

# **Corruption and Governance Challenges in Nigeria**

## **Conference Proceedings**

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The mission of CLEEN Foundation is to promote public safety, security and accessible justice through empirical research, legislative advocacy, demonstration programmes and publications, in partnership with government and civil society.

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Finally, the following staff of the CLEEN Foundation deserve appreciation for the various roles they played in putting together the conference: Lanre Akinola, Isioma Kemakolam, Onyinye Onyemaobi and Raphael Mbaegbu.

## **Preface**

Since the return to civil rule in 1999, Nigeria government has taken some steps to address the twin problems of corruption and bad governance in the country. These measures include public service reform (monetization to reduce waste and reduction of over bloated personnel, reform of public procurement); establishment of Anti-corruption Enforcement agencies (such as the Economic and Financial Crime Commission, Independent Corruption and other Practices Commission); and the ongoing sanitization of the financial services sector by the Central Bank under Governor Sanusi, which has revealed mind boggling levels of bare faced theft by the management of several banks in Nigeria. Despite the successes achieved by these measures, the situation remains unacceptable as corruption continues to permeate and pervade every facet of national life in Nigeria.

What is more worrying is that in spite of popular anger against corruption and bad governance, which have robbed the collective well being of the people of Nigeria, there remains a lack of national consensus on repulsion against the perpetrators (irrespective of their ethnicity, religion, class and gender) and emergence of a popular movement that is capable of galvanizing the palpable rage of the people and channel it to series of actions and outcomes that challenge the status quo.

In response to this state of affair and absence of sustained national discourse on the issues, the CLEEN Foundation in collaboration with the Ford Foundation's West Africa office organized a two-day national conference on corruption and governance challenges in Nigeria in January 2010. The meeting held in Lagos and brought together 70 stakeholders from government departments, organized private sector, security and law enforcement agencies, academia, non-governmental organizations (NGOs), media, donor agencies and the diplomatic community to discuss the issues.

This publication is a compilation of proceedings of the conference. It is divided into three parts. Part one focuses on welcoming statements and keynote

remarks, which provide background information about the conference, key expectations of the organizers and goodwill messages from government departments. Part two reproduces the commissioned papers, which set the tone for discussion. The first paper is titled ‘corruption and governance in Africa: How do we break the cycle in Nigeria?’ by Dr. Chidi Odinkalu. In it he argues that government challenge of combating corruption effectively confronts four cumulative crises of political legitimacy; agency credibility; elite values and institutional capabilities and that in the ensuing atmosphere of political abnormality as normalcy, the fight against corruption has thus been made to look both rarefied and tokenized. The second paper is on corruption and governance challenge: the South Africa experience by Thuli Madonzela. In it she argues that ending corruption in Africa lies in the hands of the people. “It is our countries, our people and our continent that are victims of the underdevelopment that is caused by corruption and our people that suffer poverty and other preventable maladies as a consequence”, she says.

The third and final part reproduces the communiqué issue at the end of the conference and the conference report.

**Innocent Chukwuma**  
**Executive Director**

# Part One

## **Chairman's Opening Remarks**

by  
Farida Waziri<sup>1</sup>

### **Introduction**

The word “corruption” has preoccupied and confounded the minds of many nations including Nigeria for decades. Indeed, summits, conferences, seminars, workshops such as this and even prayers have all been organized in respect of this self-inflicted monster with seemingly poor results. In Nigeria, the word has acquired an everyday usage since its incidence and effects seem to have a cancerous multiplier effect. As the former President, General Olusegun Obasanjo put it, “*Corruption is the greatest single bane of our society today*”.

In his widely acclaimed book, “The Trouble with Nigeria”, Professor Chinua Achebe in a whole chapter on corruption boldly proclaimed “*His frank and honest opinion is that anybody who can say that corruption in Nigeria has not become alarming is either a fool, a crook or else does not live in this country*” This was some twenty years back. In Nigeria today, corruption has become so common a word that few really bother with the actual meaning.

Etymologically, the word “corruption” comes from the Greek word “*corruptus*” meaning an aberration or we may say a misnomer. The United Nations Global Programme against Corruption (GPAC) defines it as “*abuse of power for private gain*”. Transparency International has chosen a clear and focused definition of the term as “*the abuse of entrusted power for private gain*”. It can also be defined simply as a perversion or change from the general accepted rules or laws for selfish gain.

An objective analysis and application of these definitions to the Nigerian situation clearly reveals that corruption has become almost an acceptable

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<sup>1</sup> Ms. Farida Waziri is the Chairman of the Economic and Financial Crime Commission, Nigeria

way of life and has indeed found itself into every sphere of our national existence. Indeed, a survey of our homes, offices, corporate organizations, ministries, institutions, organizations, leadership positions, even the commercial and banking sectors as revealed by the stock market crash and the ongoing bank investigations all go to show that corruption has become a living and breathing cancer which has unfortunately come to be justified by the average man as “the need to survive.” Yet we must not forget the words of Georges Bernanos, a French author and a World War1 soldier. He said *“The first sign of corruption in a society that is still alive is that the end justifies the means”*

Although it is perceived differently from one geographical location to another, the following behaviors indicate or are red flags for corruption: embezzlement, conflict of Interests e.g the award of contracts by public office holders to cronies and personally held companies, bribery, fraud, political corruption e.g nepotism or favouritism, ethnicity, rigging of elections, misappropriation and conversion of public funds for personal gains, bureaucratic corruption, extortion, manipulation of procurement processes e.g by over-inflation of contracts, leaking tender information to friends and relations etc., corporate corruption e.g diversion and misappropriation of funds through manipulation or falsification of financial records. The stories of Cadbury Plc and the Vaswani Brothers locally and Enron, Anderson and Anderson internationally, are all succinct examples, payment for favourable judicial decisions (judicial corruption)

According to the global Corruption Perceptions Index (CPI) 2009 by Transparency International (TI), which generated healthy debate, Nigeria occupies 130th position out of the 180 countries surveyed. The effects of corruption in Nigeria have not been insignificant. From multi-internal effects such as under-development, lack of basic infrastructure like good road networks, misuse of natural resources, inadequate power and water supply, mediocrity in professional and leadership positions, defective leadership outputs, fuel scarcity in an oil producing nation, falling standards of education and work output, high unemployment rates, the ever-widening gap between the rich and poor to mention just a few , to the international effects such as the tarnished image of our country in the international circles and the caution

exercised by foreign nationals in entering business transactions with Nigerians thereby weakening the economic sector. The multiplier effect has been the mass spread of poverty and our unenviable position in the list of poor and under-developed countries amidst rich natural resources.

### **Efforts of Government at Curbing Corruption**

In speaking on the topic of this conference, one must look at the problem alongside the role of governance and the government in curbing this menace. In the words of Rt. Hon. Hilary Benn, a former British Secretary of State for International Development, *“Only developing countries led by their own people and their own government can ultimately make the decisive changes that are needed to fight poverty.....Corruption is both a cause and a consequence of poor and outright bad governance”*. He further stated that *“State building cannot be imposed nor can there be simply a transfer of models from rich to poor countries”*. It is therefore noteworthy to list some of the efforts made by both past and present Nigerian Governments to curb corruption. These include:

- The “Corrupt Practices Decree” of 1975 promulgated by the regime of Murtala/Obasanjo.
- War against Indiscipline by Buhari/Idiagbon regime.
- Code of Conduct Bureau of 1990.
- Advance Fee Fraud & Other Related Offences Decree of 1995 by the Abacha regime which was later re-enacted as the Advance Fee Fraud and Other Related Offences Act, 2006 by Chief Olusegun Obasanjo administration.
- Corrupt Practices The Money Laundering Act, 2004
- The Economic & Financial Crimes Commission (Establishment) Act, 2004.
- The Procurement Act, 2007.

These have come alongside the establishment of Anti-Corruption agencies such as:

- The Nigerian Extractive Industrial Transparency Initiative (NEITI)
- The Independent Corrupt Practices and Other Related Offences Commission (ICPC)

- The Technical Unit on Governance & Anti-Corruption Reforms (TUGAR)
- The Economic & Financial Crimes Commission (EFCC)
- Budget monitoring and price intelligence unit (BMPIU) which later transformed into Bureau for Public Procurement.

### **The Role of the EFCC in Combating Corruption in Nigeria**

This Economic and Financial Crime Commission was established in 2004 against the back drop of adverse international attention being received by the nation due to the high rate of Economic and Financial crimes and corruption in the country. The Commission was charged with the task of combating economic and financial crimes which by definition includes corruption and was given broad powers to assist in the performance of this task. In furtherance of this charge, the Commission has over the years amidst changing economic and political situation recorded significant success and helped in ameliorating corruption in the public and even the private sector as in the recent investigation into the banking sector. In December 2008, the Commission also introduced a proactive approach geared towards curbing corruption by launching the Anti-Corruption Revolution (ANCOR) which is primarily a public enlightenment project with the slogan “SEE SOMETHING, SAY SOMETHING, DO SOMETHING”. The idea being to urge the citizenry to be both facilitators and beneficiaries of the corruption-free Nigeria by rising out of their indifference & nonchalant attitude to SEEING an obvious aberration indicative of corruption, SAYING/REPORTING such acts and DOING something positive to ensure that such acts are exposed and punished. It affords Nigerians to take full ownership of the War against Corruption.

The campaign has so far kicked off with public enlightenment campaigns in the geopolitical zones of Nigeria and it has been warmly embraced by the wider public. The idea is to reach the public in general and especially the youths bearing in mind the words of Friedrich Nietzsche, a German philosopher of the late 19<sup>th</sup> Century. He said *“The surest way to corrupt a youth is to instruct him to hold in high esteem those who think alike than those who think differently”*.

The Commission has also in consonance with the technology age, provided online information on the Commission's activities, news and contact lines. These are all geared towards public enlightenment. The story of the Commission's successes with regards to investigation and prosecution needs no emphasis as evident from the number of high profile politically exposed persons successfully investigated and charged to court and currently at various stages of trials.

## Challenges

Hillary Benn said "*Corruption is most able to thrive where accountability is poor*". Accountability becomes poor when the following factors are present:

- **Bad Leadership Precedents:** The political mentality in Nigeria presently is that politics is a means to wealth and that the end justifies the means. Indeed, the highest corruption in Nigeria is in the corridors of power as indicated by the number of state Governors and Local Government Chairmen that have so far been investigated. At this level, corruption is carried out in over-inflated contracts with selfish motives, contracts are executed and re-executed countless times, monies given to public officers for their respective populace, organizations and sectors are diverted to personal accounts and most times, laundered to foreign accounts. This mentality has invariably permeated to the common man who seeks every means legal or illegal to make his own wealth or in the popular slogan "have his share of the national cake". It therefore falls on the leadership to take a stand against corruption by living by example which would in a multiplier effect, also assure enforcers of laws that they can perform their duties without fear or favour and that nobody is above the law. This stance will be a major blow to corruption in Nigeria.
- **Inadequate funding of law enforcement & anti-corruption agencies-** In an era of high technology crimes, corporate and bureaucratic corruption, it would be fatally erroneous to assume that one can fight a war of this magnitude without adequate provisions and funding . A

comparison with our foreign counterparts in the Western part of the world will show that the defense and security sectors of these nations take priority and are usually the best equipped with state of the art technological equipment, database and up to date training of personnel. Nigeria is still significantly behind in this aspect.

- Absence of comprehensive database- Nigeria as of today lacks a comprehensive database to provide vital information on its citizens. This cripples investigation and even exchange of information with foreign counterparts. Where proper records showing vital information including criminal records are kept, it will be a major deterrent.
- The Need for Reforms in the Public Sector- The public sector contributes more than 70% of the corruption in Nigeria. Countries where corruption is the exception rather than the norm have achieved this by reforming their public institutions such as the Civil Service, the Parliament and the Judiciary. Reforms in these sectors will greatly reduce the challenges of combating corruption.

