

**INDEPENDENT COMMISSIONS IN ANTI-CORRUPTION FIGHTS: THE NIGERIA, UGANDA AND  
BOTSWANA EXAMPLES, 2000-2007**

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**ABSTRACT**

Contrary to the position of Raymond Suttner (2006) who expressed doubt on democratic consolidation under a dominant party system due to absence of competitive democracy, it can be observed that the absence of competitive democracy in Botswana strengthens the consolidation of democratic institutions including the anti-corruption agency, necessitated by an unfettered history of political stability in the country. Yet, the dominant party system but competitive in democracies like Uganda and Nigeria have exhibited a long history of political instability, leading to the centralization of political power which affects the functionality of the anti-corruption agencies in such areas such as financial autonomy. In Nigeria, though popular perceptions of the Economic and Financial Crimes Commission (EFCC) indicate its viability, the dominance of the executive and its control of the establishment and finance of the anti-corruption agency set back the agency's performance. In this paper, the consolidation and deconsolidation of anti-corruption agencies in the three countries are analysed with the objective of understanding the role of absence or otherwise of competitive democracy and the impact of political stability or instability in the agencies' performance. Towards this end, the study adopts three strands of the theory of institutionalism: the rational institutionalism, normative institutionalism and historical institutionalism.

**Key words:** Institutions, Democracy, Anti-corruption.

## INTRODUCTION

There is a dominant perspective in the extant literature that corruption impedes development. Indeed, corruption is a vice that is international in scope, monstrous in nature, and it is crudely rampant in developing economies. Corruption has sure been pervasive and devastating virtually in all less developed countries (LDC) of the world (Bello Imam, 2005, p. 20). On the exact meanings of the concept corruption, extant literature is replete with varied and ramified definitions of corruption. Corruption is a serious socio-economic illness, which is cancerous in nature and acidic in its operation, vis-à-vis social-economic growth and development. Corruption is associated with slow economic growth; reduced ineffective institution; limited social interactions and weak rule of law; poor economic competitiveness; deep ethnic divisions and conflicts; low popular participation; low educational attainment and closed economic and political systems, as Bello-Imam (2005) further explained.

It is clear that corruption imperils every society in which it occurs; it disconnects reward from ability and effort, and undermines competitive efficiency. Corruption subverts the rule of law, erodes confidence in the justice system and makes the development of patriotic spirit impossible. A corrupt society cannot command the respect and loyalty of its citizenry nor the respect of other societies, while its capacity for progress is severally limited. Therefore, corruption impedes development. This is the perspective largely shared by African political leaders and their followers as well, who generally believe that corruption has been one of the primary reasons for the underdevelopment of the continent. In Nigeria, corruption has not only permeated the government and mineral oil sector, but it has also embroiled the entire nation (Hadi, 1999).

A number of factors have been identified as instrumental to enthrone corrupt practices in Africa. These include: the nature of Africa's political economy; the weak institutions of government; dysfunctional legal systems; absence of clear rules and codes of ethics, which leads to abuse of discretionary power and make most Africans vulnerable to corrupt practices. The continent also has a culture of affluent and ostentatious living that expects much from 'big men', who usually come under extended family pressures (Maduagwe, 1996). The experience of African countries in the fight against corruption has been entirely peculiar, oftentimes influenced by the type of government or the institution in place to champion the fight against corruption. As will be seen in the study of the three African countries Nigeria, Uganda and Botswana, a plethora of factors affect and determine the success or otherwise of anti-corruption agencies in these countries.

Due to the diversity and differences in the political structures as well as in the interaction between the governments and their anti-corruption agencies, this study will be guided by the following set of underlining research questions:

1. What are the historical, political, economic and structural factors supporting or constraining the degree of success achieved by an anti-corruption agency in Africa?
2. Are there legal and constitutional frameworks which incapacitate the effective performance of these institutions?
3. How effective are the anti-corruption organizations themselves, are they properly funded, and are they protected in terms of security?
4. How confident is the public on the transparency of these anti-corruption agencies?

## **THE THEORY OF INSTITUTIONALISM**

The theory of institutionalism emphasizes on the deeply entrenched features of societal organization. It explains the process by which structures such as norms, routines and scheme become entrenched as significant and authoritative principles for societal actions (Scott, 2001). There are diverse aspects of institutionalism and the diversity underscores to a large extent how the institutional features are established, adopted, diffused and integrated over time. Also, the institutional approach to the study of political issues has various strands as well as various interpretations from various scholars of various backgrounds. Four of the major approaches to institutionalism will here be considered, beginning with the normative approach.

The normative approach espoused by Olsen and March (1996) provides a basic frame for reference. Its major contention is that the surest medium of understanding the actions of actors within political institutions is through a “logic of appropriateness” which individuals acquire by belonging or identifying themselves as a member of an institution. This perspective sharply contrasts with the “logic of consequentiality”, the central postulation of rational choice theories. The implication of March and Olsen’s argument was that individuals performing within institutions manifest certain behaviors because of normative standards inherent within the organizations and which are properly established, rather than because of their self-will to maximize individual utilities. More importantly, these established standards of behavior are inculcated through interaction with one or more institutions, as the institutions are the major supplier of values.

Contrary to the position of March and Olsen (1996), there is the rational choice school of thought of institutionalism. The rational choice sharply contrasts the theoretical presupposition of the normative school of thought. The rational choice institutionalism contends that institutions are entities created with underpinning rules as well as preferences and that ultimately the members of the institutions act in response to those salient features of institutional framework. This means that the rationale and incentives in the members of these organizations undergo a process of institutional modification and reorientation, and as such their preferences are modified by virtue of their membership in the institution. In other words, rather than portraying attitudes that are a direct reflection of established normative standards, the individuals who interact with the institutions have their personal, well-ordered preferences that remains largely unchanged by any institutional norms and preferences.

The third approach to the theory of institutionalism to be integrated in this analysis is the historical institutionalism. The core of the historical school of thought is that the decisions and institutional preferences made at the inception of the institution will have a continuous and constant effect over the direction of the members’ actions throughout its life span (Steinmo, Thelen & Longstreth, 1992). Meanwhile, the institutional historicism perspective also pays attention to the ideas that facilitate the direction of policies in institutions (Hall, 1986; King, 1996). The deficit of this approach is its weakness in the explanation and analysis of changes that occur within institutions. It accounts for the continuity of policies in institutions but much less explains changes in policies or structures.

