eJournal of Tax Research

CONTENTS

Atax
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The impact of corruption on tax revenues, tax compliance and economic development: Prevailing trends and mitigation actions in Africa

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Abstract

The impact of corruption on development is well-documented and a multitude of international instruments and domestic laws are in place to address corruption. Despite these initiatives, the prevailing trend across Africa is that socio-economic decisions by government are informed by the interests of patronage networks that are further advanced through institutional weaknesses. The pervasiveness of these conditions has a severe impact on domestic resource mobilisation because it complicates enforcement efforts on the part of tax authorities. Over and above increasing their own efficiencies, tax authorities are thus under pressure to identify and implement mitigating actions to address the impact of corruption in conjunction with other stakeholders.

Keywords: Africa, corruption, fraud, regulation, tax evasion

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1.   INTRODUCTION

The global cost of bribery alone is estimated to range from USD 1.5 to USD 2 trillion per year (Lagarde, 2017). Indirect effects of corruption are often far-reaching and include reductions in the delivery of public services, increased poverty and difficulties in achieving social welfare to the benefit of nations (African Tax Administration Forum, 2017, p. 100). Corruption also impacts negatively on the administration of the tax system where tax officials accept or solicit bribes in exchange for lowering tax assessments. As such, corruption within tax administrations is a serious concern for many jurisdictions and can involve practices such as paying bribes in exchange for understating liability and avoiding registration, or extorting taxpayers through threats of over-assessment. According to the International Monetary Fund, the resulting damage to tax compliance, revenue collections and respect for the wider tax system can be chronic, and the 'effects in shaping its real incidence profound' (International Monetary Fund, 2015, p. 17).

The questions this article seeks to address are: (i) what are the prevailing corruption trends in Africa? (ii) what is the impact of these trends on domestic resource mobilisation? and (iii) are regulatory frameworks and preventative measures effective in addressing corruption? In answering these questions, 10 African countries have been randomly selected and analysed against the backdrop of the Transparency International Corruption Perception Index (CPI). The analysis takes into account the CPI country ratings assigned over a four-year period, prominent media reports on corruption, and the regulatory framework the selected countries have in place to combat corruption. In addition, preventative measures available to countries are highlighted and consideration is given to cultural aspects that fuel corruption.

The article shows that corruption impacts negatively on the operating environment in which tax administrations collect revenue in that compliance levels decline and tax evasion increases. The analysis in this article suggests that in order to improve the operating environment, African governments should promote transparency and accountability, encourage and protect whistleblowers and promote leadership in the service of citizens. Without these steps, institutions dominated by patronage networks will fail to detect flows of funds that escape taxation, either through corruption, money laundering, tax evasion or avoidance strategies.

The article is organised as follows: section 2 addresses some definitional aspects of corruption and tax evasion and explores the linkages between the two concepts. Section 3 explores prevailing trends of corruption in randomly selected African countries whilst sections 4 and 5 provide an overview of regulatory and preventative measures available to countries to address corruption. Section 6 concludes.

2.   THE RELATIONSHIP BETWEEN TAX EVASION AND CORRUPTION

In 1963 Nicholas Kaldor asked the question, 'when will underdeveloped countries learn to tax?', and his answer was that there is sufficient capacity in economic and administrative terms for such countries to tax more – whether a country did so, therefore, was primarily dependent on its political institutions (Kaldor, 1963, quoted in Bird, Martinez-Vazquez & Torgler, 2008, p. 56). The main reason why developing countries do not tax more may be that it is not in the interest of those in power who

control political institutions to do so. It can therefore be argued that good governance of institutions may result in a higher tax effort. Bird, Martinez-Vazquez and Torgler (2008, pp. 58-66) find that an 'encompassing and legitimate state is an essential precondition' to an adequate tax system and '[i]f taxpayers perceive that their interests (preferences) are properly represented in political institutions', they will be more willing to contribute to the state through taxes.

Corruption, when applied in a civil service context, is defined variously as: (i) the 'unauthorised trading of one's entrusted authority' (Graycar, 2015); (ii) 'dishonest or illegal behaviour especially by powerful people';[2] (iii) the 'abuse of entrusted power for private gain';[3] or (iv) an act done with intent to give some advantage inconsistent with official duty and the rights of others.[4] Through its fourth *African Governance Report*, the United Nations Economic Commission for Africa (UNECA) challenges the traditionally narrow definition of corruption[5] as placing too much emphasis on public officials, while neglecting tendencies of corruption that are widespread in the private sector. UNECA emphasises that it is important for policy-makers to understand the significance and implications of viewing corruption as a broader phenomenon wherein 'private agents share significant responsibility, and where many unethical acts, which can be regarded as corrupt, may not necessarily be illegal or located within the public sector' (United Nations Economic Commission for Africa, 2016, p. viii).

Tax evasion refers to illegal acts taken by individuals or companies to reduce their tax obligations that are legally due (Thuronyi, 2003, p. 154; Cordes, Ebel & Gravelle, 2005, p. 401).[6] The potential for both tax avoidance and evasion to arise is created with the negotiation of contracts where companies, seeking favourable terms in contractual arrangements, offer some benefit or payment to public officials. If the corrupt act that led to the conclusion of the favourable terms is not detected, the taxpayer entity can benefit in perpetuity from structured transactions based on a

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[2] Merriam-Webster Dictionary.

[3] Transparency International: <https://www.transparency.org/what-is-corruption>.

[4] Duhaime's Law Dictionary: < http://www.duhaime.org/LegalDictionary/C/Corruption.aspx>.

[5] That is, 'abuse of public office for private gain'.

[6] Tax evasion or tax fraud is a criminal offence and is punishable by criminal sanction. Specifically, what behaviour constitutes tax evasion depends on the criminal laws of each country. According to De Koker (2011, para. 19.1), 'tax evasion is characterized by fraud and deceit'. It refers to all those activities deliberately undertaken by a taxpayer to free him or herself from the tax that the law charges upon the taxpayer's income, such as the falsification of returns, books and accounts and the conclusion of sham transactions. Alm, Martinez-Vazquez and McClellan (2016, p. 147) list the following: underreporting income, overstating deductions, exemptions or credits, failing to file appropriate tax returns; underreporting sales or engaging in barter to avoid taxes. Tax avoidance refers to any activity aimed at reduction of tax that is not criminal in nature or that involves a situation where the taxpayer has arranged his or her affairs in such a legal manner that the taxpayer has either reduced his or her income or has no income on which tax is payable (Thuronyi, 2003, p. 152). Thuronyi points out that the term is used to connote tax minimisation behaviour that skirts the limits of the law or that is in fact legally ineffective in reducing the taxpayer's liability. Tax avoidance involves situations where '[t]he taxpayer will typically have structured a transaction that qualifies for favorable tax treatment under the literal language of the statute. The taxpayer may argue that the statutory language is clear and entitles him to the treatment sought'. The counter argument is that 'what the taxpayer is trying to do may be inconsistent with fairness in taxation, and [courts] may therefore be inclined to disallow the benefits if there is a sound legal basis to do so' (Thuronyi, 2003, pp. 150-151). Thuronyi also points out that tax law often treats transaction differently that are similar in economic terms. Taxable transactions are legally defined events. By manipulating the transactions that they engage in, taxpayers can legally reduce the tax that they are required to pay which exploits the legal definition of taxable income based on legal categories.

