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## Toa Kitu Kidogo: Corruption in East Africa

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# TOA KITU KIDOGO: CORRUPTION IN EAST AFRICA

ERIKA FRANZ<sup>†</sup>

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## I. INTRODUCTION

“Toa kitu kidogo” or “give a little something” is often heard in East Africa, where bribes are commonplace. From a traffic stop to picking up a package at the customs window in the post office, individuals can expect to add on a few shillings or francs for the “cost of doing business.” But corruption has far darker consequences; it erodes the social fabric of a society, stifling its opportunities for growth, dissolving faith in the government, and preventing substantive rule of law and good governance. Corruption, defined broadly, conveys a lack of accountability for government decisions, consequences for illegal actions, or a fair justice system. Through various anti-corruption measures, countries struggle in their own fight against the negative consequences of corruption. This paper will examine the definition and measurements of corruption, the problem of corruption in the context of three East African nations (Kenya, the United Republic of Tanzania, and Rwanda), the anti-corruption techniques utilized in each country, and if those techniques have been effective.

Each of the three countries has adopted various pieces of anti-corruption legislation and, to various degrees of effectiveness, implemented the laws. But corruption remains a significant barrier to development and comes with significant economic and social costs. While the focus of this paper will be the adequacy of the legal and administrative measures against corruption, it must be recognized that corruption cannot be fought on a purely legal level. A country’s history, political establishment, civil society, and economic inequalities are all factors in the breadth and depth of corruption and the effects on society. There is no exact formula to eliminate corruption, but rather it is specific to each country and requires a holistic approach.

## II. CORRUPTION

### A. *What is Corruption?*

Corruption can be defined as the impairment of integrity or the inducement to wrong by improper or illegal means.<sup>1</sup> It is public officials misusing or abusing their power for personal gain. Corruption manifests itself in many forms: bribing a policeman to avoid arrest, a politician persuading voters with the promise of future benefits, or a Member of Parliament (MP) skimming off public funds for his own gain are just a few examples. “Grand corruption” involves corruption of the decision-makers—the senior-level officials in a government, MPs, and heads of state. “Petty corruption” involves local level officials, including police officers, immigration officers, and district officials.<sup>2</sup> Corruption is evidence of a lack of accountability within the public sector of a country and, therefore, the presence of corruption is significantly tied to the absence of the rule of law in a given country.

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<sup>1</sup> MERRIAM-WEBSTER DICTIONARY, *available at* <http://www.merriam-webster.com/dictionary/corruption> (last visited Jan. 31, 2012).

<sup>2</sup> George Moody-Stuart, *The Costs of Grand Corruption*, 4 *ECON. REFORM TODAY* 19, 19 (1996).

Scholars argue that corruptive practices, specifically those rampant in East Africa, are not a native endemic but rather a symptom of post-colonialism.<sup>3</sup> Under colonization, arbitrary borders were used to divide up the colonies to ease the colonial powers' burden of ruling over the local population, thus forming countries of ethnic groups that had co-existed autonomously. During the decolonization process, European powers marginalized Africans and worked closely with those anointed by the colonial powers to be the new ruling elite. Unfortunately, those groups were often chosen based on how much the Europeans would benefit, not in the interests of the African people.<sup>4</sup> By the 1970s, African governments, including those in the East African states of Kenya, the United Republic of Tanzania ("Tanzania"), and Rwanda, were in their infant stages. Most African leaders had failed to develop adequate structures to provide basic social services to their people, such as education, health care, or access to electricity.<sup>5</sup> Instead, military dictatorships and strong police forces developed in many countries. Resources were exploited to benefit the ruling elite and thus corrupt patrimonial political and economic systems were formed.

As well as choosing a new form of government, the new African governments were tasked with developing a national economy. Many of the new legislators believed that rapid economic growth and development could only be achieved through a one-party system, as the multi-party democracies in the West encouraged polarization of already existing fragile or non-existent alliances between tribes or ethnicities.<sup>6</sup> Additionally, the type of economy chosen by many of the new countries involved very high levels of government control over the allocation of resources and almost all economic activities.<sup>7</sup>

One of the results of the government's control over the economy was that the public sector grew rapidly while private sector growth was marginalized. Much of the new nations' resources were allocated at the will of the ruling elite. Private investors and entrepreneurs had little incentive to develop business, and the framework of the new government intentionally or inadvertently stifled any real economic growth and development.<sup>8</sup> Corruption was able to flourish under the post-colonial systems, with a lack of adequately developed laws and institutions, patronage, abuse of political power, misuse of public funds, and bribery becoming the status quo.<sup>9</sup>

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<sup>3</sup> John Mukum Mbaku, *Corruption as an Important Post-Independence Institution in Africa*, in *CORRUPTION AND THE CRISIS OF INSTITUTIONAL REFORMS IN AFRICA* 16, 16-17 (John Mukum Mbaku ed., 1998).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 19.

<sup>7</sup> *Id.* at 20.

<sup>8</sup> *Id.* at 23-24.

<sup>9</sup> *Id.* at 27.

*B. Three Bases of Corruption*

The problem of corruption can be viewed through three lenses: economic, cultural, and political.<sup>10</sup> These lenses could also be considered ways to view the causes of corruption as they are always working together in some fashion. Being able to untangle the three dimensions of corruption in the context of any one specific country is a critical first step in forming a comprehensive plan to preventing corruption.<sup>11</sup> Economic inequalities, the culture of bribery, and the strength or absence of democratic structure are examples of how deeply rooted underlying factors play a role in the level of corruption.

A scarcity of resources and ineffective government control make corruption an easy way to supplement one's income.<sup>12</sup> Developing countries that have limited resources also often have large economic gaps between the few super-wealthy and the majority who live day-to-day. Many times public servants, such as police officers and immigration officers, find themselves in a position where they are not making enough to provide for their families with their government salaries. Therefore, paying bribes to civil servants to avoid a traffic ticket, or to move a visa application to the top of the pile, are common occurrences.<sup>13</sup> But economic corruption is not limited to the developing world. For example, over the last few years, Siemens, a German manufacturing giant, has been under investigation for numerous counts of corruption and bribery, from paying bribes to employees of an Italian client to under the table dealings with officials from the Argentine government.<sup>14</sup> In fact the investigations have led to charges in the United States against eight Siemens executives for paying over \$100 million in bribes to the Argentine government officials to win a \$1 billion dollar contract.<sup>15</sup> Corruption for economic gain is present in every society.

Culture can add a layer of complexity to the issue because what is considered inappropriate bribery in one culture may be a very traditional and acceptable exchange of gifts, signifying that a deal has been made, in another.<sup>16</sup> Other social factors, "including the cultural basis of socioeconomic and political organizations,

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<sup>10</sup> SUSAN ROSE-ACKERMAN, *CORRUPTION AND GOVERNMENT: CAUSES, CONSEQUENCES, AND REFORMS* 4-5 (1999).

<sup>11</sup> *Id.*

<sup>12</sup> See Bertha Z. Osei-Hwedie & Kwaku Osei-Hwedie, *The Political, Economic, and Cultural Bases of Corruption in Africa*, in *CORRUPTION AND DEVELOPMENT IN AFRICA: LESSONS FROM COUNTRY CASE-STUDIES* 40, 45 (Kempe Ronald Hope, Sr., & Bornwell C. Chikulo eds., Palgrave, 2000).