And the empirical institutionalism, the fourth approach to the theory adopted for this study, is used to analyze the differences and similarities among institutions. Empirical institutionalism seeks to understand whether institutions exhibit differences in policy and decision preferences, or in political stability. The conceptualization of institutions by the empirical school is simple and easily observable; it stresses the similarities and differences between formal structures of government. However, it is noteworthy to observe that a combination of normative, rational and historical models of the institutionalism theory shape the empirical institutionalism. Put simple, institutions are a product of rational, historical and normative factors which can be studied by empirically comparing and contrasting the outcome of the relevance of these factors in shaping and moderating the affairs of institutions (Scott, 2001).

Having identified the various institutionalist approaches, it is the position of this paper that political institutions in Africa respond to the normative, historical and rational choice institutionalist perspectives. Specifically, given the historical evolution of democracies in Africa, which was characterized by a long period of anti-democratic forces (that is, military rule/dictatorship), the emerging states have become so dominant, often sidelining the independent relevance of other salient institutions of democracy. Till date, there are still certain indicators of centralization of power and anti-democratic practices by transformed authoritarian rulers in Africa. The over-concentration of power in the center incapacitates the emerging institutions of government and the infrastructures of democracy such as the constitution, the judiciary who are supposed to protect, guide and maintain territorial integrity, law and order in the new 'democratic polities'. As will be shown in this study, in the cases of Nigeria and Uganda the centralization of political powers in the office of the executive has incapacitated the new states' anti-corruption agencies at performing their functions for which they are created, thereby making nonsense of the anti-corruption agencies.

According to Transparency International Corruption Perception Index, Uganda's performance improved from a score of 1.9 in 2001 to 2.7 in 2006, while any score below 3 represents that corruption is rampant. Currently, Uganda scores 2.9 on the corruption perception index scale. A significant number of corruption cases have been reported in the Ugandan Press in recent years. High profile cases, in particular, have needed to be dealt with during the period of the Threshold Country Plan (TCP) to address the problem and change public perception. Comparatively, based on the Transparency International data Nigeria moved from the threshold of 1.0 to 2.2 on the corruption perception index, before 2012. Obviously, this does not meet the TI requirements of 3. Currently, in the year 2012, Nigeria's score on the perception index is 2.7 percent. What explains the gradual and slow-paced movement towards the 3.0 threshold? Does it imply that the anti-corruption agencies in these countries are not doing well? The most outstanding performance based on the TIC data is Botswana who got an index of 5.8 in the Transparency International rating, ranking 33rd out of 178 countries. Botswana has the highest score in Africa.

Moreover, in a survey carried out by *Afrobarometer* 32 percent of those polled indicated either all or most of the officials in non-local government and those with jobs as civil servants were involved in corruption. (*Afrobarometer*, 2010). Also, 29 percent indicated same for members of parliament, in the survey. Local government was perceived as less corrupt, with 20 percent respondents indicating either all or most of the officials in local government were involved with corruption. This

suggests the experience of corruption in Botswana is much lower than that of people living in other countries in Africa. What accounts for Botswana's anti-corruption success and its ranking as a free democracy? Indeed, democratic consolidation is a cogent variable for development in Africa. Democracy is a system run by institutions and the viability of the existing institutions in a democracy greatly determines its success or failure.

Examining the gains or otherwise of democratic consolidation for anti-corruption fight in Africa, this study is expected to contribute to the larger discourse on democratization in the continent. The paper contends that there is a need for a sporadic reform of the key institutions of democracy in a bid to accelerate developing Africa. Its choice of Nigeria, Uganda and Botswana is to allow the study draw from experiences in the broader regions of West, East and South African countries.

### **THE RATIONAL CHOICE INSTITUTIONALISM AND THE NIGERIAN ANTI-CORRUPTION AGENCY**

The rational choice institutionalism contends that institutions are entities created with underpinning rules and preferences and that ultimately the members of the institutions act in response to those salient institutional features. As we noted earlier, unlike individuals in normative institutionalism, the rationale and incentives of the members of these institutions undergo a process of institutional modification and reorientation, and their preferences are modified by virtue of their membership in the organizations. By implication members of institutions possess personal norms and preferences which can or may not be altered by the institutions.

Corruption is inhibitive to economic growth and development. Eradicating corruption might be considered a preference, given the importance attached to anti-corruption initiatives by successive African governments, both military and civilian in Nigeria. It was in continuation of this trend that the Obasanjo administration upon assumption of office in 1999 took steps to establish anti-corruption institutions to prosecute the anti-corruption war. The most notable of the institutions were the Independent Corrupt Practices Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC). Obasanjo's government established the anti-corruption agencies possibly as a result of his perception of corruption as the single most important bane of Nigeria's development – and Obasanjo was the chairman of Transparency International, a global anti-corruption watchdog.

As the scourge of corruption continues to cause immeasurable damage, in various forms, to the national economy through the multiplier effect, less privileged persons and families are poorly fed, poorly clothed and poorly sheltered; consequently, concerned opinion leaders must persistently direct their anger at the persons involved in cases of corrupt or fraudulent practices. Conversely, Nigeria has been a haven of financial criminals, a place where the risk of punishment for economic crimes is low and the pay-offs are high (Egwemi, 2012). Corruption remains entrenched in the Nigerian system because of the absence of a culture of instant punishment for corrupt persons. Senseless, unpatriotic age-long ethnic, religious and group sympathies and solidarities have helped to encourage corrupt persons in the polity. Whether highly or lowly placed, whether acting in official or unofficial capacities, Nigerians have to choose either to live happily with corruption or to de-politicize corruption-related issues comprehensively, if the nation will successfully wage war against corruption.

President Olusegun Obasanjo, certainly, took a decisive step, one of the most far reaching steps, ever in the war against corruption with the creation of EFCC in April 2003 (Egwemi, 2012). However, it is one thing to have these anti- corruption agencies on ground but another for them to live up to expectations, by successful prosecuting corruption cases and winning in the anti-corruption campaign. After all, the major goal of the Nigerian economic reform is to set the economy on a path of sustainable development, to create an economy that can compete with other economies on the Globe. There indeed might be divergencies in opinions on the level of delivery by the anti-corruption agencies in Nigeria (Eme & Okoh, 2011); it is nevertheless important to undertake a critical evaluation of the performance of the agencies, in their war against corruption in Nigeria.