purportedly 'legal' contract. Alm, Martinez-Vazquez and McClellan (2016, pp. 161-162) find that '[c]orruption enables tax evasion by making it easier for taxpayers to hide their income, while tax evasion can contribute to corruption by creating additional opportunities for corruption to thrive'; in addition, 'larger bribes result in higher levels of evasion', thus supporting the argument that 'tax compliance is dependent on the quality and honesty of the tax enforcers'.

Although corruption and outright tax evasion are distinct concepts, various studies show that they are interrelated and together bring about lower tax revenues and compliance levels and a range of economic and fiscal distortions (Attila, 2008, p. 3 and references there cited). Attila describes three mechanisms that link corruption and tax evasion: first, corruption decreases public revenues available for 'productive public investments in areas such as roads, health and education'; secondly, through distortions in the tax structure corruption reduces growth; and, thirdly, as a possible countervailing impact, 'by allowing economic agents, in particular private companies to reduce their fiscal burden', an indirect 'positive effect' growth may be found if the unpaid revenue is utilised in productive investment spending (Attila, 2008, p. 3). It has been noted, however, that corruption also imposes costs on the private sector by weakening competitiveness and crowding out local small and medium sized companies in favour of the state-owned sector (Centro de Integridade Pública, 2016, pp. 1-2) and leading to the imposition of higher rates of tax under an eroded tax base (Asher, 2001). Corruption also deters foreign direct investment because major investors' are subject to anti-corruption codes at various governmental and international levels (Centro de Integridade Pública, 2016, pp. 1-2).

In the above context, Djumashev (2007, p. 5) identifies two distortions created by corruption: (a) corrupt tax officers 'conceal tax evasion for the bribes paid by detected tax evaders'; and (b) corrupt officials 'abuse the authority given to them by attaching excessive red tape [that has no productive value to companies] to the public services they are supposed to provide'. In effect a share of the profits private companies is diverted from the lawful channels of the economy by means of this quasi-tax the level of which becomes greater as the quality of the public sector institutions declines.

The willingness of companies to evade taxes may vary in accordance with tax officials' willingness to accept bribes (Alm, Martinez-Vazquez & McClellan 2016, p. 146). According to the World Bank, the causes of corruption are always related to the country context in which the corruption takes place and is particularly also linked to the imposition of government policies that generate economic rents. The model proposed by the World Bank envisages opportunity for corruption as a function of the size of the rents under a the control of a 'public official',[7] the discretion that official has in allocating those rents, and the accountability imposed on that official (World

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[7] The *United Nations Convention against Corruption* (UNCAC), provides that the term 'Public official' means: '(i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a "public official" in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, "public official" may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party'. *United Nations Convention against Corruption*, opened for signature 9-11 December 2003, 2349 UN Treaty Series 41, entered into force 14 December 2005, art 2(a).

Bank, 1997, ch. 2; for a recent study finding an impact of mining on local corruption in Africa, see Knutsen et al., 2017). This abuse can take a variety of forms including asking bribes for the issuing of licences of any kind, in awarding contracts or in granting exemptions, diverting funds from the fiscus, by selling government property at black market prices or manipulating tender processes in favour of politically connected persons or entities, and also creates an uncontrolled environment for smuggling and diversion of revenues from the treasury to other ministries.[8]

Corruption, like tax evasion, also promotes distrust in the government, and creates equity costs by imposition of additional tax burdens that are arbitrary and capricious (Asher, 2001, p. 5). Although traditional analysis generally refers to petty corruption, grand corruption and state capture (Graycar, 2015, p. 88), six categories of corruption have also more particularly been identified in the literature that include: administrative corruption, grand corruption, political corruption, petty corruption, patronage/paternalism and being a 'team player' (Purohit, 2007, p. 285). Because of the complexity in defining corruption, Graycar (2015, p. 88) proposes the use of an analysis framework to understand what events lead to corruption in the public sector. This framework is used to analyse different behaviours that manifest through different activities, within different sectors of industry and in different places (countries/regions). Accordingly, in the next section of this article, examination of reported corrupt activities in 10 African countries will show that the predominant forms of corruption, such as state capture, are driven by high-level politicians, mainly through the natural resources sector and through abuse of procurement processes.

3.   WHAT ARE THE PREVAILING TRENDS? THE GOOD, THE BAD AND THE UGLY

While as discussed in the previous section, corruption in a country's revenue administration can have severe and widespread repercussions, because it is difficult to measure hidden and often unrecorded activity, a precise measure is not possible (United Nations Economic Commission for Africa, 2016, p. 60; Lagarde, 2017). As a result, various methodologies are employed to derive indications of the scale of corruption, which apart from reports in the media include: perception-based indices (such as the Transparency International Corruption Perceptions Index[9]); surveys of involved parties such as bribe payers; estimates from direct observation (e.g., record-keeping by bribe payers and surveillance by law enforcement); estimation by subtraction; and estimates from market interference (e.g., if a major shareholder is a politician, company share value increases) and through official audits (Olken & Pande, 2012, pp. 5-12).

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[8] In Zimbabwe, for example, the collection of revenue in the diamond fields is controlled by the minerals department. Production in the Marange fields started in 2006, and estimates of its potential ranged from 25 to 36 million carats per year, with total gross revenue of USD 1-2 billion, which could be sustained for 14 years (IMF, 2012, p. 42). However, the 2013 national budget for Zimbabwe shows that Treasury only received USD 41 million from diamond mining in 2012 (Ministry of Finance, Zimbabwe, 2012, p. 231).

[9] Critics of the Corruption Perception Index point out that it only provides a simplified view of corruption and that it disregards the involvement of Western countries involved in large-scale corruption in other jurisdictions (Åkesson & Orjuela, 2017, p. 3). Bauman (2016, p. 467) finds, in the case of Tunisia, that the Corruption Perception Index methodology primarily reflects the needs of foreign investors and that it 'fails to show how the production of the CPI is embedded in a wider global political economy'.

