**SUMMARY OF PRESENTATIONS, SASCA 2017**

1. **Hon. Pravin Gordhan: (?)**
2. **Prof Charles Fombad: The crisis of corruption and constitutionalism in Africa**

The relentless persistence of endemic corruption in Africa and the failure since independence to seriously control it poses one of the greatest threats to peace and security on the continent. In fact the evidence of the unrelenting spread of corruption in spite of the optimism that followed the 1990 wave of constitutional renewal and re-awakening on the continent clearly shows that it has become a deep seated institutional problem that has not been addressed in any effective or sustainable manner. Most of the anti-corruption strategies have not only been inadequate and ineffective but have turned out to be mere palliatives and symbolic gestures. The paper will start by providing a brief overview of the nature of the challenge posed by corruption in Africa and its negative impact on the on-going attempts to entrench an ethos of constitutional governance. The question that will be examined is why corruption has persisted and what have been the consequences of this. This is followed by an examination of some of the past attempts to bring corruption under control and why they failed. An analysis of some of the main surveys on corruption, accountability, good governance on one hand, and constitutionalism on the other, is undertaken. The purpose is to investigate the link there is between the former and the latter and what these surveys tell us about the trends on the continent. The fourth part of the paper will consider some of the radical changes that are needed to develop more effective and sustainable anti-corruption measures in Africa. In concluding, it is argued that only a comprehensive set of constitutionally entrenched principles and institutions designed to make corruption a high risk/ low return endeavour can provide the firm bedrock needed to launch a credible, effective and sustainable anti-corruption strategy that could bring Africa’s troubling endemic corruption under control.

1. **Prof Adebayo Olukoshi: State capture and constitutionalism and democratization in Africa (?)**
2. **Prof Mark Swilling: (?)**
3. **Prof John Hatchard: Constitutions: Controlling PEPs or Controlled by PEPs?**

The fundamental values of a nation are enshrined in its national constitution and given that ‘corruption and maladministration are inconsistent with’ those values, it plays the key role in upholding good governance (or in Commonwealth parlance, ‘just and honest government’). This is particularly the case when seeking to combat corruption-related activities and the laundering of the proceeds of corruption by senior political figures, commonly referred to as politically exposed persons (PEPs). Yet this raises a unique problem in that PEPs are often in a position to ‘control the constitutional controls’. This remains an issue for many African states. Thus, PEPs can use constitutional provisions to protect themselves and their supporters (e.g. through the use of immunity clauses and the exercise of the presidential power of pardon) as well as seeking to undermine the operation of good governance mechanisms (e.g. undermining the oversight of government spending).Given this reality, the challenge is to ensure that constitutional safeguards are effective and capable of ‘persuading’ even the most powerful of PEPs to ‘commit’ to good governance. This paper explores some of the strategies for making constitutions ‘work effectively’ in practice and argues that in seeking to do so, civil society, including the media, as well as anti-corruption/ethics commissions have key good governance roles to play.

1. **Prof Nico Steytler: ‘Financial constitutions’ to prevent corruption**

The principal aim of a constitution is to regulate and limit state power. The principal source of state power is money. Perforce, constitutions are therefore also concerned with the regulation and limitation on the raising and expending of public money. The basic principles of constitutionalism is therefore also applicable to the management of public funds. First, the raising and expenditure of funds are subject to democratic decision-making; secondly, the expenditure of funds is subject to limitations, including the separation of powers; thirdly, the raising and expenditure of funds are subject to the rule of law; and finally, the expenditure of funds should be for a public (developmental) purpose. These basic principles have evolved into a particular constitutional architecture which, if followed, could prevent the routinization of corruption. These principles will be examined in respect of Africa’s major economies: Nigeria, South Africa, and Kenya. Since they are also decentralised states, a further layer of controls for the vertical distribution of funds is added. Given the endemic nature of corruption in the three countries the questions are thus: (a) is this financial architecture sufficient to prevent corruption routinely? Or (b) that none of the underlying premises hold water, or inadequately so? It will be shown that although there may be some gaps in the financial architecture (for example, on procurement), the main difficult lies in the systemic weakness of the institutions.