### **SUCCESS RECORDS OF THE ECONOMIC AND FINANCIAL CRIME COMMISSION.**

When former President Obasanjo assumed office in 1999 he promised to tackle corruption head-on such that “it would no longer be business as usual”. Pursuant to this publicly avowed commitment, the Obasanjo administration established the ICPC and the EFCC, through legislative acts. The first specified law on corruption in Nigeria is the Corrupt Practices and other Related Offences Act 2000 which prohibits and prescribes punishment for corrupt practices and other related offences and established the Independent Corrupt Practices and Other Related Offences Commission (ICPC). In order to put the crimes under check in Nigeria, the Economic and Financial Crimes Commission (EFCC) was established in 2002 (Eme & Okoh, 2011). Since the creation of EFCC, there have been a number of high profile convictions since its inception. Many advance fee fraud (“419”) kingpins have been detained; two judges have been sacked and two others suspended; several legislators including a past Senate president have lost their legislative posts and are being prosecuted; three ministers have been dismissed; a former Inspector General of Police (IG), the top law enforcement official in the country has been tried, convicted and jailed for corruption (Osafo-Kwaako, 2007).

Furthermore, through the government anti-corruption crusade, about N84 billion was recovered from the family of the late Nigerian head of state, Sani Abacha as at 2001. Between May 2003 and June 2004, the EFCC in Nigeria recovered money and assets from criminal prosecution worth over \$700 million, as well as recovered £3 million through the British Government (Eme & Okoh, *ibid.*). There have been about 91 convictions for various corruption crimes from which assets worth over \$55 billion have been seized, confiscated and refunded to the state and various victims of the crimes (EFCC Report, 2005). Certainly, EFCC has increased the revenue profile of the nation by about 20% due to its activities in the Federal Inland Revenue Service and the seaports. The body recovered billions for government in respect of failed government contracts; it curbed oil bunkering in the Niger Delta, from about 300,000 to 500,000 to less than 50,000 barrels daily, with the prosecution of over 20 persons involved in the vandalism of oil pipelines (Imohe, 2005). Despite the ‘success’ records of the Nigerian anti-corruption agency, the popular claim has been that the prosecutions were selective. This assertion will be examined next.

## **THE EFCC AS A WEAPON FOR SELF DEFENSE.**

To begin with, what was the rationale for the creation of anti-corruption agencies in Nigeria? How can the events that followed the creation during former President Obasanjo's administration be understood? As earlier hinted, an important issue in Nigeria is that EFCC is not really an independent anti-corruption agency of government that could discharge its duties and responsibilities without fear or favor. This is because the President appoints the chairman of EFCC, and therefore has the power to dismiss and employ another individual in the position. By implication, the leading officials in EFCC cannot but be loyal to the President for them to remain or be relevant in their offices. The President moreover approves the funding of the anti-corruption agency, such that should the leadership be too assertive to discharge their functions independent of him the executive boss can cut them to size, by starving them of funds (Tenuche, 2010).

It is a well-known fact between 2000-2007, before EFCC undertook any task or even commences any investigation, it must seek the official approval of the President. When investigations were concluded, reports were submitted to the President for approval, in addition. Consequently, EFCC did not perform its duty outside of the President's preferences, thus curtailing the scope of the fight against corruption in Nigeria during Obasanjo's administration (Tenuche, 2010). Similarly, in the same period of 2000-2007, EFCC became officially the law court, issuing out judgments. In this regard, EFCC was used in the illegal removal of the governors of Oyo and Ekiti states in the South West region. The institution was also responsible for the lawlessness that triumphed in Plateau State in the North Central. Nigeria in this manner became a democracy run by institutions for political interest, a supposed democratic state where the rule of law and the constitution should facilitate democratic consolidation and sustainability. For the anti-corruption agency impliedly took laws into its hand, thereby jeopardizing the renewed Nigerian democracy (Falode, 2012). Disappointingly, President Olusegun Obasanjo used the institution to settle personal and political grievances with perceived political rivals just to achieve his political goals (Falode, 2012).

For instance, President Obasanjo used the EFCC to attack and hounded the former Vice President Atiku Abubakar because the deputy worked in league with other progressive forces in the country to frustrate Obasanjo's third term ambition and bid, an unconstitutional, undemocratic and unpopular ambition that violated the Nigerian people's wishes (Zakari, 2008). By manipulating the EFCC to accuse Atiku on unproven cases of corruption in the run up to the 2007 elections, Obasanjo sealed the inordinate ambition to contest for the country's highest office. Although political corruption is a phenomenon that enmeshed nearly all political officeholders in Nigeria (Shopeju & Ojukwu, 2010), the regime of President Obasanjo in 2000 to 2007 was especially notorious on account of the corrupt tradition (Zakari, 2008). Virtually all opposition to the third term bid became an instant enemy of the president and was indicted in one form of scandal or the other (Zakari, *ibid.*). The implication of this was that the EFCC institution established for the establishment of law and order was re-orientated to become an instrument of coercion against the opposition to the government.

The allegations and the surprising compromise of Buba Marwa presents an interesting peculiar case, in contrast to the case of Atiku. Buba Marwa criticized the government of Obasanjo for the president's ambition to run for the position of President in

the 2007 election, for the third term. Unfortunately, Marwa was unaware that the titan paid close attention to his criticism (Uzokwe, 2006); and when his time was due the allegations that EFCC had investigated and compiled against him were publicized, leading to his arrest. Buba Marwa was made to stand on cold feet before the EFCC and his business Albarka Air was confiscated. In the turnout of event, the popular Buba who had criticized Obasanjo's administration was converted and forcefully became a friend joining forces with the president when the latter attacked his deputy, Vice President Atiku Abubakar for "not being loyal" to "baba" or father (that is, President Obasanjo). Marwa also denied ever declaring any presidential intention (Uzokwe, 2006). Hence, President Obasanjo administration used EFCC to terrorize people for daring to disagree with the policies of his government (Uzokwe, 2006).

Demonstrating yet the ruse about the Nigerian anti-corruption agency EFCC was the illegal impeachment plots against state governors across the federation. Implemented by the EFCC, the impeachment intrigues signified a bad omen for the nation's fledgling democracy. It also reflected the weakness in the motive and objective of the institution, as the plots manifested as a design for the tenure perpetuation agenda of President Obasanjo, which was disregarded the rule of law. Furthermore, Obasanjo delayed the release of census results to the last minute. To create chaos, the president held down the local government elections until the confusion grew intense. Because there was not going to be LG elections, the people flew the Interim Government (ING) kite ahead of time. The only way out of the looming crisis in the country as that time was for President Obasanjo to vacate office immediately. Most Nigerians before the end of his second term in 2007 wished Obasanjo to resign and leave, to prevent constitutional chaos and rape of democracy.

