Grand Corruption in Sub-Saharan Africa and the Feasibility of Establishing International Anti-Corruption Court

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Abstract: Grand corruption remains a devastating challenge in most part of the sub-Saharan Africa rendering developmental efforts continually negligible. Part of the explanations for this have been the domestic challenges of dysfunctional anti-corruption and legal institutions, most especially, the inability of these institutions to prosecute perpetrators effectually by allowing their trials to linger on. This paper examines some grounds on which the formation of International Anti-corruption Court (IACC) could be based to prosecute the past and future perpetrators. It submitted that given the global dimension of corrupt acts and the inability of sub-Saharan African countries to effectively tame this menace, beyond the criminalisation of corruption or regarding it as human rights issue by various international and regional legal instruments, the establishment of International Anti-corruption Court will intensify and make anti-corruption drive in sub-Saharan African countries more effective. The methodology adopted for the paper is qualitative and the gathered data from the secondary sources were subjected to content analysis.

Keywords: grand corruption; international anti-corruption court; anti-corruption convention; sub-Saharan Africa

1. Introduction

Corruption is not a new phenomenon. In the past, prominent philosophers such as Plato and Aristotle stressed that no society is immune from corruption and typified political regimes that gained from the interests of specific groups or sectors rather of applying laws and searching for the welfare of the citizens (Friedrich in Poeschl and Ribeiro, 2012). Since then, corruption continues to remain domestic and global challenge to individuals, governments, and non-governmental organisations. Grand corruption is today thought to eat up more than five percent of global gross domestic product. Illicit financial flows out of developing countries are ten times larger than the foreign assistance those countries receive – losses that have direct human consequences (Wolf, cited in Biron, 2014). According to Transparency International (TI) (2016), more than six billion now live countries with serious and grand

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corruption problem whereby leaders with notoriously corrupt records continue to enjoy lives of luxury at the expense of people living in grinding poverty.

Sub-Saharan Africa (ssA), which is constituted by forty-nine of the fifty-four African nations, housed about 920 million people. Though a number of Sub-Saharan African nations are recently classified among the fastest growing economies in the world, these achievements are yet to be reflected in lives of the majority. This is because millions of its inhabitants live in poverty, hunger, lack access to clean water, insufficient health care, incessant war, disease and actually still rated one of the poorest regions in the world (New World Encyclopaedia, 2015). Part of the explanations often cited for this appalling condition is prevalent corruption, which has moved from petty to grand. There is general consensus among scholars that grand corruption has remained persistent in sub-Saharan Africa and continues to be a major socio-political and economic stumbling block to its stunted development, permeating all government institutions (New World Encyclopedia, 2015)

Since grand corruption is widespread, it has received much attention from the international and state actors and many remedial strategies such as UNCAC, African Union's Convention on Preventing and Combating Corruption (AUCPCC), anti-corruption bilateral and multilateral assistance, *inter alia*, have been undertaken to curb the menace. Its global dimension implies that prescriptive measures must move beyond domestic remedy. However, there are hardly any of these global anti-corruption strategies that have seriously taken into consideration the establishment of international anti-corruption court for effective prosecution of offenders to deter grand corruption. More so, that many domestic courts in sub-Saharan Africa have either been overburdened with cases bereft of independence or infested with corruption. To this extent, many corrupt leaders have escaped with their looted funds and illegal assets acquired. The objective of this paper, therefore, is to examine the viability of setting up international court to prosecute those sub-Saharan African leaders accused of grand corruption and it can effective curb the menace in the sub-continent.

2. Definition of Operational Terms

Since there is hardly any disagreement among scholars regarding the concept of grand corruption, otherwise called 'political corruption' or 'high level corruption', what is necessary here is to operationalise the suitable terms employed. First, TI views corruption as the misuse of power, entrusted to the state, for private economic gain or other improper or unlawful advantage. This definition, though poses challenges regarding investigations aimed at private corruption, it is useful in terms of international conventions and agreements which are of relevance in this paper. The definition of the Conference of the States Parties to the UNCAC (2015) is adopted for grand corruption, which views grand corruption as:

an expression used to describe corruption that pervades the highest levels of government, engendering major abuses of power. A broad erosion of the rule of law, economic stability and confidence in good governance quickly follow. Sometimes it is referred to as state capture, which is where external interests illegally distort the highest levels of a political system to private ends.

