs-ANTICRIMEUNI_BRF.html (accessed 30 October 2008).

good funding and a good staff complement. Investigations were initiated either based on a referral from the NDPP or by the public bringing a matter to the DSO's attention. However, each matter to be investigated had to meet a certain threshold.

The SIU is the only state based agency dedicated to fighting corruption. Its investigations are limited to corruption in the public sector. It deals only with cases of corruption, fraud and maladministration that have been referred to it or otherwise authorised by the President. Apart from this requirement which limits the SIU's institutional independence, the unit needs a proclamation to be issued by the Premier of the Province in which it is to carry out its work. Such proclamations often lead to inordinate delays and can sometimes compromise investigations. One notable feature of the SIU is that it receives additional funding from the government departments in which it is requested to intervene. A second interesting feature is that when an investigation reveals sufficient evidence, the SIU has the advantage of being able to institute civil proceedings to recover, protect or save state assets that have been or could be misappropriated.

The SAPS are also involved in the investigation of corruption. The mandate of the SAPS is to prevent, combat and investigate crime among other things. Section 207 of the South African Constitution empowers the President to appoint the National Police Commissioner to control and manage the national police force. The Police Commissioner is directly under the authority of the Minister of Safety and Security and is therefore subject to the control of the executive government. South Africans lack confidence in the ability of the SAPS to combat corruption and in fact consider the agency to be the most corrupt public institution in the country.[130]

In the late 1990s, with the overhaul of South Africa's criminal justice system, a debate emerged to determine whether the country could afford to maintain multiple anti-corruption agencies in spite of an emerging global framework for fighting corruption. The outcome of the debate was a decision to retain the current agencies with a recommendation for better coordination between them to improve their effectiveness.[131] It appears now that the main anti-corruption agencies are the SAPS and the SIU, both of which can hardly be said to be independent. History has taught many countries that the police force is not the most appropriate body to combat corruption as it is often one of the worst hit by the phenomenon itself. In Transparency International's Global Corruption Barometer of 2007, the police was named as the public institution reported to be most affected by petty bribery.[132] It appears that the South African anti-corruption system lacks the independence to effectively tackle corruption as required under the international conventions.

[130] See Transparency International, Global Corruption Barometer 2007 Report, http://www.transparency.org/policy_research/surveys_indices/gcb/2007, (accessed 30 October 2008), p. 23.
[131] The Public Service Commission, '*Review of South Africa's National Anti-Corruption Agencies*', Pretoria, August 2001, p. 5.
[132] Transparency International, Global Corruption Barometer 2007 Report, *supra*, p. 7.

4.1.2.7 Uganda

Uganda's main corruption fighting unit is the Inspectorate of Government (IG) as established under article 223 of the 1995 Ugandan Constitution. The powers and functions of the Inspectorate are regulated by the Inspectorate of Government Act of 2002 and the Leadership Act of 2002. The Inspectorate of Government is headed by the Inspector General of Government (IGG) who in turn is assisted by two deputies. Both the IGG and his deputies are appointed by the President subject to the approval of Parliament. Once appointed, the IGG enjoys considerable security of tenure as the President cannot remove him or her from office unless a tribunal appointed by Parliament so recommends. The removal must be for infirmity of body or mind, misconduct or incompetence. The IGG is forbidden from concurrently holding another office. The IG board, which comprises eight persons including the IGG and his deputies, is responsible for the hiring, disciplining and firing of staff.

The Inspectorate has a mandate among others to fight corruption and abuse of authority and public office. It functions as the ombudsman of government and the government's anti-corruption watchdog agency. One of its duties is to take measures to detect and prevent corruption in public offices. Its jurisdiction covers most public offices, but as can be expected does not extend to the private sector. The 1995 Constitution provides that the Inspectorate is to be independent in the performance of its functions and is not to be subject to the direction or control of any person or authority. However, the IGG's powers are expressly limited in respect of any matter relating to the Presidential Prerogative of Mercy and any other matter that the President certifies as likely to prejudice security, defence or international relations of Uganda or exposes the secrets or confidential matters of the cabinet. These limitations lawfully empower the President to interfere with the affairs of the Inspectorate on virtually any occasion. It does not appear that the exercise of the President's powers under this provision can be reviewed in a court of law or by any other authority.

Additionally, even though the Inspectorate proposes its own budget and Parliament is responsible for approving it, it is the executive government that wields the greatest influence over the amount of the agency's budget. In conclusion, while it is commendable that the IGG enjoys considerable security of tenure and the IG board has autonomy in the hiring and firing of staff, the Inspectorate nevertheless falls short of the standard of independence as prescribed by the international conventions.

4.1.2.8 Zambia

In 1996, the Zambian Anti-Corruption Commission (ACC) was established under the ACC Act of that year. This is Zambia's premier anti-corruption watchdog agency. It is an autonomous body whose functions include the investigation of complaints alleging corrupt activities and the taking of necessary and effective measures for the prevention of corruption in public and private bodies. The ACC may also partake in the prosecution of offences under the ACC Act subject to the direction of the Director of Public Prosecutions. The head of the ACC is the Director-

General and he or she is forbidden from discharging the duties of any other office while in service. The Director-General is empowered to make standing rules for the control, direction and administration of the Commission. The ACC is free to appoint investigating officers, the secretary and other officers of the Commission on such terms and conditions as the Commission considers necessary to assist the Director-General in the performance of his functions.

The ACC Act empowers the ACC to "receive and investigate complaints of alleged or suspected corrupt practices..." (section 9(b)). That it may investigate "suspected corrupt practices" and not only allegations, suggests that it may *suo moto* initiate investigations. However, it may be worth noting that the Ghanaian CHRAJA has a provision in identical terms and yet the Ghana Supreme Court held that the CHRAJ could not initiate investigations.