In sum, while Obasanjo's administration virtually suspended the Nigerian constitution, the anti-corruption agency EFCC served him to investigate, arrest, try, imprison, overrule court orders and detain in prison for months without trial, under the guise of decisive war against corruption in the polity (Ekeh, 2010). Potential and obvious political rivals were in this way arrested and detained, but the president's associates enjoyed protection. In that condition, Nigeria almost turned into a unitary state where the centre reserves the right to remove elected leaders, by reckless deployment of soldiers and mobile policemen (MOPOL) from the Barracks (Ekeh, 2010). Rational Choice Institutionalism (RCI) is a theoretical approach to the study of institutions arguing that actors use institutions to maximise their utility and this is far more evident in given the above cases. The above cases clearly questions the utility and the efficacy of the anticorruption agency which was established to combat corruption but ended up as an instrument for selective justice(Tenuche, 2010).

### **THE NORMATIVE INSTUTIONALISM AND UGANDAN EXPERIENCE SINCE 2000**

The normative institutionalism contends that the actions of actors within political institutions can be understood in the description of "logic of appropriateness", whereby individuals' actions are shaped by belonging or identifying themselves as a member of an institution. In other words, individuals serving within institutions show certain behaviors directly reflecting the normative standards inherent and established within the organizations. Analyzing Uganda's experiences with anti-corruption agencies without understanding the political context in which the experiences occurred as well as the underlining implications of the political influence will be inadequate. This argument on understanding the political context can be



justified with the instance of the neutralizing effects the central apparatus of government under President Museveni has on the creation and maintenance of democratic institutions such as political parties (which is absent) civil society groups, judiciary and anti-corruption agencies, among others. The point is: Museveni's style of democracy – purportedly embracing broad societal and collective 'involvement' but limited participation – in reality obstructed the effectiveness of emerging institutions which rather replicate government normative standards.

In his anti-corruption crusade, President Museveni of Uganda launched the National Strategy to Fight Corruption and Rebuild Ethics and Integrity in Public Office in July 2004. The strategy provided a plan of action to guide the cause against corruption (Heilbrunn, 2004). It was framed within the good governance pillar of the GOU's overall planning framework, referred to as Poverty Eradication Action Plan, and the action plan served as a guide for government and donor actions. In recent years, the GOU has shifted its official emphasis towards adopting a policy of "Zero Tolerance to Corruption". The GOU's Directorate of Ethics and Integrity (DEI) coordinates the work of the six agencies at the core of the GOU's anti-corruption effort. These agencies are the PPDA; the Office of the Auditor General (OAG); the Inspectorate General of Government (IGG); the Criminal Investigations Department's Fraud Squad (CID); the Directorate of Public Prosecutions (DPP); and the DEI itself. These agencies and other government agencies and leading civil society organizations (CSOs) are affiliated through an Inter-Agency Forum (IAF) which reviews Uganda's progress on the anti-corruption front (Heilbrunn, 2004).

In understanding the Ugandan case, one must not separate the three concepts of political will, regime type and political culture. Political will is often used as the benchmark for the assessment of the success of any anti-corruption agency in Africa. However, the concept of political will must not be divorced from political will reflected by the institution analyzed and political will reflected in the system that created the institution in the first place (Doig, Watt & Williams, 2005). Political will involves the commitment of actors to the pursuit and actualization of a given cause. Political will is a salient feature of every political culture, which comprises the norms and standards by which a given political system or regime operates (Almond & Verba, 1965). In Uganda, the absence of political will in policy and program implementation has an adverse effect on the institutions that emanate from the system. The Ugandan political system, specifically, manifests no political will; the creation of agencies such as anti-corruption commissions is intended to gain the popular acceptance the system lacks, protect the patrimonial system and the political elites, and attract foreign loans and aid (Doig, Watt & Williams, 2005).

#### **THE LEADERSHIP CODE DILEMMA.**

The Museveni government in 1996 established the Leadership Code and empowered an inspectorate of government with the legal right to enforce the leadership code, in order to gain popular acceptance. This code requires that leaders must declare their assets, liabilities and properties to the Inspectorate General of Government. Nonetheless, the 2004 dilemma to the nullification of important segments of the Leadership Code, when the presidential advisor on political affairs, Kakoza Mutale was indicted and recommended to be sacked by the Inspectorate General of Government (Ruhweza, 2008). This recommendation and consequent publicity of the Mutale case in the Media led to fierce battle between the IGG and the

leadership of Museveni and other senior officers in the government, all of whom were disenchanted by the demand of the IGG to publish the leaders' incomes (Ruhweza, 2008). As it turned out, Mutale and President Museveni headed for the court with the IGG where Museveni publicly defended Mutale's refusal to adhere to the constitutional demands. The case of Mutale became even more interesting as the president's legal team filed a counter legal suit against the IGG with the claim that the IGG was becoming more powerful than the government. Consequently, the high court ruled in favor of the president, abrogating the powers of the IGG to initiate such cases. The high court even awarded the presidential advisor a sum of 12 million shilling for damages, thus rendering the legal code act null and void (Ruhweza, 2008). The actions of the court, the President and his team of advisors simply indicated that the anti-corruption agency was a caricature; its powers to make recommendations against corrupt state officials through the evaluation of their declared assets was rendered useless; and the court never bothered to investigate the claims of the IGG but rather discredited the IGG's power to act the way it did.

The president's initial response of sacking the indicted advisor and later of swearing an affidavit on the advisor's behalf in court implies that the system lacked the political will to fight corruption. This also demonstrates that the level of institutionalization of the various political structures in Uganda were weak. The Museveni's government establishes laws and institutions, and when the laws that guides the operation of the institutions did not conform to the government's normative standards the institutions were removed. The Leadership Code dilemma involving the IGG and the government therefore illustrates how government institution is required to reflect normative standards of the system that creates it. Even the court of justice which should be the last hope of the common man simply reflected the corrupt dictatorial culture of President Museveni.

