

Smokin Charles Wanjala

Fighting Corruption in Africa: Mission Impossible?

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Introduction

Africa is a hugely endowed continent in terms of natural resources. It always has been. The statistical back-up for this assertion is astounding. The continent is home to 40% of the world's potential hydroelectric power supply. It harbours the bulk of the world's diamonds and chromium. 50% of the world's gold, phosphates and palm oil are to be found in its rocks and soil. Add to these, 90% of the world's cobalt, 64% of the world's manganese, 70% of the world's cocoa, 60% of the world's coffee and huge amounts of petroleum, natural gas, and diversities of wildlife and the whole story begins to sound as a fairy tale. Yet fairy tale it is not. Africa is rich. But that is where the story ends. The cruel reality is that as rich as it potentially is, Africa is also the poorest human habitat on the planet.

Throughout millennia, it has been described in not so flattering terms as the "dark" or "hopeless" continent. Many years after it extricated itself from the clutches of slave trade and colonialism, majority of its peoples continue to be ravaged by poverty, hunger, disease and other forms of squalor. Genocidal conflicts have led to the massive dislocation of civilian populations. With the exception of a few, most economies in Africa have stagnated, while others have completely collapsed. Historians and other commentators have offered many explanations for the sorry state that continues to characterize this part of the planet. It is beyond the scope of this essay to revisit this African story.

Be that as it may, it is now widely acknowledged that one of the main causes of the poverty and hopelessness that envelope the peoples of this part of the world, is the scourge of corruption. African economies are said to lose more than 148 billion US dollars annually due to corruption, which constitutes roughly 25% of the continent's GDP. Corruption is perceived as being rampant in thirty six African countries (TI 2007). As a result of the widespread corruption, Africa receives the lowest share of foreign direct investment inflows. Africa's share is in fact less than that received by Singapore. According to the Global Financial Integrity Forum Report, 21.9% out of a total USD 1.26 trillion illicitly flown out of developing countries over a ten year period, was from Africa (IFFD'S: 2000-2009) (Brun, Gray, Scott, Stephenson, 2011). The funds drained out of Africa as a result of the illicit financial flows is far in excess of

the official development assistance extended to the continent (Kar and Cartwright-Smith, 2010). Most of the funds illicitly taken out of the continent have been stashed in foreign bank accounts by African leaders over the years. The following tables illustrate this state of affairs.

State of Corruption in Africa: Fortunes by African leaders

No	Name	Country	Fortune (US\$)
1.	General Sani Abacha	Nigeria	20 billion
2.	H. Boigny	Ivory Coast	6 billion
3.	General Ibrahim Babangida	Nigeria	5 billion
4.	Mobutu Sese Seko	Zaire (now DRC)	4 billion
5.	Mousa Traore	Mali	2 billion
6.	Henry Bedie	Ivory Coast	300 million
7.	Dennis N'guessso	Congo	200 million
8.	Omar Bongo	Gabon	80 million
9.	Paul Biya	Cameroon	70 million
10.	Haile Mariam	Ethiopia	30 million

Money stashed in Swiss banks by nationals of some African countries (Swiss National Bank 2012)

No.	Country	Amount (Kshs.)
1.	Seychelles	219.2 billion
2.	Kenya	72 billion
3.	South Africa	69.3 billion
4.	Tanzania	15 billion
5.	Sudan	15.6 billion
6.	Uganda	13.4 billion
7.	Senegal	13 billion
8.	Zimbabwe	8.3 billion
9.	Sierra Leone	2.5 billion
10.	Rwanda	2.5 billion

Corruption therefore continues to negatively impact the continent's development agenda and frustrate the "African Renaissance". With corruption continuing to wreak havoc on African economies, both the international community and the African governments have put in place various measures to combat the scourge. Since the early 1990s, a plethora of administrative, legislative and policy frameworks aimed at combating corruption in many African countries have been constructed. Initially, these measures were imposed by multilateral and bilateral lending institutions as a condition for extending credit to African governments since the latter were still living in a state of denial. Progressively however, with the overthrow of one party dictatorial regime that had been sustained by corruption and brute force, emerging governments have embraced the fight against the scourge as a deliverable of democracy.

This attitudinal change has seen a shift from official denials of the phenomenon of corruption to solemn acknowledgements not only of its pervasiveness, but also the need to comprehensively combat it. The beginnings of the fight against corruption can be seen in a number of broad and benign reform programmes targeted at public sector financial management systems such as budget processes, procurement, revenue collection and audit systems. Because of the lack of enthusiasm on the part of governments, these reforms were considered as bitter pills to swallow since they posed a threat to the state capture of the financial and other resources of a nation. No wonder the reforms were introduced on the basis of the need to enhance efficiency in the management of public affairs rather than the imperative of fighting corruption.