Thus grand corruption is also mentioned in chapter III of UNCAC which included the offences involving high level officials and a substantial amount of money, resulting to considerable public damage or to the infringement of fundamental rights of at least part of a State's population.

Petty corruption, on the other, is sometimes described as administrative corruption, involves the exchange of very small amounts of money, and the granting of small favours. These, however, can carry considerable public losses, as with the customs officer who waves through a consignment of high-duty goods having been bribed a mere $100 or so (Conference of the States Parties to the UNCAC, 2015, 2).

The essential difference between grand corruption (state capture) and petty corruption (day-to-day administrative corruption) is that the former concerns the misrepresentation of main functions of government by senior public officials; the latter emanates within the context of performing governance and social frameworks.

3. Theoretical Explanation

Neopatrimonialism and state fragility are the relevant theories adopted to anchor our discussion. Neopatrimonialism is a combination of dual polar systems enunciated by Max Weber as patrimonialism and rational-legal systems. Neopatrimonialism refers to an institutional setup in which a country's informal institutions function according to patron-client relations while, at the same time, its formal institutions are

constructed along rational-legal lines (Mills, 2012, 30). Thus, African countries appear to have adopted *inter alia* the similar types of institutions obtainable in Western world including democracy, property rights, whereas in reality real politics is overwhelmingly conducted via informal institutions. Médard (1991 in Bach, 2012), aligned with this thought when he argued that:

neopatrimonialism provides the common denominator for a range of practices that are highly characteristic of politics in Africa, namely nepotism, clannish behaviour, so-called 'tribalism', regionalism, patronage, 'cronyism', 'prebendalism', corruption, predation, factionalism, etc (330).

Mills (2012) averred that 'big man politics' and 'personal rule' as enunciated by Jackson & Rosberg (1982 in Mills, 2012) and van de Walle, (2012 in Mills, 2012) are also inclusive of the foregoing attributes of African politics which criss-cross power configuration in Africa and excessively held by the executive branch of government. This, they say, cannot be divorced from how corruption exudes in the region where centralisation of power around the 'big men' (usually the presidents) are:

literally above the law, controls in many cases a large proportion of state finance with little accountability, and delegates remarkably little of his authority on important matters... Only the apex of the executive really matters (van de Walle, in Mills 2012, 30).

Thus, in spite of the existence of formal institutions, checks and balances to be imposed by the legislature, judiciary and others much more powerful informal institutions hold sway. For example, in Kenya and Nigeria, political leaders manipulate politics and institutions with impunity by ignoring legal boundaries. This is simply because economic resources are largely under the control of the 'big man' and his followers, political power is the origin of wealth and the state is the pie that everyone greedily wants to eat (Médard, 1982 in Mills 2012, 30).

Further, because of the nature of African politics, which is characterised by patrimonialism and overbearing 'big manism', state eventually becomes fragile, hence the relevance of state fragility paradigm in this discussion, in spite of the fact that it is highly contentious (Collier, 2007). This is connected to the complex and diverse nature of states being referred to as fragile. The expression of state fragility is often used interchangeably with such concepts like 'weak state', 'failed state' and even 'collapsed state' (Rosenje, 2016). Generally, scholars and development agencies view state fragility mainly as a major dysfunction of the state to provide

citizens' basic needs and its attendant expectations via political process (Mcloughlin, 2012).

Theoretically, state fragility can be contextualised in the context of combined measure of all aspects of state performance including authority, service delivery and legitimacy that characterise the state (European Report on Development, 2009). The criteria for gauging state weakness, failure and collapse are almost the same, ranging from the state's inability to carry out its basic duties as the main organisational structure, failure to exercise its sovereign rights, powerlessness of making binding decisions on its citizens to absence of an effectual engine of growth and appreciable development. Thus, inability to usher in all-round development occasioned by violent contestation for state power and pervasive corruption are characteristics of a fragile state (Carment, 2003; Osaghae, 2007 in Rosenje, 2016), arising from patrimonialism and 'big manism'. No wonder the former United States' Secretary of State, Hillary Rodham Clinton once affirmed that the reason so many millions of Nigerians were desperately poor, despite the nation's having so much oil, was a failure of government at the federal, state and local level (*The New York Times*, 2009 in Mills, 2012).