1. **Prof Xavier Philippe: Economic transnational justice. Turning a new anti-corruption leaf in Africa?**

The Tunisian Revolution during the Arab Spring gave rise to a commitment to democracy and fight against the odds of the previous regime. Amongst them was corruption for which the former President Ben Ali and his relatives were tried. Tunisia adopted a transitional justice mechanism in December 2013 and a new Constitution in January 2014. Both texts put a specific emphasise on fighting corruption. However, despite these principles and mechanisms, the executive power drafted a bill named *‘Statute of economic and financial reconciliation’* that grants amnesty on persons who could have taken personal benefit from the State assets or money. This bill follows the opposite objective from those espoused by the Constitution and transitional justice mechanism. Vehemently criticised by NGO’s and the population, it has been largely amended but not to the point of being simply dropped. This case study raises the issue of dealing with corruption crimes of the past in a new democratic era and the inherent discrepancies involved in fighting corruption.

1. **Prof Qingxiu Bu: Chinese Multinational Corporation’s Obligations in the Global Anticorruption: Levelling the playing field in Africa**

Bribery and corruption are major problems in both China and Africa, while the former is the biggest investor in Africa, building major infrastructure projects in the continent. With the two realities interacted, the Beijing Model inspires that a regime without adequate rule of law and democracy has still substantially developed its economy. Such a counter-conventional trajectory raises many inquiries: would Section 164 of the PRC Criminal Law serves a deferent role in combating bribery against China’s multinational corporations (MNCs) in Africa? In terms of levelling the playing field between Western MNCs and their Chinese counterparts, do China’s guanxi and West’s networking differentiate each other in any meaningful sense? Would Western MNCs be disadvantaged by such tough anti-bribery laws, such as Bribery Act 2010 and Foreign Corrupt Practices Act (FCPA)? The paper focuses on the relationship between China and Africa in the context of corruption. Viewed from an interdisciplinary perspective, Chinese MNCs have a competitive advantage over their Western rivals in the short term, but not sustainably. With pros and cons taken into consideration, it is arguably held that the China’s effort in tackling bribery and corruption plays a positive role in Africa, which facilitates Africa’s anticorruption incrementally. A sustainable development will depend upon whether the long-standing endeavour against corruption and bribery can be implemented from the African continent internally, after all, the neither China nor the West serves as primary driving forces in rooting out the global challenge!

1. **Dr O’Brien Kaaba: Electoral corruption and the adjudication of disputed presidential elections in Africa**

Corruption is widespread in Africa and invariably affects the electoral process. In the electoral process it usually manifests through bribing electoral officials and rival candidates, vote buying, multiple voting, ballot stuffing, pre-marking ballots, tampering with election results and inducing unqualified persons to vote. Winning the Presidency ensures one and those connected to him or her almost unlimited access to public resources and, for the incumbent candidate or party, losing the election usually means losing all these privileges. As a result, presidential elections in Africa tend to be bitter zero sum games. Candidates usually try to win the elections at any cost. Incumbent candidates or candidates supported by incumbent parties often have a head start as they have access to public resources their opponents in the opposition do not have. The situation incentivizes electoral malpractices, including electoral corruption. When results of presidential elections are disputed aggrieved parties have sometimes petitioned the courts for redress. Despite all the electoral corruption and other malpractices that have often characterized elections in Africa, there is no judiciary in any African country that has annulled a presidential election. This paper looks at the problem of corruption in the context of the electoral process and how courts hear and determine disputed presidential elections in Africa, in which allegations of corruption are often made. It is divided in seven sections or parts.

1. **Dr Conrad Bosire: Corruption in the Kenyan election of August 2016**

**(?)**

1. **Prof. Jonathan Klaaren: Social Grant Payments and Regulatory Responses to Corruption in South Africa**

This paper investigates an ongoing intense episode of redistributive politics in a particular sector that may be used both to reveal the limited extent of the capacity of the South African state to combat corruption and to test some more general propositions about legal institutions and constitutionalism and their ability to minimize corruption and promote competition. The first part of the paper will describe and investigate corruption and the responses to it in the South African sector of social grant payments at three levels. One is corruption at the beneficiary level. The existence of such corruption has been a justification for the use of biometric techniques. Another is corruption through the misuse of personal data by CPS and affiliates. A third level is corruption in the awarding of the contract to CPS in 2011 through the last-minute manipulation of the tender requirements and corruption in what might be termed the attempted engineered continuation of the illegal contract in 2016/2017. In each of these three levels, the aim will be to identify the form, shape, and prevalence of corruption as well as the judicial and state responses to that level of corruption.