A random selection of 10 African countries' levels of corruption as measured by the Corruption Perceptions Index over a four-year period shows that the prevailing trend in Africa is that corruption is increasing (see Table 1). Of the 10 countries selected, seven showed increased levels of corruption, one remained unchanged and two showed slight improvement. The level of corruption in low-scoring countries (i.e., high corruption), such as Angola, is described as rampant corruption; the archetypal captured state. In higher scoring countries (lower corruption), such as South Africa, it is described as pervasive, even systemic. Some key questions following from this data are, for instance, what forms of corruption drive this prevalence and are there measures in place to address corruption?

Table 1: Transparency International Corruption Perception Index 2016

Country	2016	2015	2014	2013	Global Rank[10]	Change
Angola	18	15	19	23	164	⬇
Botswana	60	63	63	64	35	⬇
DRC	21	22	22	22	156	⬇
Kenya	26	25	25	27	145	⬇
Malawi	31	31	33	37	120	⬇
Mozambique	27	31	31	30	142	⬇
Nigeria	28	26	27	25	136	⬆
South Africa	45	44	44	42	64	⬆
Tunisia	41	38	40	41	75	⬌
Uganda	25	25	26	26	151	⬇

Source: Transparency International, Corruption Perceptions Index 2016.

A media search of these 10 African countries shows an apparent prevalent trend of vast amounts of money being channelled to ministers and senior government officials through corrupt practices. There are also some examples of good practices that have emerged on the continent as illustrated below.

3.1   Angola

Literature describes Angola as a country that suffers from both a resource curse and a form of neopateralism in which there is little distinction between private and public sector (Arko-Cobbah & Olivier, 2016, p. 163). When the civil war ended in Angola in 2002, large-scale corruption, already in existence during the war, was fuelled by post-war economic growth. Politicians and heads of the armed forces enriched themselves through trade in arms, oil and diamonds. Sonangol, the Angolan oil concessionaire, came to function as a parallel state coffer ensuring the prosperity of the elite (Åkesson & Orjuela, 2017, p. 8). Roy (2016, p. 8) finds that in post war Angola, control over resources (especially rough diamonds) was assured through exclusionary strategies

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[10] Ranking is done on a scale of 0 (highly corrupt) to 100 (very clean).

that rest on corrupt practices in the extraction of resources and the consequent distribution of cost and benefits associated with it.

For the period 2002 to 2015, USD 28 billion remains 'unaccounted for' from government budgets, with 35 per cent of money spent on road construction alone having disappeared. For the same period, Angolan companies and individuals reportedly invested USD 189 billion in foreign jurisdictions through often 'opaque transactions' (Onishi, 2017, citing research by the Catholic University of Angola's Center for Studies and Scientific Research). In 2015, Angola's Vice President, Manuel Vicente, was charged with corruption and money laundering in relation to his role as CEO of the national oil company, Sonangol and alleged payments of bribes to a Portuguese magistrate and prosecutor (Shaban, 2017).

3.2   Botswana

Botswana has featured consistently as the top performing country in Africa from an anti-corruption perspective as reflected in the Corruption Perceptions Index. Its success is ascribed to the implementation of ethics and anti-corruption initiatives that are supported by the country's leaders. According to Mphendu and Holtzhausen (2016, p. 237), the Botswana experience is instructive to other countries because it holds important lessons about 'the value of socially rooted leadership'. Most of the success of anti-corruption reforms in Botswana is attributable to political will that is supported by a dedicated anti-corruption agency that has been able to translate political talk into action (Mphendu & Holtzhausen, 2016, p. 237). However, the country still faces challenges such as a 'lack of transparency, deeply entrenched patronage networks, conflicts of interest and nepotism, together with concerns over judicial independence' (Badham-Jones, 2014). According to Ulrikson (2017, p. 88) this translates into redistributive policies that largely promote the interests of the political elite while the loyal rural poor only receive supplementary benefits in the form of 'minimal social transfers and negligible taxation'. Nevertheless, Botswana highlights a different experience to many other African countries and this aspect highlights the need to consider corruption in the context of a country's historical, political and economic situation (Warf, 2017, p. 27).

3.3   The Democratic Republic of Congo (DRC)

The DRC is described as a country where 'institutional rules and regulations to guide the allocation and utilization of the country's natural resources either do not exist or they have been enfeebled by years of conflict and bad governance' (Kongolo & Zamberia, 2016 p. 183). According to these authors, unregulated extractive activity has fuelled conflict and a failure by the government to create an environment whereby the citizens of the country benefit from resource extraction (2016, p. 202).

The DRC is reportedly losing one-fifth of all of mining revenues to corruption and mismanagement (Al Jazeera, 2017, citing research by Global Witness). According to Global Witness, an estimated USD 750 million in revenue paid to the Congolese revenue authority and the state-owned mining company (Gécamines) vanished between 2013 and 2015. Reportedly some of these funds were distributed among corrupt networks linked to the DRC president (Al Jazeera, 2017).

3.4   Kenya

Corruption in Kenya is described as 'endemic' and 'pervasive, dominating the provision of public services, the formation of contracts and, of course, political life' (Hope, 2017, p. 62). According to Hope (2017, p. 63), corruption persists in Kenya primarily because those in power benefit from corruption and the existing governance institutions lack both the will and capacity to stop them from doing so. For example, the office of the president was drawn into allegations of misappropriation of funds amounting to USD 50 million that were intended for use for free maternity care in hospitals across the country. Reportedly, an electronic payment system at the Ministry of Health was manipulated to make double payments to vendors and to divert funds to individuals and private companies that are associated with the president (Osiro [2016]). According to Hope (2017, p. 63), the main reason for high levels of corruption is the deliberate undermining of the basic institutions that underpin and support the rule of law and good governance.

3.5   Malawi

In August 2017, Malawi police announced that an arrest warrant for former president, Joyce Banda, was issued for her suspected involvement in the 2013 'Cashgate' scandal (Masina, 2017). At the centre of the scandal was a computer-based financial information storage system that was exploited by officials to divert funds from the *fiscus*. Reportedly, an estimated USD 250 million may have been lost to this fraud scheme where payments for services that were never rendered, were made. (Harawa, 2014).

In 2017, a former cabinet minister was charged with abuse of office for his role in 'Maizegate' by facilitating a maize procurement contract for the purchase of maize from Zambia, involving reported kickbacks of over USD 100,000 (Masina, 2017; Reuters, 2017b).[11]

'Cashgate' led to the suspension of foreign aid and consequently the Malawian government has been struggling to implement badly needed infrastructure and modernisation projects. With up to 40 per cent of Malawi's annual budget being funded by donors (Harawe, 2017), domestic resource mobilisation has become an imperative for the country.

