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## **Combating Systemic Corruption in Africa: Altitudinal, Attitudinal, Confrontational or Constitutional?**

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*The fact and reality of systemic corruption in Africa is irrefutable. It is therefore not surprising that the subject has attracted quite a great deal of attention from the academia. Thus, to assert that corruption is the greatest impediment to the socio-political and economic development of Africa is a superfluous understatement and a mere reinstatement of the obvious. Across Africa, incredibly huge sums of money sufficient to conduct free, fair and credible elections, equip the military and the police for optimum performance, revolutionize agriculture, rejuvenate education, resuscitate infrastructures, reinvigorate the economy, revamp the industrial sector and achieve scientific and technological emancipation end up in private vaults and pockets. The consequences of this are impaired economy, immobile technology, fractured infrastructures, ill equipped armed forces, unmitigated poverty and unprecedented brigandage and banditry. This paper does not intend to contribute to the oversubscribed debate on the origins, theories and causes of corruption in Africa; rather, it addresses the question of the option(s) that could best combat systemic corruption in Africa. The paper argues that neither the altitudinal factor nor constitutional provisions could combat corruption in Africa and concludes that only attitudinal change or the confrontation option could liberate the continent from systemic corruption. The descriptive and analytical method of historical research was employed in the analysis of the data obtained for the study.*

*Keywords: Africa, corruption, analytical method, historical method.*

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### **Introduction**

Corruption is the hallmark of most African states. Consequently, literature on the subject is diverse and massive. Thus, there are excellent studies on the origins, theories, causes, course and consequences of corruption in Africa.<sup>1</sup> In his 'Foreword' to John Sullivan's "Corruption,

Economic Development and Governance: Private Sector Perspectives from Developing Countries", David Luna opined that "corruption is now widely recognized as one of the greatest barriers to prosperity, economic competitiveness and development, and political and social stability of countries. The key question now is not whether

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we should combat it or whether it is important – but *how* can we effectively combat it?”<sup>2</sup> Indeed, in the 34-point communiqué issued at the end of the Anti-Corruption Summit held recently in London, world leaders agreed that tackling corruption is vital to sustaining economic stability and growth, maintaining security of societies, protecting human rights, reducing poverty, protecting the environment for future generations and addressing organized crime.<sup>3</sup> The present paper examines four options of combating corruption in Africa. Structurally, the paper is broken into five parts. This introduction is followed by a brief contextual discourse of the concepts/terms used in the paper. The section highlights the prospects of the confrontational option in combating corruption in Africa. The third section attempts a brief analysis of the other options that could curb corruption in Africa and, with particular reference to Kenya, highlights the failure of the altitudinal option in curbing corruption in Africa. The section also examines the failure of constitutional provision in combating corruption in Africa. The fourth highlights the prospects and limitations of attitudinal change in combating corruption in Africa. This is followed by the conclusion.

### **Contextual and Conceptual Discourse**

Five major terms are used in this paper. These are corruption, altitude, attitude, confrontation and constitution. Although, some of these terms are commonplace, for the purposes of clarity and avoidance of ambiguities, it is imperative that the context of their usage in this study is put in clear perspectives. Despite the fact that corruption has attracted global attention in recent times, a generally accepted definition of the concept remains elusive. ‘Corruption’ is an omnibus term that encompasses all shades, types and categories of political, economic and financial vices, misdemeanours and monumental administrative manipulations.

This is probably why the United Nations Convention Against Corruption (UNCAC) does not define corruption. The UNCAC adopts a descriptive approach, encompassing varieties of corrupt acts including bribery in public sector, embezzlement, misappropriation or other diversion of property by a public official, trading in influence, abuse of function, illicit enrichment, bribery in the private sector, embezzlement of property in the private sector, laundering of proceeds of crime, concealment and obstruction of justice.<sup>4</sup>

According to the etymological meaning of the word, corruption comes from the Latin verb “*corruptus*” or ‘*rumpere*’ (to break).<sup>5</sup> This implies that corruption is the violation of established rules for personal gain and profit. For the purposes of this paper, we will, following Khan, define corruption as “any act which deviates from the rules of conduct, including normative values, governing the actions of someone in a position of authority or trust, whether in the private or public domain”.<sup>6</sup> From the above definition, it immediately becomes clear that corruption is motivated by the desire to misuse the instrumentality of office or one’s position in pursuit of private interests, which may or may not be material, in violation of extant rules or norms. This definition is in tandem with that of Transparency International which sees corruption as “the abuse of entrusted power for private gain”.<sup>7</sup> Transparency International has categorized corruption into three: grand, petty and political depending on the pecuniary value and sector of occurrence.<sup>8</sup> While grand corruption occurs at the topmost echelon of state or government with the connivance of political leaders; petty corruption is the abuse of office by low and mid-level public officials in their interactions with the ordinary citizens who wish to access basic goods and services in places like hospitals, schools, police departments and other public places or

agencies. Political corruption is the manipulation of policies, institutions and rules of procedure for the purposes of self aggrandizement and personal (or group) gain.<sup>9</sup> In most cases, grand and political corruption go hand-in-hand with far-reaching implications and consequences than petty corruption. The above disaggregation is important because corruption is generally thought to be the exclusive preserve of politicians whereas petty corruption is far more pervasive and prevalent than grand and political corruption although, as pointed out earlier, the consequences of grand and political corruption are graver. Transparency International has categorized the consequences of corruption into four – political, economic social and environmental. According to the Organization

On the political front, corruption is a major obstacle to democracy and the rule of law. In a democratic system, offices and institutions lose their legitimacy when they are misused for private advantage... It is extremely challenging to develop accountable political leadership in a corrupt climate...Economically, corruption depletes national wealth...Corruption corrodes the social fabric of society... Environmental degradation is another consequence of corrupt systems...the entire ecological systems are ravaged...<sup>10</sup>

Asserting that corruption is the most important singular factor that has crippled and hindered the socio-economic take-off of African states amounts to a mere reinstatement of the obvious. Of course, corruption is a worldwide phenomenon because, as Transparency International pointed out, ‘no one single country, anywhere in the world, is corruption free’. Thus, as Harald Bammel has observed, “corruption is a scourge which has existed since human beings started organising themselves into communities, indicating that corruption exists in countries in the World over. What generally differs from country to country is its dimensions, its intensity and most important [sic], the way the Government and the Society at large deal with

the problem so as to reduce or eliminate it”<sup>11</sup> Indeed, in 2015, 68% of countries worldwide manifested visible signs of ‘serious corruption problem and half of the G20 are among them’.<sup>12</sup> However, comparatively, it must be admitted that corruption is deeper, broader, firmly entrenched and systemic in Africa than in other regions of the world. For example, in the 2015 Corruption Perceptions Index referred to above, Chantal Uwimana, Transparency International’s Director for Sub-Saharan Africa, pointed out that 40 out of Africa’s 46 countries surveyed for the annual index “showed a serious corruption problem”.<sup>13</sup> Almost 90% of African countries scored less than 50% and secured an average score of 33% overall. This is 10 points below the global average. Indeed, but for Afghanistan and North Korea, the seven most corrupt countries in the world in 2015 would have been African countries. Somalia was the most corrupt, followed by Libya, Angola, South Sudan and Sudan. This shows that corruption has virtually been institutionalized in Africa thereby undermining what Vincent Otiemo calls the “preconditions for growth”.<sup>14</sup> Indeed, the World Bank declared corruption as Africa’s “public enemy no 1”.<sup>15</sup> This is because, among other things, corruption breeds grinding poverty, creates unbridgeable socio-economic inequalities and removes the resources that are meant for the common good from the common pool thereby denying the citizenry access to the so called ‘national cake’. As Mwangi and John rightly pointed out:

For the poor, corruption is an insidious institution that strips poor people of their human dignity and deprives them of access to public goods and services that could enhance their ability to dig themselves out of poverty...it also subjects a large part of the population to cruel and unnecessary suffering; the poor end up deprived of welfare-enhancing, life-saving public goods and services, such as clean water, prenatal care for pregnant women, primary education, police protection, shelter and basic health care<sup>16</sup>

The World Bank summarized the pernicious effects of corruption thus “every dollar that a corrupt official or a corrupt business person puts in their pockets is a dollar stolen from a pregnant woman who needs health care; or from a girl or boy who deserves an education [sic]; or from communities that need water, roads and schools”.<sup>17</sup> Corruption costs the world about \$1.26 trillion annually<sup>18</sup> and, according to the United Nations Development Programme, funds lost to corruption annually in Africa are estimated at 10 times the amount of official development assistance to the continent.<sup>19</sup> This is why corruption in Africa is sometimes described as systemic since it permeates all strata of African states to the point of being accepted as the norm.