### **Breaking the Cycle**

How do we break the circle? It starts with you and I. It means seeing something, saying something and doing something. In the words of Bess Myerson "*The accomplice to the crime of corruption is frequently our own indifference*". It means that we all in our little spheres of influence should eschew corruption and fight against its spread. It means enlightenment of the masses on the hideous consequences on our nation both locally and internationally. It means refusing to vote in and idolize leaders who are corrupt. It means we the populace taking part in recreating our own history bearing in mind that nation building is a tortuous but rewarding exercise. It means supporting the enactment of laws that place stringent duty of care on politicians and borrowing a leaf from foreign countries like Mozambique, Hong Kong, Malaysia and a host of others which have fought this war with visible results.

In conclusion, I will reiterate an earlier statement of mine that *“The war against corruption like terrorism is a special kind of war. It admits of no conventional methods. It is a war against human selfishness and greed. It is a war against rapid and senseless primitive capital accumulation. It is a war against decadence of mind, ethics and morals. Because of these special characteristics of the war, it requires a strong and uncompromising political will. It must be approached holistically. Casual and superficial approaches will not work. Rhetoric must match concrete action. Like all wars on salvation and restoration, friends will be hurt; families and associates will equally be hurt. And above all, politics have no place in the war”*.

I most sincerely thank the organizers of this conference not only for inviting me to give a keynote address on this all important subject but also for collaborating with us in the war against corruption in Nigeria. Distinguished ladies and gentlemen, thank you for your time.

## **II**

### **Keynote Remarks**

*by*

**Sanusi Lamido Sanusi<sup>2</sup>**

#### **Introduction**

I am very delighted to be a special guest at this National Conference on Corruption and Governance Challenges in Nigeria as it will afford me yet another opportunity to share my thoughts on the vexed issue of corruption and bad governance. Let me begin by commending the Conference Organizers on its choice of conference theme, especially against the background of the resolve of the government of President Umar Musa Yar'adua to deal decisively with the issue of corruption and poor governance in both public and private sectors of the economy.

It is equally important to recognize the role of development partners like the Ford Foundation in not only assisting in the fight against corruption but also helping in building capacity and institutions in developing countries like Nigeria. It has been globally proven that countries which have high incidence of corruption are always associated with poverty as weak corporate governance does not encourage sustainable development. In other words, there is a high correlation between corruption, poor governance and high incidence of poverty. It is against this backdrop that we posit that the war against poverty must be multi-faceted. i.e. not only through providing finance for the active poor but also ensuring that institutions are transparent, accountable and citizens rights are well protected.

Ladies and gentlemen, I am sure you will all agree with me that the cycle of corruption and poor governance can be broken through forums like this, which brings together stakeholders to discuss the evils of corruption/poor

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<sup>2</sup> Sanusi lamido Sanusi is the Governor, Central Bank of Nigeria

governance, and its impact on socio-political and economic development. Issues of corruption and poor governance have become so pervasive in recent times especially when we consider that the present global economic recession is the direct aftermath of failure of corporate governance, especially in the private sector as well as on the part of government institutions charged with the responsibility of ensuring that individuals and institutions abide by the laws of the land in the conduct of business.

The objective of my address is not to bore you with theoretical literature on corruption and governance challenges in Nigeria, but to share some of the challenges we have encountered in the on-going banking and financial system reform as well as our approaches in handling them. Permit me to reiterate that the present reform in the banking system is a timely response to combating decisively the institutional decay and flagrant disregard for corporate governance by the leadership of some of our banks and other financial institutions.

It has been well known since consolidation of 2006, that some of the banks engaged in serious breaches of corporate governance. For example, some of the banks had ineffective Board oversight, fraudulent and self servicing practices among members of the board, management and staff. Others include overbearing influences of Chairman or MD/CEO, especially in family-controlled banks, weak internal controls etc. It has also been argued that some of the banks were too focused on growth, i.e. being the biggest at the expense of appropriate and adequate risk management practices. It was quite obvious that some of our banks were weak and business could not have been allowed to continue as usual. It is against this background that we were compelled to introduce the on-going banking sector reforms. Some of the key challenges we have encountered and our responses is as follows:

### **Confidence Crisis in the Banking Industry**

Our first major challenge was the increasing crisis of confidence in the industry and how to address the menace. The challenge was even more daunting in the ten banks where the CBN intervened through the injection of massive liquidity

to shore up the banks' capitalization. Our approach here was to crave the understanding of the Minister of Finance, the Chief Economic Adviser to the President and the Accountant General of the Federation to persuade the Ministries, Departments and Agencies of the Federal Government as well as the State Governors not to move their funds out of the affected banks.

In addition the CBN embarked on public enlightenment campaign both locally and abroad to reassure the investing public, the business community, diplomatic missions and international financial institutions that the action of the CBN was meant to strengthen the banks rather than weaken them as was being misrepresented in some quarters. These initiatives included an international road show in London where I briefed the international financial institutions, investors, and the general public on the direction of the reform and assured them of the safety of their investments in Nigerian banks. We had to continue to engage stakeholders at all levels on the necessity for the reform and to reassure them of the commitment of the new leadership of CBN to address the issue of poor corporate governance in Nigerian banks, including liaising with relevant government agencies to prosecute those culpable of criminal breach of trust and recover the bad loans.

#### **Loss of Confidence by Banks in the Inter-bank Market**

It is pertinent to state that prior to CBN intervention in the banks, some perceived weak banks were already being discriminated against in the inter-bank market as the stronger ones were reluctant to lend or place funds with them. Also, players in the pension industry were averse to risking their funds with some banks, and insisted on the guarantee of the apex bank before dealing with them. The CBN's response to this challenge was by guaranteeing all inter-bank placements, placements by pension funds administrators and credit lines extended to Nigerian banks by foreign banks and multilateral financial institutions up till December 31, 2010.

#### **Transparency in Financial Reporting and Accountability to Banks' Stakeholders**

Banks reports to the CBN and investors were often not accurate, depriving the CBN the right information to effectively supervise the industry and

depriving investors of information required to make informed investment decisions. We are already working with various stakeholders such as the Nigeria Accounting Standard Board (NASB), Securities and Exchange Commission (SEC) and development partners i.e. World Bank in adopting international best practice e.g. the adoption of International Financial Reporting Standards (IFRS). A roadmap had already been agreed with implementation tentatively fixed for 2012. Besides, the adoption of a common year end for banks annual accounts which has taken effect from December 2009 will also assist in reducing misreporting and facilitate the attainment of comparability of the financial reports of banks.

### **Slow Judicial Process in the Prosecution of Recalcitrant Debtors**

The slow process of the judicial system is also a major challenge to the CBN in prosecuting the corrupt bank directors and recovering the bad loans extended to their cronies and related parties. At this juncture, it is noteworthy to commend the Chairperson of the Economic and Financial Crimes Commission who has assisted us tremendously in preparing charges against the corrupt officials for prosecution. It is pertinent to state that substantial amount had been recovered from the non-performing loans of the banks.

### **Regulatory Framework and Prudential Regulation**

The lack of effective coordination among key regulatory agencies in the financial system has also been identified as one of the causes of poor oversight of the banking system. Coupled with ineffective coordination is the dearth of resources including executive capacity which adversely affected the ability of the agencies to discharge their mandates effectively. Again the CBN has responded by taking the initiative to strengthen cooperation and collaboration among the regulatory bodies in order to build supervisory capacity, facilitate information sharing and engender holistic and integrated approach to regulating the financial system for long-term soundness and stability. The adoption of Risk Based and Consolidated approach to supervision as opposed to Compliance is equally assisting in this regard.

In conclusion, we have established that there is a strong link between good corporate governance and national development. The UNDP in its paper

“Fighting Corruption to Improve Governance” highlighted the fact that good corporate governance is essential to developing an environment that promotes economic growth and minimizes poverty. For Nigeria to attain a reasonable and sustainable level of growth we must join hands to fight the menace of corruption and bad governance. I can only add that the war against corruption and poor governance in the financial system has just begun and can only be won with the cooperation of all relevant stakeholders. The CBN cannot do it alone. We require your total support and encouragement even as we welcome suggestions and constructive criticisms to help us achieve our collective goal. The fight must be taken to the door steps of government and its institutions. It must be fought and won at all sectors and strata of our society. We cannot afford to allow endemic corruption and bad governance to continue to dispossess the present and future generations of Nigeria of our joint heritage.

# Part Two

## **II**

### **Corruption and Governance in Africa: How do we break the cycle in Nigeria?**

*by*

Chidi Anselm Odinkalu<sup>3</sup>

#### **Introduction**

Nigeria faces an existential crisis located at the nexus of governance and corruption. To fix this problem, first it is necessary to diagnose it properly and then confront it collectively. Few moments are as ripe and right for this as this year of the Golden Jubilee of Nigeria's Independence. Within and outside Nigeria, the question must be: How has a country so richly endowed blown the opportunities for itself and its generations yet unborn so spectacularly? To adapt Cassius in Shakespeare's *Julius Caesar*, it is not difficult to argue that the fault is not in our stars, but in ourselves, that we have such a crisis with corruption and governance".<sup>4</sup> The good news is that having got here as a people, we have it in ourselves to get ourselves out of it. The bad news is it will not be easy and the situation admits of no magic wand or quick fixes. To begin the journey, we must first tell ourselves some inconvenient truths.

Corruption has been the focus of considerable attention, hand-wringing and lamentation in and outside Nigeria. Some of the best known public advocacy and international organizations in the world, including the UNODC and Transparency International - exist to combat it. I do not claim any special insights on this issue. In addressing, I propose to reflect my own personal viewpoints and the experiences of a child of the post-independence generation.

It will be difficult to address the problem of corruption and governance in Nigeria in isolation of the rest of Africa. To be sure, corruption is not just a Nigerian problem; it is a problem for Africa and for development to which

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<sup>3</sup> Dr Chidi Anselm Odinkalu is a Senior legal Officer for Africa at the Open Society Justice Initiative

<sup>4</sup> *Julius Caesar*, I, ii, 140-141

African countries collectively lose an estimated 25% of GDP or about \$148 Billion annually.<sup>5</sup> Nigeria merely illustrates to scale a problem that every African and indeed developing country also confronts.

In a lecture in Lagos in November 2009, Ghana's immediate past President, John Kuffuor, claimed that "corruption is basically enshrined in our culture".<sup>6</sup> In these few words, President Kuffuor turned Cassius on his head, arguing, in effect, that the problem is in our stars and ancestors and not in ourselves. In doing so, he implausibly caricatures culture, incredibly generalizes about corruption as a social pathology; racialises it as a governance problem in a manner that would have caused severe hackles if it had been done by a Caucasian; and ultimately trivializes a rather serious issue.

President Kuffuor misdiagnosed the problem. To the extent that anthropological or other evidence exists, there is no support for his argument. Around Africa, after all, culture defines rather atomized mechanisms for governing what were in reality small and intrusive communities. As a framework, it is simply "too crude to be analytically meaningful, and even a country is too big a cultural unit to generalize about."<sup>7</sup> Whatever the model of Nigerian or African social organization that we examine, there were in fact firm prohibitions against stealing, conversion or plunder of public resources for private gain, all elements implicit in the modern manifestations of

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<sup>5</sup> See "Recovering African Wealth: Deterring Corruption and Financing Development", 1, *Africa Tax Spotlight*, 4 (2010)

<sup>6</sup> John Kuffuor, "Growing Economies in West Africa: Ghana-Nigeria Relations", 40<sup>th</sup> Anniversary Lecture to Nigeria-Britain Association, Nigerian Institute of International Affairs, Lagos, 9 November 2009.

<sup>7</sup> Ha-Joon Chang, *Bad Samaritans: Rich Nations, Poor Policies and the Threat to the Developing World*, Ch. 9 (2007)

corruption in governance.<sup>8</sup> There were also quite profound social and political consequences for those involved in such conduct.