Based on the foregoing, characterising majority of sub-Saharan African countries as fragile is not out of place, though some analysts argue that countries cannot be described in one form of fragility and that fragility can be entrenched or transitory, thus poses challenges of different scales from a socio-economic development standpoint (Menacal, 2010). However, it is reasonable to submit that many of the features specified in the preceding paragraphs are evident in most sub-Saharan African countries' quest for positive impact on their citizens' existence. That is why Dumitru and Hayat (2015) agree *in toto* that corruption generally underlies much of institutional weakness leading to fragility.

4. The Phenomenon of Grand Corruption in Sub-Saharan Africa

It is needless to use many pages to substantiate the fact that Africa is and generally regarded among the world's most corrupt places and considered as contributing to their stunted development and impoverishment (Hanson, 2009; Weylandt, 2013). The past and present performance of most sub-Saharan African countries in the global surveys of corruption, development and governance assessment indices such as Transparency International's Corruption Perception Indices, Mo Ibrahim Foundation's Governance in Africa Reports, Afrobarometer, among others has been discouraging (Tikum, 2016). A 2002 African Union study estimated that corruption

cost the continent roughly $150 billion a year. To compare, developed countries gave $22.5 billion in aid to sub-Saharan Africa in 2008 (Hanson, 2009). Similarly, Global Financial Integrity (2010 in Mills, 2012) calculated that financial leakages in terms of illicit financial flows fromSSA alone amounted to $358 billion between 2000 and 2008 periods. Human Rights Watch documented that in Angola, approximately $4.22 billion in government funds, or about 9.25 percent of the country's annual GDP, disappeared between 1997 and 2002. At the same time, the total amount of social spending in the country was around $4.27 billion. Every measurable standard of human development fell during that time, in part due to the fact that billions of dollars that could have been used for much-needed social services disappeared (Human Rights Watch, 2004; 2010). In 2012, the International Monetary Fund reported that $41.8 billion could not be accounted for between 2007 and 2011 in Angola. Despite that government provided limited justification for the disappearance of some of the funds, no meaningful explanation was offered for at least $4 billion in missing funds (Human Rights Watch, 2012). The 2009 Cameroon's budget stood at $4.6 billion, whereas $715 million was allocated to primary and secondary education, $226 million for public health, and $115 million earmarked for the agricultural sector. The late President of Gabon, Omar Bongo's deposits in banks in Cyprus, Dubai, France, Greece, Switzerland, and the United States alone added up to $280 million; this was enough to finance Cameroon's budget allocation for public health or a third of the primary and secondary education budget (Koefele-Kale, 2013). Similarly, the funds lost as a result of paying salaries to ghost workers in Tanzania increased from 178,066,130 shillings ($153,479) in 2007/2008 to 832,448,998 shillings ($717,505) in 2012/2013 (National Audit Office 2014, 2009) is good illustration in this direction. In Nigeria, about $400 billion was stolen and stashed away in foreign banks by past corrupt leaders before the return to democratic rule in 1999, while the former Nigeria's EFCC Chairman, Nuhu Ribadu claimed that over 64 trillion naira (about 507 billion US dollars) were looted by past leaders (Folorunso, 2013). Since the beginning of the Nigeria's Fourth Republic, more than 10 trillion naira public funds have been looted without the perpetrators being properly prosecuted. For example, there has been massive scam in weapons and defence procurements to the tune of over 3 trillion naira since 2011 under the guise of fighting Boko Haram (Ayodeji, 2016).

Also, for the past one and half decades, 90% ofSSA countries scored less than 50% on CPI charts depicting prevalent corruption. In 2015, forty out of theSSA's 46 countries showed a serious corruption problem and there was no improvement for

continent power houses Nigeria and South Africa (TI's CPI, 2015). For emphasis, TI, renowned for its corruption perception index tools which measure the perceived levels of public sector corruption worldwide, has unceasingly rated many sub-Saharan African countries low owing to prevalence of grand corruption. For instance, in the 2018 Corruption Perception Index (CPI), the nations of sub-Saharan Africa were still perceived on Average to house world's most corrupt governments. Seven out of the bottom most corrupt ten countries are from Africa. Thus, majority of the sub-Saharan African countries such as Somalia, South Sudan, Guinea Bissau, Equatorial Guinea, Burundi, Cameroon, Congo, Mozambique, Angola, Liberia, Ghana, Nigeria, South Africa, Kenya, Chad, Uganda and Zambia remain the citadels of grand corruption (TI, 2018; 2019).