By virtue of section 5 of the ACC Act, the ACC is supposed to be independent in its functioning. However, in practice, the Commission reports to the President who is thereby able to exert some influence on its activities. The President is also responsible for appointing the Director-General and Commissioners of the ACC subject to ratification by Parliament (section 16(1)). Only a person qualified to be a High Court Judge of Zambia is eligible for the position of Director-General (section 17 (1)). Members have a tenure of three years, subject to renewal (section 8(1)). The position of a commissioner becomes vacant if the incumbent is absent from three consecutive meetings without permission, becomes bankrupt or insane, or is declared to be of unsound mind, or by reason of death. However, once appointed the President cannot remove the Director unless a tribunal appointed by Parliament so recommends. The Director General's tenure expires when he has attained the age of 65 years. Before then, he may be removed from office for inability to perform the function of his office, whether arising from infirmity of body or mind or from any other cause or for misbehaviour, but cannot be removed except by a resolution passed by the National Assembly calling for an investigation into the question of the removal of the Director-General (section 17(2)).

If the National Assembly, by resolution supported by two-thirds of all members resolves that the question of his removal be investigated, the resolution is sent to the Chief Justice who is to set up a three-man tribunal to inquire into the matter (section 17(3)). The Chairman of the tribunal and at least one member must be persons who hold or have held high judicial office (section 17(4)). Where the tribunal advises the President that the Director-General ought to be removed for one of the causes specified in section 17(2), the President shall remove the Director-General.

ACC budget proposals are initially submitted to the Ministry of Finance and National Planning which scrutinises it before presenting to Parliament for approval.

From the foregoing, it appears that the ACC lacks practical independence as prescribed under the international conventions. The wide ranges of offences prescribed by the Conventions have not yet been included in the ACC Act.

4.1.3 Constraints and challenges

The issues identified and confirmed in the fieldwork as being crucial in assessing the efficiency of anti-corruption institutions include: independence (which encapsulates appointment and removal procedures, tenure and mode of funding); capacity, especially investigational; extent of prosecutorial power; effectiveness of international collaborative efforts; efficiency of the judicial process; the observance of the rule of law; and respect for the rights of suspects.

With the exception of Ethiopia, none of the five countries discussed above has a legislative provision granting its anti-corruption watchdog agency independent powers of prosecution. In Kenya, for instance, the KACC is required to forward all its cases to the Attorney-General's office for prosecution. Section 61(1) of the Nigerian CPA provides that every prosecution for an offence under the Act shall be deemed to have been done with the consent of the Attorney-General. Hence, there is an implied consent to prosecute in every prosecution conducted by the ICPC. However, by virtue of the Nigerian Constitution, the Attorney-General is free to withdraw his consent at any time without giving reasons and this decision cannot be challenged. Under section 46(1) of the Zambian ACC Act, prosecutions to be undertaken by the ACC must be done with the written consent of the Director of Public Prosecutions.

Every country has a unique history with regard to corruption. In some countries, the most important problem is the failure of law enforcement agencies to properly investigate cases of corruption. However, in others, the problem may also entail failure by the relevant bodies to prosecute these cases. The point to be made here is that the purpose of fighting corruption will be defeated if properly investigated cases end up being swept under the carpet by the body responsible for prosecutions. In institutions where there is a clear separation of investigative and prosecutorial powers, the requirement of independence should apply to the prosecutorial body as it applies to the investigative one. Where the enabling legislation provides for an overlap of functions between the investigative body and the prosecutorial one, the mode of exercise of the respective functions of both bodies must be clearly spelt out with proper mechanisms for transparency and accountability put in place.

Similarly, it is important to clearly define the mandate of anti-corruption agencies with a view to preventing potential conflict and duplicity in their activities as was the case with South Africa. If having multiple agencies works best for a particular country, considerable effort must be made to delineate their respective areas of operation with clear provisions on mechanisms for cooperation between them. The agencies must see themselves as partners fighting for the same cause, rather than as rivals competing for limited resources. In addition, where the mandate of the main anti-corruption watchdog agency of a country is somewhat circumscribed to the point that it prevents the agency from being able to effectively combat corruption, such mandate must be broadened to bring it in line with the international conventions. A good example is the Inspectorate of Government in Uganda. This body does not have jurisdiction to investigate corruption in the private sector, a limitation which is remarkably out of tune with modern day realities.

Zambia and Tanzania are the only two countries among the five under consideration to make provision for the crime of illicit enrichment. Section 37 of the Zambian ACC Act clearly sets out the circumstances under which the offence can be investigated and prosecuted. As corruption is usually a victimless crime, it is not unimaginable for a situation to arise whereby no one is willing to come forward as a witness or informer to provide evidence of its commission. In such instances, the crime of illicit enrichment makes it possible to prosecute a person suspected to have corruptly enriched himself or herself with limited evidence. The value of this provision is frequently underestimated. Additionally, in some countries, its implementation may require a constitutional amendment. These two reasons may partly explain why it is conspicuously absent from most anti-corruption legislations across the continent.

Most of the institutions surveyed showed that appointments are generally made by the executive, the major variants being whether such appointments require legislative confirmation or not. Removal or vacancy also tends to follow the same trend – removal or vacancy of the office is only in the event of death, unsoundness of mind or some misconduct. In some cases, the legislature must vote on the removal where misconduct is alleged. Some jurisdictions do not make any provisions for removal which of course implies that the tenure is at the pleasure of the appointor.

Tenure also takes two broad forms: either a certain specified tenure renewable at the option of the appointor, or a specified tenure with no specific provision for renewal, which may also mean that there is no security of tenure.

However, the Zambian Anti-Corruption Act, and the Ghanaian CHRAJA introduce a third variant, which is tenure expiring at a fixed retirement age. This obviously ensures the most secure tenure. On the procedure for removal, the Zambian model is again superior to others. The requirement that the legislature must vote on the question whether the Director-General should be removed by a strict majority of two-thirds of all members of the National Assembly (not only those present and voting) and the requirement of an independent tribunal to look at the allegations and to recommend action to the President provides a strong checks and balances regime.

Many other jurisdictions require a vote of the legislature to remove the CEO of an anti-corruption institution, but the Zambian requirement of a judicial tribunal examining the allegations or reasons behind the proposed removal creates a further layer of protection. All of the surveyed anti-corruption institutions firmly believed that reduced or at least well-controlled executive input into appointment is useful in ensuring independence of the commission and freeing its members from beholding the executive. They also agree that direct funding without having to present their budget to another executive body before the same is laid before parliament further insulates their institutions from executive interference. Most however, took the view that regardless of the arrangement for funding, if the executive was unwilling to fund the institution, very little could be done. The Nigerian ICPC had for instance complained of

inadequate funding to do its work, even the apparently better funded EFCC, also seems to have received most of its funding from donors.