A major source of difficulty is the fact that the transition from intrusive, atomized communities to the anonymous society built on the Westphalian model of the nation-state took place all over the continent without creating mechanisms to infuse or enforce these richly rooted African values in governance or its institutions and processes. Thus we have evolved a bi-furcated system of public ethics that appears to subvert our community values at their point of contact with the post-colonial African State and, in so doing, denudes the State of both relevance to the people and the will to protect their best interests. This is not a cultural problem, however. Rather it is a problem of institution and state-building.

If we are to fashion effective responses, therefore, we need to resolve the underlying question whether corruption is in fact the disease or its symptom. This diagnostic puzzle is central to understanding the corruption and governance challenge for both our country and the African continent. In his 2<sup>nd</sup> Bamidele Aturu & Co. Law and Development Lecture on 26 October 2009, Dr. Sam Amadi asserts that “corruption is mainly the reason why about \$400 Billion realized from the sale of oil in Nigeria since 1958 has resulted in a few hundred millionaires and millions of starving and sick citizens.”<sup>9</sup> This claim takes us nearer the gist of our problem. I cannot quarrel with the figures but I disagree with the analysis. The reason for the situation Dr. Amadi describes is not corruption but impunity and a failure of state and institution building. The problem is not that people steal our resources; it is that we allow them to

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<sup>8</sup> I have deliberately avoided any major effort at defining corruption here. Article 1 of the UN Convention against Corruption defines corruption to include “the bribery of national or foreign public officials, bribery in the private sector, misappropriation of property by a public official, influence trading, abuse of functions and illicit enrichment.” In the Nigerian case of *Biobaku v. Police*, (1951) 20 *Nig. L. Repts.* 30, Bairamian J. (as he then was), appeared to define corruption as “the receiving or offering of some benefit, reward or inducement to sway or deflect a person employed in the public service from the honest and impartial discharge of his duties – in other words, as a bribe for corruption or its price.”

<sup>9</sup> Sam Amadi, “Corruption and the Law: A Case of Unequal Justice?”, 2<sup>nd</sup> Bamidele Aturu & Co., Law & Social Development Lecture, Monday, 26 October 2009.

get away with it and, even worse, reward them with management of public trust as well as control of the public till, resources and institutions.

This does not just happen on an episodic, individualized basis; it has for the most part become generalized as the *raison d'être* of public office. As my driver, Ndale Adumya, on a recent trip to Ethiopia told me in his halting English, pointing at one of a rash of tall mini-sky-scraping new-builds springing up across Addis Ababa: “That building is not work; it is corruption. Politics man is very rich man in Africa, may be not in Europe. In Africa, politics is business. Even me, I want.”

Truth be told - we have mostly under-estimated the extent of Nigeria's governance and corruption crises or misdiagnosed them. Public policy making has mostly been reduced to a values-neutral, performance-allergic dump for ante-diluvian skills and political patronage. As a country, we have failed to develop the political values to operate numeracy as constitutive governance instrument. Our advocacy for change has been episodic rather than systemic. We have desired elections but failed to think or design workable electoral systems. We have desired political change but forgotten to think about the transformation of the Civil Service. We want a just system but have not planned for how to reform a judiciary whose business and basic tools of work mostly have nothing to do with justice for our people. We also want *human rights* but have failed to invest in assembling the *right humans* to protect them.

This paper sets out to analyze how we got to this point in post-independence Nigeria. It argues that our governance challenge of combating corruption effectively confronts four cumulative crises of political legitimacy; agency credibility; elite values and institutional capabilities. In the ensuing atmosphere of political abnormality as normalcy, the fight against corruption has thus been made to look both rarefied and tokenized.

In the sections that follow, this paper will briefly outline how, in Nigeria, we have over 50 years as an independent country prospered corruption and denuded governance. Simultaneously, we have destroyed the citizen and produced an elite without a coherent articulation of its self-interest who have in turn corrupted politics, politicized anti-corruption and annihilated the

institutional capacities of the public space and political processes to exact accountability from it.

To break these habits, the fight against corruption needs to be normalized through investments in the capacities and values that underwrite the access to a secure public space in a nation-state. Breaking the cycle of corruption, this paper will conclude, requires a re-fashioning of that both public policy making and public advocacy towards a normalization of the fight against corruption. Before addressing these, however, it will be necessary to outline the regional context in which our challenges are located and highlight perhaps the most fundamental issue in Nigeria's corruption malaise – our national affliction with advanced numeracy illiteracy.

### **Fighting Corruption: Summary of a Regional Governance Context**

The establishment of democratic government is an anti-corruption strategy. Theoretically at least, the dispersal of power within the institutions and processes of democratic government should constrain possibilities for venality. The accompanying protection of civil liberties and human rights should make for open and transparent government and provide a check on abuse of power. Competitive politics under-pinned by periodic renewal through elections of the mandate to govern should reward politicians with a credible record of protecting the public resources and interest. Together, these three occurrences – dispersal of power, kinetising the institutions of accountable government, and competitive electoral politics for periodic renewal of government's mandate – are essential elements of democratic government as an anti-corruption strategy

As the experience of Africa's pro-democracy movements in the past quarter century shows, these assertions cannot, however, be taken for granted. Democracy is perhaps too general a label for the diverse forms of government that it could refer to. In Africa, it has, for the most part, been reduced to an event – the conduct of elections. The reason for this is obvious even as it remains unacceptable. For the most part, Africa's post-independence regimes precluded any form of political competition for power through the creation

of nation-building projects in which power was monopolised by single parties. Pluralism or advocacy for it was criminalised. The institutions of state became personalised, corrupted, and instrumentalised to the end of keeping the single party and often a single person in power. This destroyed government as a system of norms, rule constraints and institutional processes established for and by equal citizens. In its place, discrimination was institutionalised and categories of citizenship created based on status or mass denial of precisely those public goods that the State supposedly exists to guarantee.

Good government is founded on a tripod of three values: legitimacy, accountability, and capacity. To explain, the legitimacy or credibility of the government is essential both for its revenue generation and service delivery. Credibility is a function of both the nature of its electoral legitimacy or mandate, and its fidelity to the norms of political behaviour. There is a logical connect between credibility and accountability. Accountability has both political and institutional dimensions. Politically, it speaks to the ability of people to participate in their government, and if necessary, to change it through transparent electoral processes; institutionally, it refers to how far the institutions and mechanisms of government are able to play their roles in ensuring that government operates properly within the law. Implicit in the political, institutional, and service delivery dimensions of government is the assumption that there is the institutional capacity to fulfil these functions. This institutional capacity is to be found in the independence and abilities of the judiciary, civil service, and bureaucracies of government to police the rules without which government becomes both whimsical, arbitrary, and personalised.

In many African countries, and certainly in Nigeria, these three essential elements of government had been destroyed by the end of the decade of the 1980s, with the result that those who controlled government enabled themselves to deliberately conflate the essential distinction between public and personal resources, get away with this, and preclude the possibility of ever being held accountable whether through the legal process of investigations and prosecutions, or through the political process of competitive elections. Writing in 1995, Cameroonian legal scholar, Ndiva Kofele-Kale, called this

Patrimonicide – the crime of exterminating the patrimony.<sup>10</sup> Without this context, it is impossible to understand the enormity of the challenge we confront.

For much of the continent, this remains the case. In Equatorial Guinea, for instance, an investigation by Senator Carl Levin on the Permanent Subcommittee of Investigations of the US Senate in 2004 revealed that the earnings from that country's petroleum were held in accounts controlled personally by President Obiang and his family.<sup>11</sup> In the Riggs Bank alone, this family held over \$700 million through over 60 accounts in the names of the President, his wife, his sons, and in-laws. President Obiang, who has been in power since 1978, has eviscerated every prospect of competitive elections, or legal accountability within Equatorial Guinea.

Around Africa, democratic government is increasingly fraught and has suffered many recent reversals. In many countries, such as Algeria, Angola, Cameroon, Chad, Eritrea, Egypt, Ethiopia, Equatorial Guinea, Guinea Conakry, Niger Republic, Nigeria, Uganda and Zimbabwe, to cite a few examples,– electoral competition is at best endangered and has increasingly been replaced by competitive authoritarianism, the instrumentalisation of the processes and institutions of government to the simultaneous ends of eliminating effective opposition, creating the appearance of minimal electoral legitimacy, precluding electoral alternance and neutering accountability.

Elections essentially have become reduced to three things – administrative processes of manufacturing figures unrelated to ballots; an expensive race to finagle three or four judicial votes from panels of five or seven judges, depending

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<sup>10</sup> Ndiva Kofele-Kale, *International Law of Responsibility for Economic Crimes: Holding Heads of State and Other High-Ranking State Officials Individually Liable for Acts of Fraudulent Enrichment* (1995); Ndiva Kofele-Kale, "The Right to a Corruption-Free Society as an Individual and Collective Human Right: Elevating Official Corruption to a Crime under International Law", 34 *Int'l L.*, 149 (2000);

<sup>11</sup> See, "Equatorial Guinea: Private Estate", Vol. 45:15 *Africa Confidential*, 21 July 2004. For a full report and analysis of the history and pattern of personalization of power in Equatorial Guinea, see, Human Rights Watch, *Equatorial Guinea, Well Oiled: Oil and Human Rights in Equatorial Guinea*, July 2009

on the country or office in dispute; or a diplomatic debacle in which disputants for office are persuaded to split their differences at the risk of mass slaughter. Whichever option it is, they have become tools for affording a veneer of public legitimacy to plunder. At the end of 2009, the African Governance Report concluded that “elections have yet to be free and fair in most African countries.”<sup>12</sup> This is the context that defines corruption’s challenge for governance in Africa generally and for Nigeria in particular.

### **A Country that cannot Count**

27 years ago, Chinua Achebe declared that the “the trouble with Nigeria is simply and squarely a failure of leadership”, and argued that “Nigerians are corrupt because the system under which they live today makes corruption easy and profitable.”<sup>13</sup> As a supplement to this, I propose shortly to suggest that corruption in Nigeria thrives because, as a system, we have failed to develop the skills or values for counting in a political economy. As I will shortly show, all of our crises with corruption and governance come down to this: as a people, we cannot count honestly and there are no consequences for dishonest counting.

It is necessary, as a prelude to this, to explain the relevance of the institutional skills and political values of counting and accounting in a modern political economy. Three processes are essential to the effective functioning of a country. These are: the processes of legitimating public power (elections); the processes of quantifying the demographic coverage of the country (census); and the processes of estimating and distributing the commonwealth (public accounts, including revenues and appropriations). These three inter-related processes – elections, demography, and public accounts - rely on the basic skills and institutions of honest policy numeracy. In elections, this involves the counting of votes and the conferment of a mandate usually on the persons usually with the greatest number of counted votes. In a census, the people are counted, which in turn helps to determine the bases for allocation of representation,

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<sup>12</sup> UN Economic Commission for Africa, *African Governance Report II, 2009*, (2009) p. 33

<sup>13</sup> Chinua Achebe, *The Trouble with Nigeria*, (1983), 1

social services, revenue and sundry public goods. In the management of public accounts, we quantify in numbers the size of the common wealth, so as to know exactly the pool of resources that those who have the legitimate mandate through elections can distribute for the benefit of those that we have counted.

The proper conduct of these three signal foundations of public policy making in a modern political economy requires the articulation of a coherent national interest, norms of political ethics and values, and an infrastructure of capable state institutions to underpin them. Because so much hangs on this, logic and intuition would suggest that we should take them seriously. But Nigeria is both illogical and counter-intuitive. Nigeria's multiple crises of governance exist because these are non-existent and corruption is such a problem because whenever we have to count as a people, we compromise the institutions that exist to do it and subvert the processes of counting and accounting without which it is impossible to run a State that works.