1. **Adv. Paul Hofmann SC: Combating corruption at the coalface in the courts: Jurisprudential gems mined in Braamfontein**

The South African Constitutional Court has been at the forefront of developing the jurisprudence for the eventual eradication of corruption. It has sat through a trilogy of cases initiated by a Gauteng businessman, Hugh “Bob” Glenister, who has steadfastly endeavoured, through the use of “lawfare”, to secure efficient, effective and adequately independent machinery of state to combat the corrupt. The Glenister cases have spawned imaginative judicial interventions based on the notion that failure to take appropriate measures to combat corruption is regarded as a violation of human rights in South Africa. This notion has been developed by the Constitutional Court because it regards the justiciable obligations of the state under the Bill of Rights, which is Chapter Two of the Constitution, as matters affected by corruption. In the light of this and focusing particularly on the *Glenister cases*, this paper investigates how the South African courts have developed the anti-corruption jurisprudence. It concludes that the *Glenister cases* have indeed been a test of judicial imagination and collectively are an important contribution to the worldwide struggle against the scourge of corruption.

1. **Prof. Francois Venter: South African constitutionalism and corruption**

This paper examines the relationship between constitutionalism and corruption in South Africa. It analyzes the attitude of the South African courts in the fight against corruption through their decisions. From this analysis, the paper brings out some of the requirements for stemming corruption which can serve as guideline for not only the courts, but other institutions that responsible for anti-corruption crusade. The paper furthermore takes stock of how South Africa has fared in this regard and discusses what the future may hold for the country in terms of stemming corruption.

1. **Dr Sherif Elgebeily: A comparative analysis of corruption and constitutionalism in Muslim MENA states: Algeria, Morocco, and Egypt**

This paper embarks upon a comparative review of the intersection between the three constitutional frameworks and corruption – Algeria, Morocco, and Egypt, exploring comprehensivity of constitutional protections and safeguards of anti-corruption and highlighting the challenges in their implementation. The paper also examines the influence of Islamic law and cultural heritage upon anti-corruption measures. It begins by identifying the nature of corruption in Algeria, Morocco, and Egypt, exploring to what extent it has been recognised as a problem. Then, the paper goes on to identify and critique the constitutional provisions and non-constitutional influences that deal with corruption, introducing the element of Islamic thought and domestic religious institutions. The paper furthermore questions how effective these measures have been in tackling corruption and identifying what is needed to bring them fully into force, before providing conclusions and recommendations.

1. **Prof Rotimi Suberu: Constitutional Design and Anti-Corruption Reform in Nigeria: Problems and Prospects**

While the interactive and complementary effects on corruption of political culture, political economy, political agency, and political institutions is acknowledge, this contribution argues that deficiencies in Nigeria’s constitutional architecture generally, and in the institutional design of anti-corruption and oversight agencies more specifically, have contributed prominently to the failure of anti-corruption reform in the country. The paper focuses on five key constitutional and institutional deficiencies as follows: the institutional perpetuation of imperial political chief executives at federal and sub-federal levels, weak political insulation for anti-corruption agencies, the decentralization of political corruption through a patronage-based federalism, feckless or hollow open government laws, and non-participatory and non-integrative constitution-building processes. Accordingly, the paper suggests that critical constitutional and institutional reforms in these domains are required to mitigate the endemic and pervasive nature of corruption in Nigeria.

1. **Dr Zemelak Ayele:** **Corruption in Ethiopia: A merely technical problem or a major constitutional crisis?**

This paper argues that corruption in Ethiopia is not a merely administrative problem but a major constitutional crisis. The prevalence of corruption in the country is, at least in part, a result of the ineffectiveness of institutions with a direct and indirect mandate of preventing, investigating and/or prosecuting corruption. This is in turn because the anti-corruption institutions lack constitutional protection and, therefore, institutional independence that their mandates require. Moreover, the absence of a competitive multiparty democracy in the country has given the ruling party an unimpeded control on all state institutions and affairs, thereby, creating a conducive environment for corruption. Furthermore, various restrictive pieces of legislation have rendered the media and civil society organisations inept in terms of playing a meaningful role in anti-corruption efforts. All these together have led to an unprecedented prevalence of corruption in the country. Therefore, a reform that does not address these issues and seeks to deal with corruption merely at technical level is not likely to be successful in term of resolving the problem. The paper begins by describing the state of corruption in the country with a view to showing how serious a national predicament it has become. This will be followed by a discussion on constitutional principles and constitutionally and legislatively established institutions that have the mandate to fight corruption. Policy reforms and legislative measures which were introduced with similar objectives will then be discussed. Finally, the paper attempts to explain why these anticorruption efforts were less than effective.