The Free Dictionary defines altitude as “the height of a thing above a reference level, especially above the earth’s surface”; “a high location or area”; “the angular distance above the observer’s horizon of a celestial object”; “the perpendicular distance from the base of a geometric figure to the opposite vertex, parallel side, or parallel surface” and “great height or elevation”.<sup>20</sup> In this paper, altitude refers to the last definition and not to its scientific, astronomical or mathematical connotations. Sometimes, at all levels of government – local, county, municipal, regional, state or federal – there is the consideration of whether people who have attained enviable social and economic mobility and who may therefore probably need nothing more than fame, authority and recognition may not be infested with the ubiquitous virus of corruption. Such people may eventually ride on the back of their altitudinal socio-economic mobility to power. However, their social and economic altitude notwithstanding, they engage in sundry corrupt practices, disappoint the hopes of the electorate and dash their expectations. President Uhuru Kenyatta of Kenya is a case in point. Thus, altitudinal consideration has not

provided solution to the problem of corruption in Africa.

Simply put, attitude refers to manner, disposition, feeling or position with regard to a person or thing. In other words, attitude is the manner of thinking, feeling, or behaving that reflects an individual’s state of mind or disposition to a concept, issue or phenomenon. There are three components of attitude. These are cognitive, affective and conative (behavioural). Cognitive attitude represents one’s thoughts patterns, beliefs and ideas about something or an individual. Typically these come to light in generalities or stereotypes. Affective attitude deals with feelings or emotions that are brought to the surface about something, individuals or events while conative attitude centers on the way and manner individuals act or react towards something based on their affective leanings. All these components are relevant to this study.

Merriam-Webster’s definition and description of confrontation is comprehensive and is adopted for the purpose of this paper. According to Merriam-Webster, to be confrontational is to be “aggressive, agonistic, argumentative, assaultive, bellicose, brawly, chippy, combative, belligerent, contentious, discordant, disputatious, feisty, gladiatorial, militant, pugnacious, quarrelsome, scrappy, truculent, warlike”.<sup>21</sup> Etymologically, ‘confrontation’ derived from *confrontare*, a Medieval Latin meaning “to assign limits”.<sup>22</sup> One prominent reason for the ubiquity of grand and political corruption in Africa is the existence and prevalence of rulers whose powers have no limits. Thus, Africa seems to be where Europe was when Acton made his now very famous submission. As a result of the emergence and preponderance of absolute rulers in Europe, Emerich Edward Acton (simply known as Lord Acton), in a letter to Bishop Mandell Creighton in 1887 expressed the view that “power tends to corrupt and absolute power corrupts absolutely”.<sup>23</sup> Approximately

six decades earlier (1770), William Pitt (British Prime Minister from 1766 to 1778), had opined that “unlimited power is apt to corrupt the minds of those who possess it”.<sup>24</sup> These assertions are very true of 21<sup>st</sup> century Africa.

As Fombad has pointed out, the definitions and conceptualizations of the term ‘constitution’ are so varied and diverse that it constitutes one of those terms which ‘are more used than defined’.<sup>25</sup> The term ‘constitution’ could be used in at least four senses: the minimalist or material sense; the formal sense; the modern sense; and the functionalist sense.<sup>26</sup> The most frequent use refers to the functionalist sense – a document, written or unwritten, which governs, regulates and allocates powers, functions and duties amongst the different organs within the state and between the governed and the government. Since the Code of Hammurabi<sup>27</sup>, probably the world’s oldest written laws, nations of the world had embraced the operation, domestication and adaptation of various forms of constitutions so that today, nearly every nation in the world has a constitution. From the onset, it should be noted and emphasized that since 1215, when the *Magna Carta* was produced in England, the primary purpose of constitutions had been to ensure the retention and preservation of the fundamental rights of citizens and to prevent the emergence of dictators. For example, the *Magna Carta*,<sup>28</sup> which was a written agreement between the king and the people, specified what the king could do and what he could not. It was a give and take arrangement wherein the people agreed to be ruled by the king while the king agreed that his power be regulated, moderated and controlled by the people.<sup>29</sup>

While the functions of constitutions are not shrouded in myth and mystery and are not in doubt or contest; this study adopts the description and definition of constitution as postulated by Debrett Ficcadilly. According to

him, a constitution is “the whole assemblage of laws, sentiments and manners ...which restrain mutually the governors [government] and the governed, in respect of each other”.<sup>30</sup> What makes Debrett’s description and definition of constitution attractive to this study is the fact that, on assuming office, most African leaders’ actions are at cross-purposes with the constitutions of their respective countries. Indeed, many African leaders circumvent several aspects and provisions of the constitutions they swore to uphold and defend. In his own definition and description of constitution, William David emphasizes that a constitution must state in very clear terms “what the government must do for the people and what the people must do for the government. It may also say what the government cannot do”.<sup>31</sup> The main purpose of a constitution is to limit the use of governmental powers in a manner that could prevent the twin dangers of anarchy and authoritarianism. Although the constitution is universally accepted as the best method of legitimation and organization of powers that prevents these twin evils, it is often clear that some constitutions fail to achieve this balance effectively, either in the text or in practice or even in both instances. Generally, there is probably no country in Africa whose constitution does not make elaborate provision for curtailing and combating corruption. As a matter of fact, some countries make very stringent and comprehensive constitutional provisions against corrupt practises; but all these are circumvented so that the letter and spirit of such constitutions are contemptuously trampled upon by those who superintend over the structural frame. Thus, to a very large extent, constitutional provisions have failed to arrest corruption in Africa. This is why scholars sometimes distinguish between certain constitutional types to reflect the extent of their effectiveness or ineffectiveness. For example, some constitutions can be described as symbolic

or sham when they are not worth the paper on which they are written. They merely serve as window-dressing and are routinely ignored. This is the category to which the constitutions of most African countries belong hence their failure failure to arrest corruption. Indeed, this is the basis for Lowenstein's categorization of constitutions as normative, nominal or semantic.<sup>32</sup> Most constitutions in Africa are nominal.

This paper postulates that the wave of corruption ravaging Africa could be curtailed in two ways – attitudinal change and confrontational posture. While the former may involve a long time-lag sublime moral rebirth or what the Yoruba of southwest Nigeria calls *omoluabi* or *omoluka* (a person who possesses great character finesse and moral impeccability); the latter may convoke some extra-constitutional measures wherein Africans may have to put their destinies in their hands, defile the odds and confront corrupt leaders; sweep them out of office; recover looted funds from them and their cronies and plough same back into the commonwealth for the benefit of all. Obviously, this will generate a messy and muddle atmosphere out of which a politically rejuvenated, economically resuscitated, socially responsible, morally refashioned and technologically reinvigorated and emancipated Africa could emerge. In the 2015 Corruption Perceptions Index referred to above, Transparency International expressed regrets that

the human cost of corruption is huge, yet all too often, leaders with notoriously corrupt records continue to enjoy lives of luxury at the expense of the people living in grinding poverty. It's time they faced the consequences of their actions. Corruption will stop only when we collectively fight it. It is crucial that we change the common mentality of accepting corruption and treat the crime as the terrible thing that it is<sup>33</sup>

Indeed, in his introduction to the 2015 Corruption Perceptions Index, the Chair of Transparency International, Jose Ugaz, opined

that “the 2015 Corruption Perceptions Index clearly shows that corruption remains a blight around the world. But 2015 was also a year when people again took to the streets to protest corruption. People across the globe sent a strong signal to those in power [that] it is time to tackle grand corruption”. According to the Centre for Citizenship, Civil Society and Rule of Law, protest is a hallowed right within constitutional democracy which allows for political expression outside the electoral process and established public sphere channels such as the media.<sup>34</sup> Jose's assertion that 2015 was a year when people took to the streets to protest corruption is true. A few instances will suffice. In March 2015, more than a million Brazilians took to the streets demanding an end to grand and political corruption. The protesters said they were “sick of corruption” and requested the authorities to “clean the filth”.<sup>35</sup> In May, Moldovans protested against the disappearance of nearly €1bn from the Central Bank of their country which they described as “the robbery of the century”.<sup>36</sup> In July, following the embezzlement of \$330m from Honduras' social security institute, the Instituto de Seguidad Social, thousands of Hondurans protested against the President.<sup>37</sup> In August, thousands of Iraqis protested against corruption and insisted that it was time for the departure of the corrupt from public offices<sup>38</sup> and in September, thousands of South Africans marched against corruption and called on public office holders to “stop government theft”.<sup>39</sup> Only recently (March 2016), the Institute of Certified Public Accountants of Kenya called on Kenyan government to “declare corruption a national disaster”.<sup>40</sup>