A brief detour through post-colonial Nigeria should reveal quite easily that this inability to count is the most constant feature of five decades of independence. As an independent country, we have never been able to organize credible polls or census nor developed a credible public accounts management system. The first crises of post-colonial Nigeria arose with the 1963 national census, the federal elections of 1964, and the elections in the old Western region in 1965. Successively compromised by dishonest counting, these three events ultimately preceded the descent into military rule, mass atrocity and war between 1966 and 1970. As Professor Robert Collins observed in his book *Nigeria in Conflict*, "this atmosphere was....the main reason for the two coups and the civil war. Dishonesty both in thought and deed were the prime bases of the Nigerian troubles."<sup>14</sup>

The end of the war was quickly followed by post-Yom Kippur War Oil Boom. Immediately before the Oil Boom, there was a national census in 1973 which proved to be "farcical. The results were never published."<sup>15</sup> Then Nigerian

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<sup>14</sup> Karl Maier, *This House Has Fallen: Nigeria in Crisis*, (2000), p. 54

<sup>15</sup> Robert Collins, *Nigeria in Conflict*, (1970), p. 187

Head of State, Yakubu Gowon, publicly declared that far from a pre-occupation with knowing how much we were worth or how many people we had to manage the money for, Nigeria's national priority was how to spend money (whose quantity, by the way, we didn't care to know).

Intoxicated with liquidity hubris, the government of General Gowon initiated an ambitious public infrastructure project that required massive importation of cement whose quantity we didn't care to know. Led by rulers who were unschooled in the complicated mechanics of international commercial credits, the country received an inundation of useless sand imports that it had not ordered and did not need. This import of sand was so vast, it overwhelmed the capacity of the ports in Nigeria, necessitating massive commitments in demurrage, lost maritime contracts and revenues, and the leasing of port space in neighboring countries. We lost a lot of money (no one has ever computed how much) and those that ran our country appeared to lose whatever marbles they had.

In one of history's more expensive piques of martial fit, Nigeria's then military government repudiated its payment obligations under the original commercial arrangements. Sued before courts in several European countries (including England, Germany, Switzerland and Austria), Nigeria unsuccessfully pleaded sovereign immunity in support of its attempt to repudiate the contracts. It failed. Armed with judgment debts that became due for payment together with accrued interest payments various international creditors easily enforced their judgment debts against Nigeria's assets overseas. By the turn of 1980, the country became unable strictly speaking to finance its foreign commitments. We were bankrupt.

As the English Court of Appeal put it with characteristic understatement in the most famous of these cases in 1977, this kind of mess could only have been caused by "some mismanagement somewhere."<sup>16</sup> Rather than find out and fix the source of this obvious mismanagement, Nigeria's leaders sought new frontiers for money without adjusting the way government business was

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<sup>16</sup> *Trendtex Trading Corporation v. Central Bank of Nigeria*, (1977) 2 *Weekly Law Reports*, 356, at p.

conducted. While the full import of this debacle was unfolding, the military turned over power to a civilian regime following elections in which the counting was characteristically “tainted by the sort of vote-rigging and intimidation that have marred all post-independence Nigerian Polls.”<sup>17</sup>

Faced with national bankruptcy, the civilian government of President Shagari declared “Austerity” in 1980. To ameliorate the resulting difficulties for working Nigerians, his federal government in 1981 established a taskforce to import and distribute rice at subsidized prices to Nigerians. The quantities were undetermined. Cement Armada was now replaced by Rice Armada and a few more millionaires were made at the expense of the public interest. Under the combined assault of these various difficulties, the Nigerian economy reportedly shrank at an annual average of two percentage points or a cumulative eight percentage points in the four-year period from 1979 to 1983.<sup>18</sup>

The elections of 1983 were even more flawed than those of 1979. In a familiar reprise of our incapacity to count, the ruling party, the National Party of Nigeria (NPN), manufactured what it called a landslide “characterized by rigging, violence, bribery, and wildly inflated voter turnouts.”<sup>19</sup> Promising to put the country (and then President, Shehu Shagari) out of our collective miseries of leadership and institutional ineptitude, the military overthrew and replaced the civilian regime on 31 December 1983. After the inconclusive interregnum of the succeeding regime of Muhammadu Buhari, it was the lot of the Babangida regime, which took over power in August 1985, to initiate dialogue with the Bretton Woods institutions to assist Nigeria with a facility of \$2billion to alleviate our lingering balance of payments crisis. In return, they required economic liberalization. The fallacy was to assume that economic liberalization could happen without political, institutional and ethical renewal of government and how it was constituted and run. To prolong himself in power, General Babangida contrived to corrupt politics. In 1991, he made another unsuccessful attempt to conduct a national census. Meanwhile, the

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<sup>17</sup> Karl Maier, *supra*, p. 15

<sup>18</sup> *Ibid.* pp 15-16

<sup>19</sup> *Ibid.*, p. 58

General was unable to count or account for the enhanced earnings – windfall – that accrued to Nigeria from the spike in international oil prices that followed the first Gulf War between 1992-1993. A subsequent investigation led by late economist, Dr. Pius Okigbo<sup>20</sup>, allegedly estimated that about \$12Billion of these earnings were not accounted for, but the report remains officially not published.

In June 1993, when it seemed Nigeria had for once broken the curse of a people that could not count with an election that was widely viewed as credible, Ibrahim Babangida inexplicably nullified the outcome. In the ensuing crisis, he was forced to “step aside”. In doing so, he left the country in the hands of the hapless Ernest Shonekan, a lawyer and former CEO of United African Company (UAC) Nigeria PLC, then the biggest conglomerate in Nigeria. In this, the country had come full circle from its first contact with British colonial expedition a little over a century earlier when, in 1879, George Tubman Goldie’s United African Company (UAC) received a Royal Charter to administer the Protectorate of Southern Nigeria. It was under these circumstances the General Sani Abacha, Nigeria’s military ruler from November 1993 to June 1998 contrived to appropriate to himself an estimated 3-5% of the country’s GDP. No one has ever quite managed to put a firm figure on how much he actually stole. However, since these events, elections in Nigeria have progressively and successively descended – in 1999, 2003 and most recently in 2007 - into spectacularly farcical non-events, each succeeding one more jaw-dropping than its predecessor in which counting votes has become too inconvenient to bother with. Meanwhile, we still do not have credible census figures; and our collective illiteracy about how much we produce or earn appears to have worsened instead of getting better.

### **Legitimacy Crisis: The Corruption of Politics**

The multiple crises of constitutional instability, mis-governance and political exclusion that have plagued Nigeria crystallize the reality that in Nigeria, governance does not have to be grounded in popular legitimacy. Colonial rule

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<sup>20</sup> *Ibid.*, p. 68

lasted sixty years during which Nigerians were subjects of a foreign sovereign, incapable of being citizens of their own country and not exactly regarded as full or equal members of the human race.<sup>21</sup> Since political independence in 1960, the story has hardly been different. In 49 years as an independent country, Nigeria has had twelve presidents and heads of government, eight of whom ruled in 29 years of military rule. The country has experienced eight military rulers, seven military-inspired changes of government, five of which have been successful military coups, six Constitutions (including one that was never used),<sup>22</sup> four Constitution drafting processes, four programmes of transition from military to civilian government,<sup>23</sup> at least three unsuccessful coup attempts,<sup>24</sup> three civilian regimes, two Constituent Assemblies, two transition programmes from military to elective government and one civil war.<sup>25</sup> Nigeria returned to civilian government

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<sup>21</sup> See, *Re Southern Rhodesia*, .... Where the Judicial Committee of the Privy Council observed about African communities that they were “so low in the scale of social organization that their usages and conceptions of rights and duties are not to be reconciled with the institutions or legal ideas of civilized society... Such a gulf cannot be bridged. It would be idle to impute to such people some shadow of the rights known to our law and then to transmute it into the substance of transferable rights of property as we know them.”

<sup>22</sup> The 1989 Constitution drafted under the auspices of the Babangida regime was abrogated before it was formally promulgated following the annulment of the presidential elections of June 1993. See, *Attorney-General of Anambra State & Others v. Attorney-General of the Federation & Others*, [1993] *Nigerian weekly Law Reports* (Part 302) 692.

<sup>23</sup> With the notable exception of the regime of Major-General Muhammadu Buhari (December 1983-August 1985), every military regime in Nigeria has evinced an intention to design and implement a programme of transition to elected civilian government. See, Awa U. Kalu, “The Democratization of Nigeria: More Bullet(s) or Ballot?” in 1:1 *Lawyers Biannual*, 40 (1994)

<sup>24</sup> It is widely believed that the claim (in early 1995) by the regime of the late General Sani Abacha to have foiled a coup attempt against it by a group allegedly comprised of middle ranking Army officers without command positions, retired Generals, civilian pro-democracy activists and journalists was not credible. *Africa Confidential*, for instance, reported that ‘[t]here is new concern that human rights activists...and independent journalists...will be roped into a secret treason trial held under military rules. Such reports confirm that the tribunal is purging dissidents rather than trying plotters.’ See ‘Nigeria: Widening the Net’ in *Africa Confidential*, Vol. 36:14, p. 8 (1995)

<sup>25</sup> The Nigerian civil war began in 1967 and formally ended on 15 January 1970

at the end of 15 unbroken years of military rule under a Constitution that entered into force on 29 May 1999.<sup>26</sup>

Over this prolonged period of colonial domination and post-colonial exclusion, institutional habits crystallized that define much of the way the country works, even today. Issue-driven politics was dead or nearly dead by the time the then National Party of Nigeria (NPN) orchestrated its infamous “landslide” in 1983. Thereafter, the public space, encouraged irresponsible government and an irrelevant citizenry, neither equipped to develop a culture of expectations nor capacitated to make demands in fulfillment of such expectations. By the time the country returned to civil rule in 1999, it was as if the people no longer mattered.

The jurisprudence from Nigerian courts makes this state of affairs wholesome. The courts have been at best cavalier and self-serving in their attitude to issues of electoral legitimacy, regarding them as no better than customary neighbourhood disputes to be decided by black-letter lawyering and settled by the rules of evidence, pleadings, practice and procedure. The Electoral Act creates electoral crimes such as electoral corruption, provides for elections to be invalidated for corrupt practices, and authorizes the courts to set aside electoral outcomes that have been procured through processes that are not in substantial compliance with the principles of elections.<sup>27</sup> Nigeria’s Courts and legal processes have, however, subverted these provisions in three ways. First, contrary to the clear provisions of the Evidence Act, they claim that any allegation of corruption in an election petition must be proved to the standard of criminal law, i.e., beyond reasonable doubt. Second, even where they have set aside elections on grounds of corrupt practices, Nigerian courts do not order any criminal investigations or prosecutions for the crimes established. It

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<sup>26</sup> Chapter II of the 1999 Constitution of the Federal Republic of Nigeria provides for economic, social and cultural rights while the chapter IV provides essentially for civil and political rights. The distinction may well be a hangover from the 1979 Constitution which was enacted at the height of the Cold War. It is arguable that the present constitution does not comply with the United Nations Resolution 48/134 of December 1993, to the extent that all human rights are equal, universal, indivisible, interrelated, interdependent and inalienable.

<sup>27</sup> Electoral Act 2006, ss. 145-146

is as if our judges believe election rigging is an act of nature without human agency. Thirdly, they have created insurmountable burdens of proof that cannot be discharged by even the super-natural.