It was not until deliberate efforts were made by way of legislative enactments that corruption became a marked phenomenon. However, the legislative actions against corruption were uncoordinated and differed from country to country. This scenario was to change dramatically with the adoption, signing, ratification and eventual entry into force of the United Nations Convention against Corruption (UNCAC). This convention has inspired the emergence of coherent legal regimes and institutional frameworks for combating corruption in a large number of African legal systems. The convention is complemented by the United Nations Convention against Transnational Organized Crime (UNTOC). Within Africa itself, there is the African Union Convention on Preventing and Combating Corruption (AU Convention). This convention is complemented by regional protocols such as the ECOWAS Protocol on the Fight against Corruption (ECOWAS Protocol), the SADC Protocol against Corruption (SADC Protocol).

Anti-corruption laws have been enacted in many African countries. The diversity and differences in these laws is a reflection of the colonial history of the continent. There are some general cross cutting trends in the anti-corruption legal frameworks that have developed following the internalization of corruption by the United Nations. These trends and features are as follows:

Almost every country has more than one piece of legislation on corruption and related offences. Some countries have anti-corruption principles embedded in their constitutions. Usually, there is a framework anti-corruption law among other sectoral legislation.¹

The laws draw their normative ingredients from international and regional anti-corruption instruments. The legal frameworks have largely adopted the multi-pronged approach in UNCAC of criminalization, prevention and asset recovery.

The laws have broadened the spectrum of corrupt practices beyond the traditional forms of bribery to encompass aspects such as breach of trust, illicit enrichment, money laundering, irregular disposition of public property etc.

The laws establish specialized agencies with varying mandates for fighting corruption and related offences.

The laws have created many new offences such as illicit enrichment, money laundering, conflict of interest, breach of trust, abuse of office, unethical contributions, trading in influence, among many others. On the preventive front, the laws have introduced innovative mechanisms whereby anti-corruption agencies are mandated to conduct examinations of the practices, procedures and methods of work in public institutions. These reviews are supposed to identify loopholes that facilitate corrupt conduct and make recommendations on how they can be sealed to prevent future corruption. Some of the laws also recognize the need for international cooperation especially in the asset tracking and recovery enterprise.

¹ For example, Nigeria has the Constitution, Independent Corrupt practices Commission Act, Economic and Financial Crimes Commission Act, Money Laundering Prohibition Act, Public Procurement Act, Fiscal Responsibility Act and Code of Conduct Act. Ghana on the other hand has the Financial Administration Act, Public Procurement Act, Internal Audit Agency Act, Audit Service Act and Money Laundering Act. Kenya has the Constitution, Ethics and Anti-Corruption Commission Act, Public Officer Ethics Act, Anti-Corruption and Economic Crimes Act, Public Officer Ethics Act, Public Procurement and Disposal Act, Political Parties Act, among others.

Towards this end, provisions for mutual legal assistance have become an integral part of many anti-corruption and anti-money laundering legislations. Similarly, quite a number of countries have enacted wealth declaration laws to compel public officials of a certain rank to declare their wealth either upon assumption of office or as a periodic exercise. Wealth declaration is supposed to aid governments keep track of the lifestyles of public officials. Any unexplained wealth leads to a rebuttable presumption of corruption.

1 The anti-corruption institutional framework

Anti-corruption institutions in Africa have been established at continental, regional and national levels. In conformity with the African Union Convention against Corruption, there is now in existence what is known as the African Board on Corruption. The Board's membership is drawn from nationals of states parties nominated in that capacity and appointed as such. The main function of the Board is to oversee the extent of compliance with the convention by states parties among other things. At the regional level, there are bodies such as the Southern African Forum against Corruption (2000) and the East African Association of Anti-Corruption Authorities (EAAACA 2007) that exist. The objectives of these regional bodies are to promote good governance and cooperation within and between the legal systems of their membership in the fight against corruption. Such bodies usually carry out their activities through meetings and exchange programmes aimed at sharing best practices in the fight against corruption. Over the last three years for example, the World Bank's Stolen Asset Recovery Initiative (StARR), has conducted three major capacity building trainings in the field of Asset Recovery under the auspices of EAAACA. These meetings have brought together anti-corruption champions from the East African Community (EAC) including South Sudan. The participants are drawn from anti-corruption agencies, national prosecuting authorities, the judiciary, state law offices, the police services and financial intelligence units. The meetings have been held in Rwanda (2011), Uganda (2012), and Tanzania (Zanzibar, 2012).