The devastating phenomenon of grand corruption has manifested on all fronts. On the socio-economic front, studies have shown that the misappropriation or misallocation of resources meant for economic development through grand corruption by leaders in power is the major driver of economic deficit and the perpetuation of the succession of poverty in sub-Saharan African countries. Its costs are unquantifiable but can be felt in the areas of foreign direct investment withdrawal or reduction, the distortion of resource allocation resulting in increased costs of goods and services, poor social welfare, health and education leading to increase in violent criminal activity such as robbery, kidnapping, terrorism due to unemployment and extreme wealth disparities (Palmer, 2012; TI, 2018). That is why accusing fingers are continuously pointed at ruling elites for embezzling state resources rather than contributing to the socio-economic development of their people. But very little is done since the onus is on national judicial systems to hold the powerful to account.

Also, the prevalence of grand corruption has distorted the political process. Scholars have observed that several public officials inSSA seek re-election because holding office gives them access to the state's coffers, as well as immunity from prosecution. When the stakes for remaining in office are so high, candidates are more likely to buy votes or rig an election, as happened in Nigeria's 2007 elections.

5. Overview of Anti- Corruption Strategies and Why Persistence of Grand Corruption in Sub-Saharan Africa

For our purpose, two broad categories of anti-corruption strategies have been identified to curb grand corruption in sub-Saharan Africa. These include institutional and non-institutional strategies. The institutional strategies involved legal and non-legal approaches. The legal approaches can be located in the relevant legal instruments such as constitution, acts, penal codes, anti- corruption laws and courts, among others. This has been the general approach in allSSA countries except that few countries such as Kenya, Angola, Uganda and recently Tanzania have exploited the option of anti-corruption court. These courts have been hampered by executive interference and lack of independence to effectively prosecute offenders (Ayodeji, 2013).

The non-legal but institutional approach is visible in the setting up anti-corruption agencies to anchor most of the anti-corruption initiatives. This type of approach is common in Nigeria, Ghana, Kenya, Cameroon, Uganda, Botswana, South Africa, Tanzania, Liberia, Rwanda, Malawi, Zambia and host of other sub-Saharan African countries. The popular Economic Financial Crimes Commission (EFCC) of Nigeria, the Kenya's Ethics, Anti-Corruption and the Botswana's Directorate on Corruption and Economic Crime (DCEC) and the Tanzania's Prevention and Combating of Corruption Bureau (PCCB) are few anti-corruption bodies that have been at forefront of corruption war in these countries. The common feature of the limitations most of these anti-corruption agencies range from operational deficiencies such as inadequate funds, appointment lopsidedness, deformed acts setting them up, to executive meddlesomeness (Global Integrity, 2010; Amukowa, 2013).

The non-institutional anti-corruption approach is mostly manifested in the rhetorical speeches by the sitting sub-Saharan African presidents and other heads of government and driven by the international development policy agenda. According to Mills (2013) in a study carried out, it was discovered that there are commonalities in the sub-Saharan African rulers' anti-corruption strong rhetorical language such as 'war against corruption'; 'crusade against corruption', and 'zero tolerance against corruption' while they usually assure the public and claim that they committed to the fight and demeaning the anti-corruption efforts of their predecessors. The anti-corruption speeches made by the past Tanzania's President, Jakaya Kikwete, Nigeria's President, Olusegun Obasanjo, and Kenya's President, Mwai Kibaki are good examples (Mills, 2013).

Though many factors can be identified for the persistent of corruption in sub-Saharan Africa, the prominent ones that are relevant in this discussion include power mongering mentality of African rulers, unaccountable culture of African leaders, absence of political will on the part of government in power, dysfunctional anti-corruption and legal institutions, external collusion and support of bribery and treasury looting.

To start with, most of the sub-Saharan African rulers are power mongers. Hence, they seek power and hold on to it at all cost and view occupation of public offices as a do-or-die affair. Many sub-Saharan African countries have experienced or still being confronted with sight-tight attitudes of their leaders. These leaders more often than not will not want to leave offices when their tenures are over in order to cover their illegal wealth accumulation while in offices. For instance, Robert Mugabe has been in power for over thirty years in Zimbabwe. Other countries such as Nigeria, Uganda, Cameroon, Angola, Zambia, Democratic Republic of Congo are good examples.