In *Muhammadu Buhari v. Independent National Electoral Commission (INEC) & 4 Others*,<sup>28</sup> the Supreme Court took this tolerance of electoral corruption to a level of diabolical absurdity. In this case where even the INEC admitted that ballot papers were not serially numbered and the Court of Appeal found as a fact that this was indeed the case, a four-judge majority of a seven-person Supreme Court panel spectacularly concluded that:

Non-serialization, if it had benefits and advantages, was not exclusive to the respondents. I do not see any proof by the appellant that the respondents had benefits or advantages over and above the appellant on the alleged non-serialization of the ballot papers. I do not see that the non-serialization favoured the respondents and disfavoured the appellant.”<sup>29</sup>

This is not the place to speculate as to the origins of this provocatively cynical *non-sequitur* or the motives behind it. If ballot papers are not serialized, the only result, one would think, must be that there are no elections to begin with because it is impossible to control in such circumstances for contamination of the ballots. Thus the question of whether or not any party has benefitted from failure of serialization does not arise in the first place, for no one should be speaking about that. To accord judicial stamp of approval to alleged elections with no serially numbered ballot papers is therefore to fundamentally misunderstand the nature of elections or willfully disregard or destroy the people’s will in constituting their government. Either way, this dooms advocacy for credible elections in Nigeria and renders the idea of popular legitimacy as the basis of government moot by diktat of the highest court in the land.

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<sup>28</sup> *Muhammadu Buhari v. Independent National Electoral Commission & 4 Others*, (2008) 12 S.C. (Pt. 1), 1. The Seven-person panel of the Supreme Court in this case comprised, Kutigi CJN, Katsina-Alu, Niki Tobi, Musdapher, Oguntade, Mukhtar and Onnoghen JJSC. Niki Tobi JSC read the opinion of the four-judge majority, which included Kutigi CJN, Katsina-Alu and Musdapher JJSC. Oguntade, Mukhtar and Onnoghen JJSC dissented.

<sup>29</sup> *Ibid.*, p.165

Professor Nwabueze rightly laments the failure by “the Supreme Court to appreciate that the question of who should rule Nigeria is not one to be decided by a perverse and narrow legalism, by the technicalities of the rules of evidence, practice and procedure and by considerations of expediency.”<sup>30</sup>

This line of jurisprudence is the legal basis for corruption and the accompanying impunity in Nigeria. It has corrupted our politics, politicised corruption and rendered most of our institutions of governance, including the police, the electoral umpire (INEC) and even the judiciary partisan at best in the experience of the participants as well as the perception of the average Nigerian. Politics is, in one sentence, the biggest business in town. Electoral politics in turn is a rat-race for the Certificate of Return. The Nigerian Bar Association graphically captures this *denouement* in its submission to the Uwais Electoral Reform Panel as follows:

This has created a political culture in which the acquisition, control, and retention of power and the levers of government have become ends in themselves rather than means to an end of ensuring enhanced development and welfare for the population of the country. In turn, this situation has destroyed the implicit bargain at the root of electoral democracy – the right of the people to reward performing politicians with a renewal of their electoral mandates and to punish the non-performing ones by declining to renew their mandates. Finding themselves exercising power in spite of the citizens, rather than because of them, those in power increasingly feel no obligation to deliver (good) government or enhance the capability of the government to do so. This outcome, this memorandum will demonstrate, has largely been fostered by a system of incentives founded on or created by the laws - including judicial decisions and doctrine – and institutions of Nigeria. The destruction of the electoral system has been achieved through a system by which the law has over time elevated the Certificate of Return irrespective of how it is acquired into a prize with overwhelming significance in Nigeria’s electoral system. The Certificate of Return is the document issued to the declared winner as evidence of their

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<sup>30</sup> Ben Nwabueze, *Judicialism and Good Governance in Africa*, 132 (2009)

eligibility to the office contested in the election. The process of issuing this certificate is administrative and has increasingly become divorced from the processes and legitimate outcomes of elections. In the absence of any requirement for the electoral umpire to prove substantial compliance with the electoral laws before issuing the Certificate of Return, the process of procuring this Certificate, has increasingly been commercialized.<sup>31</sup>

Electoral politics in Nigeria has thus been reduced to what Dr. Kayode Fayemi has described aptly as the worship of “five gods and the god-father.” Dr. Fayemi’s words bear repeating here:

I think there are five ‘mini-gods’ that one must pay significant attention to in any attempt to understand the nature of electoral politics in Nigeria. These are the mini-gods all serious politicians must find a way to appease in order to even get a foot in the door. First is the ‘INEC (the election umpire) ‘mini god’ which often acts like a Siamese twin of the ruling party – PDP. The second ‘mini-god’ is the security agencies – particularly Nigerian Police Force and the State Security Service and occasionally the Military, the third ‘mini-god’ relates to the bunch of thugs and bandits ever so handy in the rigging of elections and the fourth ‘mini-god’ is that of the ‘Judiciary’ often needed to help wade off any legal challenge to incumbents’ stolen mandate. Central to all four is the ‘Money God’ and finally the notorious and ubiquitous ‘Godfather complex’ of the Garrison-Commander’s notoriety. I must say that these gods are neither exhaustive nor mutually exclusive. They are useful as analytical categories in explaining why elections go the way they do in Nigeria with unpopular candidates ‘emerging’ as ‘winners’ in questionable elections.<sup>32</sup>

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<sup>31</sup> Nigerian Bar Association, “Memorandum to the Electoral Reform Committee”, January 2008, p. 5

<sup>32</sup> Kayode Fayemi, “An Insider’s View of Electoral Politics and the Struggle for Electoral Reform in Nigeria”, Paper presented at the Panel on “Ten Years of Civilian Rule in Nigeria”, at the African Studies Association’ 52<sup>nd</sup> Annual Conference in New Orleans, USA, November 20, 2009.

With this commercialization, the corruption of our politics is complete and the corruption of governance is only a short step from that.

### **Agency Crisis: The Politicisation of Corruption**

In the effort to enhance governance in Nigeria and combat corruption, public agencies suffer a crisis of credibility – they can no longer be taken seriously. The belief is widely held that they have been politicized and that rules, where they exist, are not applied except against people who are not in the good books of government. The biggest share of responsibility for this sorry state of affairs lies at the feet of former President, Olusegun Obasanjo. Nigeria is currently going through an illustration of the severe crisis of agency credibility that afflicts our governance. On 23 November 2009, the President was evacuated to a hospital in Saudi Arabia, supposedly to obtain specialist medical treatment for a condition that his physician at the Presidency described as ‘acute pericarditis’. For some time before this trip and since then, Nigerians have neither seen him nor credibly heard from him. In the heat of fevered rumours about his incapacity and possible death, a disembodied, barely audible voice claiming to belong to Nigeria’s President briefly took to the airwaves of the BBC through a telephone hook-up on 11 January 2010 to report that he was undergoing medical treatment for an unspecified condition and would hopefully return if and when, in his words, he made “tremendous progress” and the attending doctors gave him the go-ahead to do so. No one knows when this will be. Not even the BBC could say for certain that the voice of the speaker at the other end of the line in this interview was the President.

Prior to this, several senior public officers, including the Federal Attorney-General and the Information Minister, carried on as if Nigerians do not matter and public officers have no obligations of candour to the people. Respectively and successively, they had claimed to be in regular contact with the President that could barely (if at all) speak and that he was making good progress. As it turns out, they were quite clearly untruthful. While out of sight, the President reportedly signed into law in Saudi Arabia, the 2009 Supplementary Appropriation Bill. Amongst other feats of, he also formally appointed a new Chief Justice of Nigeria. The one thing he has not managed to do or prioritize

while scaling these incredible feats of achievement for a temporary invalid, however, is make himself visible to Nigerians. Through all this, decisions are being taken in his name by people who are not accountable to Nigerians. To confound the situation, in the 2<sup>nd</sup> week of January 2010, the Chief Judge of the Federal High Court ruled this political vacuum as perfectly legal, thereby giving judicial approval to the irrelevance of Nigerian people and the absence of any duties of accountability from their leaders. In a country where many cases take over one decade to come to decision from filing, it took all of five days from the day this case was filed to the day the learned Chief Judge of the Federal high Court announced his decision.

This tale of the missing President with dubious electoral legitimacy, a mendacious Presidential Court ostensibly preoccupied only with access to public appropriations, and a judiciary with a growing capacity for complicity in cynical, swift and, where necessary, back alley jurisprudence, emblemizes Nigeria's crisis of credible institutions. In his first inaugural address to the country on 29 May 1999, former President, Olusegun Obasanjo warned: "where official pronouncements are repeatedly made and not matched by action, government forfeits the confidence of the people and their trust." This could easily be Mr. Obasanjo's epitaph. Having been installed President with considerable goodwill, if dubious electoral legitimacy in 1999, he managed over an eight year period to squander the goodwill and do incalculable damage to the institutional capacities government. This is a rather odd conclusion to reach about the man who, during one Presidential term, created both the Independent Corrupt Practices Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC), two specialized anti-corruption agencies.

President Obasanjo had also promised in his first inaugural address that "there will be no sacred cows. Nobody, no matter who and where, will be allowed to get away with the breach of the law or the perpetration of corruption and evil." Taking him at his word, a group of Nigerian civil society organizations led by the Media Rights Agenda (MRA) and the Civil Liberties Organization (CLO) requested him in June 1999 to publish his mandatory declaration of assets. He declined, claiming there were no rules under which he could do

that. When they sent a draft Freedom of Information Bill to him to consider as an Executive Bill, he rejected their advances, reminding them that he was President not Parliament. When, however, in the final days of his Presidency, the civil society advocates had managed to persuade Nigeria's National Assembly to pass the Freedom of Information Bill into law, President Obasanjo not only vetoed it but found ways to frustrate the override of his veto.

The Freedom of Information Bill would probably have done more than any other instrument in Nigeria to infuse the fight for effective government and against corruption with the oxygen of accessible knowledge and information. Realizing this, President Obasanjo chose instead to make an unusual show of fighting corruption because that was the only way he could own it. Thus he made much about his commitment to anti-corruption through the creation of the ICPC and the EFCC. Having created them, ostensibly under pressure from Nigeria's international partners, President Obasanjo rendered the former irrelevant and made the latter an instrument of his will. This would become self evident in his quest from 2005 to 2006 to secure an impermissible elongation of his Presidential term beyond the constitutionally permitted maximum of two terms of four years each.

In his push for an amendment of Nigeria's 1999 Constitution to prolong his Presidency, President Obasanjo, who presided over an unprecedented boom in oil and commodity revenues and earnings, used the EFCC as the stick and the bribery of willing legislators with obscene amounts of money as the carrot. Or so it seemed, for when the effort failed, the act of accepting the bribes would itself become another stick with which to beat the legislators who took the bait. Having accepted his bribes, an overwhelming majority of the legislators in Nigeria's National Assembly nevertheless voted down the tenure extension in 2006. After this, as the *International Herald Tribune* would report in February 2007, President Obasanjo "used the fight against corruption as a way to persecute his political opponents."<sup>33</sup>

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<sup>33</sup> *International Herald Tribune*, February 7, 2007

As a final act of fury by a President spurned, President Obasanjo used the threat of the EFCC to take over the structures of his ruling Peoples' Democratic Party (PDP) in 2006 and to determine who would and who would not occupy what offices in the 2007 elections. Single-handedly, he would select as the anointed candidate of the ruling party for the Presidency, the mild-mannered but manifestly ill then Governor of Katsina State. By this time, the President, the party and the government had morphed into one imperial Frankenstein monster. By the time of the 2007 supervised personally by President Obasanjo, even the minimal act of pretending to count the votes had become an inconvenient chore. Chairman of the Independent National Electoral Commission (INEC), Professor Maurice Iwu, behaved as if he was clearly under instructions to announce pre-determined outcomes with no relationship to how the people voted. In the Presidential elections, for instance, Professor Iwu announced the results on 23 April, less than 48 hours after the end of the elections. As Professor Nwabueze tells the story: "excusing himself from the collation of results exercise in which he and the party agents were engaged at the INEC headquarters", Professor Iwu "left the room and announced the PDP candidate the winner on the basis of results electronically transmitted to him from thirteen States while the results from 23 States were still being awaited."<sup>34</sup> In announcing the results, Professor Iwu "neither gave the figure of the total votes cast nationwide nor the percentage scored by each of the candidates. There was also no state by state breakdown of the result announced."<sup>35</sup> In the contemporaneous governorship elections in Anambra State in which the candidate of the ruling party was President Obasanjo's closest domestic adviser, Andy Uba, was the candidate of the ruling party, Professor Iwu announced Mr. Uba as winner on a declared turnout of over 100% of the voters roll.