1. **Prof. Kwame Frimpong & Mr Kwaku Agyeman-Budu: Fighting public sector corruption in Ghana under the shadow of greed and plunder- A case of rhetoric or practice**

In light of the widespread nature of corruption and the apparent inability of the international community to combat this evil economic scourge, it is obvious that current effort do not appear to be effective. It is therefore imperative to search for new alternatives to confront this enemy. What needs to be borne in mind is the fact that corruption generally thrives when there are no appropriate mechanisms to detect, prosecute and punish offenders, or the appropriate mechanisms are ineffective. Studies have shown that when public sector institutions are strengthened the normal tendency to be involved in corrupt activities is substantially minimized. Using Ghana as a case study, this paper, inter alia, seeks to argue for the development and strengthening of democratic institutions to provide the best mechanism to expose corrupt tendencies in society and thereby make it difficult for it to thrive, and effectively punish offenders in Ghana. The paper is therefore structured in three parts. The first part examines the history of corruption in Ghana. The second part explores the rhetorical fight against corruption in Ghana and finally, focuses on the path that can be taken towards rotting out corruption.

1. **Prof Nwiza Jo Nkhata: A pretentious commitment? Constitutional promises and anti-corruption work in Malawi**

This paper is an evaluation of anti-corruption work in Malawi from 1996, when the country’s first legislation dealing specifically with corruption became operational. The adoption of a specific law to deal with corruption also marked the establishment of a dedicated government agency to deal with corrupt practices. However, to provide a context to the dynamics surrounding corruption in the country, the paper begins by charting a brief historical perspective to corruption in Malawi. This historical perspective goes further back than 1996 simply for the purpose of providing a holistic picture of the situation. The paper’s main focus is an evaluation of the work of the Anti-Corruption Bureau (ACB), especially its successes and failures over the years, as against the stipulations in the Constitution of the Republic of Malawi (the Constitution). Specifically within the Constitution, the evaluation of the work of the ACB is conducted by, primarily, referring to the fundamental principles of the Constitution and the principles of national policy. A key argument in this paper is that the Constitution’s fundamental principles and principles of national policy must always be the guiding beacons for the work of the ACB and also the basic standard(s) against which the ACB’s work should be measured. The paper also contends that the Constitution’s fundamental principles generate imperatives which require that Malawi should be corrupt free thereby imbuing all anti-corruption work with a constitutional imprimatur. The paper concludes by making some suggestions on the way forward in terms of fighting corruption in Malawi.

1. **Dr. Tinashe Chigwata: Corruption in Zimbabwe: Fighting a losing battle?**

Corruption has reached pandemic levels in Zimbabwe despite the presence of an anti-corruption legal and institution framework with constitutional backing. The 2013 Constitution of Zimbabwe has not only failed to bring corruption under control, but corruption continues to constrain the realisation of other constitutional objectives. The burden and the effects of corruption on the lives of ordinary citizens are growing more unbearable. Not everyone can access public services whenever they require them. The law is no longer fully exercising its function of protecting weak members of society. Economic growth has stalled, partially due to an unattractive investment climate with corruption at the centre of it. The effects of corruption on democracy and development, and ultimately on constitutionalism are, therefore, astronomical and devastating. Accepting defeat against corruption is not an option given the lives of a majority of Zimbabweans which are at risk due to this evil. Yet, the battle against corruption promises to be a daunting task which if not addressed as a matter of urgency will cause irreparable damage to Zimbabwean society. The magnitude of this problem, its impact on constitutionalism, the effectiveness of mechanisms designed to fight it, and ways of improving that fight, require interrogation which this paper seeks to provide.

1. **Prof. André Thomashausen: The court of audit and the control of public finances in the Lusophone African countries**

Art 14 of the French Declaration of the Rights of Man and of the Citizen, passed by France's National Constituent Assembly in August 1789, guarantees the principle of accountability which has since led to the institution in many countries of judicial organs tasked with controlling public finances and auditing public spending. In France the “Cour des Comptes” was created in 1807, and the Portuguese “Tribunal de Contas” followed in 1849. The “Corte dei Conti” in Italy was created in 1862. The Belgian “Cour des Comptes” commenced to operate in 1883. In Africa, Angola, Mozambique, Cape Verde, São Tomé and Principe and Guiné Bissau all continued the Portuguese tradition of a judicial Audit Court. The Courts of Audit in the Lusophone countries in Africa have found it difficult to operate as part of an independent judiciary and are hampered by curtailments of their competencies and powers. At the same time, their status as part of the judiciary has isolated them from the parliamentary powers of controlling the executive. The effectiveness of the Courts of Audit thus depends almost entirely on their powers of intervention and especially preventive intervention with regard to public spending and budgeting. The powers and procedures of the Courts of Audit will be examined and evaluated for each of the 5 lusophone countries. Particular legislation to strength the combatting of public finances maladministration, and corruption generally, will also be examined and critically evaluated.
In concluding, the effectiveness of the “judicial” approach to public accounts will be compared with the “parliamentary” foundation of audit functions in South Africa.