<sup>13</sup> Interview with Lusajo Mwamakula, Former Police Officer, Moshi Municipality, Moshi, Tanzania (July 26, 2011).

<sup>14</sup> Neil De Jour, *The Bribery Scandal at Siemens AG*, FOCUS (Sept. 7, 2010), <http://www.focus.com/briefs/bribery-scandal-siemens-ag/>; Edward Wyatt, *Former Siemens Executives are Charged with Bribery*, N.Y. TIMES (Dec. 13, 2011), <http://www.nytimes.com/2011/12/14/business/global/former-siemens-executives-charged-withbribery.html?scp=1&sq=former%20siemens%20executives%20charged%20with%20bribery&st=cse>.

<sup>15</sup> *U.S. Charges Siemens Executives with Bribery*, TRUSTLAW.ORG (Dec. 13, 2011, 11:53 PM), <http://www.trust.org/trustlaw/news/us-charges-siemens-executives-with-bribery>.

<sup>16</sup> DANIEL ALTMAN, *CONNECTED: 24 HOURS IN THE GLOBAL ECONOMY* 114-15 (2007).

pressures from the extended family and friends, and the lack of distinction between personal and private property” all add to the problem of corruption.<sup>17</sup>

Political corruption has plagued countries all over the world, but is particularly prevalent in East Africa where the democracies are relatively young and often dominated by one political party. Imposing undue influence on voters, rewarding supporters through patronage, and exploiting power for personal gain at the expense of the electorate are common acts of corruption.<sup>18</sup> Regardless of the type of corruption, empirical evidence has proven the negative effects of corruption on a society.<sup>19</sup> The value of having effective anti-corruption mechanisms in place is undisputed.<sup>20</sup>

### C. Measures of Corruption

Corruption lends itself to measurement more readily than the rule of law, but it is not without its own set of challenges. First, corruption can be manifested in an infinite number of acts: misuse of public funds, taking bribes, and election tampering are just a few examples. Second, the specific acts are hard to measure because they too often go unreported. Third, if the data is being collected through government organizations, it is hard to imagine there is no bias or pressure to underreport (if at all). Fortunately, there are a number of existing indexes that attempt to measure levels of corruption all over the world.

Transparency International (“TI”) produces the best-known measure of corruption, the Corruption Perceptions Index (“CPI”). The CPI ranks countries based on the perceptions of how corrupt their public sector is thought to be. The index is compiled from corruption-related data collected from the countries, experts living and working in each country, and other polls.<sup>21</sup> The CPI is based on perceptions because it assumes that since corruption is illegal and often unreported, accurate data of the levels of corruption would be unreliable and nearly impossible to gather.<sup>22</sup> The CPI assigns countries a score from 0 to 10, with 0 being very corrupt and 10 being very clean and free of corruption.<sup>23</sup>

The World Bank produces the World Bank Worldwide Governance Indicators (“WBI”) each year in an attempt to quantify the six concepts of governance by measuring the perceptions of experts and citizens.<sup>24</sup> The score for each country on

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<sup>17</sup> Osei-Hwedie & Osei-Hwedie, *supra* note 12, at 41.

<sup>18</sup> ALTMAN, *supra* note 16, at 119.

<sup>19</sup> ROSE-ACKERMAN, *supra* note 10, at 4-5.

<sup>20</sup> *Id.*

<sup>21</sup> *Corruption Perceptions Index 2011*, TRANSPARENCY INTERNATIONAL, [http://cpi.transparency.org/cpi2011/in\\_detail/#myAnchor1](http://cpi.transparency.org/cpi2011/in_detail/#myAnchor1) (last visited Jan. 31, 2012). The CPI only includes countries if there are three or more sources of data for the country.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Daniel Kaufman, Aart Kraay & Massimo Mastruzzi, *The Worldwide Governance Indicators: Methodology and Analytical Issues* 4-7 (The World Bank, Policy Research Working Paper No. 5430, 2010), available at [http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2010/09/24/000158349\\_20100924120727/Rendered/PDF/WPS5430.pdf?cid=EAP\\_GACGovHubNewsletterEN\\_M\\_EXT](http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2010/09/24/000158349_20100924120727/Rendered/PDF/WPS5430.pdf?cid=EAP_GACGovHubNewsletterEN_M_EXT).

“control of corruption” is a composite score based on the “perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as ‘capture’ of the state by elites and private interests.”<sup>25</sup> The rank assigned to each country is between 0 (lowest level of “control of corruption”) and 100 (highest level of “control of corruption”).<sup>26</sup>

Regionally, a collaborative effort among national chapters of TI, the Association Burundaise Des Consommateurs (AUBCO) from Burundi, and the Concern for Development Initiatives in Africa (ForDia) from Tanzania produce the East African Bribery Index (“EABI”).<sup>27</sup> The EABI measures the prevalence of bribery within each of the five East African countries, as well as breaking it down by public and private institution within each country. The data is collected by a random sampling of households throughout all administrative regions of each country, asking individuals to name the public or private institution where they were required to pay the bribe or where the bribe was a condition to service, and whether or not service was given upon payment of the bribe or refusal to pay the bribe.<sup>28</sup> The measure of prevalence of bribery in the country is the likelihood that an individual will have to pay a bribe to access services at the national level.<sup>29</sup>

#### D. Consequences of Corruption

It seems remiss to discuss the causes of corruption and mechanisms to control corruption without briefly covering a few of the most important consequences of corruption. Corruption has a negative effect on the societies in which it exists in a number of ways.

Corruption is linked to weak economies, though whether corruption is the cause is extremely difficult to prove. It is a factor for businesses from wealthy countries consider when deciding whether to invest or expand into a new country. Companies are often asked to pay bribes to numerous government officials during the initial stages of investment, thereby supporting corruption, or to decide against the opportunity, hurting the economy by not investing at all. The economic consequences include: bureaucratic corruption hurting small businesses in the domestic economy, discouraging foreign investment, and negatively affecting the economic growth rate of a country.<sup>30</sup> International aid is not immune to the problems of corruption, as it too can end up in the wrong hands when politicians use

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<sup>25</sup> *Id.*

<sup>26</sup> *The Worldwide Governance Indicators: Control of Corruption*, THE WORLD BANK, available at <http://info.worldbank.org/governance/wgi/pdf/rl.pdf> (last visited Jan. 31, 2012).

<sup>27</sup> Member Profile: ABUCO—Consumers Association of Burundi, CONSUMERS INTERNATIONAL, <http://www.consumersinternational.org/our-members/member-directory/ABUCO%20-%20Consumers%20Association%20of%20Burundi%20-%20Association%20Burundaise%20des%20Consommateurs> (last visited Jan. 31, 2012).

<sup>28</sup> See generally *The East African Bribery Index*, TRANSPARENCY INTERNATIONAL (2011), available at [http://www.transparency.org/news\\_room/latest\\_news/press\\_releases\\_nc/2011/2011\\_10\\_20\\_east\\_african\\_bribery\\_index\\_2011](http://www.transparency.org/news_room/latest_news/press_releases_nc/2011/2011_10_20_east_african_bribery_index_2011).

<sup>29</sup> *Id.* at 1.