At the national level, in response to the imperatives of the UN Convention against Corruption (UNCAC) and other dictates of international cooperation, many African countries have established specialized anti-corruption agencies (ACBF Institutional Frameworks, 2007). These specialised agencies go by different names. Many are simply called anti-corruption commissions (Kenya, Zambia, Malawi, etc.), while others are tagged in fairly descriptive terms. In this regard, Uganda has the Inspectorate of Government, Nigeria, the Economic and Financial Crimes Commission, and the Independent Corrupt Practices Commission, Botswana, the Directorate on Economic Crime and Corruption, and Rwanda simply the Ombudsman. While some countries do not have specialized anti-corruption agencies within the mold of UNCAC, they have established units within their national policing, investigative and prosecutorial services with specific remits to deal with corruption and related offences.

The UNCAC expects these agencies to be independent and autonomous, and to have sufficient resources and specialized staff. The degree to which the agencies established so far have been clothed with the foregoing attributes is highly debatable and varies from case to case. Indeed the agencies are quite diverse in terms of establishment, mandate, rules of origin and political standing. Those countries that have established their agencies in response to their obligations under UNCAC have modelled them along the success stories of Singapore and Hong Kong. The main functions of these agencies include investigation and prosecution of corrupt conduct, prevention of corruption, asset recovery, education and monitoring and research. All in all, the following are the different characteristics of anti-corruption agencies in terms of powers, functions and mandate.

In terms of establishment, some are anchored in their respective countries' constitutions while others are creatures of ordinary legislation. Yet others are established through non-legal or administrative fiat.

Regarding their powers and functions, some have multi-faceted mandates to investigate and prosecute corruption; trace and recover corruptly acquired assets and educate the public on the dangers of corruption. Others have the foregoing functions except the power to prosecute which is vested in the

state's Attorney General or Director of Prosecutions. Some agencies have a restricted mandate to investigate and prosecute corruption with the preventive and asset tracing dockets going to other departments. Some countries have two or more anti-corruption agencies some called with specific mandates of law enforcement, prevention or asset tracing.

As for their terms of service, quite a number of the agencies are given specialized treatment. Exchequer budgets are set aside for them which translates into better pay and perks for staff. Most of the staff are employed on contractual terms. Others are established as part of the general public service of the country which means that they do not enjoy any special favours. However, the latter are able to attract a higher number of staff because of wage affordability.

2 Anti-corruption agencies in Africa: some case studies

The institutions charged with the duty of fighting corruption in Africa have faced many challenges and suffered debilitating setbacks. Their degree of success has varied from country to country depending on the social and political dynamics prevailing at any given time. A few examples will suffice for purposes of demonstrating just how complex the fight against corruption can get.

2.1 The Kenyan case

Kenya provides perhaps the most dramatic scenario of the fate of the agencies that fight corruption and of those in charge of them. Over the years, the Kenyan agency has been *set up*; extinguished, resuscitated, renamed, repackaged, killed again, and...., the story appears to go on and on. Likewise, the agency has seen those in control of it come and go and recycled in equal measure.

It all started in the year 1991 when the *Kenya Anti-Corruption Police Squad* was formed to spearhead the war on corruption. It was during the era when governments in Africa were reluctant to acknowledge the phenomenon of corruption within their ranks. The decision by the then President of Kenya to designate a squad in the police force to fight corruption was an ironcone since the police in were the most corrupt public servants. There was no way such a force was going to fight corruption. The squad was doomed to fail from the moment it was formed. Instead of fighting corruption, the squad in fact became the main facilitator for huge corruption deals in the country. By the year 1996, the idea of corrupt police fighting corruption had become a cruel joke. It was finally disbanded albeit reluctantly.

Next in line was the *Kenya Anti-Corruption Authority (KACA)* which was formed in 1997 under the Prevention of Corruption Act, a carry-over statute from the colonial times. It can be said that the establishment of KACA was the first serious attempt at fighting corruption in the country. But even that presumption was to be proved wrong as the agency began operations on a slippery foot from the very start. Hardly a year after its establishment, the first Director was removed from office following a Judicial Commission of Inquiry which determined that he was incompetent to head the organization. The Commission of Inquiry had been set up by the President following an altercation between the Director and the then Minister of Finance over the decision by the former to arrest and charge three senior officials from the Ministry with corruption.

The President appointed a second director to head KACA. The new appointee was picked from the Judiciary where he had been serving as a High Court Judge. Under his leadership, KACA started off again but this time with better strategic direction and focus. A number of high profiled personalities including a cabinet minister and several permanent secretaries were arrested and charged with corruption. It was the first time a cabinet minister had been arrested and charged with corruption in Kenya. Public enthusiasm was at its all-time high. The Authority soon faced a constitutional challenge in the High Court in an

application filed by the accused in one of the cases. The applicant argued that putting KACA, a law enforcement agency under the headship of a judge offended the doctrine of separation of powers. It was further argued that the provision in the Prevention of Corruption Act pursuant to which KACA had been vested with powers to prosecute had offended the country's constitution which, so the argument went, vested the powers to prosecute solely and exclusively in the country's Attorney General. The High Court sitting as a constitutional court agreed with the applicant and promptly declared KACA unconstitutional.