1. **Mr. Ibrahim Harun: Impact of endemic corruption on constitutionalism and peacebuilding in Somalia**

Corruption in Somalia is of growing concern both to the Somali people and to the international community and is, therefore, consistently singled out as a serious problem. In international rankings measuring corruption, Somalia has remained stubbornly at the bottom of the pile over the past several years. In 2005, Somalia was ranked 144th on Transparency International’s Corruption Perception Index. By 2009, Somalia had slipped into 180th place. In 2016, Somalia was ranked 176th, earning the unenviable title of the country perceived as most corrupt. Corruption in Somalia has now become a major challenge and has been entrenched in all areas of life, threatening the fragile peace, stability and security, undermining the institutions and values of democracy, destroying ethics, values and justice, and jeopardising the growth of constitutionalism that is gradually taking shape. Consequently, corruption is decelerating the state-building process and development gains and impedes the progress achieved in terms of the rule of law, access to basic services and free market economy. Both the Somali government and the international community have made fighting corruption a stated priority, especially in the current context of transition. The paper argues that anticorruption measures should be viewed as an important conflict-prevention tool, thus providing an agenda for the promotion of peace and security in Somalia.

1. **Prof. David Sebudubudu and Dr. Ramadi Dinokopila: Botswana’s constitutional democracy and its response to corruption**

The purpose of this paper is to demystify Botswana’s hailed anti-corruption’s response/strategy. In that context, the paper considers Botswana’s constitutional democracy’s response to the problem of corruption. It further unpacks the effectiveness and limitations of this response. Drawing from previous studies on the issue of corruption in Botswana, the paper further argues that the commitment to entrench a culture of constitutionalism, good governance and respect for the rule of law is critical to curbing corruption in any country. It argues that while Botswana is doing well, perhaps relative to many African countries, recent trends in the incidence of corruption suggests that Botswana is slowly failing to effectively address issues of corruption. The lapse in the country’s concerted efforts to address issues of maladministration and corruption became apparent since President Ian Khama took office in 2008. This is, it is further argued, due to the limitations that have been placed on the country’s response to corruption. Such limitations undermine and are a threat to the country’s constitutional democracy which is ranked as one of the strongest in Africa.

1. **Dr Ken Obura: Using the bill of rights to check the state excesses in the fight against corruption: A review of jurisprudence from Kenya and South Africa**

The constitutionality of the fight against corruption has been the subject of litigation in a number of jurisdictions. These challenges reflect the constant unease that characterises relations between law enforcement and the bill of rights. In the context of anti-corruption, these challenges have been witnessed in a number of areas including: the use of non-conviction forfeiture mechanisms; autonomy and operational independence of anti-corruption agencies; creation of special anti-corruption courts; definition of corruption; and investigative powers and techniques, such as electronic and other forms of surveillance and undercover operation, adopted by anti-corruption agencies. But how have the courts dealt with these challenges and are there lessons that can be drawn on how to design a constitutional compliant anti-corruption framework? This paper attempts to answer these questions through an analysis of identified cases where the constitutionality of the anti-corruption effort has been challenged.

1. **Prof Sope Williams-Elegbe: Moving beyond the state: Citizen led anti-corruption mechanisms in sub-Saharan Africa**

Anti-corruption mechanisms have had a chequered history in Africa. Since the ‘corruption eruption’ of the 1990s, Africa has been the intense focus of the development community’s anti-corruption studies, action and rhetoric; with the aim to improve governance and developmental outcomes in Africa. Despite the implementation of several measures to address corruption in areas of the public sector such as public finance, public administration and public procurement, there appears to have been little change in the perception of corruption in many countries in sub-Saharan Africa based on global corruption indices such as the Corruption Perception Index and the Bribe Payers Index. This paper examines the underlying causes of the failures to adequately reduce government corruption in Africa, exploring the problems inherent in the manner in which corruption is characterised and addressed, the collective nature of corruption in countries with systemic corruption, and the limitations of current anti-corruption measures. The paper further explores the recent move towards citizen action against corruption to determine whether citizen action provides more promise in fighting corruption than government sponsored regulatory and non-regulatory measures.