Thus, arising from their power mongering attitudes, many African leaders have developed unaccountable culture while in office becoming passionate self-styled rulers and abhor being challenged. Whether under the military or democratic regimes, questioning leaders in power or after leaving office to account for their corrupt acts, misdeeds or offer logical explanations for what they do or fail to do is usually viewed as subversive, uncooperative or witch-hunting. In Nigeria, probing of some underhand arms deals that ensued under Jonathan administration is being viewed in some quarters as witch-hunting.

Also, there hardly any explanation being offered by any anti-corruption study onSSA without mentioning absence of political will as a snag in the anti-corruption efforts. Indeed, owing to the fact that sub-Saharan Africa rulers, whether military or civilian, have already being weakened by power mongering and unaccountable syndrome, many of them lack the necessary will power to genuinely pursue anti-corruption agenda which may consume them because they are also involved. The remove from power of democratic governments some countries such as Moussa Troare's Mali, Mobutu's Zaire, Samuel Doe's Liberia and Sierra Leone are a few examples of countries where high-level and systemic corruption have been highlighted as factors that contribute to the denouncement and overthrow of these regimes (Kpundeh, 2000). More recently, it can be claimed that administrations of Nigeria's Jonathan, Uganda's Museveni, Zimbabwe's Mugabe, Biya's Cameroon lack the political will

or have embarked on phoney anti-corruption war, hence, the escalation of grand corruption while in office.

The foregoing factors can be sensibly linked to the dysfunctional anti-corruption and legal institutions which remain major stumbling blocks to efforts to bring to book those rulers that have looted public funds inSSA. To be sure, grand corruption in these countries has become a social disaster due to ineffective anti-corruption law or owing to the failure of the legislative and judicial institutions to make and to implement the law of the land regarding bribes, accounts falsifying, violation of office oaths, political patronage (Jean-Marie Hyacinthe Quenum, 2012). Even the military regimes that came beforehand on rescue missions were also enmeshed in grand corruption. It can easily be recalled how funds worth $ 5 billion were recklessly looted by Mobutu Sese Seko of Zaire, over $ 5 billion squandered by Sani Abacha of Nigeria (Infoplease, 2015); while in Equatorial Guinea under the President **Teodoro Obiang Nguema Mbasogo, the Africa's longest serving ruler, who overthrew his uncle** in a bloody coup d'état in August 1979, his first son, Teodorin Obiang lavishes millions of dollars of state funds financing his extravagant lifestyle which includes luxurious property in Malibu, a Gulfstream jet, Micheal Jackson memorabilia and unbelievable car collection (Nsehe, 2012).

Lastly, external collusion and support of bribery and treasury looting appear to be greatly responsible for the persistent grand corruption in sub-Saharan Africa. As rightly observed by Palmer (2012), there exist: external drivers and facilitators of grand corruption, including the tolerance, and even support and protection, of notoriously corrupt states by powerful non-African states to ensure and perpetuate economic, strategic or political advantages; the banks and other financial institutions that accept stolen billions from corrupt sub-Saharan African leaders; and, private companies that pay bribes to secure lucrative contracts...(33)

It is on record that most of the funds looted by African leaders are usually stashed away in foreign bank accounts in Switzerland, United Kingdom, United States, France, among others. For instance, as canvassed by the current President of Nigeria, Muhammadu Buhari, the Swiss and British banks are still holding on to the looted funds deposited by the past and present Nigerian leaders and they unwilling to let go.

From the above, it will be difficult through domestic legal means to effectively bring theSSA's greatest kleptocrats to justice. The foregoing suggests that for sub-Saharan African countries to curb the wilful looting of funds by their rulers, anti-corruption

efforts must move beyond conventional strategies and rhetoric by these rulers and drastic measures must be undertaken. Especially by those countries and international bodies that Africa countries look up to for developmental assistance. One of the observed prescriptions that could assist in cubing grand corruptionSSA is the setting up anti-corruption international court (IACC) analogous to the International Criminal Court (ICC) that has been trying to curb crimes being committed against humanity. How feasibility is this proposed IACC to curb grand corruption inSSA? This is focus of the next section of this article.