Thus by the year 2000, it was back to the drawing board. Come 2001 and a successor to KACA was established through presidential edict. It was to be known as *The Kenya Anti-Corruption Police Unit*. The unit was headed by a Police Officer appointed by the President. The Police director was one year later replaced by another police officer. As with its predecessor (the Police Squad), the Unit could not fight corruption while domiciled within and manned by the country's police force. By then, the drum beats against corruption in the country had intensified so much so that the Police Unit was never recognized by the citizens. Nothing done under its authority ever attracted public attention or comment. The unit ceased to exist with the defeat of the ruling party (KANU) at a general election in the year 2002 after having held power for forty years since the country's independence. KANU's defeat was to mark a paradigm shift in the war against corruption.

In 2003, Parliament enacted the Anti-Corruption and Economic Crimes Act which established the *Kenya Anti-Corruption Commission (KACC)*. The Act also repealed the Prevention of Corruption Act and adopted a modern and expansive scope of corruption to include conduct that goes beyond bribery and abuse of office. At the same time, Kenya became the first country to sign and ratify the United Nations Convention Against Corruption (UNCAC). KACC was modeled along the lines of Hong Kong's Independent Commission Against Corruption (ICAC). It was mandated to fight corruption through law enforcement (investigations and asset recovery), prevention and public education. The Commission was not given powers to prosecute. Instead, it was to conduct investigations into alleged or suspected corrupt conduct and forward its recommendations to the Attorney General for prosecution if the latter agreed with its recommendations. This arrangement later became a major impediment in the operations of the Commission.

KACC was placed under the directorship of the former director of KACA who had by then returned to the Judiciary when the latter was declared unconstitutional (he had since been elevated to the Court of Appeal). To avoid what had befallen him during his stewardship of KACA, the judge promptly resigned from the Court of Appeal upon appointment as the director of KACC. Together with three assistant directors, he set about building a new and highly specialized institution. The Commission executed its mandate admirably on all the investigative, preventive and asset tracing fronts. However, without the powers to prosecute, an impatient public, a hostile judiciary, a taunting parliament, and highly negative media, the first five years of the Commission's existence were tumultuous. Much as the director and his assistants tried, the Commission never quite won the public's confidence. Matters were to come to a head just before the expiry of the director's first term, and in the face of a public clamour for a change in the leadership of the Commission, the President, when acting upon what he must have believed to be correct legal advice, went ahead and reappointed the director for a further term of five years without reference to parliament. The fallout was immediate and disastrous. A furious parliament rejected the reappointment and passed a motion declaring the President's action illegal. The director had no option but to capitulate and leave office taking two assistant directors down with him one of whom had resigned earlier.

With the exit of the director, it was now time for a new team to head KACC. The Agency's advisory board set out to recruit another director. After a short while (2010), in came a new director, a lawyer from private practice who also had served as law lecturer at the University of Nairobi. The director came in with three new assistant directors. With much pomp and fanfare, the new team set about its business vowing to take the fight to the corrupt both big and small. Arrests and court prosecutions of several high profile personalities followed. The ever hopeful Kenyan public was again aroused into enthusiastic support for the new blood at KACC. It so happened that the year 2010 was also the year that Kenya promulgated a new

constitution, the culmination of twenty years of struggle for democracy by the Kenyan people. The new constitution, a robust and liberal charter was almost revolutionary for a country that had only known authoritarianism under one party rule. The constitution has radically redefined the governance landscape in the country. In the context of fighting corruption, the constitution has ushered in the reformation of the country's judiciary as an independent guarantor of the people's fundamental rights under an elaborate Bill of Rights. Curiously however, the drafters of the constitution stopped short of anchoring KACC into the constitution. The task was left to parliament, to establish a new institution and prescribe its powers.

With the new constitution came the *Ethics and Anti-Corruption Commission (EACC)* (2011). The EACC replaced KACC and altered the agency's governance structure by replacing the directors and assistant directors with a commission of three, comprising of a chairman and two member commissioners. Just before these developments, it was the turn of the new director of KACC to drink from the "poisoned chalice" that is the stuff of fighting corruption in Kenya. In a highly publicized altercation with an Assistant Minister in the grand coalition Government, accusations of impropriety on the part of both protagonists received vociferous coverage in the electronic and print media. During the parliamentary debates that culminated in the enactment of the EACC Act, members of the August house were near unanimous in their accusation of the director. The accusations leveled against him by the lawmakers ranged from incompetence to witch hunting. The legislators voted to send the entire management team home and out went the director and three assistant directors.