<sup>30</sup> Shang-Jin Wei, *Corruption in Economic Development: Beneficial Grease, Minor Annoyance, or Major Obstacle?* 8-11 (The World Bank, Working Paper No. 2048, 1999), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=604923](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=604923).

money for personal gain instead of pumping it into their economy, creating jobs and raising incomes for nationals.<sup>31</sup> “The fruits of corruption provide another motivation for repression and resistance to change.”<sup>32</sup>

The costs are not just economic. When allocating resources for public investment, corrupt government officials choose projects that can be manipulated or have a higher likelihood of kickbacks, regardless of whether or not they have a high social value.<sup>33</sup> Social services suffer from lack of funds while the politicians and public officials line their pockets with payouts. In September 2011, in the midst of a drought affecting millions of Kenyans, a string of corruption scandals were uncovered that accounted for tens of millions of dollars.<sup>34</sup> The politicians who are using patronage and corruption for personal gain and to maintain power have no motivation to fix broken public services or improve the status quo for the millions of average citizens. Corruption poses a variety of problems to countries, but so far the attempts to prevent corruption and establish rule of law have had limited success.

### III. KENYA

#### A. Post-Colonial History

Kenya was part of British East Africa during colonization. The ethnic make-up of the country was (and still is) dominated by a handful of groups: the Kikuyu, the Kalenjin, the Luo and the Luhya.<sup>35</sup> During colonization, the British systematically took the most fertile farmland and gave it to their white settlers for cultivation, mainly for coffee. Incidentally, since most of the best land was in the Rift Valley and central highlands, which were home to the Kikuyu and Kalenjin people; these two groups suffered more than most. Jomo Kenyatta was a leader of the Kikuyu and instrumental in the “Mau Mau” Rebellion, a Kikuyu uprising against the colonizers that marked the beginning of the fight for independence,<sup>36</sup> which was achieved on December 12, 1963.<sup>37</sup>

Kenyatta became the first President of Kenya, representing the Kenya African National Union party (KANU), which was comprised of the Kikuyu people and few other ethnic groups. During the 1960s, there were two opposition parties, one led by the Luo and the other by a coalition of smaller ethnic groups, but both were

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<sup>31</sup> ALTMAN, *supra* note 16, at 121.

<sup>32</sup> *Id.* at 119.

<sup>33</sup> Wei, *supra* note 30, at 11-13.

<sup>34</sup> *String of Corruption Scandals Leaves Kenya Government Without Enough Money to Feed Starving*, THE WASHINGTON POST (Sept. 8, 2011), available at [http://www.washingtonpost.com/world/africa/string-of-corruption-scandals-leaves-kenya-government-without-enough-money-to-feed-starving/2011/09/08/gIQAAdZACK\\_story.html](http://www.washingtonpost.com/world/africa/string-of-corruption-scandals-leaves-kenya-government-without-enough-money-to-feed-starving/2011/09/08/gIQAAdZACK_story.html) [hereinafter *String of Corruption*].

<sup>35</sup> *Kenya Fact Sheet*, U.S. DEPT. OF STATE, <http://www.state.gov/r/pa/ei/bgn/2962.htm> (last visited Nov. 30, 2011).

<sup>36</sup> GUY ARNOLD, A GUIDE TO AFRICAN POLITICAL AND ECONOMIC DEVELOPMENT 82 (2001).

<sup>37</sup> *Kenya Fact Sheet*, *supra* note 35.

dissolved by 1966.<sup>38</sup> By that time, Kenya was unofficially a one-party state, made official by an amendment to the constitution in 1982.<sup>39</sup>

After Kenyatta's death in 1978, the Presidency changed ethnic groups, but not political parties. President Daniel Arap Moi, who was a Kalenjin, took over the seat. Presumably, international and public pressures mounted to open the political system to opposition, and in 1991 the one-party state was repealed and a multi-party system was put in place. The first multi-party elections were held in 1992 with little effect on KANU's political stronghold. It was not until the 1997 elections that KANU needed to build coalitions with minority ethnic groups to retain the majority.<sup>40</sup> From 1978 until 2002, Moi's administration became synonymous with corruption and patronage politics.<sup>41</sup>

The 2002 presidential election was critical in Kenyan's politics. Shortly before the December vote, a new opposition coalition party formed called the National Rainbow Coalition (NARC). Despite being a relatively loosely organized coalition (as seen by its dissolution shortly after conception), it was a powerful statement that the Kenyan people wanted a change from the corrupt rule of KANU.<sup>42</sup> The NARC candidate, Mwai Kibaki, a Kikuyu from the Rift Valley, defeated Moi at the voting booth in what international observers considered to be a free and fair election.<sup>43</sup>

By 2005, during the process of drafting a new constitution, the fractions among various alliances in NARC began splitting the party. The division led to two political parties vying for the Presidency in 2007—the Orange Democratic Movement (ODM) and the Party of National Unity (PNU). Ralia Odinga, a Luo who was once Kibaki's ally, led ODM and the PNU remained the party of President Kibaki and his supporters. The majority of PNU supporters are Kikuyu, while ODM supporters are comprised of supporters representing nearly all the other ethnic groups.<sup>44</sup>

The December 27, 2007 elections for the Presidency were tainted with allegations of voter fraud, irregularities in vote counting, and, once Kibaki was announced as the winner, outbreaks of violence. Frustrations against what voters saw as a corrupt political machine manifested in violence that left 1,300 Kenyans dead and over 500,000 displaced by the violence in Nairobi, the capital city. After the riots were stopped, a power-sharing deal was brokered with the help of former United Nations Secretary General Kofi Annan. The deal was signed in 2008, giving the Presidency to Kibaki and a newly-created Prime Minister position to Odinga.<sup>45</sup>

Throughout the tumultuous elections and power-sharing negotiations, the task of drafting a new constitution continued. It focused on reforms to the constitutional

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Gladwell Otieno, *The NARC's Anti-Corruption Drive in Kenya*, 14 AFR. SECURITY REV. 4, 1 (2005).

<sup>42</sup> *Kenya Fact Sheet*, *supra* note 35.

<sup>43</sup> Otieno, *supra* note 41, at 1.

<sup>44</sup> *Kenya Fact Sheet*, *supra* note 35.

<sup>45</sup> *Id.*

structure, electoral system, land allocation and rights, and institutional capacity building, as well as addressing government accountability for corruption and political violence. The new constitution was approved by popular vote on August 4, 2010.<sup>46</sup>

The Kenyan economy has mirrored the troubled political scene. After periods of high growth immediately after independence, economic growth slowed down significantly in the 1980s and 1990s. Since 1995 it has seen positive, albeit small, growth. It was picking up speed leading up to the 2007 elections, but political violence severely disrupted the progress.<sup>47</sup>

### B. Corruption in Kenya

The 1990s in Kenya saw one of the biggest grand corruption schemes come to light. The Goldenberg Scandal, an export compensation scheme, was exposed; an estimated \$650 million USD was embezzled.<sup>48</sup> An unrelated study on corruption and laxity cost Kenya over \$6.4 billion between 1991 and 1997.<sup>49</sup> The political scene was certainly ripe for the argument that corruption was out of control and needed to be addressed, setting the stage for Kibaki to win the Presidency in 2002.