3.6   Mozambique

The estimated average annual cost of corruption (based on a sample of 36 cases) over a 10-year period (2004-2014), is estimated at USD 4.9 billion which is equivalent to around 30 per cent of the country's 2014 GDP and 60 per cent of the 2015 budget (Centro de Integridade Pública, 2016, p. 1). Estimates also show that the annual value of bribes paid in the customs area alone amounted to USD 108 million, with a significant secondary impact of corruption on revenue (through a loss of tax revenue) estimated at 11.6 per cent and the economy (the loss of over 17 per cent of the value added to the Mozambican economy) (Centro de Integridade Pública, 2016, pp. 1-2).

Whilst Mozambique has implemented anti-corruption laws, Levy and Williams (2014, p. 237) point out that for these to succeed, a supporting legal and practical framework

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[11] Reportedly, import documents show that the government of Malawi had been overcharged by USD 345 per ton, instead of the real worth of the consignment, estimated at USD 215.

is needed that not only prosecutes and sanctions corrupt practices, but also 'attempts to change culturally entrenched attitudes, reduce the opportunities for abuse and increase the likelihood that offences are detected and punished'. Also, like Malawi, the scale of corruption affects donor programs and transparency in the budgeting process has, for example, emerged as a key aspect for measuring accountability in how donor funding is spent (Schmitt, 2017, p. 246).

3.7   Nigeria

Nigeria has been the victim of many examples of grand corruption (Anaedozie, 2016). For example, in 2014 it was reported that USD 20 billion was not remitted to the federal government by the Nigerian National Petroleum Corporation (NNPC). Between 2011 and 2015, the NNPC reportedly withheld an estimated USD 25 billion in public funds and reportedly allowed them to be siphoned off to a variety of private interests (Ugbuaja, 2017, p. 14).

In order to change its fortunes as one of the most corrupt countries on the African continent, the Chief Justice of Nigeria has revealed plans in 2017 to establish special courts for the sole purpose to hear and promptly resolve corruption and financial crime cases (Inyang, 2017). Another measure aimed at addressing corruption is an Audit Bill which aims to guarantee the independence of the office of the Auditor-General and enhance transparency and accountability across all levels of the Federal Government (Nwachukwu, 2017, p. 6). It is also noteworthy that Nigeria's Federal Inland Revenue Service (FIRS), has instituted an Anti-Corruption and Transparency Unit to watch for corrupt practices (African Tax Administration Forum, 2017, p. 106).

Nigeria is also attempting to diversify its economy in an effort improve domestic resource mobilisation. By focusing on agriculture that is more decentralised than the oil industry, the government is attempting to lift a large section of its population out of poverty. Because agriculture is driven by private enterprise of citizens as opposed to narrow self-interest pursuits of many government officials, it may be less prone to corruption (Ugbuaja, 2017, p. 15).

3.8   South Africa

Despite the vast range of laws in place to discourage and punish corruption, media reports indicate that government officials, audit and advisory firms and large multinational corporations appear ambivalent to such laws and continue to engage in arrangements that are not only illegal but morally reprehensible. Illustrative of this point are recent activities of a big four auditing and advisory firm in South Africa. Amidst political infighting and factionalism within South Africa's ruling party and allegations of state capture by the Guptas, a family described as being very close to the country's president, KPMG South Africa found itself drawn into this political cauldron through: (a) a commission to conduct an investigation for the South African Revenue Service (SARS), and (b) by its association with a Gupta-related entity (KMPG SA, 2017).

With regard to the first issue, the company found itself in a position where it produced an 'investigative' report with specific recommendations which was not as a result of its own work. In other words, it rubber stamped a narrative that was compiled by another firm of attorneys (amaBhungane & Scorpio, 2017a). This KMPG endorsed narrative, was mainly used to discredit and replace a serving finance minister. The

collateral damage of these actions was the South African economy (rocked by a steep depreciation in currency value and credit downgrades) and democracy, described by Poplak (2017) as giving rise to 'the wholesale destruction of the democratic experiment in the service of unfettered rent-seeking'. De Vos (2017) correctly makes the point:

> It [KPMG] provided its alleged integrity and auditing skills to endorse (and give credibility to) legal 'findings' it had not investigated, had no skills to assess, and had no way of knowing whether they were correct. Like many other South African companies, it decided to please its powerful client with deep pockets, instead of acting in an ethical and legally appropriate manner. Greed trumped any sense of right and wrong.

On the second issue, KPMG provided tax advisory services to a Gupta-controlled entity that was implicated in the abuse of taxpayer funds.[12] In short, wedding expenses (for hosting a wedding of a Gupta family member) were covered by Linkway Trading (a Gupta entity) which were reimbursed by Accurate Investment, purportedly an unrelated entity based in Dubai. The media flagged two issues in this regard: (a) no explanation was offered in the audited financial statements as to reasons why a 'supposedly unrelated third party in Dubai' would pay for the Guptas' USD 2.3 million (ZAR 30 million) wedding bill;[13] and (b) no reason was provided as to why a wedding was deemed a bona fide business expense (amaBhungane & Scorpio 2017a). It has been noted that the net effect of this 'accounting sleight-of-hand' was that the wedding was effectively paid for by taxpayers from funds diverted from the Free State government (through an 'empowerment project' involving another Gupta-related entity) (amaBhungane & Scorpio, 2017b). Reportedly, the Gupta family paid no income tax on this windfall and any income was offset against Linkway Trading's expenses, resulting in it receiving zero taxable income from its Free State windfall.

While the above example illustrates complicity of private and public sector corruption, instances of grand corruption keep emerging in South Africa that may bring into question the 'improved' Corruption Perception Index rating assigned to the country.[14]

3.9   Tunisia

Government failure to address corruption in the face of rising inequality has led to increased public demand for responsive and accountable government. In Tunisia it triggered social unrest and gave rise to the Arab Spring (United Nations Development Programme, 2014, p. 13). Murphy and Alba (2017, p. 4) describe this political change

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[12] Its senior partners reportedly also had a close relationship with the Gupta family as evidenced by their reported attendance at a lavish wedding (amaBhungane & Scorpio, 2017a, 2017b).

[13] The items for which Linkway invoiced Accurate reportedly ranged from ZAR 13,086 for chocolate truffles to ZAR 2.3-million for scarves, ZAR 247,848 for fireworks and ZAR 13.9-million for 'event services'. Inclusive of VAT, Linkway's bill totalled a perfectly round ZAR 30 million (rounded numbers being an established audit risk indicator). It was further noted that 'this invoice is the equivalent of USD 3,333,400' (amaBhungane & Scorpio 2017b). According to the report, a junior auditor found that these [wedding-related] costs were most probably not incurred in the production of Linkway's income.