A resonant theme from all the institutions surveyed was that – legislation was useful but not nearly enough to guarantee independence and effectiveness in prosecuting its objectives. Political will, everyone agreed, is king. Zambia's model for instance which as we have noted, most effectively protects the independence of the institution is an example of the sometimes wide gap between legislation and political will. During the Chiluba administration (1991 to 2001), and despite the existence of the legislation and its checks and balances, the ACC was practically comatose, especially in relation to grand corruption involving senior public officials. Without political will, funding for the Commission was extremely poor. Besides, as noted by a senior official of the ACC, in law enforcement agencies, bureaucrats who could be of help as is generally the case, watch the body language of the executive closely. Once it is apparent as was the case in Zambia that the executive is not interested in a serious anti-corruption effort, they also tune off.

The relative loss of credibility of the ACC during that period of its inaction was responsible for the constituting of the taskforce on corruption on 15 July 2002 by the new administration of the now deceased President Levy P. Mwanawasa, SC. The taskforce was to investigate suspected official corruption in Zambia from 1991 to 2001, to recover all stolen assets, prosecute (as determined by the Director of Public Prosecutions) and build capacity for investigation of complex financial crimes in Zambia.

Senior officials of the ICPC in Nigeria also felt that the Commission despite the robust legislation and high objectives stated by government since its inception in 2002, was rather poorly funded and this hampered all aspects of its work at the initial stages. The EFCC also has a similar story, although its more aggressive and high profile stance appears to have endeared it to donors. The question of security of tenure does not however necessarily translate to much security for the institution's functionaries where the executive has an axe to grind.

The intrigues surrounding the "posting" and subsequent removal of the former Chairman of the EFCC in Nigeria, Mr. Nuhu Ribadu illustrates the point eloquently. Under the law, the Chairman had a fixed tenure of four years, renewable for another four years. An appointment is subject to Senate confirmation. Mr. Ribadu had served a well acclaimed four-year term and was on the second term when a new government came into office. Obviously the new government did not want Mr. Ribadu. The government then purportedly sent him on a one year course to the National Institute of Policy and Strategy Studies and appointed an acting Chairman. Before his course was completed, the government had appointed a new Chairman of the EFCC. All of these steps were taken amidst legal actions challenging their legality. Many of those actions are still the subject of legal challenge in the courts. The morale of the story is that laws protecting independence may in the absence of strong political will to maintain the independence of the institutions be worth no more than the paper they are written on.

It is worth remarking also, as noted by Ali Sulaiman (the head of Ethiopian FEACC), during our telephone interview, that security of tenure by itself is not enough. What happens after service as the top anti-corruption boss? Most times, he noted the official is left to cater for his own personal security and general welfare. Adequate arrangements are hardly ever made, for example, to even ensure that the official has a home to live in after years of considerable dangerous service, in which many enemies are invariably made.

It is of course valid to suggest that once effective laws guaranteeing security of tenure are in place, all that may be required would be courage on the part of the institutions – to confront corruption, especially that involving senior public officials. Civil society activists and the press in Zambia, Nigeria and Tanzania felt that there was a need for anti-corruption agencies to be ready even to confront governments in cases of corruption. To seek their green-light before pursuing cases involving senior officials of government is timid and will ultimately not yield positive results.

Dr. Edward Hoseah of the PCB of Tanzania however took the view that a confrontational stance almost always leads to a quick termination or short-circuiting of the entire anti-corruption effort. While the high-profile revelations and prosecution of corruption in high places always makes good press and also helps to deter corruption, where it is one without sufficient political backing, success is almost always short-lived. He emphasized that the anti-corruption war was a many sided one, and a major component was the prevention of corruption. This he said was being achieved in Tanzania by broadening the coalition against corruption through public education (involving schools, the media and civil society) and working to change institutional and governance structures which are conduced to corruption (initially through the Good Governance Co-ordination Unit under the President's office, but now through a steering committee of all stakeholders, under the chairmanship of the DG of PCB). In his view, confrontation with the executive has almost always led to an inability to carry out the preventive component of the anti-corruption agenda.

Along the same lines, Hon. Justice Ayoola, Chairman of the Nigerian ICPC, argues that while high profile prosecutions had their strong points, the effects could not endure. A systematic and detailed preventive and educational effort is in his view more likely to deliver enduring change. Besides, he further argues, integrity training and watchdog programmes in government agencies which the ICPC had embarked on, has begun to yield slow but clear results.

All the institutions surveyed indicated low capacity as a major hindrance to effective results in investigations. The head of the Ethiopian FEACC, who had himself been a judge for 20 years, emphasized low capacity as the premier problem of the institution. This is most obvious in the area of training in investigative techniques, and technology especially for complex financial transactions. According to him, "We need capacity to even pick from the menu of available options in investigative technology". He particularly emphasized the difficulty of tracking suspects in a recent gold scam perpetrated on the National Bank, where despite calls to

investigators by the suspects, the technology to track them was simply unavailable. On account of low capacity, the cost of investigations, involving the use of foreign investigators and support personnel, tends to be exorbitant. One of the criticisms levelled by Civil Society Organisations in Zambia against the efforts of the Task Force on Corruption investigating the Chiluba years was the very high cost and relatively modest results so far seen. The head of the Task Force on the other hand, was convinced that in the absence of adequate local capacity, and even by the very nature of international investigations, foreign experts had to be engaged.

Closely tied to low capacity, especially for investigating complex offences with international dimensions is the difficulty of assessing multi-lateral or mutual legal assistance. Many of these institutions complained about the difficulties encountered in getting responses to simple questions about whether suspects hold accounts or made deposits in banks of other countries under mutual assistance treaties. Dr. Hoseah of the Tanzanian PCB complained about the cumbersome procedures especially worked against developing countries trying to access information from the financial systems of the more developed countries.

The procedure usually involved the local "Central Authority" (usually the Attorney General's office), at the request of the anti-corruption institution, making a request to the "Central Authority" of the requested state which then forwards the response to the anti-corruption agency. The process is known to take several months in many cases. The entire process can even be frustrated where for any reason, the local central authority is not keen on processing the request. The Nigerian EFCC, in 2007 was locked in such a struggle with the office of the Federal Attorney General over requests the EFCC sought to make from the United Kingdom regarding the assets of a State governor who had been indicted locally and in the U.K. From all appearances, the Attorney General seemed unwilling to process the request and turned it down a few times for non-compliance with procedure.