Curiously, except for regular lamentations about corruption by Nigerians in the media and a few protests orchestrated by rights activists; the huge protests against corruption in other climes are a rarity in Nigeria despite the fact that the country is home to some of the world's

most scandalous corruption cases. A number of factors may be responsible for this prominent among which may be the prevalence of petty corruption in the country. Since the corrupt possesses no moral justification to criticize or protest against the corrupt; a very large number of the middle class, from whose ranks the leaders of anti-corruption protests should normally be drawn, are probably not free from corruption. Indeed, estimates have shown that low-income households in Africa spend as much as 2-3 percent of their income on petty bribes.<sup>41</sup> This is most probably the case in Nigeria than in any other African country. According to the International Anti-Corruption Academy, corruption is usually kept hidden by those in position to checkmate it since they benefit more from keeping quiet than from speaking out.<sup>42</sup> This is the case with Nigeria the hallmark of whose civil and public services is corruption. Another factor may be the rather tacit support successive Nigerian governments had given to corruption. For example, the former President, Goodluck Jonathan, sacked Lamido Sanusi, Governor of the country's Central Bank, who attempted to unravel what happened to an estimated \$20b that disappeared from Nigeria's oil revenues over an 18-month period. However, the above does not imply that the confrontational option of combating corruption could not be contemplated for Nigeria. Since the country, as Sarah Chayes has pointed out, "is a textbook example of the 'resource curse',<sup>43</sup> Monumental grand and political corruption alongside petty corruption may continue until common people are no longer able to bear the scourge and scar of corruption. At that point, a spontaneous uprising could break out. Jose Ugaz stressed this option and possibility in the 2015 Corruption Perceptions index when he opined that "corruption can be beaten if we work together. To stamp out the abuse of power and bribery and shed light on secret deals, citizens must together tell their governments they

have had enough". This is probably the quickest route to arresting corruption in Africa. Where and when corruption is systemic, fighting it requires revolutionary measures and, as David Cameron recently opined, "the corrupt should be pursued and punished".<sup>44</sup>

### **Combating Corruption in Africa: What Other Options?**

So far, we have argued that the confrontational option probably remains the surest route to arresting and combating grand and political corruption in Africa as Kenya's experience has shown that the altitudinal option may not arrest corruption, after all. As we have pointed out earlier, altitude, in the context of this paper, refers to great socio-economic height or elevation Prior to the 2013 elections, Uhuru Kenyatta's "wealth was taunted as reason why he would neither be corrupt nor corrupted but a series [of] billion shillings scandals in his regime have dented his reputation".<sup>45</sup> Thus, approximately three years into his presidency, Kenyans are accusing Uhuru of high profile grand and political corruption. Indeed, in an opinion poll, while 3% of Kenyans think Uhuru is corrupt; only 1% thinks the former Prime Minister, Raila Amolo Odinga (2008 to 2013), was corrupt.<sup>46</sup> Yet, among other prominent factors, Uhuru rode on the wings of his wealth to become the President of Kenya in 2013. Indeed, Kenyatta was seen by most Kenyans as a rich president who "has no need to steal"<sup>47</sup>. However, in his 'Memo to Kenyans', Osiro dismissed Uhuru as "a corrupt president" and expressed the view that "...the malfeasance exhibited by the country's leaders, beginning with Jomo Kenyatta and currently book-ended by his son, Uturu, will come to roost".<sup>48</sup> Ironically, a member of Kenya's ruling Jubilee Party, Alfred Keter, called for the resignation of Uhuru for failing to combat what he called 'runaway corruption' in Kenya. He said only very negligible number of Kenyans

have benefited from Kenyatta's government and called for the "clean up of the entire system".<sup>49</sup> Keter estimated that Kenya was losing Sh1.8b on a daily basis to corruption.

Much as the fact of corruption is indubitable in Kenya, it should be pointed out that Uhuru Kenyatta has taken a number of steps (irrespective of the superficiality of some of them) to tackle corruption in Kenya. For example, he described corruption as "shameful and dishonourable"<sup>50</sup> and launched a website that allows users to report incidents of corruption in the country directly to him. The site affords users to anonymously upload video, audio, pictures or other relevant documents from a drop down menu providing a long list of civil service or other government agencies they want to complain about.<sup>51</sup> Furthermore, on 20 March 2015, the Ethics and Anti-Corruption Commission published the so-called 'list of shame' (list of corrupt Kenyans) which included the names of several elected leaders, parastatal heads and cabinet ministers linked to corruption. Indeed, several cabinet ministers including those of Labour, Infrastructures and Energy and Petroleum were among those who vacated their offices. Also, Philip Tunoi, a Supreme Court Judge, was suspended from office for accepting bribes while the Senator representing Nairobi in the Kenyan Senate, Mike Sonko, also stepped down over corruption-related issues.<sup>52</sup> In 2015, within one week, 72 individuals including Principal Secretaries and Managing Directors were prosecuted for corruption related offences. Indeed, about 352 high profile individuals were charged to court for corruption or abuse of office within 6 months.<sup>53</sup> Comparatively therefore, President Uhuru Kenyatta may be a leap ahead of his peers elsewhere in Africa who did not only sack a Central Bank Governor who was determined to tackle corruption headlong but granted state pardon to public officers who siphoned several million dollars public funds.<sup>54</sup>

In Uganda, despite President Yoweri Museveni's repeated rhetoric and pledges to curb and combat corruption, in reality, many Ugandans are of the opinion that Museveni is giving tacit support to corruption, particularly to his aides and associates by shielding them whenever they are accused of corrupt practices. For example, in 2008 Museveni publicly voiced his support for Amama Mbabazi, his then Security Minister (and currently Secretary General of Museveni's National Resistance Movement Party) when Mbabazi was accused of corrupt practices in the sale of land to the National Social Security Fund (NSSF). While a Parliamentary Committee that investigated the matter recommended that Mbabazi should be censured, the majority of members of Parliament (MPs) voted to exonerate him in November 2008. Three months later, Museveni reshuffled his cabinet and appointed four MPs who led the opposition to the censure motion against Mbabazi, to prime ministerial posts.<sup>55</sup> In another instance, while an abuse of office case against former Vice President Gilbert Bukenya was pending in court (2011), Museveni said the Attorney General had informed him (Museveni) that the case lacked merit. As should be expected, the Inspectorate General of Police later withdrew the charges, citing lack of evidence. More recently, when Mike Mukula, a former State Minister for Health and a current MP, appealed his conviction and sentence for embezzling 210 million Ugandan shillings (US\$80,000) from the Global Alliance for Vaccines and Immunisation in 2013, Museveni personally paid Mukula's legal team 100 million Ugandan shillings to aid his defence.<sup>56</sup>

President Robert Mugabe has replicated the above several times in Zimbabwe. Among others, Mugabe shielded several of his aides, ministers and other state officials from prosecution in the 'Willowgate scandal' wherein senior government officials were accused of using government

facility to purchase vehicles from Willowvale Motor Industries and reselling same for profit. One of the ministers who was involved in the scandal committed suicide while Mugabe pardoned the others for 'showing remorse'.<sup>57</sup> According to Everson, "following the pardoning of those involved in the Willowgate scandal, it dawned upon those in government that they too could loot national resources and get Mugabe's protection from prosecution. This gave birth to several other scandals involving government ministers".<sup>58</sup> Among these were the War Victims' Compensation Fund scandal, the Indigenisation Funds scandal, Reserve Bank of Zimbabwe's Agricultural Programme Funds scandal, etc.<sup>59</sup> Indeed, *The Progressive* of 30 March 2007 described Mugabe as a personification of corruption. Comparatively, therefore, Uhuru Kenyatta is probably a leap ahead his peers in fighting corruption. However, his effort at curbing corruption neither discharges nor acquits him from the failure of the altitudinal model discussed in this paper because *ab initio*, many Kenyas voted for him in the confident expectation that his illustrious family background and immense wealth would immune him to corruption. Since many Kenyas now accuse Kenyatta of corruption (with fact and figure), the altitudinal consideration for his emergence as Kenyan president may have been defeated.