#### **THE MUSUNGI AND IGG CASE**

There was the case involving Musunguzi and the IGG too. The Musunguzi case demonstrates the staggering normative standard in the anti-corruption agency in Uganda. The IGG's investigation found out that James Ganga Musungunzi, a city tycoon and a rancher was been compensated unduely by the Museveni administration. A huge amount to the tune of 13 billion Shilling (Us\$7.4 million) was due to be paid to Musunguzi for the redistribution of ranches in Rankai (Nume, 2004). The IGG as its constitutional mandate required moved up to investigate the issue, however; the case was dismissed rather than "settled out of court", to the amazement of the public. The Solicitor-General who had made the discovery was initially adamant to hand over the file which would mean the closure of the case, and this led to his arrest and detention by the Obdusman (Nume, 2004). From all evidence the sidelining of the IGG's powers of investigation and inquiry was totally against the provisions of the law and it contravened the 1995 constitutional mandate upon which the IGG was established. This simply demonstrates the weakness of the institution Inspectorate General of Government to implement its responsibilities as expected by law. Once again, the expectation the museveni government dictated the performance of the formal institutions of government, in terms of decision making.

**THE BOTSWANA CASE AND HISTORICAL INSTITUTIONALISM**

The core of the historical school of thought is that the decisions and institutional preferences made at the inception of institutions will have a continuous and constant effect over the direction of its actions throughout its life span (Steinmo, Thelen & Longstreth, 1992). The historical institutionalism also pays attention to the ideas that facilitate the direction of policies in institutions (Hall & Taylor, 1996). What accounts for the success of democracy in Botswana despite the fact the country is a multi-party system having a dominant party? To a large extent, Botswana’s ranking among democracies in the world is thought-provoking and demands empirical investigation. The success of Botswana’s democracy cannot be separated from the government’s resolute effort at combating corruption, the entrenchment of the institutions of democracy, including the judiciary and the anti-corruption agencies, as well as the long history of zero-authoritarian interference.

Table 1

*Military interventions in Nigeria, Uganda and Botswana*

Country	Number of interventions	Freedom house rating	Transparency <u>International Index</u>
Nigeria	5 times	Partly Free	22%
Botswana	None	Free	54%
Uganda	7 times	Partly Free	28%

Note: The information was sourced from Transparency International 2007, Freedom House 2007, and Mwakikagile, 2001.

**MILITARY INCURSION AND AFRICAN DEMOCRATIC INSTITUTIONS**

Can Botswana’s democratic exception be explained by its zero-authoritarian political history? Bissessar and Owoye (2012) argued that military rule, based on decrees, eroded the democratic transition process in Africa, because military incursions and their authoritarian governance structures altered, to a great degree, the institutional structures these countries inherited at the inception of independence (Bissessar & Owoye, 2012). From the table 1.1, Botswana has no history of military intervention in its politics (Morton, 1997). By way of comparison, Nigeria and Uganda had military interventions leading to the over-centralization of political power in the West and East African countries, respectively. A consequence of the military incursions has been the type of constitution which has been adopted in later years that has concentrated power in the central executive and limited the role of the legislature certainly in reality (Ake, 2010).

It is not impertinent to highlight that the constitution which established the emerging institutions in the Nigerian and Ugandan democracies was framed by the previous military regimes and reframed to still accommodate dictatorial tendencies in the later democratic dispensation. In accordance with Ake (2010), the new democratic government in Nigeria has adopted the military legacy of an authoritarian structure, conscious or unconsciously, in its constitutional provisions. The military had believed that multiple structures and autonomous functions would be highly unorganized and consequently ineffective (Ekeh, 2010) and they reflect their prejudice the ‘democratic’ constitution. For instance, institutions such as the Nigerian Police and

the law enforcement and prosecution agencies and their powers have remained controversial within the polity. The Nigerian 1999 constitution was highly flawed by the central control, budgeting and finance of vital institutions of democratic rule (Ekeh, *ibid.*). In Part One of the 1999 Constitution, the Code of Conduct Bureau, the Council of States, the Federal Character Commission, the Federal Civil Service Commission, the National Judicial Council, the Federal Judicial Commission, the Independent National Electoral Commission, the National Defence Council, the National Economic Council, the National Population Commission, the National Security Council, the Nigeria Police Council, the Police Service Commission, the Revenue Mobilization Allocation and Fiscal Commission, the Independent Corrupt Practices and Related Offences Commission, the Economic and Financial Crimes Commission, and the Niger Delta Development Commission, all are centralized (Elaigwu, 2010). All of these ‘democratic institutions’ are not allowed in the constitution constituent state level duplication and functionality. It has therefore been easy for the federal government, particularly the executive headed by the President, to capitalize on the autonomy, financial freedom as well as the judicial strength of these institutions to drive and determine the cause of democratic politics in the country, virtually unilaterally. Former President Obasanjo’s regime epitomized this assertion, a point earlier underscored.

Similarly, Uganda experienced considerable political instability and the experience has told on the viability of the democratic institutions later created in the country. Between the period of 1966, 1971 and 1985 as the table 1.1 shows, military coups and rule were a feature in the Ugandan politics. In fact, the current NRM-led government was a product of political contestation (Mwakikagile, 2001). Museveni’s abrupt disregard for the institutionalization of democratic structures reflects in his policy of “no opposition party” and no party system. The NRM is allowed to operate unfettered, uncontested, unchallenged. It will be recalled that during the governments of Idi Amin and Obote formal political institutions were nearly of no importance. Museveni’s quest to attract popular support and an all-encompassing “social movement” led to the formation of institutions including anti-corruption agencies which were in form, character and principle different but in reality the same un-democratized political caricatures (Freedom House, 2007). In addition, the emerged Ugandan constitution allowed the existence of anti-corruption agencies but the establishment was merely to strengthen Museveni’s legitimacy; the institutions in practice respond to the informal normative standards of Museveni’s government.