Following protracted recruitment processes and acrimonious approval debates, parliament approved the names of a chairman and two commissioners to take over the stewardship of the reconstituted anti-corruption commission. The parliamentary committee on Justice and Legal Affairs had earlier voted to reject the three on grounds that they had not demonstrated sufficient passion necessary to fight corruption. The proposed chairman had come in for scrutiny following accusations of impropriety while serving as the legal officer of a collapsed state corporation. The Committee's motion of rejection was however defeated during the vote of the full house. But this parliamentary action was to leave a bitter taste in the mouths of some both inside and outside parliament. No sooner had the three been appointed by the President as chairman and member commissioners of the Ethics and Anti-Corruption Commission than a litigant obtained an injunction from the High Court restraining the Chairman from assuming office until a case filed challenging his appointment had been heard and determined.

And so the circus continued with the new commission being thrown into abeyance from the very beginning. When the case against the chairman was finally heard and determined in September 2012, the High Court declared that the chairman was unfit to hold the high office to which he had been appointed. In reaching this decision, the court observed that serious integrity questions had been raised against the chairman during the approval hearings. The court found that these questions had not been answered at all thus offending chapter six of the constitution which requires that all those proposed to hold public office must pass the integrity test. The court's decision left in place the Ethics and Anti-Corruption Commission intact but rudderless.

This is so far the story of Kenya's anti-corruption agency(ies). If it should sound like a soap opera, it is not. Indeed Kenya's story may be dramatic but it is not unique on the continent. Many anti-corruption agencies in Africa have gone through experiences not so dissimilar to the Kenyan case. Heads of such agencies have seen their tenures cut short through various machinations. Some have been disbanded altogether through legislative interventions while others have been reconstituted and their autonomy disrupted by mergers and absorptions.

2.2 Mission impossible?

Since the 1990's, African governments have grappled with the dragon of corruption through various administrative, policy, normative and institutional interventions. The scorecard indicates that despite the

paradigm shift from condemnation and outright denial to deliberate efforts aimed at combating corruption, the phenomenon is still pervasive on the continent. The institutions established to combat corruption face considerable difficulties as exemplified by the Kenyan case. Corruption scandals are exposed and reported in many jurisdictions. Related offences such as money laundering and illicit financial flows are rampant. It is no longer in doubt that the majority of African countries are State Parties to the UN Convention against Corruption and many related international instruments. Domestic anti-corruption policy, legal and institutional regimes are widespread. These are complemented by robust civil society organizations that are unrelenting in their criticism of government. The question remains, why the apparent doom and gloom in the anti-corruption enterprise? Is it all lost?

2.3 Some success stories

In the face of the failed attempts at eradicating or seriously denting the scourge of corruption in Africa, there are few success stories that have been recorded. In Africa, countries such as Botswana, Mauritius, South Africa, Rwanda, (and to some extent Nigeria) have scored highly on the Transparency International Bribery Index. Botswana's Directorate on Economic Crime and Corruption (1994) which is modelled along Hong Kong's ICAC, has enjoyed huge success in combating corruption in that country. Through a three pronged approach of investigation, prevention and education, the Directorate has been quite effective in the execution of its mandate. Even without powers to prosecute (all investigated cases are forwarded to the Attorney General for prosecution), it has achieved an 83% conviction rate in the cases it forwards to the state law office. The Directorate's success is attributed to a number of factors including but not limited to unwavering political support, adequate financing by the Government, institutional synergies and few incidences of corruption in the country generally.

The *Economic and Financial Crimes Commission* (EFCC 2003) of Nigeria is another moderate success story. The Commission has both investigative and prosecutorial powers to fight corruption and economic crime. This arrangement (a combination of investigative and prosecutorial powers) is a rarity in Africa. The Commission has succeeded in investigating, prosecuting and getting high profile individuals including state governors convicted of corruption and other economic crimes. A number of the convicts have not only been jailed and their illicitly acquired wealth confiscated by the state, they have also been barred from running for public office. Yet even this promising agency has had its fair share of political interference².

3 Fighting corruption: What ails Africa?

3.1 Governance

Corruption does not exist in a vacuum. It is a symptom of bad governance. Many African countries are yet to pass the governance test. Examples of democratic, accountable and rule of law based governments are few and far between. The struggles for independence and emancipation from all forms of oppression by the African leadership and their peoples have not translated into real freedom and prosperity. Historical and geopolitical factors have somehow conspired to keep the continent in a permanent state of struggle. Most post-colonial arrangements did not catapult African countries onto the pedestal of clean government.

Many countries in this part of the world have only known authoritarian rule characterized by suppression of individual freedoms, ethnic profiling, fraudulent elections, communal armed conflict, poverty and scarcity of basic human needs such as food, water, sanitation, health and educational facilities, etc. Some regimes

² The first and highly acclaimed Director of the EFCC Mr. Nuhu Ribadu was removed from office and sent on study leave immediately following a change of leadership in Nigeria. He was never reinstated.

have mutated into murderous monstrosities that have occasioned untold human suffering. Many such regimes have been overthrown through what has been dubbed “second liberation movements”. The experiment of government has therefore been a long and painful one. Such an environment of misgovernance has created conditions conducive for corruption and other crimes to not only thrive, but become deeply embedded and endemic.