6. Feasibility of Establishing International Anti-Corruption Court

Unlike other anti-corruption strategies, scholarly literature on establishment of anti-corruption court is still unfolding. The available ones exhibit a divergent of opinions among scholars, legal luminaries, anti-corruption experts and organisations including policy makers resulting to a debate. There are those on the divide of the IACC viability and the positive impact it will make (Starr, 2007; Bantekas, 2006; Wismer, 2011; Global Organisation of Parliamentarians Against Corruption (GOPAC) 2013; Biron, 2014; Bloom, 2014; Rotberg, 2016; Goldstone & Rotberg, 2018; Roach & Mortensen, 2019) among others. Among these set of scholars, some strongly are of the opinion that establishment of IACC will facilitate the bringing peace, security, justice to the world, the renowned world klepoctrats, especially inSSA can be brought to book. It could also serve as deterrence, while others believe that criminalising grand corruption as a crime against humanity and paving way for the existing ICC to handle the matter will be in order. The recent prominent promoter of IACC's establishment is Mark Wolf (2014), a United States Federal judge, who remains adamant in the promotion of this cause, especially in the realm of criminalisation and setting up separate IACC.

Summarily, Wolf's proposal is stirred by the two logical observations; first, that corruption is exceedingly damaging bringing out serious economic costs and usually leading to human rights abuses. Second, national governments have failed to effectively address grand corruption. That although corruption is illegal universally, in many nations, grand corruption at the highest levels of government has led to a culture of impunity whereby offenders involved freely walk away and fear no punishment (Stephenson, 2014, Goldstone & Rotberg, 2018). Hence, he strongly proposed the establishment of the IACC possessing criminal and legal jurisdictions and power to deal with grand corruption and leaders who refused to move against smaller-scale but still significant corruption.

However, since Wolf's proposal, many critics such as Stephenson (2014), Schaefer, Groves, & Roberts (2014), Doukellis (2015) and others have emerged doubting the possibility of IACC emergence. Their doubts rest mostly on workable means of getting IACC started off ground given political and legal complications that may arise. Part of these technical hitches bothers on the age long national sovereignty issue; ineffectiveness of the ICC which may serve as a unenviable model for the proposed IACC; the accusation of biases against less powerful developing countries likeSSA nations as the case with ICC; other hitches include the ascribing participation in the proposed IACC to membership in key international institutions could throw up an even greater dilemma leading to opposition by potentially leading major international players like the United States, India, Russia, China, and Brazil. And many corrupt leaders who have spent decades corruptly accumulating wealth, for example inSSA, will damn all the consequences to protect themselves and their personal corruption networks notwithstanding any loan conditions attachments by key international institutions (Ali, 2015).

From the foregoing perusal of the two opposing views, based on the available evidence from the scholarly literature and beyond taking sides, the inference that could be made is summarised hereunder.

First, more than in any region globally, grand corruption has become a collective extraordinary obstacle to manySSA countries' developmental efforts and indeed a primary, rather than a secondary rationale for development failure (Warf, 2017). Hence, a peculiar problem demands a remarkable solution and this can be handled by the establishment of IACC to deal with the situation.

Second, if critically analysed, the benefits of the establishment of the IACC outweigh its limitations, especially toSSA, where grand corruption has become an untamed monster to Western countries. The sovereignty controversy has remained with operations of many international institutions like the United Nations and its subsidiaries such as International Court of Journal (ICJ), African Union (AU) among others and their positive impact is still noticeable. Also, the purported ineffectiveness and the assumed biasness or double standard accusation to be levied afterwards by less powerful nations against the IACC as the case in the ICC operations are pre-emptive and not entirely valid. To be sure, United States, who rejects the ICC's membership, which is probably partly affecting the operations of the ICC, appears to be in total support of the IACC's establishment. Aside this, though may be unnoticeable, the existence of the ICC has deterred the commission of crime with impunity against humanity by African leaders. Many sub- Saharan African rulers

cannot forget in a hurry the message sent by the conviction of Charles Taylor, former Liberian ruler and warlord, the embarrassment faced by Kenyan President, Uhuru Kenyata and Vice President William Ruto before soft landing of some sort, and the ICC's warrant arrest on Sudanese President, Oman Bashir which has curtailed his movement. Willy nilly, handling the cases of the proven grand corruption against African rulers this way will rub off on the operations of the IACC if established.