Against this background, Botswana can be seen to have had an outstanding political history. After 80 years as a Protectorate under Britain, Botswana became independent in 1966, and since has existed as a stable, functioning, multiparty democracy. Its democratic success can be partly attributed to the existence of a dominant party system; the party has ruled the country ever since, while it allows for the formation of other parties (Ramsay, Morton, B., & Morton, F., 1997). The dominant political party BPD has remained functional, and due to this it has not received important opposition to its rule (Ramsay, Morton, B., & Morton, F. 1997). Given the Botswana experience of the dominant party system, Raymond Suttner’s (2007) *a priori* assumption that the dominant party system disrupts consolidation of the institutions of democracy is questioned. The absence of political competition in Botswana’s multiparty democracy and its history of zero-authoritarianism have rather strengthened the institutionalization of the structures of democracy, including the anti-corruption agencies. Indeed, in Nigeria where the history of political instability has weakened the institutionalization of democratic structures, the emergence and

growth of a highly competitive democracy since 1999 has hardly made a difference on the democratic consolidation. And Uganda with the NRM, single party-led government, its history has been characterized by the over-centralization of power, power monopoly by the executive and political contestations. Of course, the anti-corruption agencies have suffered, stifled by executive control, in turn (BTI, 2012). Having provided theoretical and empirical analyses of the relations in the democratic institutions and history and weakness of anti-corruption agencies in the three countries, Nigeria, Uganda and Botswana, it is next important to emphasize the factors incapacitating the optimum performance of the anti-corruption agencies in three study cases.

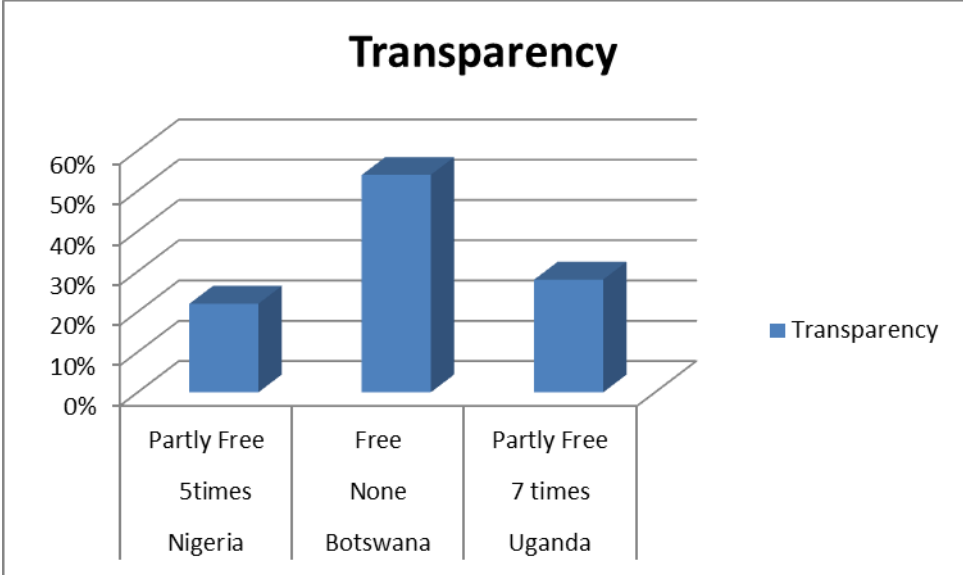


Figure 1. Military intervention in Nigeria, Uganda and Botswana.

Adapted from Transparency International 2007, Freedom House 2007, and Mwakikagile, 2001.

**INSTITUTIONAL SETBACKS TO THE ANTI-CORRUPTION AGENCIES: EMPIRICAL EVIDENCE**

To begin with, it is needful to refer to the pre-colonial heritage of Botswana to understand the consolidation of its democratic institutions. The Tswana people of Botswana have always had a state culture and norms advocating a hierarchical political structure. Although it was centralized, the pre-colonial Tswana state’s culture, norms and principles allowed for a disciplined government and viable political institutions. Discipline was by the mechanism inculcated in the lower tier of government and in the masses. Moreover, Tswana’s religious principles stress virtue in both political and social senses, as evil was considered mainly social and political. A doer of evil was one who violated the social taboos and the political unity of the society. A sufferer of evil was one whose social and political life was shattered and had to bear the consequences for the violation of societal norms. The emphasis on the disciplined political institution is vital in explaining the development of democracy in recent times.

Below is the general perception of the anti-corruption agency by the populace of Botswana, Nigeria and Uganda. In the *AfroBarometer* survey, questions were posed on how the people perceived the anti-corruption agency and if they see them as being effective in the discharge of their duties.

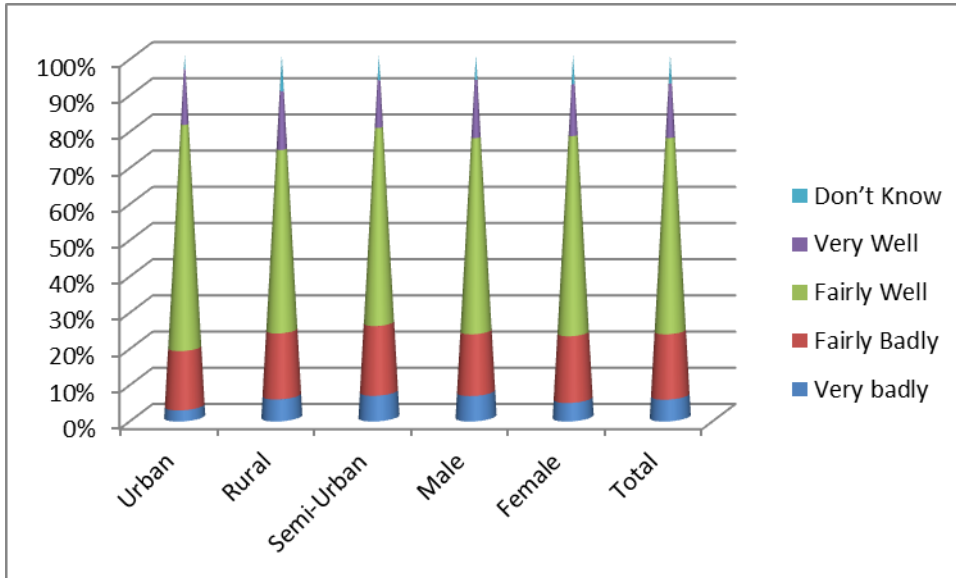


Figure 2. AfroBarometer Public Perception of the Performance of Anti-corruption Agency in Botswana. Adapted from *AfroBarometer* 2007.