3.2 Institutional mal-function

A working democracy is dependent upon strong and functional institutions across the governmental divide. Legislatures have to be freely and competitively elected and structured so that they can play their law making and oversight functions effectively. A professional legislature that operates as the custodian of the public interest and which constantly checks the excesses of government is an absolute necessity. Such a legislature will not only interrogate government policy but also make laws that are responsive to the needs of society.

Many legislatures or parliaments in Africa are products of flawed elections whose legitimacy is never assured. The “elected representatives of the people” hardly perform the roles expected of them. Upon election, they immediately degenerate into merchants of influence and power brokerage. The legislature then becomes not the custodian of the public interest, but an integral part of the scheme of bad governance. Corruption cannot be seriously combated without the input of parliament. The latter is expected to enact laws whose strict enforcement can deal a deadly blow to the scourge of corruption.

Yet most parliaments in Africa are rogue assemblies whose members are not only perpetrators of corruption, but routinely provide succour and cover to individuals whose conduct may be the focus of investigations. The cruel reality therefore is that in Africa, very few legislatures have played their role in the fight against corruption. On the contrary, they have placed legal and other impediments in the way of the anti-corruption enterprise.

Another key institution in a working democracy based on the rule of law is the judiciary. An independent, impartial and effective judiciary is the cornerstone of accountable government. In the fight against corruption, courts of law play a key complementary role by way of informed interpretation of law and meting out punishment for corrupt conduct. In this regard, courts must carefully balance the rights of the accused against the wider public interest. Corruption thrives on impunity.

The ability and possibility of perpetrators of corruption to escape or avoid punishment not only frustrates the war on corruption but intensifies and institutionalizes the scourge. Corruption cannot be fought on the basis of persuasion. Those who engage in corrupt conduct must not only be punished but also deprived of the proceeds of their corrupt activities.

Here again, the record of judiciaries in Africa is far from inspiring. Courts on the continent have not only been rated as ineffective and inefficient, but also corrupt. It is near impossible for corrupt courts of law to punish corrupt conduct. Anti-corruption agencies have not infrequently found their most crushing defeats in the courts.

It is to the courts that those being investigated for corruption have almost invariably turned to for protection. The most serious cases of corruption are also the best defended in courts since corruption can afford to pay its way. This situation becomes even more egregious when judges and magistrates who adjudicate upon cases of corruption are compromised through outright bribery and other forms of undue influence.

In most cases, courts of law have stalled the conclusion of corruption cases through orders and counter orders upon application by defence lawyers. The inordinate delay in the trial of corruption cases quite often leads to the acquittal of the accused persons or the collapse of the prosecution cases due to lost or

tampered evidence and the death of key witnesses. Instead of being key partners in the fight against corruption, judiciaries have been either hostile or unwilling players in this important enterprise.³

The next important link in the chain of the anti-corruption enterprise is the law enforcement agencies. Law is only as good and effective in regulating social conduct as its enforcement. However well thought out and crafted, law that is not enforced is not efficacious. It remains on the statute books as reference text for academicians and legal researchers. In Africa, the problem of governance is not necessarily caused by the absence or inadequacy of good law. Rather, it is the halfhearted or lack of enforcement of law. For corruption to be effectively addressed, all law enforcement agencies in a country's governance system must function efficiently. These range from policing, intelligence gathering, customs, audit, revenue collection, standards, investigative, and prison institutions. In fact if all these law enforcement agencies did their work well, if they enforced the law, the war against corruption would be won. In fact, it is doubtful whether in the face of unrelenting enforcement; there would be any need for a specialized and autonomous anti-corruption agency. The reality on the African continent however is that the most corrupt institutions in Africa are those charged with law enforcement. They are the citadels of corruption. It is the decay and mal-function in these institutions that facilitates the systemic growth of corruption. Bribery, embezzlement, abuse of office, tax evasion, procurement fraud, money laundering and predicate offences thrive due to the rotten environment in these law enforcement agencies. It is cruelly ironic that these institutions apply the law not to enforce national standards of conduct, but as avenues for extortion. It is worthy of note that in most developed countries with a record of minimal corruption, where law institutions function optimally, there are no anti-corruption agencies. The vice is tackled within specialized units in law enforcement arms of government or by regular divisions in the respective agencies. There could never have arisen the need to establish specialized and autonomous anti-corruption agencies in such countries. It is no wonder that when the United Nations Convention against Corruption was opened for signature and eventual ratification, the bulk of countries that signed up and followed with ratification were African countries and their counterparts in Asia and Latin America where law enforcement agencies hardly operate in the right direction. The same is also true of countries that have established anti-corruption agencies the majority of which have recorded minimal success if any.