Kibaki and NARC promised to crack down on corruption. A Commission of Inquiry was formed to investigate the Goldenberg Scandal and legislation was passed to form various institutions to safeguard against corruption, including the Public Office Ethics Act, the Commission of Inquiry into Irregular and Illegal Allocation of Public Lands, and the Pending Bills Verification and Validation Committee. But the NARC government and Kibaki fell short on many of these lofty goals. The Commission of Inquiry on the Goldenberg Scandal produced a thorough investigation but lacked follow-through to bring those most responsible to justice.<sup>50</sup> In many ways, the old ways of corruption and patronage politics under Moi and KANU had not changed.<sup>51</sup>

In 2006 there were two major corruption scandals that broke, one regarding money laundering and the other a tax evasion scandal in the banking system. The incidents were linked to government officials, including three senior-level government ministers, one of which was re-appointed after the allegations.<sup>52</sup> Around the same time, John Githongo, the well-respected former director for Transparency International Kenya who had been appointed by Kibaki to lead the fight against corruption, resigned and relocated to England, stating that he was disappointed and disillusioned by the lack of commitment in the Kibaki government to fight corruption.<sup>53</sup> The problem of corruption only worsened in 2007 with post-election

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Otieno, *supra* note 41, at 2.

<sup>49</sup> Policy Brief, *A Survey of Seven Years of Waste*, CENTRE FOR GOV'T AND DEV. (Feb. 2001); Otieno *supra* note 41, at 4.

<sup>50</sup> Otieno, *supra* note 41, at 2-5.

<sup>51</sup> *Id.* at 5.

<sup>52</sup> *Id.*

<sup>53</sup> Alex Perry & Laura Blue, *The Demons That Still Haunt Africa* 35, TIME (Jan. 10, 2008), <http://www.time.com/time/magazine/article/0,9171,1702349,00.html>.

violence and allegations of serious errors in vote counting, some districts reporting more votes than they had voters.<sup>54</sup>

### C. Anti-Corruption Efforts

Anti-corruption legislation began in 1956, when Kenya was still a British colony, with the Prevention of Corruption Act, which remained in effect until May 2003.<sup>55</sup> The Kenyan Anti-Corruption Authority (KACA) enforced the Act until it was disbanded in 2000 after a ruling from the High Court declared the KACA undermined the authority of the Attorney General's office.<sup>56</sup> The Anti-Corruption Police Unit took on the role of investigation and prosecuting corruption from August 2001 until it was also replaced by the Kenya Anti-Corruption Commission (KACC) in May 2003.<sup>57</sup>

In line with the 2002 election of Kibaki and his promise to focus on the fight against corruption, 2003 was a big year for anti-corruption legislation. Many of the good governance efforts were tied to the Economic Recovery Strategy in 2003, including two key pieces of legislation: the Anti-Corruption and Economic Crimes Act (ACECA) and the Public Officer Ethics Act (POEA).<sup>58</sup> The ACECA created the Kenya Anti-Corruption Commission, which was responsible for investigating corruption and economic crimes and conducting public education on corruption.<sup>59</sup> The POEA provides codes of conduct for all public officers and compels all government officials to declare their wealth, including the assets of their spouse and dependents.<sup>60</sup> This legislation was seen as a solid effort for reform and as a result some institutions that had severed ties because of corruption in the past, like the International Monetary Fund, began working with Kenya again.<sup>61</sup> Other pieces of legislation passed by Kibaki and NARC during his presidential term included the Public Procurement and Disposal Act of 2005, the Public Procurement Regulations (2006), and the Witness Protection Act, 2006.<sup>62</sup>

After the new constitution passed, the KACC was restructured to conform to stronger regulations against corruption and renamed the Ethics and Anti-Corruption Commission (EACC).<sup>63</sup> The EACC reports investigations and traces assets, conducts litigation and recovery of public and unexplained assets, implements corruption prevention activities, and assists in institutional capacity building.<sup>64</sup>

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<sup>54</sup> Otieno, *supra* note 41, at 5.

<sup>55</sup> ETHICS AND ANTI-CORRUPTION COMMISSION, <http://www.kacc.go.ke/default.asp?pageid=2> (last visited Dec. 5, 2011).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> ETHICS AND ANTI-CORRUPTION COMMISSION, *supra* note 55; Otieno, *supra* note 41, at 2.

<sup>59</sup> Otieno, *supra* note 41, at 1.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> ETHICS AND ANTI-CORRUPTION COMMISSION, *supra* note 55.

<sup>63</sup> *Id.*

<sup>64</sup> Annual Report 2009/2010, Kenya Anti-Corruption Commission, *available at* <http://www.kacc.go.ke/default.asp?pageid=20> (last visited Jan. 31, 2012).

There has also been specialty courts established within the Kenyan court system to deal with corruption cases.<sup>65</sup>

#### D. Status of Corruption

According to the EABI 2011, an individual has a 28.8% chance of having to pay a bribe in order to access services at the national level (i.e., police, immigration and customs, tax revenue agency). This is a slight improvement from 2010 when there was a 31.9% chance of encountering a bribe.<sup>66</sup> The WBGI score for “control of corruption” has increased from 14.63 to 18.66, showing modest gains in the perception that corruption is under control in Kenya.<sup>67</sup> The CPI score for Kenya in 2011 is 2.2 (out of 10), a gain from 2.1 in 2000.<sup>68</sup> All scores indicate improvements, even if very modest.

Evidence that is equally if not more powerful than the statistics is current news stories of corruption within the Kenyan government. In 2011, there were reports of missing education funds and missing funds for food aid for northern Kenyans suffering from the East African drought.<sup>69</sup> Political corruption from post-election violence in 2007 is continuing to play out as six government officials were indicted by the International Criminal Court in 2011 for inciting the riots caused by alleged political corruption in the December 2007 presidential election.<sup>70</sup> While the statistics may show slight improvements for the fight against corruption in Kenya, it remains a significant plague on the country.

### IV. UNITED REPUBLIC OF TANZANIA

#### A. Post-Colonial History

Tanganyika (the mainland of Tanzania) was a German colony until the end of World War I when it became part of British East Africa. Tanganyika became fully independent on December 9, 1961, and Julius Nyerere, the leader of the Tanganyika Africa National Union party (TANU), became the first President. Three years later on April 26, 1964, it joined with Zanzibar to become the United Republic of Tanzania.<sup>71</sup> The political parties from Tanganyika and Zanzibar also merged in 1977 to become Chama Cha Mapinduzi (CCM), known as the Revolutionary party.<sup>72</sup>

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<sup>65</sup> *Special Courts for Corruption Cases*, U4.No, <http://www.u4.no/publications/special-courts-for-corruption-cases/> (last visited Jan. 31, 2012).

<sup>66</sup> *Burundi Most Corrupt in East Africa, Index Shows*, REUTERS AFRICA (July 22, 2010), <http://af.reuters.com/article/rwandaNews/idAFLDE66L0U320100722?pageNumber=1&virtuaIBrandChannel=0>. The EABI has only been produced since 2009. In the 2009 EABI, Rwanda is not included. Therefore, as a comparison, 2010 is used.

<sup>67</sup> *Control of Corruption*, *supra* note 26.

<sup>68</sup> *Corruptions Perception Index*, *supra* note 21.

<sup>69</sup> *String of Corruption*, *supra* note 34.

<sup>70</sup> *Kenya's Appeal on ICC Cases Dismissed*, THE DAILY NATION (Aug. 30, 2011), <http://allafrica.com/stories/201108300961.html>.