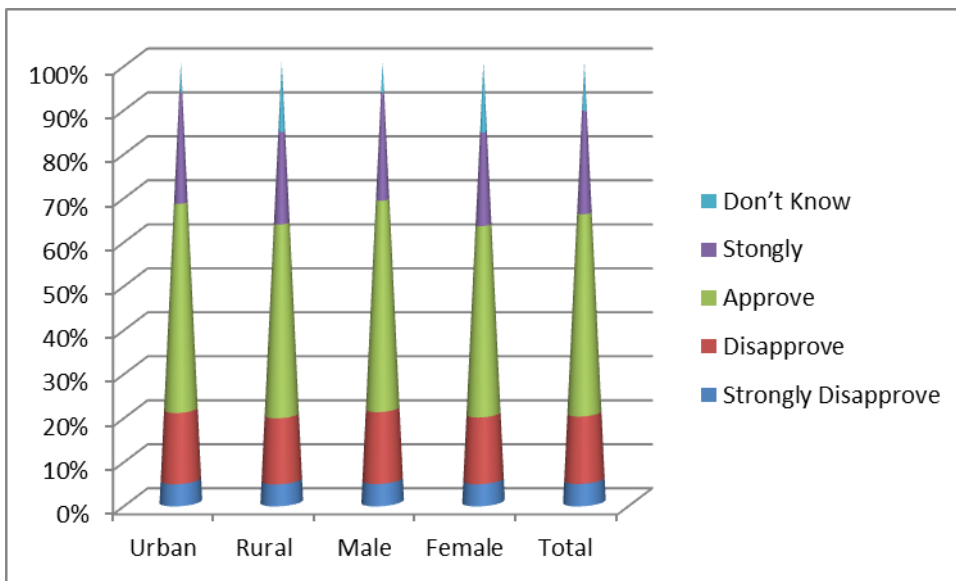


Figure 3. Afro Barometer Public Perception of the Performance of Anti-corruption Agencies in in Nigeria. Adapted from *AfroBarometer* 2007.

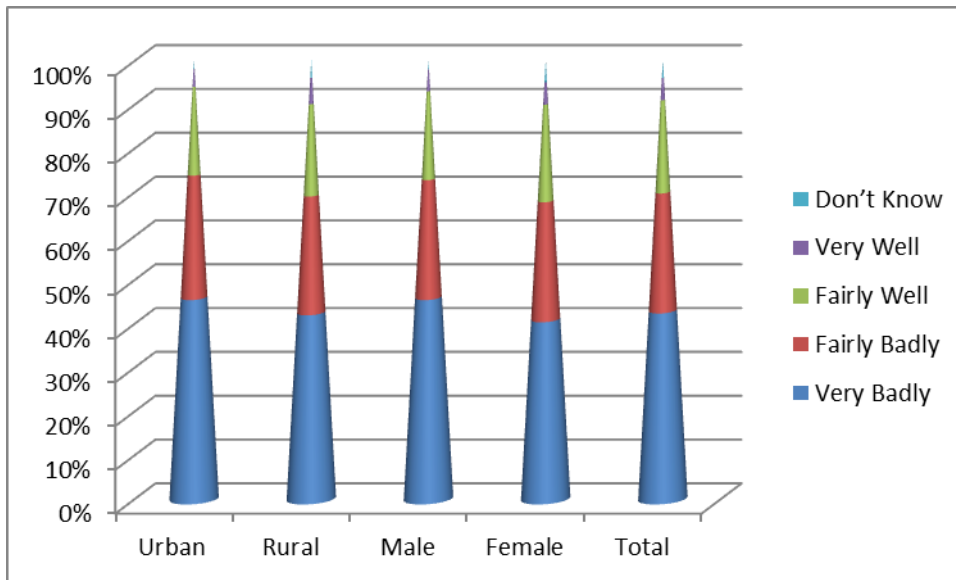


Figure 1.4. Afro Barometer Public Perception of the Performance of Anti-corruption Agencies in Uganda. Adapted from *AfroBarometer* 2007.

### INTERPRETATION OF FINDINGS

In Uganda, the public perception of anti-corruption agencies indicates that the agencies have performed below expectation. 50% of the population perceived the anti-corruption body as ineffective and inefficient; 30% of the population saw it as performing fairly badly; 30% indicated the anti-corruption agency as performing fairly well. On the other hand, in Botswana, 70 percent of the population saw the anti-corruption agency as performing fairly well; 20% saw it as performing very well; only 15% of the population held grievances with the anti-corruption agency. And in Nigeria, 55% of the population saw the anti-corruption agency as properly functioning; 35% even held stronger approval of the anti-corruption agency; 0% of the population indicated the anti-corruption agency was flawed.

The Ugandan anti-corruption agency obviously was found wanting by the country's majority, thus agreeing to the earlier assertion that the agency was only a caricature created to impress the already disgruntled populace. On the contrary, the anti-corruption agency in Botswana had general acceptance with the respondents in the *Afrobarometer* survey. Not one of them indicated a flaw and dissatisfaction with the state agency, in spite of the fact that they had had a dominant party system. Coming to the Nigerian case, it can be startling that the majority of the respondents showed approval for their country's anti-corruption agencies. The survey finding in this way rather contradicts the prior analysis in this study that the rationale behind the creation of the Economic and Financial Crimes Commission in Nigeria was for personal benefits and served as a tool for fighting the opposition, especially in the hands of the former President Olusegun Obasanjo. With the *Afrobarometer* results, could it mean that the anti-corruption agencies in Nigeria were properly institutionalized?

There are thread offs to this result that should be noted. First is that the measure adopted by Afrobarometer index in determining public perception avoids the measurement of the anti-corruption agencies' independence in the execution of its constitutionally mandated duties. Perhaps, the pattern of investigations and executions made by the EFCC during this period of the survey indicates that majority of the victims of the EFCC trials were individuals who opposed the president's third term agenda.

## **OBSTACLES AGAINST ANTI-CORRUPTION AGENCIES' PERFORMANCE OF THEIR DUTIES**

The obstacles to the efficient and effective performance of anti-corruption agencies in especially Nigeria and Uganda are typically those of lack of autonomy and inadequate institutional capacity. These problems are discussed in the following subsections.