Through the damage he wreaked on the credibility of Nigeria's public institutions of both access to power and accountability, Olusegun Obasanjo has done more lasting damage to the fight against corruption in the country than arguably all the regimes before him, including the regime that succeeded

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<sup>34</sup> Ben Nwabueze, *Judicialism and Good Governance in Africa*, (2009), p. 216

<sup>35</sup> *Thisday* Newspaper, Tuesday 24 April 2007, p. 7

him. By so manifestly politicizing and instrumentalizing anticorruption, he brought the necessary effort to reign in corruption in Nigeria into disrepute and will, for several more years yet, continue to afflict Nigeria's public institutions with an unspeakable credibility crisis.

### **Crisis of Elite Values: Impunity and Absence of Effective Legal Capability**

Effective law enforcement is essential for the governance and wellbeing of orderly society. Generally in Nigeria, rules are inconvenient and enforcement happens to losers, non-persons or politically ostracized. Indeed, in 2008, a Presidential Committee which included three former Inspectors-General of Police complained about the diversion of over 100,000 or over 27% of the personnel of the Nigeria Police Force (NPF) on protection detail to the well connected, thereby creating a country in which "the rich and powerful behave with impunity because of police protection."<sup>36</sup> There are many reasons why this is so. Norms are generally outdated or unclear and enforcement capacity is nearly non-existent, including an incapable Police/law enforcement infrastructure, an unskilled prosecutorial system and a hobbled judiciary. At the heart of the culture of impunity that underwrites this is a design flaw in our institutions: Nearly all reporting lines in law enforcement end up in the office of the President or State Governor, the sources of whose claims to office are often dubious and who have little or no obligations of political accountability. As a matter of domestic law in under Nigeria's 1999 Constitution, they are equally immune from legal accountability.

The institutional architecture for accountability begins with the political process, which, as demonstrated here, has been fundamentally compromised to the point of denying choice to the citizens. It includes the public finance and accounting systems supervised jointly by the Finance Minister, the Head of Service and the Auditor-General, all appointed by an unaccountable

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<sup>36</sup> Federal Republic of Nigeria, *Presidential Committee on the Reform of the Nigeria Police Force, Main Report*, Vol. 1 (April 2008), pages 196, (hereafter referred to as "Yusuf Committee Report.")

President. Of particular significance is the infrastructure of documented transactions, which has increasingly been rendered irrelevant or redundant. High volume corruption thrives on the existence of an informal and un-banked economy in which vast sums of money are moved outside the radar of the financial services documentation and intelligence. The sums of money used to pay legislators in the massive effort to secure their support for the failed tenure extension project of the Obasanjo regime, for instance, were allegedly moved in private aircrafts and the trunks of official vehicles. Tracing such financial movements or providing the purposes for which they occurred for accountability purposes is usually next to impossible. The Code of Conduct Bureau and Tribunal are coincidentally part of the Presidency. With regard to the two specialized anti-corruption agencies, the ICPC and the EFCC – the former is a diminished caricature of the promise at its inception in 2000 and President Obasanjo politically compromised the latter long before its well-advertised travails under the Yar'Adua regime. The system of public prosecutions is headed by the Attorney-General who, coincidentally, is also the Minister or Commissioner for Justice at the federal or state level and under the direct control of the President or State Governor and the influence of the dominant colleagues in cabinet for continuity in office. Since 1982, Nigerian Judges through the All-Nigerian Judges Conference have consistently but unsuccessfully sought a separation of the offices of Attorney-General and Justice Minister.

The legislature is supposed to be central to this project of accountability. Traditionally, the legislature has three principal roles – law making, appropriations and oversight. Through these roles, it should act as a check on the executive and ensure institutional and political accountability. In reality, the current Parliament in the National Assembly is a huge part of the problem and few Nigerians harbor the illusion that they can be relied on to be part of the solution. With respect to the Police, the President is the operational head of the Nigeria Police Force (NPF) under both the Constitution and the Police Act. The effect of this on the Force has been entirely deleterious. In early 2008, the M.D. Yusuf Presidential Committee on Police Reform, which included three former Inspectors-General of Police, reported as follows:

Successive military regimes erroneously regarded the Nigeria Police as a rival power base (to the armed forces) and as such did everything they could to undermine its capabilities and effectiveness, so as to sustain their political hegemony. As a result, standards of training, discipline, kitting, etc. fell drastically as a result of deliberate underfunding and neglect. Worse still, through several interventions and subterfuge, the military deliberately created rival law and order institutions, and usurped police duties by setting up anti-crime taskforces and other outfits and effecting so many changes in the institutional organization, appointment and deployment of the Nigeria Police, which further eroded public confidence in the Force. This trend went on throughout military rule, from 1966 to 1979, and from 1983 to 1999. The advent of democratic administration from 1999 did not change matters, because the former President came with the same military mindset. As such, the position of the Nigeria Police even deteriorated. The cumulative impact of all these has been a Nigeria Police Force that has been weakened, deficient, incapacitated, lacking in confidence and orientation.<sup>37</sup>

Another Presidential Commission on Police Reform, headed by former Deputy Inspector-General, Muhammadu Danmadami, in 2006 identified several constraints that compromise the work of ensuring accountability by the NPF as follows:

Basic operational logistics like statement papers, case file jackets, office lockers for storage of case files are no longer provided. Some of these items are procured by detectives with the assistance of complainants. Detectives take case files home, resulting at times in the loss or even destruction of such files and swapping of important statements in the file with statements that cannot sustain conviction in court.<sup>38</sup>

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<sup>37</sup> *Yusuf Committee Report*, pages 177-178

<sup>38</sup> Federal Republic of Nigeria, *Main Report of the Presidential Committee on Police Reform*, Vol. II, (2006), p. 30.

In December 2008, the Presidential Committee on Electoral Reform chaired by a former Chief Justice of Nigeria, Mohammed Lawal Uwais, complained about the “functional ineffectiveness of the police during elections” and certified a litany of complaints of criminal conduct by the police during elections including “unprofessional conduct like brutality, intimidation, facilitating the snatching and destruction of ballot boxes, under-age voting, mass thumb-printing of ballot papers, forgery of results in exchange for bribes, etc.”<sup>39</sup> Not much has been done to improve the NPF from this sorry situation. In summary, everyone knows that the NPF is not a force for accountability. The state of the applicable norms is not much different. At the time of Nigeria’s Independence in 1960, Lionel Brett and Ian Maclean, two senior colonial-era legal and judicial personnel who held over into post-independence Nigeria, writing in the leading text on criminal law and procedure in Nigeria, complained about crimes of corruption as follows:

In this sphere, it is not easy to define both precisely and comprehensively the acts or omission which ought, in the interest of society to be punishable and a number of reported cases show the difficulties which confront those responsible for the administration of the law.<sup>40</sup>

One decade later, the late Gani Fawehinmi would similarly complain that “the law against corruption in Nigeria today is in an ugly mire of utter confusion and gross incomprehension. It has failed to combat the uneasy wave of corrupt practices in our society.”<sup>41</sup> These lines remain true of contemporary Nigeria. The crime of corruption in the Criminal and Penal Codes applicable in Nigeria covers only “persons employed in the public service”<sup>42</sup> This definition puts it

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<sup>39</sup> Federal Republic of Nigeria, *Report of the Electoral Reform Committee, Main Report*, Vol. 1, 196 (December 2008), para. 5.6.6.4 (hereafter referred to as “*Uwais Committee Report*”). See also, International Crisis Group, “Nigeria: Failed Elections, Failing State?” Africa Report No. 126 of May 30, 2007; Lydia Polgreen, “Election in Nigeria Sullied by Chaos,” *New York Times*, April 22, 2007, available at: [www.nytimes.com/2007/04/22/world/africa/22nigeria.html?ex=1334894400&en=c2f32b6b44e6e904&ei=5088&partner=rssnyt&emc=rss](http://www.nytimes.com/2007/04/22/world/africa/22nigeria.html?ex=1334894400&en=c2f32b6b44e6e904&ei=5088&partner=rssnyt&emc=rss)

<sup>40</sup> Brett & Maclean, *The Criminal Law and Procedure of Lagos, Eastern Nigerian and Western Nigeria*, (1960), p. 434, para 1305

<sup>41</sup> Gani Fawehinmi, “Make our Corruption Laws Positive”, *Daily Sketch*, 3 June 1971, p. 5

<sup>42</sup> *Biobaku v. Police*, (1951) 20 *Nig. L. Repts.* 30. See also s. 98, Criminal Code.

very much in arrears of contemporary practice. Economic liberalization, with its accompanying emphases on privatization, commercialization and concessioning, has very much reduced the scope of the public service to the bare essentials while, however, enhancing the capacities of public office holders to profit handsomely from both patronage and monopoly control of regulatory discretion. The result is that the footprint of norms defining crimes of corruption is limited. We lack adequate laws to deal with the variety and nimbleness of contemporary corruption. This is why, for instance, in the ongoing cases of the Executives of mis-managed banks and financial services institutions, the Central Bank and the EFCC have resorted to catch all, often overbroad, military-era legislation to prosecute classic financial crimes of insider dealing and racketeering, for which, in truth, we do not have legislation or indeed investigative capacity.

It is also the case that the prosecutorial practice of the anti-corruption agencies makes a mockery of any commitment to effective prosecution of corruption. The tendency to charge multiple counts - often running into hundreds of counts - of crimes may impress the public and grab newspaper headlines but diminishes the possibility of conviction on any count because it fails to prioritize prosecutorial assets, spreads them too thin, and increases the odds on the likelihood of fatal prosecutorial mishap or error.

The few cases that manage eventually to get to court are frustrated by a combination of legal and procedural technicalities, delay, the peculiarities of an antiquated court system and what appears to be an unusual coincidence of kindred feeling among the Nigerian judiciary for suspects in white collar crime. This is the only way to describe the fact that most suspects in cases of the most egregious corruption in Nigeria invariably make bail and soon thereafter receive judicial blessings to travel for overseas medical attention for unclear ailments, often to the countries where they are alleged to have stashed away their loot. In most cases, these are also serving or recent public officers who proved unwilling to provide to the public or invest in social services, including hospitals, while they had the opportunity to do so. Most Nigerians will describe much of the, the jurisprudence - with the occasional exception - as indifferent;

often reading complicit; sometimes with more than a whiff of a suggestion that it has been preceded by some form of a *quid pro quo*.

### **Conclusion: Breaking the Cycle**

So it is that, in summary, we have corrupted politics and elections; corrupted demography and public accounts, and politicized anti-corruption by denuding the entities supposed to do it of capacity, credibility and effectiveness. The capacity of the judiciary to offer any meaningful dispute resolution or remedies in the midst of such habitual corruption has become compromised and our jurisprudence has, to put it most charitably, become quite tolerant of or complicit in corruption. For now, there is very little else of significance left to corrupt. In this situation, corruption thrives because, as Achebe rightly argues, we have not found a way to make it both “difficult and inconvenient.”<sup>43</sup>

If Africa is to break this cycle, the self-proclaimed Giant of Africa must show up with better than feet of clay. Currently, Nigeria is one of the continent’s poster-territories for how not to address corruption or governance reform. To change this, as suggested at the beginning of this paper, we must return to the basics of state-building and take the anti-corruption project out of the realm of the exotic. A major commitment to re-building the legitimacy of government and the institutions that underpin it is where we must begin. Unlike sex, this must not only be done, but must be seen to be manifestly done. Politicians without electoral legitimacy have no stake in or incentive to support an effective public governance or anti-corruption system. On the contrary, their self interest lies in undermining and frustrating the emergence of such system. In effect, there can be no successful fight against corruption without credible elections founded on credible electoral reform.