<sup>71</sup> *Tanzania Fact Sheet*, U.S. DEPT. OF STATE, <http://www.state.gov/r/pa/ei/bgn/2843.htm#history> (last visited Nov. 28, 2011).

<sup>72</sup> *Id.*

Nyerere, affectionately called “Mwalimu” (the Kiswahili word for teacher), was one of only a few Tanzanians who had been educated abroad during colonization. That education greatly influenced his political and economic ideology. From independence, Nyerere’s socialist form of government encouraged a strong national identity among the people, taking priority over ethnic or religious differences.<sup>73</sup>

Nyerere’s policy of socialism meant that CCM and the state were effectively one and the same. While the cohesive vision of having just one “people” has served well (as seen by Tanzania’s political stability through the years), it did not do any favors to economic growth or prevention of corruption. Nyerere stepped down from the Presidency in 1985 and was followed by President Ali Hassan Mwinyi (also from the CMM party).<sup>74</sup> Mwinyi was succeeded by President Benjamin Mpaka in 1995 until 2005. In 2005, President Jakaya Kikwete won the presidency. While there have been four multi-party elections in Tanzania’s history, CCM has handily remained in control of virtually all aspects of the government.<sup>75</sup> In the most recent election in 2010, opposition parties began to pose legitimate threats to the CCM stronghold. The opposition party Chadema won a number of seats in the Parliament and the presidential candidate for Chadema, Willibrod Slaa, won 27% of the vote.<sup>76</sup>

Nyerere’s original policies of socialism, sometimes referred to as the “Great Socialist Experiment,” were largely a failure when it came to a developing economic system.<sup>77</sup> By 1986 Tanzania began to liberalize their system and allow for open markets, but growth was slow. Even in recent years, about 30% of the country’s budget comes from donor aid. Tanzania has made efforts to reform the economy and encourage investment—particularly foreign direct investment—but the legacy of socialism, along with complaints of a hostile bureaucracy and a weak judiciary, does not help.<sup>78</sup>

### B. Corruption in Tanzania

During the 2005 presidential campaign, Kikwete ran on an anti-corruption platform, pledging to commit to the fight against corruption. Unfortunately, a quick overview of the last several years does not show evidence of any implementation of his promise.<sup>79</sup> In 2008, three grand corruption scandals were exposed. First, the Governor of Tanzania’s Central Bank, Daudi Ballali, was fired after an international internal audit discovered over \$100 million USD was paid to local companies, some of which did not even exist, without consideration.<sup>80</sup> Next, the former Prime Minister, Edward Lowassa, along with two other senior-level ministers in the government, resigned after allegations that they awarded a large-sum contract to a

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*; Mbaku, *supra* note 3, at 19.

<sup>78</sup> *Id.*

<sup>79</sup> Emmanuel Muga, *Can Elections Help Tanzania Tackle Corruption?*, BBC NEWS (Oct. 27, 2010), <http://www.bbc.co.uk/news/world-africa-11589013>.

<sup>80</sup> *Id.*

non-existent electricity company in the United States.<sup>81</sup> Lastly, in April 2008, British and Saudi governments linked BAE, a British arms manufacturer, to commission payments (or bribes) given to individuals in Tanzania to help lobby for the multi-million dollar deal. The scandal allegedly involved the former Attorney General, Andrew Chenge, but Chenge resigned before any charges were brought.<sup>82</sup>

The attempts at holding those accountable have been less than satisfactory to many Tanzanians. In October 2010, former Finance Minister Basil Mramba, Ministry's Permanent Secretary Gray Mgonja, and former Energy and Minerals Minister Daniel Yona, all faced corruption charges in court, but the substance of any punishment or follow-through is yet to be seen.<sup>83</sup> During the 2010 elections, corruption was an enormous issue facing the candidates. Kikwete was forced to defend the little progress being made while the opposition accused the government of settling for prosecuting scapegoats as the senior officials were allowed to resign and avoid accountability.<sup>84</sup> The 2010 Revenue Watch Index placed Tanzania at the bottom of the list in terms of transparency regarding mining deals and mineral revenues.<sup>85</sup>

### C. Anti-Corruption Efforts

The Prevention of Corruption Ordinance was the first piece of anti-corruption legislation in Tanzania and was enacted in 1958. In 1971, it became the Prevention of Corruption Act (PCA).<sup>86</sup> The PCA established the Anti-Corruption Squad in 1975 and its responsibilities included investigating and prosecuting offences, taking measure to prevent corruption, and advising the government on mechanisms to combat corruption.<sup>87</sup> In 1991, the Anti-Corruption Squad became the Prevention of Corruption Bureau (PCB). Until 1995, the PCA was the sole piece of anti-corruption legislation and the PCB was the sole enforcement mechanism.<sup>88</sup>

In an attempt to create a comprehensive plan to fight corruption, President Mpaka's administration compiled the "Warioba Report," which would act as a driving agent for the anti-corruption strategy for years.<sup>89</sup> From the "Warioba Report" the first National Anti-Corruption Strategy and Action Plan (NACSAP) was adopted in 1999.<sup>90</sup> The NACSAP included measures to remove corrupt leaders,

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<sup>81</sup> *Id.*

<sup>82</sup> Rob Evans and David Leigh, *BAE Corruption Investigation Switches to Tanzania*, THE GUARDIAN (Apr. 11, 2008), <http://www.guardian.co.uk/world/2008/apr/12/bae.baesystems-business>; Muga, *supra* note 79.

<sup>83</sup> Muga, *supra* note 79.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> THE PREVENTION AND COMBATING OF CORRUPTION BUREAU, <http://www.pccb.go.tz/index.php/about-pccb/historical-background> (last visited Dec. 5, 2011).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Report of the Presidential Commission of Inquiry Against Corruption ("Warioba Report"), Government of the United Republic of Tanzania (Nov. 1996).

strengthen the Prevention of Corruption Bureau, appoint a minister of good governance, and establish a Commission of Ethics.<sup>91</sup>

In May 2008, the Enhanced National Anti-Corruption Strategy and Action Plan (NACSAP II) was launched, aiming to encourage partnerships between the government and the private sector, civil society and the media to assist in the fight against corruption.<sup>92</sup> The institutions and legislation established and/or strengthened by the NASCAP and NACSAP II are: the Prevention and Combating of Corruption Bureau, the Office of the Director of Public Prosecutions, the Ethics Secretariat, the Inspectorate of Ethics, the National Audit Office, the Commission for Human Rights and Good Governance, the Public Procurement Regulatory Authority, the Public Procurement Appeals Authority, the Good Governance Coordination Unit, and the Financial Intelligence Unit within the Ministry of Finance.<sup>93</sup>

#### *D. Status of Corruption*

The efforts of the NASCAP and NACSAP II are paying off, but corruption remains a significant problem for the country. The 2011 EABI score actually shows an increase in the prevalence of bribery from 2010 to 2011, with the percentage of likelihood in encountering a bribe when accessing public services having risen from 26.8% to 31.6%.<sup>94</sup> However, both the CPI score and WBGI show moderate improvements since 2000. The CPI score has risen from 2.5 (2000) to 3 (2011) on a scale of 0 to 10 with 0 as most corrupt and 10 as very little corruption.<sup>95</sup> The WBGI for “control of corruption” scores Tanzania at 37.32 out of 100 in 2011, compared to 14.63 in 2000.<sup>96</sup>

Some of the issues in the fight against corruption in Tanzania are: insufficient enforcement, inadequate safeguards for whistle-blowers, limited public access to government official’s records and public declarations, and a basic lack of power behind the strategy.<sup>97</sup> President Kikwete has renewed his promise to fight corruption, starting this time with his own party, CCM. He has stated that CCM will dismiss party members who have been linked to corruption scandals.<sup>98</sup> Until

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<sup>90</sup> Marie Chene, *National Anti-Corruption Strategy in Tanzania*, U4.No (May 14, 2007) <http://www.u4.no/publications/national-anti-corruption-strategy-in-tanzania/>.