### **AUTONOMY**

One major problem with anti-corruption agencies in Africa is that the constitutions place them at a disadvantaged position. The executive wields enormous influence on the creation, finance as well as the operation of the anti-corruption agencies. In Uganda, despite the fact that the Inspectorate General of Government (IGG) has been mandated to investigate corruption cases, the President still has the power to influence court decisions to its interest. An instance was the Prevention of Corruption Act which created the Directorate of Public Prosecutions (DPP), Inspectorate of Government (IGG), Criminal Investigations Department (CID), Auditor-General and the Public Procurement and Disposal of Assets (PPDA) contained in 230 (1), Article 120 (3), 120 (4) of the Ugandan constitution. The Prevention of Corruption Act limits the functioning of the anti-corruption agencies to mainly bribery, and diversion of public funds, influence peddling, conflict of interest and illicit enrichment by public officials (Chêne, 2009). Comparatively, in Nigeria the 1999 constitution mandates the establishment and function of the EFCC under the auspices of the federal government headed by executive president (Ekeh, 2010), and in this manner the anti-corruption agency was susceptible to the president's whims and caprices. But in the Botswana case, the Directorate on Corruption and Economic Crime (DCEC) is a highly independent body established by consensus and under the office of the Minister for Justice, Defense and Security. The Director of the DCEC is assisted by five assistant directors, each of whom has distinct branches of the directorate established in various states, which are responsible for specific tasks. Though the national headquarters of the DCEC is situated in the Gaborone city, the various offices established takes care of the various regions in the country (Gbadamosi, 2006). This autonomy given the DCEC was obvious in the decision of the parliament to enhance its power in 2000 by effecting an amendment giving the DCEC total autonomy to investigate issues of money laundry(Gbadamosi, 2006). Thus, crimes both at home and abroad could thereby be investigated by the Botswana anti-corruption agency. To a large extent, Botswana's exceptional anti-corruption institution is not unconnected to the political will evident among its leaders whose consciences are quick to fight and combat the societal ill. Most African states sure lack the feature of political will (Gbadamosi, 2006).



### **INSUFFICIENT INSTITUTIONAL CAPACITY.**

Institutional effectiveness is facilitated by trained staffs and adequate facilities in the discharge of their constitutional mandates. Uganda's poor show in the *Afrobarometer* survey is indicative of this fact. The anti-corruption institutions lacked sufficient well-trained staffs and experts to handle fraud and corruption cases in the country (see also Watt & Williams, 2005). There is great need to continually train and upgrade staff in investigation, prosecution and adjudication of corruption cases that are increasingly becoming sophisticated and highly technical. The fraud unit of the DPP and the National Fraud Squad of the Ugandan Police need specialized training both locally and internationally to be able to cope with their tasks. Again, Uganda's anti-corruption agencies also have inadequate financial facilities and challenges in the execution of their mandates, because the major financiers of these institutions are donors from the developing countries (Watt & Williams, 2005).

In contrast, the DCEC in Botswana has been able to generate its own funds through the hiring of experts that will engage in consultancy servicing to the government parastatals and advise the parastatals on how to combat corruption within their organizations. This has led to a huge savings in most public corporations in Botswana (Lysson & Rudolph, 2011). More so, the anti-corruption agency in Botswana has remained relevant because of the institutional strategies it adopted in combating corruption, unlike in Nigeria and Uganda where no visible tactics have existed. These Botswana tactics include the formation of anti-corruption clubs, introducing corruption studies, essays and debates on strategic eradication of corruption in the school curriculum, as well as in publications and workshops/seminars and conferences. Consequently, the organization has challenged ordinary citizens of Botswana to play a role in tackling corruption. The citizen could secretly report corrupt charges through the hotline. In this respect, a total of almost 1851 reports were lodged in 2010 and 41.6% of those reports were classified for investigation. Of the 41.6%, 82.34% had to do with corruption, 11.69% were economic crimes, and 5.97% were money laundering cases.

Comparatively, in Uganda in 2003, 610 cases came from Auditor General. Of the 319 new cases of **corruption** that year, 110 were referred elsewhere, having 61 completed with report and 136 completed without report (BTI, 2012). In Nigeria, the judicial system has not helped the anti-corruption institutions to achieve their objectives of prosecuting corrupt officials, to a large extent. Most criminals when arrested are not tried in time, as in most cases there is a slow movement of cases in the Nigerian judicial system. Also, the judiciary rather than prosecute the corrupt officials would release them based on the fact that the high profile government officials employ the services of the best lawyers or senior advocates to defend the corruption cases and thereby intimidate the young lawyers during trials in court (Bello-Imam, 2005). The Nigerian judicial system has obstructed rather than served the anti-corruption commission in the sense that the instrument which the EFCC use in the anti-corruption crusade is the same used by the corrupt officials to beat the effort. When the commission takes politicians and public officers to court, the accused persons use legal means to set themselves free (Obijiofor, 2009).

Furthermore, the EFCC lacks sufficient financial facilities to carry out its tasks. This has led to its inability to open more branches in other states of the federation; and more offices is essential for the commission to be effective in its mandate.

Limited offices do imply limited coverage in the discharge of their mandates in the country. According to Bello-Imam, there are no offices of the anti-corruption commission in the 36 states and in the 774 local government areas in Nigeria. The EFCC has operated from its headquarters in Abuja, as well as its Lagos office, obviously hampering its operational ambit.

In summary, the process of democratic consolidation implies that the salient democratic institutions of horizontal accountability operate effectively and independently. The institutions include the executive, the judiciary and the legislature, and the various special institutions of oversight and control, anti-corruption agencies, the media and civil society organizations as well. Opponents of dominant party systems have argued that democratic polities possess at least some conventional rules and procedures to eliminate the abuse of political power and stabilize the political institutions. However, it is evident that such conventional creation and longevity of institutions of horizontal accountability does not necessarily guarantee democratic consolidation. In the case of Botswana, the consolidation of the DCEC was a product of a zero-authoritarian interference in the democratic process in the South African state. In the case of Uganda and Nigeria (partly), the deconsolidation of anti-corruption institutions stems from the ant-democratic historical roots of both countries which largely produced the later 'democratic' institutions.

Noteworthy is the political will exhibited by the Botswana's parliament, and this has been instrumental in the country's excellent records in the anti-corruption **campaign**. Botswana has coupled its political will with reforms to curb corrupt **tendencies** in both domestic and international scene. In Nigeria, with the failure of the leaders to sign the international agreement on corruption in 2003, and the later reluctant approval of the agreement in 2011 (7 years later), the Nigerian parliament **displayed** lack of political will to fight the menace of corruption in the federation. The success of the anti-corruption agency in Hong Kong, for instance, was due to the fact that the leaders had the political will and there was an existing vibrant institution.

Certainly, corruption impedes development in any country. The **establishment** of well-facilitated, independent anti-corruption agencies in Africa is a necessity for the **continent's** growth and development.

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