There is no doubt that a more open and less cumbersome process will be helpful to African countries seeking to recover looted funds hidden in banks in developed countries. Perhaps even our current position is worth celebrating. Since 11 September 2001 and the search for terrorist funds, many of these banks have been forced to relax banking secrecy rules, in addition to the great strides made by the Financial Action Task Force (FATF) initiatives.

Almost all the institutions surveyed did not have independent prosecutorial powers. After investigations are concluded, the public prosecutor's consent is sought or the matter is handed over to his office to decide whether or not to prosecute. In Tanzania, the PCB, worked round the problem with the cooperation of the Director of Public Prosecutions. Ten of the PCB's over 100 prosecutors were appointed as prosecutors by the DPP by way of a government notice. The PCB is of the view that direct prosecution is much preferred. In Nigeria, the anti-corruption institutions benefit from the constitutional and now judicial position that, while the Attorney General's office (both State and Federal) may take over a prosecution once initiated, some agencies including the Police and anti-corruption institutions could initiate prosecution. The

attempt by the Federal Attorney General's office in 2007 to impose, a prior consent role on the EFCC and ICPC for corruption prosecutions failed and was retracted administratively. Clearly, direct prosecutorial authority for anti-corruption institutions makes sense, more so, where the public prosecutor is also very often a political appointee and a member of cabinet.

Associated with prosecution is the judicial process. Many jurisdictions in Africa appear to have similar problems, one of the most critical being the slow pace of trials. Every jurisdiction surveyed complained of the time it takes to complete prosecutions. The Zambian, Nigerian and Ghanaian agencies noted especially that where the suspects can afford to hire good senior counsel, cases may go on for years without resolution. Aside from infrastructural difficulties which may extend trial time, some countries have constitutional provisions which allow appeals on interlocutory issues and which may lead to a stay of proceedings while the issues are being appealed. The Nigerian EFCC Act[133] sought to remedy the situation by providing that an application for stay of proceedings in any matter brought by the commission before a court could not be entertained until judgment is delivered.

The complexity of some of the cases of embezzlement or money laundering sometimes also creates delays. Special courts for corruption cases have helped to a certain extent to remedy this situation. In Nigeria, both under the ICPC or EFCC laws, some courts in different states are specially designated to take on corruption cases brought under the respective statutes. This has helped in giving greater priority to disposing of corruption cases. No other jurisdiction studied has specially designated courts.

Compliance with the rule of law in the treatment of suspects in corruption cases has tended to affect the credibility of the anti-corruption institutions. Holding suspects for extended periods without bail is the most common form of violation of the rule of law. The success of the EFCC in its high profile anti-corruption cases was often dented by allegations of violations of the rule of law, detention of suspects without bail, poor treatment of suspects, non-admittance of counsel to suspects during interrogation, and so on.

Ethiopia has a no bail for grand corruption rule. This of course may mean significant detention time without bail. Bail may be granted in other corruption cases at the court's discretion after a maximum of 14 days of remand. The prosecution may be able to extend that period if they are able to establish sound reasons. The Tanzanian PCB, Ghana's CHRAJ, both confirmed that they do not as a matter of practice detain suspects while investigations are going on, and that suspects may if they wish, have counsel present during their interrogation. The Tanzanian PCB, in fact offers mandatory trainings in human rights for its operatives.

4.1.4 Cooperation between National Authorities and Non-State Actors

Non-state actors have generally seemed to play supportive roles to anti-corruption institutions.

[133] Section 40 Act.

Their exact successes or influence is however controversial. In Ghana and South Africa, only 21% of experts surveyed in the ECA Africa Governance Report of 2005 said that civil society organizations have a strong or fairly strong influence on government policies or programmes. 43% considered it fair, while 36% considered it weak or non-existent. In many parts of Africa, the media has often tended to be in the forefront of the anti-corruption crusade. The head of Tanzanian PCB acknowledged the frontline role the media played in many of the corruption cases which were investigated by the Commission, although cautioning that sensationalism and unverified reports sometimes affected the credibility of the media.

Also, in view of the state of corruption in Tanzania, it is to be noted that though the media is critical not only for raising the level of awareness, but also for mobilizing the public to fight against corruption, the effectiveness of the media in this respect has been found to be undermined by deficiencies in internal capacities with the media and corruptive practices in the media itself. This observation is probably true of most of the media institutions in Africa, especially Sub-Saharan Africa.

The associate Executive Director of the Ghana Centre for Democratic Development, Balfour Agyeman-Duah, noted that the media (in Ghana) in particular have assumed a major role in the anti-corruption drive "since the famous case of Komla Dumor in 2000 when a radio broadcaster succeeded in exposing and causing the prosecution of officials of the SSNIT for serious financial malfeasance".

He however observed that: "they like other civil society institutions are fraught with problems of capacity, professionalism and integrity. Media capacity for investigations is weak and suspicions are rife that media practitioners are "bought" to champion certain parochial interests and indulge in blackmail and extortion. Thus, he continued by saying that, "media exposures often have huge credibility gaps".

This observation is apt and emerges in high relief where there is relative freedom of the press. The Nigerian media for example, especially the soft sell magazines and tabloids frequently publish scoops in corruption in high places. Where such stories may even be true, little or no investigative follow-up is done, giving credence to the allegations of "buying off" of stories and or extortion. In any event, none of these criticisms can take away from the increased boldness, courage and dynamism of the press in Africa in exposing corruption.

Civil Society groups have also played significant roles in the anti-corruption effort, and have often supported and complemented the work of anti-corruption institutions. In Ghana, under the Ghana Anti-Corruption Coalition (GACC), the Ghana Integrity Initiative, the Institute of Economic Affairs, the Ghana Centre for Democratic Development, the Commission for Human Rights and Justice (CHRAJ) and the Serious Frauds Office (SFO), have developed joint anti-corruption initiatives.

In Nigeria, the Convention on Business Integrity and the Integrity Organisation has developed a self-regulatory, peer-reviewed convention on integrity in business, subscribed to by several of the major private sector businesses.