<sup>91</sup> *Id.*

<sup>92</sup> The Enhanced National Anti-Corruption Strategy and Action Plan (NACSAP II) 2008-2011, (The United Republic of Tanzania President’s Office, Good Governance Coordination Unit, May 2008), available at <http://parliament.go.tz/bunge/docs/reports/1251960061.pdf>.

<sup>93</sup> Stephanie von Wogau, *Corruption in Tanzania, Civil Society Against Corruption*, AGAINSTCORRUPTION.EU (Dec. 27, 2010), [http://www.againstcorruption.eu/uploads/norad/Wogau\\_Corruption-in-Tanzania.pdf](http://www.againstcorruption.eu/uploads/norad/Wogau_Corruption-in-Tanzania.pdf).

<sup>94</sup> *The East African Bribery Index*, *supra* note 28.

<sup>95</sup> *Corruption Perceptions Index 2011*, *supra* note 21.

<sup>96</sup> *Control of Corruption*, *supra* note 26.

<sup>97</sup> Chene, *supra* note 90.

<sup>98</sup> Fumbuka Ng'wanakilala, *Tanzania Ruling Party Plans Anti-Corruption Purge*, REUTERS (Nov. 26, 2011, 7:10 AM), <http://www.reuters.com/article/2011/11/26/us-tanzania-politics-graft-idUSTRE7AP0AC20111126>.

now, a number of senior-level party leaders have maintained their top positions in the party even after allegations of corruption and resignations from government posts due to corruption accusations. Only time will tell how serious Kikwete and CCM are about the commitment to cleanse the party of corruption (until now only one senior-level official has voluntarily left the party because of graft), and if their pledge to clean the party of corrupt officials will be effective for the next presidential campaign.<sup>99</sup>

## V. RWANDA

### A. Post-Colonial History

As a colony, Rwanda was under Belgian rule from post-World War I until July 1, 1962 when it became independent.<sup>100</sup> Under colonial rule, Belgium instituted a “racialization” of the local population by issuing identity cards that associated a person with his ethnic group, mainly Hutu or Tutsi.<sup>101</sup> The system began to create animosity between the two groups as the Belgians favored the Hutus. After independence, Gregoire Kayibanda, a Hutu and leader of the Parti du Mouvement de l’Emancipation Hutu (Parmehutu) political party, became the first President of Rwanda.<sup>102</sup> Kayibanda led a one-party government that instilled anti-Tutsi programs and was riddled with corruption scandals and inefficiency. In 1972, the military took power by force and Major General Juvenal Habyarimana took over as President. Habyarimana abolished Parmehutu and formed the National Revolutionary Movement for Development (MRND).<sup>103</sup>

Habyarimana’s government remained anti-Tutsi and as a result many Tutsi fled to neighboring countries during both of the first two administrations. After eighteen years in charge and without opposition, Habyarimana gave in to international and public pressures to turn the one-party state into a multi-party state.<sup>104</sup> In October 1990, the Tutsis living in exile formed the Rwandan Patriotic Front (RPF) and began to wage attacks on the Rwandan government and the MRND. The fighting lasted over two years and ended briefly in 1992 with the Arusha Accords.<sup>105</sup>

On April 6, 1994, President Habyarimana’s plane was shot down over Kigali, the capital city, and in Kigali violence erupted between the RPF and the Rwandan government. The government was complicit in ordering the systematic killing of

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<sup>99</sup> *Id.*

<sup>100</sup> Rwanda Fact Sheet, U.S. DEPT. OF STATE, <http://www.state.gov/r/pa/ei/bgn/2861.htm> (last visited Jan. 31, 2012).

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*; Parmehutu is translated into English as “Party of the Hutu Emancipation Movement.” *Rwanda: Political Parties*, ENCYCLOPEDIA OF THE NATIONS, <http://www.nationsencyclopedia.com/Africa/Rwanda-POLITICAL-PARTIES.html#b> (last visited Jan. 31, 2012).

<sup>103</sup> *Rwanda: Political Parties*, *supra* note 102.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

any and all Tutsis and moderate Hutus. Over the next four months, genocide ensued, taking the lives of over 800,000 Rwandans and displacing over two million.<sup>106</sup>

On July 4, 1994, the RPF took control of Kigali and the genocide ended. The effort to rebuild a nation began. The RPF organized a coalition government called “The Broad Based Government of National Unity,” comprised of eight political parties, but outlawed MRND.<sup>107</sup> Since 1994, the RPF has been the main political party and leader of the coalition government. Paul Kagame of the RPF was elected to a seven-year term as the President of Rwanda on August 25, 2003 and was re-elected in 2010 with 93% of the vote.<sup>108</sup> There have been some allegations of suppression of opposition in 2003 when the transitional National Assembly dissolved the Democratic Republic Party and some of its members disappeared. More allegations came in 2010 during the presidential election with accusations of activities of oppression of opposition, including a murdered journalist, suppression of two newspapers, and murder of a senior political official in the Democratic Green Party.<sup>109</sup>

The effects of the genocide are still felt as over 70,000 Rwandans live in neighboring countries and tens of thousands more are in the judicial system (either waiting for trial or serving a prison sentence) for genocide-related crimes. But there has been significant recovery as well, with steady economic growth, progress in combating corruption, and transparency in banking reforms to encourage investment.<sup>110</sup>

#### B. Corruption in Rwanda

Over the last ten to fifteen years, Rwanda has made significant progress in the fight against corruption, but it has not been eliminated. The problem remains, particularly at the lower levels of administration. A 2004 report from the Ombudsman’s office, which is in charge of leading the anti-corruption strategy, showed 35% of corruption cases involved district leaders and their assistants, public fund embezzlements, selling of district’s natural resources, mismanagement, and unauthorized bank withdrawals.<sup>111</sup> In 2004 and 2005, approximately 300 police officers, including senior-level officers, were fired for corruption. In 2005 and 2006, Kagame fired several senior-level officials accused of being involved in corruption and embezzlement.<sup>112</sup>

Since the transition period after the genocide, the Rwandan government has remained aggressive in the fight against corruption. Kagame leads a government that follows through on its promises to hold individuals accountable, no matter the ranking or reputation of the person.<sup>113</sup>

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<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> Chene, *supra* note 90.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

### C. Anti-Corruption Efforts

There are four primary institutions that Rwanda has created to implement its anti-corruption strategy. The National Tender Board was formed in 1997 to manage and organize the public procurement process and implement the general public procurement policy on behalf of the government.<sup>114</sup> The Anti-Corruption Unit within the Rwanda Revenue Authority has instituted a Code of Conduct, internal disciplinary measures, and a culture to promote integrity within the institution.<sup>115</sup> The Auditor's General's Office (OAG) was established in 1999 to provide audits of government adherence to fiscal controls.<sup>116</sup>