Third, the issue of whether to regard grand corruption as a human right issue and crime against humanity has attracted attention of anti-corruption scholars and goes to the heart of whether to empower the existing ICC to try grand corruption cases or be left to the proposed IACC. Aside the fact that both positions are feasible, the linkage between grand corruption and crime against humanity has been since established by an avalanche of scholars and international institutions (see Bantekas, 2006; Starr, 2007; GOPAC, 2013; Koefele-Kale, 2013; Bloom, 2014; Ali, 2015), the standpoint of proving that grand corruption meets the threshold to be investigated and prosecuted as a crime against humanity is also feasible. It has been shown that elements which a prosecutor needs to establish whether the crime against humanity has occurred include its widespread or systematic, whether the attack is direct, any civilian population involved and mental element and that ...grand corruption has all the elements and similar effects to those of crimes against humanity... (Njoroge, no date, p.7); and all these are present in most cases of grand corruption that have evolved inSSA. However, argued elsewhere, it will rather be more expedient to establish fresh IACC because it appears that the current ICC has been overburden with more than enough crime cases. That is why it is suggested that the proposed IACC should be multi-structure allowing some continents, for instance, Africa and Asia, that are notorious for grand corruption to have separate divisions (see the proposed structure in Figure 1 below). While there should be highest body structure (supreme division) that has overriding jurisdiction on all grand corruption cases, each continental division should assume on cases emanated from its area.

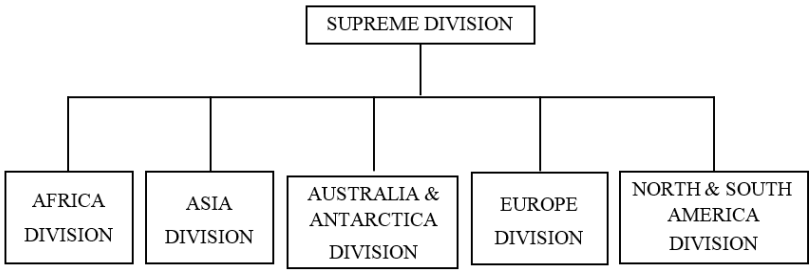

Figure 1. Proposed Structure of the IACC

Still on the legal threshold, it even becomes more feasible for IACC to emerge if the existence of the major global and regional anti-corruption conventions such as UNCAC, AUCPPC, Transnational Organised Crime; the UN Declaration against Corruption and Bribery in International Commercial Transactions, the International Code of Conduct for Public Officials, ECOWAS Protocol on the Fight Against Corruption in Member States (Amukowa, 2013) and others are meant to serve as an international legal framework to tackle corruption and what states should do to prevent and outlaw corruption, how states can cooperate to recover assets and deal with culprits. This has established that corruption is no longer a local matter but a transnational phenomenon which affects all societies and economies, and demand internationally-agreed urgent. The recognition of some corrupt acts as crimes by most these global legal instruments is a pointer to the fact prosecution of perpetrators under proposed IACC appears feasible. All that is needed to be done is to amend and streamline these legal instruments to reflect the contemporary realities.

Fourth, unlike before, evidence abound that contemporary grand corruption inSSA is characterised by vast wealth flight and the capacity to conceal it due to globalisation and some other factors. It is estimated that Africa's political elite stashed away somewhere between $700 and $800 billion in offshore accounts externally (Koefele-Kale, 2013). Capital flight fromSSA was equal to 145 percent of the total debt owed by these countries in the mid-1990s, or 25 percent of the continent's Gross Domestic Product! For instance, General Abacha's estimated net worth stood between 1.5 and 3.7 percent of Nigeria's GDP (Koefele-Kale, 2013). Unfortunately, 80 to 90 percent of the illicit wealth leakage coming from Africa remains outside the continent and never reinvested productively domestically for the fear of being detected and subsequent recovery (Koefele-Kale, 2013). If this has been the case, no domestic courts or anti-corruption agencies can effectively recover the aggregate of funds substantially as have been the cases in Nigeria, Kenya, Uganda, Zaire Zambia, among others. It is obvious that the creation of IACC becomes handy to serve as a rendezvous for the trial of these 'big men' that appear to be untouchable in their domestic arena and the looted funds recovered.

Lastly, since it has been established that corruption could be regarded as a crime against humanity, the contention regarding complementarity principle in line with the international criminal justice discourse and ICC operations also become handy here given the reluctance or lackadaisical approach towards the domestic prosecution of grand corruption offenders in SAA. The principle, though controversial, stipulates that a national jurisdiction should handle international crimes and only if the national

justice system is disinclined or incapable to hear such trials will the ICC exercise its jurisdiction (Olivier, 2012). In this regard, the failure of the relevant domestic judicial system to prosecute suspected corrupt rulers should be an automatic qualification and mandate given to Non-governmental national and international anti-corruption and human rights institutions such as TI, GOPAC, *Socio-Economic Rights and Accountability Project (*SERAP) of Nigeria, Amnesty International, Human Rights Watch, Civil Rights Defenders of Kenya and others to petition IACC for necessary investigation and prosecution.