[14] For example, alleged misappropriation of an estimated ZAR1 billion in public funds by the State Security Agency (SSA), fraud and corruption in the Passenger Rail Agency of South Africa (PRASA) estimated at ZAR 2.5 billion, fraud and corruption in the energy parastatal (ESKOM) in excess of ZAR 2 billion and alleged corruption and procurement irregularities in the South African Information and Technology Agency (SITA) and the South African Police Service (SAPS) amounting to an estimated ZAR 6.1 billion.

as an 'overthrow of a pro-Western kleptocratic autocracy and the persistence of economic relationships between international capital and Tunisian economic operators developed in obscurity during the former regime'.

In 2017, Tunisia's parliament approved a law that protects officials accused of corruption during the rule of former President Zine El-Abidine Ben Ali from 1987 to 2011. This triggered a range of protests by activists and the opposition (Reuters, 2017a). The government argues that the measure can ensure that business people are able to inject their fraudulently obtained riches back into the local economy. According to estimates, USD 3 billion could reportedly find its way into the legally-taxed economy (Al Jazeera, 2017). It can be argued that while this approach may secure short-term revenue, it may have a damaging impact on state building that is dependent upon governments' ability to constructively interact with their societies. Le Billon (2014, p. 770) observes that there is a close link between inequality, mistrust and corruption and that unequal power relations may 'reinforce particularised or in-group trust within privileged circles, which in turn exacerbates corruption'.

3.10   Uganda

Corruption in Uganda is systemic and cuts across many sectors. (Van Uhm & Moreto, 2017, p. 14). For example, the Ugandan Ministry of Energy and Mineral Development, mandated to oversee the mining sector,[15] is frequently the subject of allegations of mismanagement and corruption in relation to the payment of mining and prospecting royalties. The Office of the Auditor General reportedly found that the Ministry assessed royalties and awarded exports for 93 kilograms of gold worth 11.82 billion Ugandan shillings (USD 113 million). However, corroborative reports from the Customs and Excise Department of the Ugandan Revenue Authority indicated that 5,316 kilograms of gold, valued at close to 700 billion shillings (USD 6 billion), were in fact exported (Wambi, 2017). Thus, a deficit of approximately USD 5.8 billion needs to be explained.

Another sector affected by corruption is the trade in wildlife as reflected in the appointment of a commission of enquiry into the mismanagement of a USD 27 million World Bank loan that was meant to improve wildlife conservation (Van Uhm & Moreto, 2017, p. 15). According to the United Nations Office on Drugs and Crime (2016, p. 97), corruption plays a significant role in wildlife crime since officials can 'transform contraband into legal product with a single piece of documentation'. Cakaj and Lezhnur (2017, p. 16) state that in addition to corruption, pressure on those in leadership of the Ugandan Wildlife Authority Conservation ensure that illegal permits are handed out or that a blind eye is turned to wildlife crime.

3.11   Summary

The prevailing trend identified from the media reports and literature discussed above shows that predominant forms of corruption such as grand corruption and state capture are driven by high level politicians, mainly through the natural resources sector and through abuse of procurement processes. The next section looks at the regulatory anti-corruption frameworks and preventative measures available to these countries to mitigate the impact of corruption on domestic resource mobilisation.

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[15] Including issuing of exploration and mining licences and enforcement of the mineral sector regulations.

4.   REGULATORY FRAMEWORK TO ADDRESS CORRUPTION

Corruption is classified as a category of transnational crimes[16] and the emergence of the international framework against corruption has been described as being the result of convergence of a combination of values (moral and religious) and interests (economic and development), with the negotiation of international anti-corruption instruments involving highly political processes representing a response of traditional normative values and the interests of global players to corruption (Terracino, 2012, p. 3). On the African continent, this is reflected by the *Southern African Development Community Protocol Against Corruption*[17] and the ECOWAS *Protocol on the Fight against Corruption*,[18] and by the *African Union Convention on Preventing and Combating Corruption*.[19] The *United Nations Convention against Corruption* is the most recent and significant international law instrument against corruption (Terracino, 2012, pp. 19, 51). The latter includes provisions on the recovery of stolen assets and establishes various measures for international cooperation for the purpose of detecting the transfer of proceeds of crime, determining the ownership of assets as well as their confiscation, return and disposal (Terracino, 2012, p.52).

Under the *United Nations Convention against Corruption*, it is mandatory to criminalise bribery and embezzlement in domestic law whilst the criminalisation of the specified second group of acts[20] is not mandatory, but preferred (Terracino, 2012, p. 82). The Southern African Development Community (SADC) Protocol deals with both primary and secondary acts whilst the ECOWAS Protocol covers the same but without the inclusion of 'abuse of function'. The immediate concern flowing from this is, according to Terracino (2012, p. 82), that where other acts than the prescribed ones are not accepted by countries party to the *United Nations Convention against Corruption*, their acceptance as corrupt acts at the international level is not clear and can complicate judicial processes.

Among other international instruments, the OECD Anti-Bribery Convention establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions and is focused on the supply side of bribery transactions.[21] The US Foreign Account Tax Compliance Act (FATCA) targets non-compliance by US taxpayers using foreign accounts. FATCA requires foreign

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[16] Other crimes in this category include drug trafficking, human trafficking and the financing of terrorism.

[17] *Southern African Development Community Protocol Against Corruption*, signed 14 August 2001 (entered into force 6 August 2003).

[18] *Economic Community of West African States Protocol on the Fight Against Corruption*, signed 21 December 2001. This Protocol was noted in 2016 as having entered into force with the then recent ratifications of Niger and Senegal: National Anti-Corruption Institutions in West Africa (NACIWA), General Assembly Resolutions, 13-15 July 2016, <https://www.unodc.org/documents/westandcentralafrica//NACIWA_General_Assembly_Resolutions_Cotonou_EN_FINAL.pdf>.

[19] *African Union Convention on Preventing and Combating Corruption*, adopted 11 July 2003 (entered into force 5 August 2006). An additional feature to the AU Convention is a monitoring role constituted as the African Peer Review Mechanism (APRM) which is a mutually agreed instrument to which member states can voluntarily accede as a means of self-monitoring as to whether they are in conformity with the agreed political, economic and corporate governance values.

[20] Trading in influence, abuse of functions and illicit enrichment.