In 2014, Transparency International ranked Kenya the 3<sup>rd</sup> most corrupt country in Africa. With respect to grand and petty corruption, 74% of the Kenyan respondents said they paid bribes to access basic government services. Also, 95% said they felt that the police were very corrupt. Asked why they paid bribes, 56% said they did so to get faster services while 36% paid bribes because they felt they would have otherwise been unable to obtain/access services. Indeed, a survey by Transparency International and AfroBarometer rated Kenya very high in grand, political and

petty corruption. In the survey, 7% of Kenyans polled held the view that Uhuru Kenyatta was doing very poorly with respect to living above board and curbing corruption.<sup>60</sup> Although, the above figures fade into insignificance when compared with similar figures from countries like Nigeria, Angola, Cameroon, etc. For example, patients wishing to access basic services in public hospitals in Cameroon have to put some money in the consultation book before they are attended to.<sup>61</sup> The reason we have singled Kenya out in this section of the paper is to follow through on our altitudinal option of combating corruption in Africa.

On the whole, constitutional provisions have failed, woefully and dismally, to curb corruption in Africa. There are 54 independent states in Africa including Egypt, which Chief Obafemi Awolowo described as a country with one foot in Africa and the other in the Middle East.<sup>62</sup> Territorially, Egypt is a transcontinental country, which has a small part of its territory in Asia, on the other side of the Suez Canal, but politically it is a member of the African Union. In Africa, as in other climes, apart from the constitution which constitutes the supreme law and which contains provisions on measures and institutions that are geared towards preventing, monitoring and combating corruption; other sources of anti-corruption legislations include acts of parliaments, subsidiary legislations, case laws, principles of common laws, doctrines of equity and customary laws. Since it is practically impossible to examine the constitutional provisions of all independent African states *viz-a-viz* corruption in a single and relatively short paper like the present endeavour; this section attempts a brief examination of some African states' constitutional legislations against corruption as well as the effectiveness or otherwise of their anti-corruption bodies and agencies. This is without regard to the colonial background of these countries since there is no

unassailable empirical evidence to suggest that countries colonized by a particular colonial power is less or more corrupt than those colonized by others. Here, the point-encompassing or cross-reference method of analysis is adopted rather than the sequential method which, for the present purpose, will be too cumbersome and lengthy.

The Zambian Constitution's definition and description of corruption is one of the broadest in Africa. The laws of Zambia (Act No. 42 of 1996) defines corruption as "the soliciting, accepting, giving or offering of a gratification by way of a bribe or other personal temptation or inducement or the misuse or abuse of a public office for private advantage or benefit"<sup>63</sup>. Yet, corruption is as elaborate as its definition in Zambia and a major threat to the country's economic growth. Widespread corruption has caused huge economic losses to the country and has not only severely curtailed investment, but has also hurt economic development. Funds from tax revenue and foreign aid end up in private pockets. In Zambia, corruption accounts for more than 10 percent of government spending, with kickbacks demanded for government contracts and bribes paid for other services. Indeed, it has been pointed out that in some cases, some business concerns expend as much as 30 percent of their capital on payments of all sorts of bribes to very senior government officials to get their businesses going.<sup>64</sup> It must be pointed out however that a former President, Levy Mwanawasa, demonstrated unwavering commitment to combating corruption in Zambia by prioritizing the fight against corruption in the country's political agenda. Among others, he established a Task Force on Corruption, designed a corruption prevention strategy and reinforced anti-corruption institutions. However, following Mwanawasa's death in 2008 and the assumption of power by Rupiah Banda, the anti-corruption crusade in Zambia suffered devastating setbacks.

Apart from acquitting former president Fredrick Chiluba (1991-2002) who embezzled massive public funds, Banda dismantled the Task Force on Corruption and refused to probe a major health care corruption scandal.<sup>65</sup>

Like many other African states, there are several anti-corruption legislations, agencies and institutions in Zambia. Amongst these are the National Anti-Corruption Policy (2009), Anti-Corruption Commission Act, Task Force on Corruption, Anti-Corruption Commission, the Directorate of Public Prosecution (DPP), the Commission for Investigations (Ombudsman), the Financial Intelligence Unit (FIU), the Office of the Auditor General (OAG) and Zambia Public Procurement Authority (ZPPA). However, the multiplicity of anti-corruption legislations and institutions notwithstanding, corruption constitutes the greatest barrier to the socio-economic development of Zambia as senior state officials engage in monumental and sundry corrupt practices and many established high-profile corruption cases fizzle out at the probe level. For example the Zambia Revenue Authority Commission of Inquiry, the Oil Procurement Commission of Inquiry and the NAPSA Land Commission of Inquiry reports revealed monumental abuse of office and corrupt practices with very few or no convictions thereby leading civil society organizations to question the effectiveness of anti-corruption legislations and institutions in Zambia.<sup>66</sup>

The situation in Uganda is the same. Although, Uganda has an impressive array of anti-corruption legislations and agencies, corruption remains a major impediment to development and a barrier to poverty reduction in the country. Some of Uganda's anti-corruption legislations and agencies are the Prevention of Corruption Act; Directorate of Public Prosecutions, (DPP); Criminal Investigations Department, (CID); the Disposal of Assets Unit; the Anti-Corruption

Court (a specialized tribunal within the Ugandan judiciary); the Office of the Inspectorate of Government (IG, led by the Inspector General of Government, the IGG – an office mandated by the Ugandan constitution to fight corruption); the Auditor General and Parliament’s Public Accounts Committee. The Anti-Corruption Act criminalizes and defines corruption as when “a public official corruptly solicits or receives or agrees to receive a gratification as an inducement to, or reward for doing or omitting to do something in which the public official is concerned”.<sup>67</sup> Since President Yoweri Museveni took office in 1986, despite recurrent corruption scandals, his government has failed to hold to account senior officials implicated in the theft and diversion of public funds. Indeed, no high-ranking government official, minister or political appointee has ever served a prison sentence despite investigations into numerous corruption scandals over many years. The only minister that would have been convicted of a corruption-related offence had the verdict overturned on appeal shortly after President Museveni publicly offered to pay the minister’s legal costs.<sup>68</sup>

Uganda’s contemporary history is replete with monumental corruption scandals. Donor funding worth \$12.7 million was stolen from the Office of the Prime Minister in late 2012. The money was earmarked for rebuilding northern Uganda, a region ravaged by a 20-year war, and Karamoja, Uganda’s poorest region. Scandals have also rocked health programmes like the \$4.5 million diverted from the Global Fund to Fight AIDS, Tuberculosis, and Malaria in 2005 and the \$800,000 stolen from the Global Alliance for Vaccines and Immunisations in 2006.<sup>69</sup> This apparently informed the description of corruption in Uganda as ‘entrenched’. In its 2014 World Report, Human Rights Watch opined that “corruption in Uganda remains pervasive at both low and high levels of public administration” and

broached on the failure of constitutional provision in combating corruption in Uganda when it opined that “corruption in Uganda is severe, well-known, cuts across many sectors...the law and its institutions cannot be relied on to protect against violations of fundamental human rights or deliver justice...health, water, food, and education.”<sup>70</sup>

Jean P. Gashumba has attempted a fairly detailed examination of anti-corruption legislations and constitutional framework in Rwanda, Sierra-Leone and Malawi and concluded that as elaborate as these countries’ anti-corruption constitutional provisions and institutions were; they generally lacked enforcement and as such corruption is ubiquitous in the three countries.<sup>71</sup> This reinforces the argument in the present discourse – that constitutional provisions have failed to combat corruption in Africa. The case of Nigeria is an encyclopaedia example of this failure. Although, Nigeria probably has one of the most elaborate anti-corruption legislations, agencies and institutions in Africa; the country has remained very prominent on the table of the most corrupt countries in the world. This author and another scholar had dealt with the nature, causes and consequences of institutionalized corruption in Nigeria elsewhere.<sup>72</sup> But suffice it to state here that besides Senegal, Nigeria probably has the largest number of anti-corruption acts, laws, edicts, agencies and institutions in Africa. Amongst these are the Public Officers (Investigation of Assets) Decree No. 5 of 1966; Corrupt Practices Decree No. 38 of 1975; both the 1979 and 1999 Constitutions have provisions for code of conduct for public officers.<sup>73</sup> The Code of Conduct for public officers requires a public officer not to put himself in a position where his personal interest conflicts with his duties and responsibilities. He must not ask for or receive property or benefits of any kind for himself or any other person on account of

anything done or omitted to be done by him in the discharge of his duties. Under the Criminal Code, offences relating to corruption and abuse of office in the public service are contained in sections 98-116 (Cap. 77 Laws of the Federation of Nigeria 1990). In the Penal Code, there are elaborate anti-corruption provisions in sections 115-122 of the Code. There are also the Corrupt Practices and Other Related Offences Act (2000); the Economic and Financial Crimes Commission and the Money Laundering Prohibition Act (2004). Yet among several other high profile corruption scandals, a former cabinet minister squandered about €12 million state funds on air charter services for non-official trips within two years<sup>74</sup> while a former National Security Adviser mismanaged \$2.1 billion meant for the purchase of arms to fight Boko Haram. Thus, like in several other African states, petty, bureaucratic and grand corruption continue to grow in leaps and bounds in spite of multiplicity of anti-corruption legislation and institutions in the country.