The Tanzanian Annual Report on Corruption titled, "The State of Corruption in Tanzania" is the product of collaboration between the Tanzanian PCB and two autonomous institutions commissioned to prepare the report namely: the Economic and Social Research Foundation (ESRF) and the Front against Corrupt Elements in Tanzania (FACEIT).

Supreme public audit institutions have not played a particularly notable role in the anti-corruption struggle. The office of the Auditor-General though provided for in many African constitutions or other legislation have not been effective perhaps because they are in many jurisdictions, an intricate part of the civil service and can hardly be expected to independently assess public accounts. In most African countries surveyed, the auditor general's report is remitted to the legislature for discussion, where usually a parliamentary committee considers the report. With a few exceptions, auditor-generals' reports tend to be ignored. Section 85(1) of the Nigerian Constitution provides for the office of the Auditor-General of the Federation. The Constitution expressly provides that the Auditor-General shall not be subject to the direction or control of any other authority or person.[134] The Auditor-General holds tenure until his retirement age. This is to ensure his independence. Significantly, the penultimate Auditor-General gave a damning report on public spending in Nigeria, and was sacked.

The Tanzanian law also provides for an Auditor-General for the entire public sector.[135] The Auditor-General is appointed by the President. In practice, the Auditor-General submits yearly reports to Parliament. The Global Integrity Report of 2007 notes that,

> *… although past governments have treated audit findings as internal documents, rarely was any action taken. However this year, President Jakaya Kikwete set new standards, by ordering all the executive arms of his government to review the findings and discuss them so they could act on any shortcomings before the next exercise. The public has yet to see any action taken against those implicated in cases of financial embezzlement. However, warnings about the prospects of such action as well as a promise by the Head of State to give the audit office more legal powers to prosecute have increased public confidence.*

The Ethiopian Auditor-General's office has a long history. Today it is established by Proclamation 68/1997 under Act 101(4) of the Ethiopian Constitution. The Proclamation provides for the appointment of the Auditor-General by the Council of Peoples' Representatives upon

[134] Section 85(6).
[135] See Public Finance Act 2001 (section 26), and Article 143(6) Tanzania Constitution 1997).

appointment by the Prime Minister. The Auditor-General is accountable to the Council of Peoples' Representatives and between sessions, is accountable to the President of Ethiopia. The report of the Federal Auditor-General must be sent to all government agencies which have 30 days to take corrective action. There are no known examples of agencies sanctioned for default.

The relative independence of the Auditor-General's office is perhaps borne out by an incident in 2007 when the Ethiopian government by motion in Parliament condemned the Auditor-General for reporting that the government had borrowed 3.235 billion Birr in excess, when according to the government, it was a false conclusion based on the fact that the Auditor-General failed to account using internationally accepted practices that calculate borrowing on a net basis. When preparing the 2005 fiscal year report, an independent committee appointed to investigate the claims found no error in the Auditor-General's report.

In the 2005-2006 Audit Report, the Auditor-General referred to the sum of 7.2 billion Birr ($638 million) provided as budget support to the regional states which he claimed was not accounted for. The Prime Minister while accepting the report took strong exception to the particular point, because the Constitution provided that the Auditor-General is only to audit Federal funds and not the funds of the regional states. These situations show that the Auditor-General have in some instances shown some independence and have sometimes had to face the consequences of their temerity. Again, the question of political will resonates. Governments still find any attempt to call them to account as hostile, subversive and deserving of sanctions, contempt or anger.

Parliamentary committees have generally not been known for much anti-corruption work. In many instances, the ruling party effectively controls the parliament and serious scrutiny of government finances and procurements is unusual. Recently, the Nigerian Senate sub-committee on power conducted a probe into the expenditure of the previous government in the power sector. Several damning revelations emerged, but the report has neither been made public nor has any action been taken by any of the law enforcement or anti-corruption agencies regarding the allegations.

On a happier note, the AGR notes that several African countries have taken steps to ensure that parliamentary committees examine the Auditor-General's report in an objective, professional and non-partisan manner. In Nigeria, the composition of the parliamentary oversight committee is based on the competence, discipline and educational background of parliamentarians. This compensates for lack of staff to assist the legislators.

South African Parliament Standing Committee on Public Accounts members work across party lines to ensure objectivity and transparency. The general trend in Africa it seems is to do so little about the Auditor-General's report. In Nigeria and Zambia, the report is largely ignored. Zambia's electricity supply composition and Food Reserve Agency and the damning reports on financial abuses in several government departments reported in Nigeria's Federal Auditor-General's report were ignored.

A few good examples are available. Tanzania implements some of the Auditor-General's recommendations, while Mauritius stands out as one country where reports are seriously acted upon.

Commenting on the position in Ghana, Balfour Agyeman-Duah notes that a chief problem is the constitutional limitation on horizontal accountability in executive-legislative relations. He argues that entrenched "executive dominance" as exemplified by the system of "executive-legislative fusion" where the President must appoint a majority of his cabinet from the Parliament has rendered ineffective Parliament's oversight of the executive. The problem he observes is that parliamentarians who are also ministers find it difficult to balance their loyalty to the executive and the parliament. As a result, such potentially powerful committees as finance, public accounts and government assurances stay timid in their duty to scrutinize executive power, actions and assurances.

4.2 Best Practices

4.2.1 Republic of South Africa

4.2.1.1 National Crime Prevention Strategy

The National Crime Prevention Strategy (NCPS) of the Republic of South Africa presents a valid holistic model for anti-corruption work that is based on a conceptual crime prevention approach. Corruption and white collar crime are two of the seven crime categories on which the strategy is based.

The NCPS was drawn up by an inter-departmental strategy team comprising of the Departments of Correctional Services, Defence, Intelligence, Justice, Safety and Security and Welfare. This document sets a comprehensive policy framework for the prevention and reduction of crime based on the concept of protecting the constitutional rights and freedoms of South Africans to live in a crime-free society. The NCPS has the following objectives:

- addressing crime in a coordinated and focused manner which draws on the resources of all government agencies, as well as civil society;
- promoting a shared understanding and common vision of how crime is to be tackled;
- developing a set of national programmes to kick start and focus the efforts of various government departments in delivering quality service aimed at solving the problems leading to high crime levels;
- maximizing civil society's participation in mobilizing and sustaining crime prevention initiatives;

- creating a dedicated and integrated crime prevention capacity as well as facilitating effective crime prevention programmes at provincial and local level.