[21] *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, signed on 17 December 1997 (entered into force 15 February 1999). From an African perspective, the Ratification Status of the Convention (as of May 2017) reflects only South Africa as signatory.

financial institutions (FFIs) to report to the US Internal Revenue Service information about financial accounts held by US taxpayers, or by foreign entities in which US taxpayers hold a substantial ownership interest.

Domestic legislation in some countries places emphasis on the briber, for example, the UK Bribery Act of 2010 sets out two offences that are specifically aimed at commercial bribery. Section 6 creates an offence relating to bribery of foreign public officials for the purpose of obtaining or retaining business or an advantage in conducting business. Section 7 establishes a new form of corporate liability for failing to prevent bribery on behalf of a commercial organisation.[22] The statutory formulation of the UK Bribery Act abandons the agent/principal relationship[23] in favour of a model based on an intention to induce improper conduct.

By introducing similar legislation, African countries can better position themselves to address cross border corrupt activities, but also, to give policy effect to UNECA's concern that a wider interpretation of corruption is necessary to deal with "private agents." Looking at the selected countries, all have anti-corruption laws in place as reflected hereunder.

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[22] This is in addition to the two general offences that cover the 'offering, promising or giving of a bribe (active bribery) and the requesting, agreeing to receive or accepting of a bribe (passive bribery)' through sections 1 and 2 of the Act.

[23] The agent/principal model defined bribery as the betrayal of a loyalty to an identified person, and by eliminating the need for an identified person, the standard was lowered to 'the betrayal of a duty' in general.

Table 2: Anti-Corruption Instruments and Legislation in African Countries

Country	Anti-Corruption Instruments and Legislation
Angola	Law on the Criminalization of Infractions Related to Money Laundering (CIML); Public Probity Law 2010; Public Contracting Law; Decree 48/06; Law on Access to Administrative Documents; Penal code 1886 and the Law of Crimes against the Economy criminalise active and passive corruption 2002; In 1996, the Law of the High Authority Against Corruption was passed for the creation of an anti-corruption body (yet to be established).
Botswana	Directorate on Corruption and Economic Crimes (1994); National Anti-Corruption Strategy; Proceeds and Instruments of Crime Act 2014; Section 99 of Penal Code of 1964.
DRC	Public Finance Management Act, Constitution 2006; Code of Ethics for Public Officials; Anti-Corruption Act; DRC Financial Intelligence Unit.
Kenya	Kenya Anti-Corruption Commission (KACC); Constitution of 2010; Ethics and Anti-Corruption Commission Act 2011; Leadership and Integrity Act 2012; Anti-Corruption and Economic Crimes Act 2003 and the Public Officer Ethics Act 2003.
Malawi	Anti-Corruption Bureau (ACB),established in 1995 under the Corrupt Practices Act 1995; National Anti-Corruption Strategy 2009;
Mozambique	Central Office for Combating Corruption (Gabinete Central de Combate à Corrupção, GCCC). The GCCC was established within the Attorney General's Office and replaced the anti-corruption unit established in 2003; The Penal Code; Law No. 6/2004, of 17 June, Anti-corruption Act; Law No. 14/2012, of 8 February, amending the Law No 22/2007, of 1 August, Organic Law of the Attorney-General's Office and the Statute of Prosecutors; Law No. 16/2012, of 14 August, Law of Public Probity; Law No. 1/79, of 11 January, punishing crimes for misappropriation of State's funds; Law No. 15/2012, of 14 August, Witnesses Protection Act; and Law No. 7/2012, of 5 February, Anti- Money Laundering Act.
Nigeria	EFCC Est. Act 2004; Independent Corrupt Practices & Other Related Offences Act 2000; Advance Fee Fraud and Other Related Offences Act 2006; Money Laundering (Prohibition) (Amendment) Act 2012; Miscellaneous Offences Act; Code of Conduct Act; Nigerian Extractive Industries Transparency Initiative Act; Freedom of Information Act 2011; Fiscal Responsibilities Act 2010; Penal Code Laws of Federation of Nigeria 2004; Criminal Code Law of Federation of Nigeria 2004; Banks and Other Financial Institutions (Amendment) Act 1991;Failed Banks (Recovery of Debts) and Financial Malpractices in Banks (Amendment) Act 1994.
South Africa	Special Investigations Unit (SIU) established in terms of the Special Investigating Units and Special Tribunal Act, Act No 74 of 1996 (SIU Act); Public Finance Management Act of 1999; Prevention of Organized Crime Act121 of 1998; Constitution of the Republic of South Africa; Municipal financial Management Act 56 of 2003; Financial Intelligence Centre Act 38 of 2001; Prevention and combating of Corrupt Activities Act 12 of 2004; Prevention of Corruption Act 1988
Tunisia	Constitution 2014; Good Governance and Anti-Corruption Agency: Instance de la Bonne Gouvernance et de la Lutte Contre la Corruption (established under article 125 of Constitution); Penal Code ; Anti-money laundering legislation : Law 2003-75.
Uganda	National Anti-corruption Strategy; Constitution of the Republic of Uganda 1995 Inspectorate of Government Act, 2002; Leadership Code Act, 2002; Anti-Corruption Act, 2010; Whistle-blowers Protection Act, 2010.

Source: World Bank, 'Anti-Corruption Agencies', <https://www.acauthorities.org/cross-country>; Badham-Jones (2014); United Nations Development Programme (UNDP) (2014).

5.   PREVENTATIVE MEASURES

Various preventative measures are available to reduce the incidence of corruption. Where these measures are combined as part of the regulatory framework, a greater impact in reducing corruption may be possible.

5.1   Increased transparency

In recent times, a number of mass 'public interest' disclosures by whistleblowers has highlighted tax and corporate practices which are characterised by aggressive tax avoidance and use of corporate structures to hide profits. The 'Luxembourg Leaks' (Luxleaks), 'Panama Papers' and 'Paradise Papers' are probably the best known. The effect of the scandals has been a re-ignition of the debate on international tax reform to counter practices contributing to all forms of illicit financial flows, including corruption.

The UN *Convention against Corruption* also emphasises the importance of transparency in public administration. Under Article 10 of the *Convention*, Parties are required to undertake the measures that are necessary to enhance transparency in public administration, which includes aspects such as the organisation, functioning and decision-making processes. The measures may include

> adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public; *(b) s*implifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and *(c)* publishing information, which may include periodic reports on the risks of corruption in its public administration.