Thus Nigeria does not lack anti-corruption legislations and institutions; what she lacks is enforcement because as elaborate as these anti-corruption legislations and constitutional provisions are, corruption rages on like a phoenix and remains the most important impediment to the political, social and economic development of the country. The same is true of South Africa. According to the 2014 report by Transparency International “South Africa has a well-developed legal framework for curbing corruption, but the country’s lack of enforcement jeopardises this effort”. For example, the South African Prevention and Combating of Corruption Act (PCCA) criminalizes corruption in the public and private sectors and codifies specific offences, thereby making it relatively easy for courts to use the Act but “it suffers from poor implementation”. This is also true of Cameroon

where “constitutional provisions against corruption are neither obeyed nor enforced”.<sup>75</sup> Indeed, at the 2015 Regional Conference on Anti-Corruption in West Africa held in Niamey, Niger in February 2015, national anti-corruption authorities from 13 West African countries expressed grave reservations about “the persistent impunity for economic and financial crimes, notably the lack of prosecutions leading to final judicial convictions in the region”. While it may be true that the structure of anti-corruption agencies and institutions, as well as constitutional provisions and legal framework differ from one country to another; no African country is in dearth of anti-corruption legislations, agencies and institutions. In many African states, governments have established anti-corruption units within existing public institutions or created new agencies or authorities dedicated entirely to combating corruption. Indeed, the African Union Convention on Prevention and Combating Corruption express concern “about the negative effects of corruption and impunity on the political, economic, social and cultural stability of African States and its devastating effects on the economic and social development of the African peoples” and resolved to “formulate and pursue, as a matter of priority, a common penal policy aimed at protecting the society against corruption, including the adoption of appropriate legislative and adequate preventive measures”.<sup>76</sup> Yet African states have remained very prominent on the list of the most corrupt countries in the world.<sup>77</sup> This confirms the failure of constitutional provision in combating corruption in Africa.<sup>78</sup>

Some of the reasons for this failure are not far-fetched. In most African states, tribal, parochial and party affinities take precedence over national consideration and interest. Thus, the clientele nature of African states enables corrupt public officers to circumvent extant

anti-corruption legislation and escape arrest or prosecution even in established and glaring corruption cases. This is the situation all over Africa. Unfortunately, the judiciary that should give legal teeth to some of the anti-corruption legislation and agencies is, in some cases, as corrupt as the functionaries in the other arms of government, agencies and the public service. In a report by the Society for International Development in East Africa (IDEA), the judiciary was rated as one of the most corrupt institutions in East Africa.<sup>79</sup> In his examination of the nature and causes of corruption in the judiciary in Africa, Herbert Igbunugo found that “corruption in the judiciary has become widespread across Sub-Saharan Africa”<sup>80</sup> and described corruption in Kenya’s judiciary as ‘pandemic’. Indeed, until recently, the popular maxim in Kenya was “why pay a lawyer when you can buy a judge”.<sup>81</sup> In September 2015, 12 high court judges, 22 lower court magistrates and over 100 judicial service personnel across Ghana were captured on video collecting bribes, extorting money from litigants and negotiating the release of persons standing trial in their respective courts.<sup>82</sup> This is the reality in most African states. Apparently, as Herbert has rightly pointed out, “for African judiciaries to be effective in combating the plague of corruption [that is] endemic in the region, the judiciary institution itself must be completely rid of corruption”.<sup>83</sup>

At this juncture, it should be emphasized however that there is at least an exception to all of the above. For a fairly long time now, Transparency International has consistently ranked Botswana as the least corrupt country in Africa. The country was ranked 30<sup>th</sup> least corrupt in the world in 2012 and 2013; 31<sup>st</sup> in 2014 and 28<sup>th</sup> in 2015 (but each year the least corrupt in Africa). According to a 1998 Report by the United Nations Development Programme,

“Botswana has not experienced the same wide spread corruption which affects most parts of Africa”.<sup>84</sup> It would be recalled that anti-corruption legislations and institutions were strengthened in Botswana in 1994 with the establishment of the Directorate on Corruption and Economic Crimes following series of corruption scandals. Unlike other African states where anti-corruption laws are neither implemented nor enforced; Botswana has consistently demonstrated unwavering commitment to the enforcement of anti-corruption legislations and the fight against corruption. It is therefore not surprising that in contemporary African historiography the country is variously referred to as ‘an economic miracle’; ‘an exceptional case of democratic success’; ‘an oasis in the desert of corruption’ and ‘an administrative probity unequalled in tropical Africa’.<sup>85</sup> In his comparative study of some African institutions, Johnston opined that “Botswana is in many respects an African success story. Since independence in 1966, it has not only maintained democratic politics...but it has also avoided the devastating corruption found in many other countries on the continent. Indeed...the general view both in and outside of Botswana was that whatever the country’s other challenges might be, serious corruption was not among them”.<sup>86</sup> It must be added however that Botswana still grapples with the problem of corruption but not at the level and scale elsewhere in Africa.

### **The Prospects of Attitudinal Change in Combating Systemic Corruption in Africa**

As pointed out earlier, attitude, in the context of this paper, refers to the manner, disposition, feeling or position with regard to a person or thing. This implies that attitude is the manner or pattern of thinking, feeling, or behaviour that reflects an individual’s state of mind or

disposition to a concept, issue or phenomenon. Generally, the attitude of Africans to corruption is ambivalent since those who enjoy the fruits of corruption and those who suffer its ills would normally perceive it differently. However, one incontrovertible fact is that greed and selfishness are the pillars and propellers of corruption. This is one of the sharp contrasts between African traditional society and our contemporary sophisticated and individualistic society. In traditional African societies, a high premium was placed on honour, integrity, honesty and dignity. For example, among the Yoruba of South Western Nigeria, individuals kept their names (*oruko*) and those of their families and forbears (*oruko ebi*) unimpaired and inviolable. Indeed, '*oruko rere*' (good name) was the standard of measurement of an individual's or family's reputation in traditional Yoruba societies hence the construct '*oruko rere san ju wura*' (good name is preferred to wealth). Indeed, an individual could commit suicide if he brought his name or that of his family to ignominy. Before the advent of Western civilization and culture, a strong and unassailable sense of brotherhood and hospitality prevailed in Africa. But, with the arrival of the Europeans, different ideologies and philosophies about human relations and attitudes came into play.<sup>87</sup> As Kalu has pointed out, traditional African societies were so tightly constructed that a puncture from any angle posed a threat to the whole.<sup>88</sup> Thus, in traditional African societies, one was "human because of others, with others and for others and since we are, therefore, I am".<sup>89</sup> The communal spirit in traditional African societies was so strong and effective such that the building of a hut or house for a poor kinsman was often seen as the collective responsibility that called for the contributions of many. Indeed, the whole community or at least kinsmen, mobilized workforce to the farm of a dead relative or someone who was bereaved.<sup>90</sup>