The philosophy of the NCPS is based on a fundamentally new approach that "requires the development of wider responsibility for crime prevention and a shift in emphasis from reactive 'crime control', which deploys most resources towards responding after crimes have already been committed, towards proactive 'crime prevention' aimed at preventing crime from occurring at all."[136] It seeks to develop a conceptual framework for crime prevention at all levels. Its methodology is based on achieving a wide consensus on the key elements of an effective crime prevention policy and its implementation across all social, political, economic and cultural strata of South African society. It also adopts a disaggregated approach to defining appropriate responses to different forms of crime. This ensures that effective measures are designed to address the unique challenges posed by each specific form of criminal activity. The strategy is prioritized into seven key crime categories that provide a focus for the optimal and effective deployment of criminal justice resources. The crime categories are:

(i) crimes involving fire-arms;
(ii) organised crime, such as the smuggling of illegal immigrants and narcotics;
(iii) white collar crime;
(iv) gender violence and crimes against children;
(v) violence associated with inter-group conflict;
(vi) vehicle theft and hijacking;
(vii) corruption.

A four-pillar framework was designed to tackle these crime categories. The pillars are: (i) Criminal Justice Process, (ii) Community Values and Education, (iii) Environmental Design, and (iv) Transnational Crime.

While the "Criminal Justice Process" pillar is essentially based on a crime control paradigm, the "Environmental Design" pillar draws on opportunity-reduction theories of crime prevention for its validity. The pillars of "Community Values and Education", and "Transnational Crime" are premised on objectives of popular mobilization and international cooperation respectively.

The NCPS goes on to describe a number of national programmes to be led by specific government departments to design and implement activities for the attainment of the goals of the strategy within the parameters of framework. The programmes include crime information and intelligence, prosecutorial policy, community sentencing, and victim empowerment. On public sector corruption and white collar crime, the NCPS seeks to strengthen internal

[136] National Crime Prevention Strategy,

controls by establishing consensus on codes of conduct for business and government, as well as implementing money laundering legislation.

4.2.1.2 The Directorate of Special Operations (aka "Scorpions")

The Directorate of Special Operations (DSO) was created in July 1999 as "a necessary machinery to eradicate organised crime in South Africa" and to "effectively investigate and prosecute priority crimes in South Africa". It was envisaged to become "a world-class law enforcement agency" that would have a particular focus on corruption and white collar crime. Although it was transitionally operational from 1999, DSO legally came into operation in January 2001.

The set-up and functioning of the DSO have already been described above. However, perhaps worth reiterating is that the agency functioned by adopting a unique methodology which involved combining crime analysis, investigation and prosecution in an integrated manner. The rate of successful prosecutions undertaken by the agency left few in doubt as to the effectiveness of the agency. While a measure of the success is attributable to the support the agency enjoyed from President Mbeki at the time, one cannot underestimate the role the internal structure of the agency played in ensuring that it carried out its operations in the most effective manner possible.

4.2.1.3 Asset Forfeiture Unit

The Asset Forfeiture Unit of the National Prosecuting Agency applies South Africa's law enforcement regime of recovery of stolen and illegal assets. The regime is based on the United Kingdom model of criminal forfeiture and a United States model of civil forfeiture of assets. It also applies a best practice model of mutual legal assistance that is focused on overcoming bureaucratic impediments that occur through diplomatic channels. This is based on direct relationships between mutual legal assistance (MLA) authorities in different states and regional organisations. There are three major mechanisms by which this is conducted: (i) bilateral MLA treaties; (ii) multilateral agreements or conventions that have such requirements; and (iii) domestic legislation that empowers states to provide direct MLA.

- **The Alamieyeseigha case**

One important case in which the South African asset forfeiture MLA process proved invaluable was the request of Nigeria in respect of a former governor of a Niger Delta state, Diepreye Alamieyeseigha. Alamieyeseigha had escaped the United Kingdom where he was arrested on suspicion of criminal activity and returned to Nigeria where he had immunity from prosecution. His illegally acquired property in South Africa was frozen through a civil forfeiture order in December 2005 on the basis of evidence from the United Kingdom and Nigeria that it was the proceeds of crime. An uncontested forfeiture order was obtained in July 2006 on the basis that the court recognised the Nigerian Federal Government as the true innocent owner of the assets. The assets were disposed off and the proceeds returned to Nigeria.

4.2.2 Republic of Korea ("South Korea")

Integrity Perceptions Index

As a strategy for providing a system of checks and balances between public officials and ordinary citizens, and to provide a platform for the evaluation by ordinary citizens of the integrity of public institutions, the Seoul Metropolitan Government (SMG) in 1999 commissioned the design of a framework for the assessment of public institutions to measure the prevalence of corruption in government. This assessment model was developed by a Civil Evaluation Committee set up by the SMG. Based on the findings of pilot studies conducted in 2000 and 2001 measuring the integrity of public institutions, the Korea Independent Commission against Corruption (KICAC) conducted an assessment in 2002.

The level of integrity refers to the degree to which public officials abide by the law and refrain from corrupt practices in performing their duties in a proper and impartial manner. The methodology adopted for applying the framework is through telephone surveys to selected target segments of the population, followed by an analysis of the data collected and dissemination in the public domain. Target institutions are selected based on an evaluation of risk areas where the exercise of discretionary power could affect organizational decision-making and the interests of citizens. These risk areas relate to the issuance of licences and permits, control, supervisory tasks, the use and management of government subsidies, etc.

Survey targets are selected by independent research institutes from a list of public service users submitted to the KICAC by public institutions in compliance with Article 21 of the Anti-Corruption Act. The survey targets are ordinary citizens who have had firsthand experience with the selected public institutions in the preceding twelve months. The phone surveys are conducted by the research institutes with the results and analysis presented to KICAC. Institutions that perform well, with no bribery incidents reported and an integrity score of 9.0 or better, are exempted from the survey in the succeeding year.