3.3 Pebbles in the sea

The foregoing analysis brings us to the question as to why most anti-corruption agencies have endured formidable obstacles in the course of their work. Why is it that even in the face of publicly expressed government commitment to the fight against corruption, these agencies continue, with the exception of a few, to record dismal results? Why even with an enabling and elaborate legal framework in the mold of anti-corruption and related laws does the landscape remain hopeless? The answer to these questions is not hard to unravel. Just as corruption does not exist in a vacuum, the war against it cannot be successfully undertaken in isolation or a vacuum. Apart from enabling law, and institutional innovation, it is imperative for a country to clean up and reform its law enforcement institutions. The dispiriting performances of African governments in the war against corruption are easily explained by the fact that they have sought to address a deep seated, and systemic malaise through simplistic, and uni-linear solutions.

³ In Kenya for example, until the year 2012, only one corruption case had resulted in a conviction since the year 2003. Most of the cases had stalled in the courts due to numerous constitutional applications pursuant to which the courts liberally ruled in favour of accused persons. The other concluded cases ended in acquittals. Convictions were only secured in petty cases while the resultant punishments were very lenient. This scenario led to harsh criticism of the anti-corruption agency. However, the situation has dramatically changed for the better since the promulgation of a new constitution in 2010. The constitution guarantees the independence of the judiciary in Kenya. The latter has been undergoing fundamental transformation under a new Chief Justice. The appointment of judges and magistrates is now a competitive and transparent process and not the preserve of the President. In 2012 alone, two permanent secretaries have been convicted of corruption with one of them being sentenced to serve jail for 4 years. Similarly one head of a state corporation has been convicted and sentenced to 3 years in jail.

Faced by runaway corruption, the tendency by many African governments has been to embark upon a legislative adventure of passing a raft of anti-corruption laws followed by the establishment of one or more anti-corruption agency(ies). These actions are hardly informed by any comprehensive or scientific analysis of the phenomenon. Nor are they based on any policy framework. Crucially, the passage of laws and establishment of agencies is done in isolation and total disregard of the surrounding institutional architecture. The fact that corruption abounds in existing governance institutions is never considered. Immediately as the respective anti-corruption agency embarks upon its mission, it finds itself surrounded by institutional counterparts that are either unwilling to cooperate in furthering its mission or out-rightly hostile to and subversive of its work. Depending on the way it is structured in terms of conditions of staff service and funding, it becomes isolated. This should not be surprising since public sector corruption resides in these institutions. Sooner rather than later, traffic police officers, accountants, magistrates, revenue collection agents, procurement and supplies officers, members of parliament, all attract the attention of the corruption watchdog. The isolation of the latter intensifies with predictable consequences. Such is the experience of many an anti-corruption agency on the continent. They resemble pebbles in a sea. Thrown into the deeper end and surrounded by bloodthirsty sharks.

Corruption is many vices in one. It thrives on gaps and loopholes in the day to day management of public affairs. It eats into the fabric of a people. It is both systemic and predatory. Unless systematically and unrelentingly exposed for what it is, corruption soon finds favour even among its victims. The most dangerous stage of corruption in society is when it acquires acceptability and tolerance as a way of life in a nation. In many African countries, this is in fact the stage at which corruption has reached. The arsenal to be assembled against it must therefore be equally sophisticated, multifaceted and awesome. Such a strategy calls for solidarities and synergies among several players. Such synergetic networks that erect a front against this dragon are severely lacking in many African countries.

First there are civil society organizations that periodically direct their attention to corruption scandals as they emerge. A few of them identify specific lines of corruption and pursue them to the extent possible. But civil society is usually too disjointed and narrowly focused to pose any real disruptive danger to entrenched corruption networks. Then there is the media, whose agenda is rarely its own. Highly partisan and ideologically bankrupt, the media serves both ends, the corrupt and their pursuers in equal measure. There are few instances of professional investigative journalism which can be deployed for use by state agencies in the fight against corruption. Yet given its inherent power to influence change, the media can be a lethal weapon in the array of possibilities.

Finally there is the public, most of who are poor and deprived. They are the victims of corruption whose resentment must be aroused and preyed upon to deliver the final blow against corruption. Yet, by its very nature the public is not only manipulable but fickle and unpredictable. The political class in Africa from which the perpetrators and beneficiaries of corruption are to be readily found, continually plays on the vulnerabilities of the people to defeat the anti-corruption enterprise. Whenever anyone from this class is targeted for investigation and prosecution for corruption, he in typical African style arouses ethnic, clan and nepotistic sensibilities as a defensive wall to shield him from the possible consequences of his actions.