From the foregoing, the feasibility and utility of creating an IACC is not in doubt. It would go a long way in assisting fragile and incapacitated sub-Saharan African countries who often find it difficult forensically to pursue the complicated trails of highly and connected corrupt politicians and bring increased attention and notoriety to the excesses of corruption and to kleptocracy more generally. It would help arresting, prosecuting and punishing corrupt officials, help to reduce impunity and thus deter grand corruption, and give the kind of international legitimacy to anti-corruption strategies that national court systems often lack.

7. Policy Implications and Recommendations

As fallout of the part of the preceding analysis, it is evident that anti-corruption strategies, whether real or phoney, being applied to curb grand corruption inSSA appears to be ineffective. These strategies are never fully implemented or not implemented at all. It also appears that each time it appears that one step is being taken to move forward towards curbing corruption; many steps are taken backward in total disregard of the seeming anti-corruption attempts at progress.

Part of the major reasons for this is that majority of these strategies fall into imprecise zone of national responsibility which has already been weakened due to patrimonialism and state fragility. Aside this, existing multilateral agreements, including the UNCAC, AUPCC and others, appear to lack substantive enforcement mechanisms (Biron, 2014). For example, in spite of available anti-corruption legislation in almost every sub-Saharan African country, many of the most corrupt rulers have been able to use their connections, wealth and power to subvert these laws and eventually escape justice.

The derived major policy implication from the above is that while an avalanche of anti-corruption strategies has identified and implemented inSSA, the creation of IACC to address the grand corruption prevalent among the rulers remains only

unexplored option; hence, the necessity of establishing an IACC. The mandate of the proposed IACC should emphasise recovery of the stolen funds and then punishment to serve as deterrence while recovered assets should be repatriated to victim states, and checks and safeguards should be applied to ensure that recoveries are used appropriately. However, due to usual funding challenge that such bodies usually faces, it is proposed that while the member nations should exclusively fund the body, there should be mutual agreement among them that some percentages of recovered funds should be set aside for the sustenance of the IACC. After all, if not for the IACC's efforts, such funds would have directly added nothing to development of such culprits' countries.

It is also proposed that IACC, if established, should be in divisions taking charge of the different continents. As pointed out earlier, there should be a division that deals with the cases brought from African countries while the presiding judges should be internationally approved jurists consisting of a mixture of developed and developing countries, renowned and vast in handling grand corruption cases in the past. It should also have the investigative and prosecutorial court staff immune to pressure from powerful African elites.

Alternatively, African leaders should move away from rhetoric of dealing with grand corruption and demonstrate strong political will towards curbing it by establishing African Anti-corruption court which could be an eventual subsidiary of proposed IACC. This has been recently demonstrated in the Extraordinary African Chambers, a special criminal court set up by the African Union within the Senegalese court system, granted former Chadian president Hissene Habre's victims of rape and sexual violence reparations of about 34,000 dollars each (*Vanguard Newspaper,* July 31, 2016).

8. Concluding Remarks

Since it has been established in preceding sections that grand corruption, though a global phenomenon, but its existence is somewhat unique and has become a culture among the rulers and highly placed top government officials inSSA. This is largely due to *inter alia* power mongering mentality, political will deficit, external collusion and the higher risk of corrupt benefits rather than that of the punishment. The anti-corruption strategies to correct this anomaly have not been effective due to the persistent dysfunctional anti-corruption and legal institutions and the lip-service the rulers usually pay.

Therefore, in spite of the identified political and technical hitches that may stand in the way of establishing IACC and having assessed its rewards and limitations, it is worth trying and appears to remain the only option that has not been explored to curb the perennial grand corruption that has characterised governance inSSA which often distorts its movement towards development. Hence, creating an IACC would not only be an innovative way to punish corrupt political leaders and those who feed off corrupt practices, it would also serve as an alternative and effective channel for the law enforcement dealing with ubiquitous grand corruption and leverage the requirements of treaties such as the UNCAC, AUCPCC and other obligations of organisations. This would also spur many nations likeSSA to fortify and exhibit their competence to battle grand corruption.

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