Today, individualism has not only ruptured these bowels of mercy; it has placed wealth far above honour, integrity and dignity. As Farouk rightly pointed out in his exposition on the theories of corruption, there is a school of thought that attributes corruption to moral factors. According to this school, corruption appeared in the human society as a result of the weakness of the moral environment.<sup>91</sup> This school of thought opines that corruption could only be curbed by "re-instilling these [traditional African societies'] values and principles in society and providing its members with moral education".<sup>92</sup> This moral education should, among other things, highlight the dangers of selfishness and promote integrity, dignity and honour over the acquisition of material wealth. This is in tandem with the view expressed by Githu Muigai, Kenyan representative at the Anti-Corruption Summit held in London recently. According to him, "from our African perspective, we are of the strong conviction that corruption is fueled by the discarding of age-old customs and values instilled by our forefathers which were responsible for shaping people into individuals of integrity who abhorred all that was wrong, unjust, and unfair".<sup>93</sup> Re-instilling 'our forefathers' values would minimize the incentive for bureaucratic larceny and reduce the corruption problem to the status of a residual, tolerable, insignificant social irritant – the product of an isolated but natural human predilection for greed

### Conclusion

This paper has attempted a brief analysis of some of the options that could be deployed in combating systemic corruption in Africa. The paper pointed out that the altitudinal option may not curb corruption as the Kenyan example has shown. Because of the overwhelmingly corrupt environment that has been created all over the

continent, even Africans who have already attained enviable socio-economic heights and possess immense material wealth before being elected or appointed into offices still engage in sundry corrupt practices. Thus, the altitudinal option may not curb corruption in Africa, after all. Like countries in other parts of the world, African countries are not in dearth of anti-corruption legislations, agencies and institutions but anti-corruption laws in most African countries are neither obeyed nor enforced. Indeed, apart from the fact that most constitutional provisions of African states are either never implemented or implemented at the discretion of the occupants of the structural frame; most anti-corruption laws in Africa exist only on the papers on which they are written. The consequence is that with the exception of Botswana (and probably Senegal), African countries have remained very prominent on the list of the most corrupt countries in the world. This has created the contrasting trajectories of several laws; severe corruption. In the final analysis, constitutional legislation and the establishment of sundry anti-corruption agencies and institutions have failed to curb corruption in Africa.

In its 2015 Corruption Perceptions Index, Transparency International expressed the view that corrupt leaders should be confronted and prevented from enjoying the fruits of corruption.

Although, like the Transparency International rightly pointed out, while several countries around the world rose against corrupt leaders; with the exception of the massive anti-corruption protests in South Africa and pockets of feeble protests organized by rights' activists elsewhere, no serious attempts were made at confronting corrupt leaders in the continent in 2015. Obviously, confrontation will always almost generate a messy and muddle atmosphere but, if followed through irrespective of initial pains, it could lead to the emergence of a politically rejuvenated, economically resuscitated, socially responsible, morally refashioned and technologically reinvigorated and emancipated Africa. A peaceful option of combating corruption in Africa is attitudinal change. If the present insatiable quest for material possession is moderated, the flamboyant and ostentatious life-style whittled down and Africans place honesty, dignity and honour above crude accumulation of material wealth; then the grip of the pillar and propeller of corruption – greed – would slack and corruption would reduce substantially. It must be conceded however that an important limitation of the attitudinal option in combating corruption in Africa is that its sublime impact could be piece-meal and gradual in contrast to the confrontational option whose impact could be immediate, spontaneous and revolutionary.

<sup>1</sup> Some of these are Yusuf Ali (ed.), *The Anatomy of Corruption in Nigeria* (2016); Bolaji Labanji, *The Anatomy of Corruption in Nigeria* (Ibadan: Daaystar Press, 1970); Kivutha Kibwana et. al. (eds.), *The Anatomy of Corruption in Kenya: Legal, Political and Socio-Economic Perspectives* (Nairobi: Claripress, 1996); Awojobi O. Nathaniel, "Corruption and Underdevelopment in Africa: A Discourse Approach", *International Journal of Economics, Commerce and Management*, Vol. II, No. 10, October 2014, pp. 1-14; George Ayittey, *Africa in Chaos* (New York: St. Martin's Press, 1998); Mushtaq H. Khan, "Determinants of Corruption in Developing Countries: The Limits of Conventional Economic Analysis" in Susan Rose-Ackerman (ed.), *International Handbook on the Economics of Corruption* (Cheltenham: Edward Elgar, 2006); Alina Rocha Menocal et. al. "Why Corruption Matters: Understanding Causes, Effects and How to Address Them", Evidence Paper on Corruption, Department for International Development, January 2015; Jens Andvig & Odd-Helge Fjeldstad, "Crime, Poverty and Police Corruption in Developing Countries", CMI Working Paper No. 7, 2008; Edgardo Buscaglia, "Judicial Corruption in Developing Countries: Its Causes and Economic Consequences", Centre for International Crime Prevention, Vienna, March, 2011; Benjamin A. Olken & Rohini Pande "Corruption in Developing Countries", August, 2011; Ojo Emmanuel O. (not the present author), "Nigeria's Nascent Democracy and 'WAR' against Corruption: A Rear View Mirror", *African Research Review*, Vol. 5, No. 2, April, 2011; Usman Mohammed "Corruption in Nigeria: A Challenge to Sustainable Development in the Fourth Republic", *European Scientific Journal*, Vol. 9, No. 4, February 2013 and Benjamin Yamb & Oscar Bayemi, "Bribery in Cameroonian Public Hospitals: Who Pays and How Much?" *Asian Journal of Social Sciences and Management Studies*, Vol. 3, No. 1, 2016.