In many instances corruption is fuelled in part by either the indifference or resignation (or both) of the population. By raising public awareness, transparency supports measures to combat corruption and, importantly, increases public pressure on the government to fully address the problem of corruption (Terracino, 2012, p. 136). Because whistleblowing hinges on public awareness and understanding, tax administrations in Africa are finding innovative ways of drawing attention to the importance of public disclosure. For example, in Swaziland, the revenue authority's Internal Affairs Division launched a campaign under the slogan, 'I refuse to be silent', that is intended to 'raise public awareness and encourage people to come forward with any suspicions of corruption or fraud cases through a toll-free number that they can call any time' (African Tax Administration Forum 2017, p. 108) In Uganda, 30 per cent of the revenue administration investigation unit's cases in financial year 2015/16 were brought to its notice by whistleblowers (African Tax Administration Forum, 2017, p. 107).

5.2   Bilateral and multilateral treaties

Bilateral and multilateral treaties provide mechanisms to police interactions between countries because bilateral investment treaties (BITs), for example, permit countries that want to host foreign investment to attract financing by agreeing to certain constraints to safeguard the rule of law and encourage investment (Campbell, 2016, p.

540). Campbell (2016, p. 541) also points out that a failure on the part of an investing country's BITs to put any real pressure on nations to institute internal reforms (e.g., human rights considerations or corporate social responsibility) represents a lost opportunity to assist the host country and to mitigate risks for investing entities because well-designed BITs have the ability to promote the rule of law through international arbitration and other conditions. Such conditions may 'motivate developing host countries to improve domestic administrative practices and laws to avoid future disputes' and for countries to better deal with negative externalities caused by foreign involvement (Campbell, 2016, p. 546).

5.3   Establishment of anti-corruption bodies

Institutional responses to corruption have also come in the form of anti-corruption bodies whereby states attempt to enhance their institutional capacity to prevent corruption. The typical role assumed by these bodies is implementing and/or overseeing and coordinating the implementation of anti-corruption policies. Implementation of anti-corruption policies is, however, dependent on institutional cohesion (i.e., all government departments 'buying in' and supporting the initiative) since the responsibility for implementation of the various individual components of the anti-corruption policy lies with the particular sector or government agency (Terracino, 2012, p. 138). Terracino (2012, pp. 138-139), further points out that functional and financial independence should be established in law (rather than by executive decree) to ensure that the entity is able to carry out its functions without undue interference (such as reductions in its budget). Campbell (2016, p. 537) argues that an important reason why corruption persists in countries such as Nigeria and South Africa, is 'the inability of these countries to establish monitoring bodies that are both effective and independent'; it is noted that 'comprehensive domestic solutions to the problem of corruption seem a long way off' in that 'true government reforms' will be unsuccessful until nations such as China join Western countries in policing their companies operating in Africa. Corruption-related recovery is low in South Africa despite the existence of a multitude of enforcement bodies (Financial Action Task Force, 2009; Campbell, 2016).

In the South African context, Pillay (2017, p. 11) identifies the following impediments to address corruption, namely 'political interference, lack of capacity, and the non-existence of coordination, synergy and cooperation'. These impediments are common across the continent and countries can benefit from a 'whole of government approach' that draws different agencies' strategies and resources together to allow for better alignment of activities that support common objectives. Murphy and Albu (2017, p. 2) caution that anti-corruption policies should, however, not be developed in the 'absence of an open acknowledgement of divergent institutional, socio-economic and political interests of both their developers and the regulated subjects'.

5.4   Implementation of a risk management framework

An important element in corruption mitigation is a formal process by which government departments can take ownership of their anti-corruption activities and assess levels of implementation of anti-corruption measures. In tracking the successful implementation of anti-corruption mechanisms, the following aspects are important:

1.   if the country acceded to the UN *Convention against Corruption*, have the relevant Articles been passed into domestic law?

2.   to what extent are corruption cases pursued and what is the quality of judicial rulings; in other words, were there instances of judicial abuse – either procedurally or substantively?

3.   what is the monetary value of corruption-related freezing, seizure and confiscation of assets?

4.   are anti-corruption bodies fully operational?

5.   how functionally effective are financial investigation units within the larger criminal justice system in assisting prosecutions linked to public sector corruption through mutual legal assistance and joint investigations?

6.   how many requests are made to other jurisdictions for mutual cooperation in handling transnational corruption cases?

7.   to what extent are prevention measures pursued, e.g., public information activities that contribute to refusal to tolerate corruption, as well as public education programs?

8.   have departments established appropriate transparency-based systems for procurement that promote competition and objective criteria in decision-making? Are these effective in deterring corruption?

9.   is a system of oversight in place and are risk management best practices applied to ensure a proper control framework?[24]

Buscaglia (2011, pp. 471-473) finds that countries experiencing significant reductions in perceptions of high-level corruption and reductions of irregularities in the handling of case files have had successful reforms in a range of areas, such as: (i) creating uniform and comprehensive case management and tracking systems together with transparent rules for assignment of cases; (ii) administrative reforms in the public service (personnel, budget, performance-based indicators; rewards, and career paths for law enforcement officers); (iii) inter-agency cooperation through improved coordination and specialisation; (iv) implementation of a 'task team' approach to treating cases of corruption, and (v) in many cases, implementation of forfeiture of assets linked to high-level political corruption.

Given the generally limited financial and human resources of tax administrations, tax education and integrity efforts should include engagement with all relevant stakeholders to allow for more and better opportunities to get through to taxpayers. Such engagement can also be effective in influencing compliance behaviour and reducing the incidence of corruption and fraud. It is therefore critical that tax authorities effectively engage with local leaders, politicians, tax advisors, business associations, clearing agencies, policy-makers and local police (African Tax Administration Forum, 2017, p. 170).

5.5   Implementation of an anti-money laundering framework

The links between corruption, tax evasion and money laundering are well-established (Financial Action Task Force, 2011, p. 6; see also Article 14 of the UN *Convention against Corruption*). Money laundering provides the mechanism to hide both the

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[24] As envisaged under Article 9 of UN *Convention against Corruption*.

proceeds of tax evasion and corrupt acts and also the sources of these funds. A comprehensive anti-corruption strategy therefore requires a properly functioning anti-money laundering regime where predicate offences, such as tax evasion, are clearly recognised.

5.6   Implementation of a legislative and regulatory environment for revenue collection

The OECD very relevantly points out that the lack of a clearly defined legal and regulatory framework may constitute a major driver of corruption (OECD 2014, p. 67). The problem is exacerbated through the absence of a well-functioning tax administration. In this context, the *African Tax Outlook* (African Tax Administration Forum, 2017, p. 100) also highlights that 'manual registration, filing and payment procedures involve person-to-person interaction between tax officials and taxpayers' that can create opportunities for corruption. The IMF (International Monetary Fund, 2015, p. 35) advises that in view of the cost of corruption in revenue administrations in terms of both short-term revenue losses and long-term erosion of compliance, a range of risk mitigation measures are required including simple, transparent and to the extent possible automated procedures, strong information systems and high-profile prosecutions.