And back to the question, is fighting corruption in Africa a mission impossible? Are the sociological, political, institutional and structural factors discussed above so intricate as to be insurmountable? Have all the possible options for use by policy makers, legislators and governors been exhausted? In attempting an answer to these vexations, one must not forget the success stories on the continent, however few. That some countries have performed fairly effectively in their efforts to eradicate corruption is proof that corruption in Africa can be dealt a mortal blow. It may never be possible to eliminate corruption and there is doubt as to whether any country on earth can completely eliminate this vice, but it is possible to combat corruption to such a degree that its impact on society becomes insignificant.

4 Fighting corruption: Which way Africa?

For a continent that has endured and yet survived the worst forms of human oppression and deprivation (conquest, subjugation, slave trade, colonialism, apartheid and neo-colonialism), defeat by corruption is hard to imagine. When all efforts seem to be faltering, and hope is at an all-time low, this is the time to rethink past and current anti-corruption strategies. It is time to re-assess and determine what works and what has failed to work. Here-below are some suggestions:

4.1 Governance

It is worth repeating the assertion that corruption does not exist in a vacuum. It is a symptom of bad governance. It is a product of undemocratic constitutions, of unaccountable governments, where the latter are based on the rule by law as opposed to the rule of law. Over time, corruption ceases to be a mere symptom of abuse of power; rather, it becomes the sustaining pillar of oppressive governments. To combat corruption effectively, African countries must embrace democracy and its vital ingredients. Thus constitutionalism, rule of law, human rights, social justice and economic prosperity for all are the milieu from which the anti-corruption agenda can be built. Unless this broad governance agenda is comprehensively addressed, the fight against corruption will remain a circus to be replayed on every occasion of change of government. Anti-corruption strategies that do not spring from a fundamental re-ordering of society are an exercise in cosmeticism. Deepening democracy and entrenching a culture of accountability should be the first pre-occupation of elected governments. All else, as far as fighting corruption is concerned will automatically follow.

Governance that is based on the rule of law as advocated above requires strong oversight institutions. The ability of a people to choose their representatives in free and fair elections is the fundamental building block of accountability. Freely and democratically elected parliaments are the bastions against poor governance. In this regard, it is time for African scholars to seriously address the question as to what ails competitive politics on the continent and to provide workable solutions. Are there solutions that are peculiarly African to the seemingly insurmountable electoral disease in Africa? Is the sociology of African society incompatible with conventional electoral politics? What mechanisms can be put in place to tame the rogue legislative assemblies in Africa? Answers to these questions will not come easy. But they offer the key to democratic, professional and accountable parliaments. The intellectual human resources that bestride the continent must retreat into rigorous exercises to unlock the democratic jig saw.

4.2 Institutional re-engineering

The judiciary, prosecuting, law enforcement agencies and oversight institutions are all critical components in the fight against corruption. These institutions can only play their respective roles if they themselves are free of corruption. Institutional synergies are necessary for a coordinated, sustained, and sustainable war on corruption. Establishing anti-corruption agencies before re-engineering supportive institutions is an exercise in futility. However well-conceived, structured and resourced, such an agency cannot work well in the face of isolation, hostility and sabotage by counterpart public agencies. Likewise, enacting anti-corruption and related laws while existing laws and regulations are not being enforced does not add significant value to the anti-corruption effort. If most penal, revenue, customs, audit, procurement and other existing laws were enforced; there would be no urgency for the legislature to make more laws. It however would be much easier to apply new anti-corruption norms if and when enacted. These institutions must be empowered to carry out their functions effectively.

4.3 International cooperation

The trans-boundary nature of corruption calls for cooperation between Africa and the international community to follow it wherever it may find refuge. The international anti-corruption conventions recognize the need for cooperation. UNCAC in particular places a big premium on the need for technical and mutual legal assistance mechanisms. While Africa is the theatre where most corruption is perpetrated, the effects of this scourge are no longer confined to the continent. It is in the interests of all members of the community of nations including international organizations to intensify efforts at curbing its spread through cooperation and collaboration. But international cooperation should take cognizance of the governance deficit that fuels corruption in Africa. A deeper understanding of the "African Problem" will go a long way in enhancing more meaningful and effective international cooperation.

Conclusion

This essay has explored the difficulties and complexities of fighting corruption in Africa. The challenges faced by anti-corruption agencies in the fight against corruption are formidable. It is now clearly apparent that the anti-corruption agenda has been reactive, ad hoc and ill thought out by governments and policy makers on the continent. However, the situation is not all doom and gloom since the challenges are not insurmountable. Furthermore there are a few success stories in the anti-corruption war on the continent which can provide best practices. But to recapture the initiative in the fight against corruption, far reaching social, political and economic reforms need to be undertaken and sustained. Half measures are a recipe for disaster. The message to African leaders, governments and peoples is simple but loud and clear; "PUT THE GOVERNANCE OF YOUR COUNTRIES IN ORDER".

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