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- <sup>3</sup> "Anti-Corruption Summit Communiqué", 12 May 2016 retrieved from <https://www.gov.uk/government/topical-events/anti-corruption-summit-london-2016> on 14 May 2016.
- <sup>4</sup> Jean P. Gashumba, "Anti-Corruption Agencies in Africa: A Comparative Analysis of Rwanda, Sierra-Leone and Malawi", M.A. Research Paper submitted to the Faculty of Law, University of the Western Cape, South Africa, October 2010 p. 12.
- <sup>5</sup> Shpetim Kurti "Meaning, Criminological Profile and Anatomy of Corruption" *Anglisticum Journal* (IJLLIS), Vol. 3, No. 8, August 2014, p. 140. See also Alliyu Nurudeen et. al. "Nigeria's Cobweb of Corruption and the Path to Underdevelopment", *Journal of Arts and Humanities*, Vol. 3, No. 3, July 2014, p. 105.
- <sup>6</sup> M.H. Khan, "A Typology of Corrupt Transactions in Developing Countries" JDS Bulletin: Vol. 27, No. 2, 1996 quoted in David Uchenna Enweremadu, "The Struggle Against Corruption in Nigeria: the Role of the National Anti-Corruption Commission (ICPC) under the Fourth Republic", *Institut Français de recherche en Afrique*, Special Research Issue, 2, 2006, p. 42.
- <sup>7</sup> Transparency International, "How do you define Corruption?" Retrieved from [www.transparency.org/what-is-corruption/definition](http://www.transparency.org/what-is-corruption/definition) on 23 March 2016.
- <sup>8</sup> Transparency International, *ibid*. In his own topology, Shpetim Kurti sees grand corruption as that which has to do with high state officials, with decisions or contracts, international tenders involving huge sums of money while small or petty corruption is practiced by officials of lower ranks. See Shpetim Kurti, "Meaning, Criminological Profile and Anatomy of Corruption" p. 143.
- <sup>9</sup> Transparency International, "How do you define Corruption?"
- <sup>10</sup> Transparency International, "What are the Costs of Corruption?"
- <sup>11</sup> Harald Bammel et. al. (translated by Diom M. Richa) *Corruption in Cameroon* (Friedrich-Ebert –Stiftung, 1999), p. 5.
- <sup>12</sup> Transparency International, "Corruption Perceptions Index 2015" at [www.transparency.org](http://www.transparency.org). For detailed studies on the nature and consequences of corruption on Albania, Japan, Greece, China and the United States of America respectively, see Shpetim Kurti "Meaning, Criminological Profile and Anatomy of Corruption"; Werner Pascha, "Corruption in Japan – An Economist's Perspective", paper delivered at the annual meeting of the Association of Asian Studies in Boston, 14 March 1999 (with particular reference to the Shipbuilding Scandal of 1954; the Lockheed Scandal of 1976; the Recruit Scandal of 1988-89; the Kyōwa Affair of 1991; the Sagawa Kyūbin Scandal of 1991-1993; the Tax Evasion Scandal of 1993; the Genecon Corruption Scandal of 1993 and the Sōkaiya Scandals of 1997); Criton M. Zoakos, "Eye-Popping Greek Corruption", *International Economy*, Spring, 2010; Nicolas D'Amico, "Corruption and Economic Growth in China: An Empirical Analysis", Senior Honors Projects, John Carroll University, Paper 78, Spring, 2015 and Andrew J. Wilson, "Comparative Political Corruption in the United States: The Florida Perspective", Graduate Theses and Dissertations, University of South Florida, January, 2013.
- <sup>13</sup> Transparency International, "Corruption Perceptions Index 2015".
- <sup>14</sup> Vincent O. Otieno, "A Critical Appraisal of Kenya's Anti-Corruption Law". A Dissertation submitted for the Degree of Bachelors of Laws, Moi University, Kenya, 2014, p. 8.
- <sup>15</sup> World Bank, 'Press Release: Corruption is Public Enemy Number One in Developing Countries', 19 December 2013. It would be recalled that on assumption of office as Liberian President on 16 January 2006, Ellen Johnson-Sirleaf, declared corruption as Liberia's 'Public Enemy Number 1'. See "Liberia Leads Africa in Corruption from Citizens' Perception", *Front Page Africa*, 2 December, 2015.
- <sup>16</sup> Mwangi S. Kimenyi & John M. Mbak, "Africa's War on Corruption – Foresight Africa: The Continent's Greatest Challenges and Opportunities for 2011", The Brookings Institution, pp. 30,31
- <sup>17</sup> World Bank, 'Press Release: Corruption is Public Enemy Number One in Developing Countries', 19 December 2013.
- <sup>18</sup> David Cameron, policy paper delivered at the Anti-Corruption Summit, 12 May 2016.
- <sup>19</sup> "Corruption and Development", United Nations Office on Drugs and Crime, 2015 p. 1
- <sup>20</sup> *The Free Dictionary* at [www.thefreedictionary.com/altitude](http://www.thefreedictionary.com/altitude). Accessed on 20 March 2016.
- <sup>21</sup> Merriam-Webster at [www.merriam-webster.com/thesaurus/confrontational](http://www.merriam-webster.com/thesaurus/confrontational). This site was accessed on 23 March 2016.
- <sup>22</sup> *Etymology Dictionary*
- <sup>23</sup> This letter is dated 5 April, 1887. For a full text of the letter, see Lord Acton, "Letter to Archbishop Creighton" retrieved from [www.history.hanover.edu/courses/exerpts/165acton.html](http://www.history.hanover.edu/courses/exerpts/165acton.html) and Acton-Creighton Correspondence – Online Library of Liberty, [oll.libertyfund.org/titles/2254](http://oll.libertyfund.org/titles/2254). These sites were accessed on 15 March 2016. Mandell Creighton (1843-1901) was a British historian and a Bishop of the Church of England.
- <sup>24</sup> See The Phrase Finder at [www.phrases.org.uk](http://www.phrases.org.uk). Site was accessed on 10 February 2016.
- <sup>25</sup> Charles Manga Fombad, "Strengthening constitutional order and upholding the rule of law in Central Africa: Reversing the descent towards symbolic constitutionalism", *African Human Rights Law Journal*, Vol. 14, No. 2, 2014, p. 413.
- <sup>26</sup> Charles Manga Fombad, pp. 412-414.
- <sup>27</sup> The Code of Hammurabi is a well-preserved Babylonian law code of ancient Mesopotamia dating back to about 1754 BC. The Code, one of the oldest deciphered writings of significant length, was associated with Hammurabi, the sixth King of Babylon (present day Iraq). The Code had 282 written laws which included the famous 'an eye for an eye; a tooth for a tooth' law. The laws were not written on paper but were carved into a tall, black stone which still exists in the Louvre Museum in Paris, France. The Code was discovered by French archaeologists in 1901 while excavating the ancient city of Susa (in present day Iran) and its translation was published by Jean-Vincent Scheil in 1902. See William D. Thomas, *What is a Constitution?* (London: Gareth Stevens Publishing, 2008), p. 4. For all the 282 laws contained in the Code of Hammurabi, see L.W. King (translator), "The Code of Hammurabi", Avalon Project at Documents in Law, History and Diplomacy, Yale Law School, 1974.

- <sup>28</sup> *Magna Carta* or «great charter,» is the charter of English liberties granted by King John in 1215 and modified during the reign of Henry III in 1216, 1217 and 1225. This document is the first systematic elaboration of the fundamental idea of rule by law, and one of the first examples in Western Europe of appeal to written law as opposed to custom. The barons of England forced *Magna Carta* on King John because he abused his royal power. The barons rebelled against him in 1214 and after a brief civil war, he capitulated to the barons' demands, and in 1215 at Runnymede he granted *Magna Carta*, which became a symbol of liberty and constitutional government for future generations. *Magna Carta* is the first modern statement of the idea that a ruler is bound by the rule of law. For details, see J.C. Holt, *Magna Carta* (Cambridge: Cambridge University Press, 1991), p. 461.
- <sup>29</sup> For details, see *What is a Constitution?* p. 4.
- <sup>30</sup> Debrett Ficcadilly, *What is Liberty? What is Constitution? Volume 10* (London: 1802), p. 15.
- <sup>31</sup> William D. Thomas, *What is a Constitution?* p. 3.
- <sup>32</sup> Charles M. Fombad, "Strengthening constitutional order and upholding the rule of law in Central Africa: Reversing the descent towards symbolic constitutionalism", p. 415
- <sup>33</sup> Transparency International, *Corruption Perceptions Index 2015*
- <sup>34</sup> "Radical Protest in Constitutional Democracy", cfp Abstract, Centre for Citizenship, Civil Society and Rule of Law University of Aberdeen at [www.abdn.ac.uk/cisrul](http://www.abdn.ac.uk/cisrul). This site was assessed on 2 April, 2016.
- <sup>35</sup> Luciana Magalhaes & Rogerio Jelmayer, "Mass Protest Across Brazil Reflect Anger at President", *The Wall Street Journal*, 15 March 2015.
- <sup>36</sup> Vitalie Calugareanu & Robert Schwartz, "Spring again in the Republic of Moldova: Mass Protest against Corruption", *The Stakeholders*, 22 May 2015.
- <sup>37</sup> Brianne Berry & Laura V. Natera, "Protests in Honduras against high level Corruption", Council on Hemispheric Affairs, 22 July 2015.
- <sup>38</sup> *theguardian* (London), 7 August 2015.
- <sup>39</sup> Paul Herman, "South Africa: Hundreds March Against Corruption in Cape Town", *New Statesman*. Retrieved from [www.newstatesman.com](http://www.newstatesman.com) on 28 March 2016.
- <sup>40</sup> Peter Clotey, "Declare Corruption a National Disaster..." Retrieved from [www.voanews.com/content/declare-corruption-national-disaster-kenyan-group-tells-government](http://www.voanews.com/content/declare-corruption-national-disaster-kenyan-group-tells-government) on 7 April 2016.
- <sup>41</sup> Mwangi S. Kimenyi & John M. Mbak, "Africa's War on Corruption – Foresight Africa: The Continent's Greatest Challenges and Opportunities for 2011", The Brookings Institution, p. 31.
- <sup>42</sup> International Anti-Corruption Academy, "Anti-Corruption Challenges – The Story of Africa" *IACALumnus*, Issue IV, August 2014, p. 6
- <sup>43</sup> Sarah Chayes, "Nigeria: Where Corruption and Insurrection go hand in hand", *Los Angeles Times*, 27 March 2014.
- <sup>44</sup> David Cameron, "Global Declaration Against Corruption", Policy paper delivered at the Anti-Corruption Summit held in London on 12 May 2016 retrieved from <https://www.gov.uk/government/topical-events/anti-corruption-summit-london-2016>. Site was accessed on 14 May 2016.
- <sup>45</sup> "More people now think Uhuru is more corrupt than Raila", *Kenya Today*, retrieved from [www.en.africatime.com/articles/more-people-now-think-uhuru-corrupt-raila](http://www.en.africatime.com/articles/more-people-now-think-uhuru-corrupt-raila). Uhuru Muigai Kenyatta, serving as the 4<sup>th</sup> President of Kenya, is the son of Jomo Kenyatta (1894-1978), the first Prime Minister (1963-64) and President (1964-78) of independent Kenya.
- <sup>46</sup> *Kenya Today*
- <sup>47</sup> *Daily Nation*, 15 August, 2013.
- <sup>48</sup> Osoro Washington, "Memo to Kenyans: We are who we elect into office", Kenya: 2015 in Review, *The World Post* retrieved from [www.huffingtonpost.com/washington-osoro/kenya-2015-in-review](http://www.huffingtonpost.com/washington-osoro/kenya-2015-in-review) on 6 April, 2016.
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- <sup>50</sup> Statement by His Excellency, Hon. Uhuru Kenyatta, C.G.H., President and Commander in Chief of the Defence Forces of the Republic of Kenya on a National Call to Action Against Corruption, State House, Nairobi, 23 November, 2015. Retrieved from <http://newsrescue.com/Kenya-uhuru-kenyatta-declares-corruption-national-security-threat> on 8 April 2016.
- <sup>51</sup> See the *Standard Digital* and *Dawn* of 31 October 2013 for details regarding the website – [www.president.go.ke](http://www.president.go.ke).
- <sup>52</sup> Thomas Barrabi, "Kenya Corruption Probe: Government Ministers Step Down at President Uhuru Kenyatta's Request", *IB Times*, 28 March, 2015.
- <sup>53</sup> *Daily Nation*, 15 September 2015
- <sup>54</sup> A case in point is that of Chief Diepreye Alamiyeseigha, a former governor of Bayelsa State, south-south Nigeria, who probably siphoned more than \$5 billion public funds between May 1999 and September 2005. Alamiyeseigha was elected Governor of Bayelsa State in May 1999 and was re-elected in 2003. His second term of office was intended to run until May 2007, but was cut short by impeachment on allegations of corruption on 9 December 2005. Investigations by the Proceeds of Corruption Unit of the London Metropolitan Police led to his arrest in September 2005 and was charged with money laundering. At the time of his arrest, the Metropolitan Police found about £1m cash in his London home. After three weeks in custody, Alamiyeseigha was released on bail. He jumped bail and returned to Nigeria in November 2005. Following his impeachment by the Bayelsa State House of Assembly, he was arrested by the Economic and Financial Crimes Commission (EFCC) and charged for corruption. In July 2007, Alamiyeseigha pleaded guilty to all the charges against him, sentenced to two years in prison from the day of his arrest two years earlier and released a few hours later. On 12 March 2013, the National Council of State, presided over by former President, Goodluck Jonathan, granted Alamiyeseigha presidential pardon. Jonathan described Alamiyeseigha as his 'political benefactor'. In a report on Nigeria entitled 'Corruption and Lack of Transparency in Government', the United States of America criticized Alamiyeseigha's pardon