The assessment framework makes a distinction between "perceived integrity" and "potential integrity." Perceived integrity reflects the level of corruption perceived or experienced by public service users. Potential integrity refers to the prevalence of potential factors causing corruption as perceived by the citizens. While the former reflects personal experience or perception of corruption, the latter indicates the presence of factors that are likely to correlate with actual incidences of corruption in the future. The higher the level of integrity, the less likely it is that public service users experience or perceive corruption and that factors in the administrative system contribute to corruption. A weighting system determined by experts is applied so that perceived integrity is 49.6% while potential integrity is 50.4%. A public institution's integrity is expressed as:

Public institution's integrity = perceived integrity + potential integrity

Perceived integrity is further divided into two sub-fields:

(i) perceived corruption (perception of bribery or gift of entertainment); and *(ii) experienced corruption* (incidence of bribery or offer of entertainment, and amount of bribe or gift of entertainment).

Potential integrity is divided into four sub-fields:

(i) working environment (common practices of bribery or offer of entertainment, and need for additional counselling); *(ii) administrative system* (practicality of standards and procedures, and degree to which information is publicly disclosed); *(iii) personal attitude* (fairness in the performance of duties, and expectation for bribe or entertainment); and *(iv) corruption control* (level of counter-corruption efforts, and ease of raising objections).

Each element is weighted and scored according to its weight. The assessment framework is still constantly being refined and upgraded by academics and experts working with KICAC.

In applying the framework, KICAC conducted an assessment of 71 public institutions and 348 areas of public service. The number of target institutions was increased steadily every year up to 1,330 in 2005. In order to improve the validity and objectiveness of the framework, in 2005 KICAC also analyzed cases in which bribes and gifts of entertainment had been offered. In 2006, it assessed 304 public institutions and 1,369 areas.

After the data is aggregated and analysed, the results are published and disseminated to the public through the mass media in the form of the Integrity Perceptions Index (IPI).

One of the effects of the IPI since 2002 when it was introduced is that public institutions now pay keen attention to it and strive to improve their rankings and "move up the integrity ladder". This manifests in deliberate efforts by institutions to strengthen their internal assessments, design specific interventions that address peculiar integrity challenges, improve their systems and procedures, as well as communicate these improvements to the public.

The results of the surveys and assessment show a year on year improvement. In 2006, the average score for the surveyed public institutions was 8.77 points, up 2.34 from 6.43 points in 2002. The overall result is improved public services.

4.2.3 Hong Kong Special Administrative Region of China

Independent Anti-Corruption Commission

Established by the Independent Commission against Corruption Ordinance of 1974, the Hong Kong Independent Commission against Corruption (ICAC) is recognised as one of the most

successful models of an anti-corruption commission.[137] Its success has inspired the creation of a number of national anti-corruption agencies in other countries.[138] It has a three-pronged mandate of law enforcement (excluding prosecution), prevention and community education to fight corruption.

The history of corruption in Hong Kong prior to the establishment of the ICAC is well-documented. Owing largely to the design of an appropriate legal framework and through the success of the ICAC, Hong Kong has transformed from a society where corruption was "largely a way of life… in the 1960s and 1970s"[139] to a society "known for its integrity in governmental functioning".

One of the most remarkable features of its success is that ICAC has won the support of the community it serves. Surveys of the public in Hong Kong over the years have confirmed a confidence rating in the ICAC of between 98 and 99 per cent – well above that of any other agency of the administration. There could be no greater endorsement of their success in winning public support. This translates into the fact that Hong Kong is recognised as one of the least corrupt societies in the world.[140]

The Commission conducts annual perception surveys to *"(a)* obtain an updated reading of public perception and attitudes towards the Independent Commission against Corruption (ICAC) and the problem of corruption; and *(b)* to identify any changes in public perception and attitude over time".[141] The results of the 2007 survey show that:

- 68.6% of the respondents considered corruption uncommon in Hong Kong, and 76.1% considered corruption uncommon in government departments in Hong Kong;
- 96.3% said that neither they themselves nor their relatives and friends had experienced corruption in the preceding twelve months;
- 73.8% considered ICAC's work effective or very effective, while 22.9% considered its performance average;

[137] S. Rose-Ackerman, "The Role of the World Bank in Controlling Corruption", (1997) 29 Law & Pol'y Int'l Bus. 93, 106. Also, C. Raj Kumar, "Human Rights Approaches of Corruption Control Mechanisms – Enhancing The Hong Kong Experience of Corruption Prevention Strategies", (2004) 5 San Diego Int'l L.J. 323

[138] Notable among these in Africa is the Botswana's Directorate of Corruption and Economic Crime (DCEC). See N. Kofele-Kale, "Change or the Illusion of Change: The War Against Official Corruption in Africa", (2006) 38 Geo. Wash. Int'l L. Rev. 697. Also, B. Olowu, "Combating Corruption and Economic Crime in Africa: An Evaluation of the Botswana Directorate of Corruption and Economic Crime", 4 (1999)

[139] A. Lai, "Building Confidence in Anti-Corruption Efforts: The Approach of the Hong Kong Special Administrative Region of China", UN Centre for International Crime Prevention 2nd Forum on Crime and Society 135, 136, UN Sales No. E.03.IV.2 (2002)

[140] See Transparency International's Corruption Perceptions Indexes from 2001 to 2008, available at http://www.transparency.org/policy_research/surveys_indices/cpi (last accessed 15/01/09).

[141] "ICAC Annual Survey 2007: Executive Summary"
http://www.icac.org.hk/filemanager/en/Content_1283/2007surveysummary.pdf (last accessed 15/01/09)

- 60.4% indicated a high level of confidence in the ICAC, while 17.8% expressed complete confidence;
- 98.5% of respondents said that ICAC deserved their support.

These survey results have been significantly consistent over the four years from 2004 to 2007.

Hong Kong takes as its starting points the following principles:

- corruption occurs when an individual abuses his authority for personal gain at the expense of other people;
- corruption brings injustice and, in its more serious manifestations, puts the lives and properties of the community at risk;
- the spirit of the Prevention of Bribery Ordinance (POBO) enforced by the ICAC is to maintain a fair and just society;
- the law protects the interests of institutions and employers and inflicts punishments on unscrupulous and corrupt staff.