To achieve this, secondly, requires thoroughgoing reform of and investment in the institutional skill, autonomy, modernization and independence of the institutions of the electoral umpire, the public service, the police and the judiciary. The dependence of our public accountability systems on the

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<sup>43</sup> Chinua Achebe, *supra*, p. 1

Presidency which has historically been an instigator of corruption makes a mockery of any claims to take the fight against corruption seriously. The independence of the NPF, INEC, the public service and the judiciary must not only be guaranteed but must manifestly be seen to be a national priority.

Thirdly, we must invest in establishing a political economy capable of documenting both human beings and our transactions. At the moment, it is probably true that the undocumented economy in Nigeria trumps the documented one. Millions of Nigerians are born, live and die without being documented or having experienced the documented economy except to the extent that they may have used denominations of the national currency. A pervasive informal economy cannot support a successful anti-corruption effort.

Fourthly, a way has to be found to cure the country of our policy aversion for honest numeracy. Corruption will continue to thrive as long as our national aversion for honest counting does not change fundamentally. There has to be a price for dishonest counting or for undermining honest counting and that price has to be shown to work. Of course law reform will be needed. We will need a reform of the Official Secrets Act and to replace it with a Freedom of Information Law. This should inspire new Civil or Public Service ethos based on the equality of citizens and presumption of equal participation and access to public records rather than arbitrary and self-serving exclusion from the public space. Harmonization of the laws on corruption will be required to make them easier to implement. Significant reform of the financial services and stocks and securities systems will also be needed. The non-existence of a properly capacitated regulatory, competition and anti-trust regime a quarter of a century after the commencement of de-regulation in the mid-1980s is now entirely inexcusable.

But it is difficult to envisage any of these in a country that lives in near total darkness where the productivity of citizens is hostage to a cabal of traders in power generators. The first evidence of a commitment to effective anti-corruption in Nigeria has to be successful reform of the energy sector and the powering up of the country to unlock the energies, enthusiasms, skills and capabilities of its people. It is not possible to talk about fighting corruption

when election returns can disappear into familiar darkness and be substituted by fiction; or when a court or law enforcement agency can claim the absence of energy as an excuse for not keeping records, attending to complaints or taking its responsibilities seriously.

These changes will make it possible to envisage the emergence of a new elite hopefully weaned of the preoccupation with consuming what it cannot produce, producing what it cannot consume, borrowing to impress rather than to produce or invest, and destroying the capabilities of the system to ensure that it pays back debts incurred, borrowed or owed. Such an elite will be able to see its self-interest not in a mad scramble for private estate but in guaranteeing the existence of a public space capable of protecting us all. The first measure or indicator of progress along this path will be the extent of success with tax reform and energy reform. Tax reform will be evidence that citizens are buying into a new Nigeria project and the system is improving its bureaucratic and service provision capabilities. Progress towards energy reform will be evidence of the seriousness of the country to limit, contain or eliminate the influence of its criminal and racketeering classes on the public good.

Although basic, the measures that we need to undertake to begin to register minimal progress in governance and the fight against corruption in Nigeria will take time. The occasional conviction of the odd discredited politician or ostracized former political actor is the kind of low-hanging fruit along this path that cannot hurt progress. In such a reformed system, agencies like the ICPC and the EFCC will become normalized as part of a public accountability system that has integrity. For now, however, the tale of the missing President and his mendacious Court is much more than reality. It is a metaphor also for the Nigerian tale and a measure of the challenges we face in creating the kind of country that the independence generation promised their children but never quite managed to bequeath to their grand-children.

## II

# **Corruption and Governance Challenges: The South African Experience**

*by*

**Thuli N. Madonsela**

### **Introduction**

Greetings from South Africa, the country that is proudly hosting the FIFA 2010 World Cup on behalf of the African continent! I deeply cherish the honour and privilege of addressing this August event and sincerely thank the organisers for inviting me to share the South African experience on the fight against corruption and the promotion of good governance.

I was requested to talk on the theme: Corruption and governance challenges from a South African perspective. I was also requested to share some of the strategies my organisation, the Public Protector South Africa, uses in fighting public sector corruption. My brief includes sharing any suggestions I may have for mobilising popular anger against corruption in Africa.

### **Conceptual Clarifications**

Perhaps the starting point should be a common definition of the concepts “**corruption**” and “**good governance**”. In my view corruption and good governance sit at the opposite ends of the spectrum. While good governance represents the ideal for governments, corporations and nations globally, corruption is a scourge that decent people, organisations and governments seek to eradicate. In the simplest of terms, corruption involves the abuse of power for private gain. Actual acts range from a simple act of bribing someone to skip a queue or bribing a traffic officer to avoid a speed fine to serious conduct as the irregular award of tenders or even buying political patronage.

We may then want to ask: what will it take to end corruption and to ensure good governance? Most authorities on the issue of corruption and good governance are adamant that the single most important factor is the human

element. In other words we need to address human values and behaviour. Off course having good and preferably, transparent governance and administration systems is part of the package.

A huge part of the human element that is critical for promoting good governance involves the values of the community within which we seek to fight corruption. In my view there are three dimensions to the human element. These are the values of each individual, community values and political will at all levels of leadership. It is particular important that the community's understanding of corruption and consensus on what is inappropriate is in synch with those of leaders that are formally charged with combating corruption.

The corruption tolerance levels of the community too can be a force for or against corruption. This includes the opprobrium a society accords blatantly corrupt acts. Political will is undoubtedly a critical factor in the fight against corruption and the promotion of good governance. Off course political will transcends grand speeches. Political will incorporates leading by example and taking prompt and firm action where corruption is detected and supporting law enforcement agencies when they do their work in this regard.

Earlier I mentioned that systems are a critical part of the anticorruption and good governance package. The legal system and respect for the rule of law is an indispensable part of an effective anti-corruption system. Having independent law enforcement and related anti-corruption agencies is a fundamental pillar of a viable anti-corruption and good governance framework. Another important factor is ensuring that anti-corruption agencies not beholden to the government of the day as this undermines their independence, objectivity and, needless to say, effectiveness.

Coming back to our continent and individual societies, we need to ask ourselves if we haven't reached or are approaching a point where people are immune to corruption to the extent that certain acts of corruption fail to raise eyebrows, and become an acceptable part of life, and of doings things. For example, we lose the fight against corruption when most of us are prepared to raise our voices against corruption involving millions such as in the procurement of

armaments, but not think twice before offering a bribe to a traffic officer to avoid a speeding ticket.

It should be a concern to us that in post independence Africa, certainly in South Africa, the accumulation of riches (in most cases, very sudden) is venerated even in the absence of visible means of accumulating the riches. Some would say that the obsession with visible affluence is a historical legacy that started with “taking from the oppressors” or was even a matter of emulating the administrators then. You could even argue that with corruption being a bilateral wrong, it is often contractors from the developed world that seduce our bureaucrats and politicians. We also know about cases of “blood diamonds” or minerals, Blood oil and other resources that are plundered from our continents illegally using armed conflict as a diversion.

The reality though is that ending corruption in our societies and our continent lies in our own hands. It is our countries, our people and our continent that are victims of the underdevelopment that is caused by corruption and our people that suffer poverty and other preventable maladies as a consequence. We cannot deny that corruption is behind a lot of the underdevelopment in our countries and continent. It causes, among others, poor quality goods and services, lack of efficiency, excessive costs, and ineffective public programmes. Corruption basically destabilises societies. In many instances corruption also endangers the security of our states.

According to a newsletter published by the Mvula Trust, a Water and Sanitation Non-Governmental Organisation, in South Africa “it is widely accepted that the poor are the ultimate victims of corruption. It is they who suffer the most from poor quality services or goods or non-delivery of goods and services often resulting from corruption”. This takes us to the South African experience and the role of the Public Protector in combating corruption and promoting good governance in South Africa.

## **The South African experience**

South Africa has battled with corruption since the days of apartheid. Post apartheid South Africa is a more open society and more opportunities have been created for detecting, exposing and prosecuting corruption.

Some have argued that it is this legitimate use of the state to redirect resources to distribute services and resources equitably to all in an attempt to address the legacy of colonialism and apartheid heightens the risk of corruption<sup>44</sup>. In many instances the inherited bureaucracy was corrupted. Under the new dispensation, a decision was taken to use the state machinery to drive the redistribution of economic opportunities to achieve an inclusive economy as part of normalising society. Often the mechanisms for this purpose are used for unjust accumulation of personal wealth by individuals in flagrant violation of procurement and other requirements. A combination of these and systemic inherited tendencies, particularly in the pseudo states that had been created under apartheid, has multiplied the problem.

South Africa's approach to corruption is multipronged. The main pillars are the law or legal framework, anticorruption agencies, and public mobilisation. I will provide an overview of each below.

### ***Legal Framework***

South Africa has enacted various pieces of legislation in the fight against corruption. These are:

*The Constitution of the Republic of South Africa Act, 1996*

Chapter 10 of the Constitution sets out the basic values and principles that govern public administration in every sphere of government, organs of state, and public enterprises. The values and principles promote a public administration that is free from corruption and bad governance. The values and principles include that:

- a high standard of professional ethics must be promoted and maintained;

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<sup>44</sup> Richard Levin, Anticorruption and Ethics

- the efficient, economic and effective use of resources be promoted;
- public administration be development-oriented;
- services should be provided impartially, fairly, equitably and without bias;
- public administration must be accountable; and
- transparency must be fostered by providing the public with timely, accessible and accurate information.

*The Prevention and Combating of Corrupt Activities Act, 2004*

The Act provides inter alia, (for) the following:

- creates the offence of corruption<sup>45</sup>;
- authorises the National Directorate of Public Prosecutions to investigate any individual with unexplained wealth, or any property suspected to be used in the commission of a crime prior to instituting asset forfeiture or criminal proceedings;
- the creation of a Register for Tender Defaulters within six months by the Minister of Finance;
- places a duty on any person who holds a position of authority<sup>46</sup> to report corrupt transactions; and
- grants the courts extraterritorial jurisdiction in respect of corruption offences committed outside South Africa in certain circumstances, for example, if the person who committed the crime is a citizen of South Africa or ordinarily resides in the Republic.

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<sup>45</sup> This encompasses the abuse of a position of authority, breach of trust or the violation of a legal duty or a set of rules

<sup>46</sup> Such persons include Directors-General of Departments, Municipal Managers, any public officer in the senior Management Service of a public body, any head of a tertiary institution, any Manager, Director or Secretary of a company, the Executive Manager of a bank or financial institution, any partner in a partnership, the CEO or equivalent of an agency, authority, board, commission, committee, corporation, council, department, entity, financial institution, foundation, fund, institute, service or any other institution or organisation whether established by legislation, contract or any other legal means

*Prevention of Organised Crime Act, 1998*

The Act inter alia provides the following:

- that any person who is in charge of a business undertaking has to report activities relating to unlawful activities or proceeds<sup>47</sup>;
- makes it an offence to belong to a criminal gang or to aid any criminal activity by a criminal gang;
- the civil forfeiture of criminal assets used to commit offences or are the proceeds of unlawful activity;
- the obtaining of restraint orders by the Directorate of National Prosecutions against any person charged or to be charged with an offence from dealing with the property specified in the order.

*Protected Disclosures Act, 2000*

This Act encourages whistle-blowing, and provides for the protection of employees in both the public and private sectors from occupational detriment by reason of having made a protected disclosure<sup>48</sup> relating to unlawful or irregular conduct by an employer or employee of the employer.

*Promotion of Access to Information Act, 2000*

This Act promotes transparency by giving effect to the Constitutional right of access to any information held by the state, and information held by any other person that is required for the exercise or protection of any rights.