- and condemned the impunity ‘with which officials of the Nigerian government... frequently engaged in all forms of corrupt practices’. See *ThisDay*, 1 March 2014.
- <sup>55</sup> Lindsey Carson, “Institutional specialisation in the battle against corruption: Uganda’s Anti-Corruption Court”, *The Public Sphere Journal*, 2015 LSE Africa Summit Special Issue, p. 19. Yoweri Kaguta Museveni has been President of Uganda since 29 January 1986. He was sworn in for his fifth term on 12 May, 2016.
- <sup>56</sup> *Ibid*, pp. 19-20.
- <sup>57</sup> Inyasha Chivara, “Willowgate Report”, *Mail & Guardian*, 27 September 2013.
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- <sup>62</sup> G.J. Idang, *Nigeria: Internal Politics and Foreign Policy, 1960-1966* (Ibadan: Ibadan University Press, 1973), p. 67.
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- <sup>68</sup> Human Rights Watch, “Letting the Big Fish Swim: Failures to Prosecute High-Level Corruption in Uganda” 21 October 2013 retrieved from [www.hrw.org/report/2013/10/21/letting-big-fish-swim/failures-prosecute-high-level-corruption-uganda](http://www.hrw.org/report/2013/10/21/letting-big-fish-swim/failures-prosecute-high-level-corruption-uganda) on 29 May 2016.
- <sup>69</sup> *Ibid*
- <sup>70</sup> *Ibid*
- <sup>71</sup> Jean P. Gashumba, “Anti-Corruption Agencies in Africa: A Comparative Analysis of Rwanda, Sierra-Leone and Malawi”, M.A. Research Paper submitted to the Faculty of Law, University of the Western Cape, South Africa, October 2010, pp. 21-32.
- <sup>72</sup> See E.O. Ojo, “Nigeria, 1914-2014: From Creation to Cremation?” *Journal of Oriental and African Studies*, Vol. 24, No. 10, 2015, Athens, Greece and A.T. Ajayi & E.O. Ojo, “Democracy in Nigeria: Practice, Problems and Prospects”, *Journal of Developing Country Studies*, International Institute of Science, Technology and Education, USA, Vol. 4, No. 2, 2014, pp. 107-125.
- <sup>73</sup> The 2003 African Union Convention on Prevention and Combating Corruption defines a Public Officer as “any official or employee of the State or its agencies including those who have been selected, appointed or elected to perform activities or functions in the name of the State or in the service of the State at any level of its hierarchy”, Article I, p. 4.
- <sup>74</sup> See *Vanguard* or any Nigerian daily of 21 March 2014 for details
- <sup>75</sup> “What can be done to curb corruption in Cameroon?” *Cameroon Post*, 30 October, 2009.
- <sup>76</sup> “African Union Convention on Prevention and Combating Corruption”, Article 1, p. 2. The Convention was adopted by the 2nd Ordinary Session of the Assembly of the African Union on 11 July 2003 in Maputo, Mozambique. It consists of 28 Articles all devoted to combating corruption in Africa.
- <sup>77</sup> Transparency International listed Somalia, Sudan, South Sudan, Libya and Eritrea as five of the ten most corrupt countries in the world in 2014. The ten least corrupt countries were Denmark, New Zealand, Finland, Sweden, Norway, Switzerland, Singapore, Netherlands, Luxemburg and Canada. In 2015, six of the ten most corrupt countries in the world were from Africa – Somalia, Sudan, South Sudan, Angola, Libya and Guinea Bissau. See Transparency International, 2014 & 2015 Corruption Perceptions Index.
- <sup>78</sup> For a critique of the African Union Convention, see Kolawole Olaniyan, “The African Union Convention on Preventing and Combating Corruption: A Critical Appraisal”, *African Human Rights Law Journal*, Vol. 4, 2014, pp. 74-92.
- <sup>79</sup> *The Christian Science Monitor*, October 2013.
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- <sup>81</sup> Transparency International, “Global Corruption Report 2007”, p. 4. For a detailed examination of the impact of judicial corruption, see Amélie Arvidsson & Emilie Folkesson, “Corruption in the Judiciary: Balancing Accountability and Judicial Independence”, M.A. Thesis, Department of Law, Psychology and Social Work, Örebro University, Sweden, Spring, 2010, particularly pp. 8-14.
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- <sup>92</sup> *Ibid*
- <sup>93</sup> Githu Muigai, “Kenya Country Statement at the London Anti-Corruption Summit”. Githu is the Attorney General of the Republic of Kenya.

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## **Противодействие систематической коррупции в Африке: оценочное, конфронтационное или конституционное?**

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*Факт наличия системной коррупции в Африке является неопровержимым. Неудивительно, что данная тема привлекла довольно большое внимание со стороны научного сообщества. Таким образом, утверждение, что коррупция является самым большим препятствием на пути социально-политического и экономического развития Африки, является значительным преуменьшением и лишь констатирует очевидное. По всей Африке выделяются невероятно большие денежные суммы, достаточные для проведения свободных, справедливых и заслуживающих доверия выборов, оснащения вооруженных сил и полиции, для обеспечения оптимальной производительности, модернизации сельского хозяйства, реформирования образования, реанимации инфраструктуры, оживления экономики, модернизации промышленного сектора и достижения научно-технического прогресса, которые в итоге оседают в частных карманах. Последствиями этого являются обесценившаяся экономика, немобильные технологии, разрушенная инфраструктура, плохо оснащенные вооруженные силы, повсеместная нищета и беспрецедентный разбой и бандитизм. Целью данной статьи не является продолжение дискуссии о происхождении, теориях и причинах коррупции в Африке. В статье рассматриваются варианты действий, которые могли бы наилучшим образом противостоять системной коррупции в Африке. Утверждается, что ни оценочный фактор, ни конституционные положения не помогут в борьбе с коррупцией в Африке. Таким образом, только изменения в отношении к проблеме или в вариантах противодействий позволят освободить континент от системной коррупции. Для анализа данных, полученных в ходе исследования, использовались описательный и аналитический метод исторического исследования.*

*Ключевые слова:* Африка, коррупция, аналитический метод, исторический метод.

*Научная специальность:* 23.00.00 – политология.

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