ICAC does not prosecute cases. That function is left to the statutory prosecuting authority. This separation of powers ensures that no case is brought to the courts solely on the judgment of the ICAC. It also ensures a certain degree of specialization, and frees the Commission of the considerable burden of conducting prosecutions.

Some of the essential elements of success of the Hong Kong model are:

- the quality, competence and commitment of staff of the ICAC;
- a judiciary with integrity, and an excellent legal framework;
- a conceptual approach of prevention as a key to success in fighting corruption;
- the role of community education as an important feature of prevention;
- a well-developed, coherent and coordinated set of strategies; and
- adequate resources[142] to carry out its functions.

[142] Estimated at US$85 million in 2005.

Section V: Conclusions and Recommendations

Some of the best performing anti-corruption institutions in the world reveal that structurally there is not much difference between them and many of those in Africa. The Singaporean Corrupt Practices Investigation Bureau (CPIB) is headed by a director who reports directly to the Prime Minister. Its objectives are also largely similar to similar institutions in Africa. They are to secure and investigate complaints alleging corrupt practices and to prevent corruption by examining the practices and procedures in the public service to minimize opportunities for corrupt practice.

Also, the Bureau does not enjoy independent prosecutorial power. Completed investigation files are submitted to the Public Prosecutor based on the available evidence. Under the Prevention of Corrupt Act, no prosecution can be instituted except by or with the written consent of the Public Prosecutor. Similarly, Hong Kong's very successful Independent Commission against Corruption (ICAC) does not prosecute the cases it investigates.

An apparently independent structure or the lack of it is therefore not as critical as several other factors such as a comprehensive legislation and policy approach, covering investigation, education and prevention, favourable policy context, one which is predisposed to implementing anti-corruption initiatives. Features of that context are an effective and well-remunerated public service, stable democratically elected governments, and clear, strong political will that is evident not only in the rhetoric, but also in the actions of the highest officials of government.

It is also quite apparent that the independence and effectiveness of anti-corruption institutions is a function of the courage, personal integrity and independence of its leadership. Although there are obvious weaknesses where institutions are built around individuals, yet there is little doubt that great institutions are built by good leaders, who are able to develop effective team work and an ethos of effectiveness and integrity.

Accordingly, the recommendations emerging from the study are as follows:

1). Perhaps the most crucial point to take away for the researcher on this project is the point repeated by almost all officials of anti-corruption institutions interviewed, namely that political will is the primary determinant of the success of an anti-corruption agency. There must be a consensus in government at the highest levels, that corruption is ultimately destructive of everything;

2). Anti-corruption institutions are not effective on their own. They basically function better in an environment where some integrity systems for all institutions are available so that people

do not see the anti-corruption institution as merely a lone policeman, but a collaborator in effecting a larger public good. This must then become policy and must be disseminated to all and rigorously implemented;

3). Adequate funding is critical for the success of anti-corruption institutions. Most successful anti-corruption institutions are very well funded. The extent of funding itself is at all events a measure of the seriousness of a government about any particular issue. The ICAC in Hong Kong had a budget in 2001 of US$88 million. Singapore's CPIB had one of US$10.7million in the same year. Hong Kong's ICAC's emphasis on a comprehensive strategy of investigation, education and prevention accounts for its per capita expenditure of US$12.57 million on fighting corruption;

4). Capacity building is an issue which was important to all the institutions surveyed. There is little doubt that the skills and technology required to investigate the often complex transactions involved in corrupt practices especially grand corruption is lacking in most institutions. None of the institutions considered their training budgets adequate. Investigators and prosecutors of corruption must be well equipped in terms of skilled human resources, equipment and financial resources;

5). The likelihood of detection and certainty of punishment discourage corruption most effectively. If corruption is perceived as a low risk high reward activity, good legislation and well structured agencies alone will be of little value. The high profile and well publicized activities of the EFCC in Nigeria, which targeted senior officials many of who were still in government, sent a message that it was not going to be business as usual with corruption. Nigeria's dramatically improved score in TI's corruption perception index is widely regarded as being the result of the EFCC's work;

6). Greater independence and autonomy of anti-corruption institutions is important. Certainty of tenure and adequate protection against political influence in the appointment and renewal of tenure is as important in ensuring the effectiveness of anti-corruption institutions. Tenure which exceed or overlap between successive administrations will provide greater security of tenure. The decision to prosecute is also best left to the anti-corruption agency. Many of the institutions surveyed agreed that political considerations usually come into play when senior government officials or politicians are involved in corruption. The implication of this is that public prosecutors who are usually politicians themselves may not be independent enough to make the decision to prosecute;

7). Making international cooperation easier is another prominent issue. Using mutual legal assistance treaties often proves to be quite complex and time consuming. Bureaucratic processes between governments need to be streamlined to avoid the long delays experienced in getting answers to requests;

8). Innovative public education and prevention strategies need to be given as much, if not more prominence than investigation and prosecution. Public awareness of the consequences of corruption is low and social toleration level for corruption appears high as some of the most prominent members of society are public officials whose wealth is clearly traceable to official corruption;

9). The credibility of anti-corruption institutions will depend not only on their successes in investigation and prosecution, but also on their respect for the rule of law and the rights of suspects. Training of investigators and operatives in human rights, and constitutional safeguards for actions in the investigative process should be emphasized;

10). The creation or designation of special courts to combat corruption is likely to improve both the speed in processing corruption cases, and also increase judicial competence in handling corruption cases;

11). Anti-corruption legislation in most African countries still fall far short of the prescriptions of the UNCAC and AUPCC. Most African countries do not have neither, criminalized illicit enrichment and the wide range of offences in both conventions, especially the UNCAC, nor have most implemented comprehensive money laundering legislation. Many also do not provide for the protection of whistleblowers. These loopholes significantly affect the capacities of anti-corruption institutions to effectively fight corruption;

12). A well remunerated public service should be considered fundamental to any anti-corruption programme. All the senior officials of the anti-corruption institutions surveyed were of the view that poor salaries in the public service predisposed civil servants to official corruption. Article 9 of South Korea's Anti-Corruption Act makes a provision titled, "Guarantee of livelihood for Public Officials", which should be emulated. The article provides: "The state and local governments shall make efforts to guarantee the livelihood of public officials so that they can devote themselves to their duties and shall take necessary steps to improve remuneration and treatment of them."

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