Lastly and most recently, the Ombudsman's office was created in 2004 to monitor transparency and regulatory compliance in all government sectors and to expose fraud, corruption and malpractice.<sup>117</sup> The multi-pronged approach to create more transparency and accountability is similar to the approaches employed by Kenya and Tanzania but the difference seems to be in the meaningful implementation. The Chairperson for the Ombudsman's Office credited the progress to the removal of corrupt leaders, more training and education, and decentralizing the anti-corruption strategy.<sup>118</sup>

### D. Status of Corruption

Rwanda has shown unprecedented success in tackling the problem of corruption relative to other countries in the region. In 2010, the likelihood of encountering a bribe in accessing public services was 6.6%. In 2011, that percentage dropped to 5.1%.<sup>119</sup> Transparency International's CPI score in 2011 was 5, on a scale of 0 to 10.<sup>120</sup> The WBI for "control of corruption" scored Rwanda at 30.73 (out of 100) in 2000, with significant improvement in 2011 at 70.81.<sup>121</sup>

As a result of Rwanda's success in fighting corruption, there are few current news stories on corruption, and even fewer that are big enough to reach the scale of the grand corruption scandals seen in Kenya and Tanzania in recent years. However, the incidents do exist. In July 2011, an investigation led to the prosecution of 223 people, including senior government officials, for stealing public funds of \$5 million USD.<sup>122</sup> Because of their success fighting corruption, Rwanda's efforts are taking the next step in the fight against corruption and pushing the laws further to allow more mechanisms for recovering stolen assets.<sup>123</sup>

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<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *The East African Bribery Index, supra* note 28.

<sup>120</sup> *Corruption Perceptions Index 2011, supra* note 21.

<sup>121</sup> *Control of Corruption, supra* note 26.

<sup>122</sup> Berna Namata, *Rwanda Pushing for Law to Recover Stolen Assets*, THE EAST AFRICAN (Dec. 12, 2011), <http://www.theeastafrican.co.ke/news/Rwanda+pushing+for+law+to+recover+stolen+assets/-/2558/1287186/-/vd7g2dz/-/>.

<sup>123</sup> *Id.*

## VI. COMPARISONS WITHIN THE REGION

## A. Scores Compared Across Countries

While each country has proven unique in its fight against corruption, analyzing the scores across the region can provide a larger perspective on the status of corruption in East Africa.<sup>124</sup> Table 1 makes the similarities and differences become more apparent.

Table 1

Country	% of Bribery Prevalence 2010 <sup>125</sup>	% of Bribery Prevalence 2011 <sup>126</sup>	CPI Index (2000) <sup>127</sup>	CPI Index (2011)	WBI – Control of Corruption (2000) <sup>128</sup>	WBI – Control of Corruption (2010) <sup>129</sup>
Kenya	31.9%	28.8%	2.1	2.2	14.63	18.66
Tanzania	26.8%	31.6%	2.5	3	14.63	37.32
Rwanda	6.6%	5.1%	N/A	5	30.73	70.81
United States	N/A	N/A	7.8	7.1	92.68	85.65

Rwanda leads the fight against corruption with the lowest levels of bribery (according to the EABI). In the WBI scores, Rwanda is closer to the United States than it is to either Tanzania or Kenya.<sup>130</sup>

<sup>124</sup> It is vital to note that East Africa as a region includes the countries of Kenya, Tanzania, Rwanda, Uganda and Burundi. This paper focuses only on Kenya, Tanzania and Rwanda to provide a sample from the region and is not comprehensive.

<sup>125</sup> *The East African Bribery Index*, *supra* note 28. The aggregate index is derived from a combination of all the individual indicators. The index is derived from the following individual components: likelihood of bribery, prevalence of bribery, average size of bribe, share of bribery and size of bribery. Institutional ranking is based on a score of between 1 and 100 (100 being the most unfavorable).

<sup>126</sup> *Id.*

<sup>127</sup> *Corruption Perceptions Index 2011*, *supra* note 21. CPI Score relates to perceptions of the degree of corruption as seen by business people, risk analysts and the general public and ranges between 10 (highly clean) and 0 (highly corrupt). *See id.*

<sup>128</sup> *Control of Corruption*, *supra* note 26. The World Bank Worldwide Governance Indicator Rankings have been rounded to the nearest tenth for the convenience of this paper. The Control of Corruption Index reflects “perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as ‘capture’ of the state by elites and private interests.” *Worldwide Governance Indicators: Frequently Asked Questions*, THE WORLD BANK, <http://info.worldbank.org/governance/wgi/faq.htm> (last visited Jan. 31, 2012).

<sup>129</sup> *Control of Corruption*, *supra* note 26.

<sup>130</sup> The United States has been included as a benchmark representative of Western democracies and developed countries.

Through discussions of history, politics, and economics, it is clear that there are many factors contributing to the scores of corruption. According to the scores, Kenya appears to be struggling with corruption more than Tanzania and Rwanda, with less gain on both the CPI score and WBI score. However, Tanzania is the only country of the three whose prevalence of bribery has increased in the last year. Kenya and Tanzania, according to all three of the measures, are dealing with similar levels of corruption, while Rwanda has effectively dealt with the problem of corruption.

### *B. Possible Explanations for Similarities and Differences*

Just as there are a variety of factors that can be argued to cause corruption, there are numerous reasons for the differences between Kenya, Tanzania and Rwanda and their past and current levels of corruption. Some of the possibilities include the size of the country, the ethnic diversity of the population, the strength of the political parties, and the size of economic disparities. Numerous factors also explain the success or failures of each country's anti-corruption programs, including the amount of political will and commitment, civic participation in the government, witness protections for those who report corruption, and faith (or lack thereof) in a system of accountability. Equally as important to understanding the causes of corruption and factors effecting anti-corruption mechanisms is remembering the difficulties in measuring corruption. Often, the public relies on the media to expose grand corruption scandals. In both Kenya and Rwanda, Freedom House has listed the media outlets as "not free," meaning there exist government restraints in what can be reported.<sup>131</sup> Exposure of corruption scandals and the extent of corruption throughout society is a critical step in combating the problem.

There are observations that may help explain the differences between the three countries. Kenya seems to be unique in its struggle of tribalism and patronage politics— particularly in comparison to Tanzania—thanks to Nyerere and his push for a national identity. Kenya also suffers from a history of land rights issues during colonization that may have led to patronage in compensation immediately following independence. Tanzania has been disadvantaged from both the legacy of socialism and extreme government involvement in the economy, as well as one dominant political party that governed without checks and balances since independence. Rwanda's tragic history certainly sets it apart. The task of rebuilding a nation after genocide left no tolerance for corruption. The zero tolerance was paired with a legitimate commitment from the government to hold those involved with corruption accountable, no matter the level of government involved. The transparency and coalition building required for healing the nation after the genocide also served to prevent corruption from taking root in the new government.

## VII. IMPLICATIONS FOR THE EAST AFRICAN COMMUNITY

### *A. Background & Anti-Corruption Efforts*

The East African Community (EAC) was formed originally in 1967 and reinstated in 1996. The original members were Uganda, Kenya and Tanzania, with

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<sup>131</sup> George B.N. Ayittey, *Combating Corruption in Africa: Analysis and Context*, in *CORRUPTION AND DEVELOPMENT IN AFRICA: LESSONS FROM COUNTRY CASE-STUDIES* 111, 113, (Kempe Ronald Hope, Sr. & Bornwell C. Chikulo eds., Palgrave, 2000).