Escaping from the costly and harmful 'equilibrium' of high corruption and low tax revenue is difficult and both a strong political will and whole-of-government approach are essential if anti-corruption efforts are to have any chance of success (International Monetary Fund, 2015, pp. 35-36). Tax design issues that may create opportunity for corruption also need to be considered. In this regard, the IMF cautions against the use of presumptive taxes based on physical assessments, because they tend to be complex and prone to corruption (International Monetary Fund, 2015, p. 58). In this context, for firms below the value-added tax (VAT) threshold, a simple turnover tax that is levied at one or two rates differentiated across sectors can serve as a basic form of income tax.

Some key areas identified by the OECD (2014, p. 67) that can mitigate tax evasion and corruption, and that have taken up across the African continent include:

1.   promoting the use of tax information exchange agreements as an instrument for fighting cross-border tax evasion in developing countries;

2.   fully implementing international standards on exchange of information, expansion of a network of information exchange agreements between OECD and developing countries, and exploring possible automatic exchange of information;

3.   increased efforts to build capacity in developing countries to enable exchange of information;

4.   expansion of networks of treaties with relevant countries and jurisdictions through instruments such as the Multilateral Convention on information exchange;

5.   strengthening institutions and systems to prevent and combat tax evasion. For tax and customs administrations, post clearance audit and risk management capacities are critical to: (a) identifying false invoicing; (b) assessing the risk;

(c) auditing the transactions and entities involved; and (d) reporting the results in detail;

6.   strengthening the ability to detect and pursue criminal activity by adoption of a 'whole-of-government' approach to fighting tax and other financial crimes.

Country by Country Reporting[25] is useful in providing tax administrations with a means to risk assess multinational enterprises through provision of data on the overall allocation of profits within the group across multiple jurisdictions, and whether a bias exists towards low-tax jurisdictions or whether intragroup trading reflects trade mispricing practices.

5.7   Implementation of beneficial ownership requirements

A wide range of business activities are conducted through corporate entities and other types of legal structures such as companies, trusts, partnerships and foundations, and while these corporate vehicles play an essential and legitimate role in the global economy, they can also be used in some circumstances for illicit purposes such as corruption and tax evasion (Financial Action Task Force, 2014, p. 3).

The Financial Action Task Force (2014, p. 3) highlights that a meaningful reduction of various abuses of corporate vehicles could be brought about if there was information available to authorities regarding the legal owner and the beneficial owner of such vehicles, the different sources of their assets, and its business activities. Beneficial ownership information facilitates better identification of perpetrators of predicate crimes and 'following the money' through identification of assets and accounts held through corporate vehicles, particularly in cross-border situations (Financial Action Task Force, 2014, p. 3). There are, however, significant challenges involved in implementing beneficial ownership information measures. Many African countries do not have automated company registers in place nor are there interfaces between public institutions and revenue bodies which can ensure better integration of data. Therefore it may take considerable time for many African countries to develop, implement and have beneficial ownership requirements available for the purposes of domestic law enforcement and international exchange.

5.8   Addressing the cultural aspects that fuel corruption

According to the *African Tax Outlook*, tax and customs rank third after government procurement and land administration on the corruption scale (African Tax Administration Forum, 2017, p. 24).   While disciplining of corrupt staff is recommended, and stringent pre-screening and vetting when recruiting carried out, the African Tax Administration Forum (2017, pp. 104, 106) considers that upstream action should, however, take precedence in that revenue authorities should build integrity and anti-corruption into corporate culture and require their staff to work and behave in accordance with ethical standards.   Anti-corruption and integrity have become key agenda items for meetings year round of, for example, the Botswana and Burundi revenue authorities; in addition, employees 'should be financially literate and

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[25] Under the OECD's Base Erosion and Profit Shifting (BEPS) Action 13, a template is provided for the means by which multinational enterprises (MNEs) must report annually and for each tax jurisdiction in which they do business: OECD, *Country by Country Reporting*, <http://www.oecd.org/tax/beps/country-by-country-reporting.htm>.

trained to recognise and respond to fraud, conflicts of interest and integrity dilemmas' (African Tax Administration Forum, 2017, p. 106).

Apart from the above conceptual management principles, however, cultural attitudes to political institutions and actors are also highly relevant, and, in many African countries, the service-based nature of political leadership as enshrined in democracy in theory is replaced by a 'serve me' mentality in practice (see, for example, Antwi, 2017). This observation reflects the general unwillingness or protracted time it takes – if at all – for such countries to prosecute corrupt leaders. For example, while the South African President was charged with corruption in 2008, it took nearly a decade for the Appeal High Court to confirm that the charges are legitimate.[26] Similarly, in Kenya charges against ministers for signing overpriced or fake contracts for equipment that amounted to as much 16 per cent of the annual budget, were brought in 2005 but prosecutions only launched in 2015 (The Economist, 2015). Antwi may to a large extent be correct when he points out that 'today, the average African politician knows that the worst punishment he/she might ever receive for corruption, is a couple of weeks of bad press' (Antwi, 2017).

6.   CONCLUSION

African countries are faced with a huge challenge to reduce endemic corruption. Reflecting on her campaign of 2006 to eradicate corruption, the outgoing president of Liberia, President Ellen Johnson Sirleaf, stated in her final state of the nation address that corruption had been too firmly entrenched in Liberian society for her administration to eliminate it (Foxnews 2017). It is, however, clear from the example set by Botswana, that political will is the starting point for any country's anti-corruption drive. In the absence of political will, all the anti-corruption instruments are blunted and will not produce the results that the programs are designed to achieve, such as prosecution of high level officials, repatriation of assets and the protection of whistle blowers.

Corruption is damaging to the social contract because it weakens the legitimacy of the state and results in low tax compliance levels. Tax policy is an important tool for good governance and good governance is also a measure to prevent and combat corruption. The presence of corruption negates or skews the objectives of the tax regime because corrupt politicians approve contracts that allow for unreasonable exemptions, thus affecting the taxation of profits. Over and above institutional improvements, it is important that African countries promote transparency and accountability, encourage and protect whistle blowers and promote leadership in the service of citizens. These are critical steps needed because weak institutions dominated by patronage networks, can fail to detect outflows that escape taxation, either through corruption, money laundering, tax evasion or avoidance strategies.

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[26] See 'SA President Zuma must face corruption charges, court rules', *BBC News*, 13 October 2017, <http://www.bbc.com/news/world-41607511>.

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