Rwanda and Burundi joining in 2007.<sup>132</sup> The EAC was created to form comprehensive tariff regulations, ease the flow of people throughout the region, and improve regional infrastructure.<sup>133</sup> The formation of meaningful policies and implementation of any policies has been slow, as some countries are apprehensive to opening their markets and becoming vulnerable, particularly with Kenya's dominating economy.<sup>134</sup> The Customs Union and Common External Tariff was established in January 2005, but has yet to be implemented.<sup>135</sup>

The East African Association of Anti-Corruption Authorities was formed on September 28, 2007 to provide comprehensive strategies to combat corruption in the region.<sup>136</sup> Also relevant to the regional fight against corruption, the East African Business Council produced "The State of Corporate Governance and Anti-Corruption in East Africa Partner States," attempting to set a starting point for the region to address problems of corruption as it affects business and economic growth.<sup>137</sup>

### B. Implications

As the plans for a unified East African Community move forward, resulting in fewer restrictions on imports and exports between countries, a more mobile workforce that can move throughout the region, and the possibility of a common currency, there are certainly many issues left to iron out.<sup>138</sup> And given the differences on the control of corruption between Kenya, Tanzania and Rwanda, corruption should certainly be considered. Rwanda may not have significant influence, being one of the smaller countries in the EAC, but its anti-corruption mechanisms and commitment to the fight against corruption are impressive.

## VIII. THE ROLE OF THE INTERNATIONAL COMMUNITY

The international community has had some success in influencing countries to prioritize good governance and anti-corruption commitments over the past decades. There are a number of ways in which the international community can continue to encourage good governance. The international community can keep an active interest in tracking funds from international organizations to ensure they are used effectively. Aid agencies can fund programs specifically directed at fighting

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<sup>132</sup> *Kenya Fact Sheet*, *supra* note 35. For purposes of this paper, Uganda and Burundi were not included in the analysis, but are members of the East African Community.

<sup>133</sup> *Id.*

<sup>134</sup> GUY ARNOLD, A GUIDE TO AFRICAN POLITICAL AND ECONOMIC DEVELOPMENT 102 (2001).

<sup>135</sup> *Kenya Fact Sheet*, *supra* note 35.

<sup>136</sup> EAST AFRICAN ASSOCIATION OF ANTI-CORRUPTION AUTHORITIES, <http://www.eaaaca.org/about.htm> (last visited on Jan. 31, 2011).

<sup>137</sup> *The State of Corporate Governance and Anti-Corruption in East Africa Partner States*, EAST AFRICAN BUSINESS COUNCIL (Oct. 2008), [http://www.cbglobal.org/CBGG\\_rary/Corruption\\_Governance%20SurveyofEACStates.pdf](http://www.cbglobal.org/CBGG_rary/Corruption_Governance%20SurveyofEACStates.pdf).

<sup>138</sup> John Lavelle, *Resurrecting the East African Shilling*, ALL AFRICA (July 8, 2008), <http://allafrica.com/stories/200807071183.html>.

corruption, improving transparency<sup>139</sup> The corporate side of international business can assist by promoting policies internally that prohibit employees from paying bribes and establishing procedures to reports corruption. The United Nation, World Bank, IMF and others can use international law to establish new international institutions for reform and oversight of corruption.<sup>140</sup> Kenya, Tanzania and Rwanda have all signed the African Union Convention on Preventing and Combating Corruption, as well as the United Nations Conventions Against Corruption.<sup>141</sup> International pressures can help keep countries committed to establishing good governance, particularly through leading by example and keeping signatory countries accountable for anti-corruption conventions.

The International Monetary Fund (IMF) influences borrower countries by holding that countries must comply with IMF regulations to borrow money. In the past, the IMF has put pressure on both Kenya and Tanzania to institute reforms and show a commitment to fighting corruption in order to resume borrowing.<sup>142</sup> The World Bank requires that countries sign a “no-bribery” pledge as a pre-requisite to receive funds. While the pledge may seem simply procedural, it can be used to impose sanctions and at least provides an upfront understanding that the World Bank has a zero-tolerance policy for corruption.<sup>143</sup>

#### IX. CONCLUSIONS AND RECOMMENDATIONS

“Power tends to corrupt and absolute power corrupts absolutely.”<sup>144</sup> This historical quote by Lord Acton in 1887 has been applied countless times over the last century. The analysis of corruption in East Africa is another example of the statement’s accuracy. In Kenya, Tanzania and Rwanda, each unique history allowed an opportunity for a single political party to grab hold of the power over the state without viable opposition to keep the power in check, resulting in a flourishing culture of corruption.

But more important than finding the historical root of corruption is determining which factors allow it to continue. The biggest difference between Kenya and Tanzania (both countries that continue struggling with corruption on a large scale) and Rwanda is the commitment of the current government to good governance, transparency and accountability. Each country will require a unique strategy to fight corruption and its particular causes in their society. But certainly the strategy must be holistic in its approach, address both procedural and substantive mechanisms, and remain meaningful in its implementation.<sup>145</sup> A successful anti-corruption plan

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<sup>139</sup> World Bank, IMF, UN Development Programme, and many others already do this.

<sup>140</sup> ROSE-ACKERMAN, *supra* note 10, at 178; Wei, *supra* note 30, at 22.

<sup>141</sup> EAST AFRICAN ASSOCIATION OF ANTI-CORRUPTION AUTHORITIES, *supra* note 136.

<sup>142</sup> Otieno, *supra* note 41, at 1.

<sup>143</sup> ROSE-ACKERMAN, *supra* note 10, at 181.

<sup>144</sup> Letter from Lord Acton to Bishop Mandell Creighton (Apr. 5, 1887), in *Historical Essays and Studies* (J. N. Figgis and R. V. Laurence eds., London: Macmillan, 1907), available at [http://oll.libertyfund.org/index.php?option=com\\_content&task=view&id=1407&Itemid=283](http://oll.libertyfund.org/index.php?option=com_content&task=view&id=1407&Itemid=283).

<sup>145</sup> James Thuo Gathii, *Corruption and Donor Reforms: Expanding the Promises and Possibilities of the Rule of Law as an Anti-Corruption Strategy in Kenya*, CONN. J. INT’L L. 14, 407-53, 408.

requires buy-in and political capital from all levels of the government, from the President's office to the district administrators.<sup>146</sup> Serious approaches to tackle the problem of corruption must lay down realistic and measurable goals and not just empty promises of broad unattainable reform.<sup>147</sup>

Local history, political will, institutional capacity, and the commitment to hold corrupt individuals accountable are all variables in the type of strategy and success of anti-corruption plans. Hopefully this analysis of the history of corruption and politics in Kenya, Tanzania and Rwanda provides some insight into the complexity of corruption and some factors that could explain various degrees of success of anti-corruption strategies. Corruption is a disease to development, both social and economic, and requires serious commitment to end. But with dedication and political will, its damaging effects can be reduced.

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<sup>146</sup> Otieno, *supra* note 41, at 2.

<sup>147</sup> Chene, *supra* note 90, at 3.