*Promotion of Administrative Justice Act, 2000*

Like the previous Act, this Act also promotes transparency which is a cornerstone of good governance by giving effect to the Constitutional right to administrative action that is lawful, reasonable and procedurally fair, and the right to written reasons where one's rights have been adversely affected by administrative action.

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<sup>47</sup> Failure to do so constitutes an offence

<sup>48</sup> This includes disclosures to legal advisers, employers where made in good faith, Members of Cabinet or Executive Councils, and to bodies such as the Public Protector and Auditor-General

*Witness Protection Act, 2000*

This Act encourages state witnesses to give evidence in trial proceedings and commissions of enquiry by providing them with protection.

*The Public Finance Management Act, 1999<sup>49</sup>*

This Act promotes the effective and efficient use of resources by departments and constitutional institutions. Accounting Officers of these institutions are required to maintain inter alia:

- effective, efficient and transparent systems of financial and risk management and internal control;
- a system of internal audit under the control and direction of an audit committee; and
- an appropriate provisioning and procurement system which is fair, equitable, transparent, competitive and cost-effective.

*Financial Intelligence Centre Act, 2001*

This Act aims to combat money laundering activities, and to this end establishes a Financial Intelligence Centre. The objectives of the Centre are to assist in the identification of the proceeds of unlawful activities, the combating of money laundering activities, making information available to it to investigating authorities<sup>50</sup>, and to exchange information with similar bodies in other countries.

In order to combat money laundering activities, it requires Accountable Institutions<sup>51</sup> to establish and verify the identity of a client before concluding a single transaction with such client, and to keep a record of such identity for at least five years. Accountable institutions are also required to report transactions exceeding a certain amount. The Act also places a duty on business owners or managers to report suspicious and unusual transactions to the Centre.

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<sup>49</sup> The Municipal Finance Management Act regulates the municipal sector along the same lines as the Public Finance Management Act.

<sup>50</sup> As well as to the Intelligence Services and SARS

<sup>51</sup> A list of Accountable Institutions is contained in Schedule 1 to the Act. The common denominator is that such institutions and persons deal with money in their ordinary course of business and include banks, casinos, long term insurance companies, etc.

Compliance by Accountable Institutions overrides any duty of secrecy or confidentiality, or any other restriction on the disclosure of information, whether imposed by legislation, common law or agreement.

#### *Anticorruption Agencies and other bodies*

The Public Protector is one of various agencies established by the Constitution, legislation and administrative instruments to combat corruption and promote good governance. These constitute a critical pillar of the multipronged approach I referred to earlier.

However, there are debates from time to time which pit this multi-agency approach against the single agency approach. The matter was debated as recently as at the 3<sup>rd</sup> National Anticorruption Summit that took place in 2008. The general consensus was that it is better to strengthen independent institutions such as the judiciary, Parliament and its institutions, the media and the SAPS<sup>52</sup>. I now proceed to outline the role of each of the key anti-corruption agencies.

#### *The Public Protector*

The Public Protector is an Ombudsman Office. It was created by Chapter 9 of the Constitution.<sup>53</sup> The Public Protector's anti-corruption work derives from its broad mandate relating to investigating and correcting improper and prejudicial conduct in state affairs as per se 182 of the Constitution and the Public Protector Act of 1994; and its power as the sole agency for enforcing the Executive Ethics Act and the Executive Ethics Code.

Some of the conduct that the Public Protector ordinarily investigates would constitute corruption. The Public Protector's role in anticorruption is also recognised in the key anticorruption statutes including the Prevention and

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<sup>52</sup> Public Service Commission, Special Edition Newsletter for the 3<sup>rd</sup> National Anticorruption Summit, August 2008

<sup>53</sup> Section 18

Combating of Corruption Act, the Protected Disclosures Act and the Public Finance Management Act. For example, the Prevention and Combating of Corrupt Activities Act specifically gives the Public Protector the authority to investigate any improper or dishonest act, or omission or offences referred to in the Act, with respect to public money.

*The South African Police Service (SAPS).*

*The Directorate for Priority Crime Investigation*

Besides its general criminal investigative role, the SAPS has a separate division, the Directorate for Priority Crime Investigation.<sup>54</sup> This division is a successor to the Directorate of Special Operations (Scorpions) that used to fall under the National Prosecuting Authority. The functions of the Directorate are to prevent, combat and investigate national priority offences, in particular, serious organised crime, serious commercial crime and serious corruption<sup>55</sup>.

*Independent Complaints Directorate (ICD)*

Although the ICD is established in terms of the South African Police Service Act, 1995, it functions independently of SAPS. Its responsibilities include the investigation of criminal acts and misconduct by members of SAPS and the Municipal Police Service, which would include corruption.

*National Prosecuting Authority*

*Asset Forfeiture Unit*

This Unit falls within the National Prosecuting Authority, and is the one responsible for confiscation and restraint orders in terms of the Prevention of Organised Crime Act, already discussed.

*Witness Protection Unit*

This Unit is responsible for Witness Protection under the Witness Protection Act already discussed.

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<sup>54</sup> Created in terms of the South African Police Service Amendment Act, 57 of 2008

<sup>55</sup> Section 17B read with section 17D of the Act

### *The Auditor General*

The Auditor General is established in terms of the Constitution to audit and report on the accounts, financial statements and financial management of all national and provincial departments, municipalities, or any other institutions required by national legislation to be audited by them. As the Supreme Audit Institution of South Africa, it enables oversight, accountability and good governance in the public sector.

The Auditor General can also conduct investigations or special audits whenever it considers it to be in the public interest or on receipt of a complaint or request.

### *The Department of Public Service and Administration (DPSA)*

#### *The Anticorruption Coordinating Committee (ACCC)*

The ACCC<sup>56</sup> is an intergovernmental structure comprising departments and agencies that have anticorruption work part of their functional mandate. The ACCC was established in terms of Strategic Consideration 2(b) of the Public Service anticorruption Strategy to coordinate the implementation of the Strategy and to integrate anticorruption work in the country. It falls within the DPSA. The ACCC is also a platform where information on anticorruption best practices, including initiatives on prevention, detection and investigation of corruption can be shared amongst departments and agencies to better equip them in the fight against corruption.

The objectives of the ACCC include to:

- ensure full coordination and integration of anticorruption initiatives in the public service;

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<sup>56</sup> Membership of the ACCC is aimed at institutions that conduct anticorruption work. However, more departments were identified for inclusion. Membership to ACCC comprises of senior officials from the following departments and agencies: the DPSA (Convener), Correctional Services, Defence, Financial Intelligence Centre, Foreign Affairs, Government Communications and Information Systems, Justice and Constitutional Development, Home Affairs, Housing, National Intelligence Agency, National Prosecuting Authority, National Treasury, Office of the Premier of each Province, Office of the Public Service Commission, Provincial and Local Government, South African Local Government Association, South African Management Development Institute, Education, South African Police Service, South African Revenue Service, Special Investigating Unit, and Trade and Industry.

- ensure that there is no duplication of initiatives and efforts in the fight against corruption in the public service;
- provide a platform where information on anticorruption initiatives, including prevention, detection and investigation can be shared amongst departments;
- oversee and monitor the implementation of the Public Service Anticorruption Strategy; and
- ensure an enriched process of implementation of the Public Service Anticorruption Strategy.

#### *Public Service Commission*

The Public Service Commission manages the Anticorruption Hotline that was established in 2004. The Commission also serves as the secretariat to the National Anticorruption Forum.

It also has a very specific constitutional mandate which is, inter alia to:

- promote a high standard of professional ethics in the public service;
- investigate, monitor and evaluate the organisation and administration, and the personnel practices of the public service.

Other anticorruption mechanisms, particularly public mobilisation strategies, include the following:

#### *Anticorruption summits*

South Africa held its first summit in 1999. A second summit was held in 2005, and the third in 2008. At the first Anticorruption Summit, a resolution was taken to form a National Anticorruption Forum (NACF). The NACF comprises three sectors, namely **civil society**, **business** and **government**

It was established to combat and prevent corruption, build integrity and raise awareness, and was launched in 2001. In particular, it coordinates sectoral strategies against corruption and advises government on national initiatives to combat corruption.

*The Public Service Anticorruption Strategy*<sup>57</sup>

Cabinet adopted this Strategy in 2002. It has 9 Strategic Considerations.

*Strategic Consideration 1* deals with the review and consolidation of the Legislative Framework. The Prevention and Combating of Corrupt Activities Act, 2004, was born of this Consideration.

*Strategic Consideration 2* deals with Increased Institutional Capacity. This has to do amongst others with improving the functioning of existing institutions that have anticorruption mandates. As shall be seen below, South Africa has a number of institutions that fight corruption as part of a broader functional mandate. Government departments are also required to create a minimum capacity to fight corruption. By 2006, 57 of government departments had a dedicated anticorruption unit<sup>58</sup>.

*Strategic Consideration 3* deals with ways of improving reporting wrongdoing and protecting whistleblowers by institutions, as well as reviewing anticorruption hotlines.

*Strategic Consideration 4* deals with the prohibition of corrupt individuals and businesses. The intention is to establish mechanisms to prohibit corrupt employees from employment in the public sector and corrupt businesses and agents of such businesses from doing business with the public service for a certain period.

*Strategic Consideration 5* deals with improving management policies and practices. Managers in organs of state are required to sign performance agreements that hold them accountable for corruption prevention through managing discipline, risk, and information systems, and following proper procurement and employment practices.

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<sup>57</sup> A Local Government Anticorruption Strategy was developed by the Department of Provincial and Local Government and signed by the Minister responsible for the Department. It is modelled around the Public Service Anti-Corruption Strategy but tailored to be applicable in Local Government

<sup>58</sup> Hennie van Vuuren, National Integrity Systems: Transparency International country study Report, Final Draft, South Africa 2005, p 110

*Strategic Consideration 6* deals with management of professional ethics in the fight against corruption. It provides for the development of codes of conduct for various sectors, which codes should provide for declarations of conflict of interest and financial interests and assets.

*Strategic Consideration 7* recognises the role of society in the fight against corruption and encourages partnerships with them.

*Strategic Consideration 8* encourages society particularly organisations to undertake ongoing research on corruption.

*Strategic Consideration 9* aims at awareness, training and education to support the many initiatives on corruption. It recognises that public awareness is very poor and recommends a targeted public communication campaign and raising awareness and training amongst employees.

#### *Other initiatives*

As result of this Strategy, there has been a concerted effort to also establish anti-corruption hotlines in government departments. A national hotline was established in 2004. In 2009, a Presidential Hotline was established to deal with issues pertaining to non-delivery of services.

Commissions of enquiry are also appointed to look into certain corrupt activities, such as the Jali Commission, that looked at the Department of Correctional Services. Specialised Commercial Crimes Courts have also been established to deal with white-collar crime.

There are also Codes of Conduct for the Public Service, for Municipal Staff Members, and for Councillors. There is also a Code of Conduct for Assembly and Permanent Council Members which requires Members of Parliament to declare their interests.

South Africa also forms part of the African Parliamentarians Network Against Corruption (APNAC).

#### **National Challenges**

Bad governance and corruption are essentially “failure to make a clear separation between what is public and what is private, hence a tendency to

direct public resources for private gain...”<sup>59</sup> It is therefore attractive to those who think they can get away with it.

As indicated earlier, one of the critical factors in the fight against corruption and entrenchment of good governance is political will. Then President Mandela<sup>60</sup> recognised this when he said:

*“Our hope for the future depends also on our resolution as a nation in dealing with the scourge of corruption. Success will require an acceptance that, in many respects, we are a sick society.*

*It is perfectly correct to assert that all this was spawned by apartheid. No amount of self-induced amnesia will change this reality of history.*

*But it is also a reality of the present that among the new cadres in various levels of government, you find individuals who are as corrupt as - if not more than - those they found in government. When a leader in a Provincial Legislature siphons off resources meant to fund service by legislators to the people; when employees of a government institution set up to help empower those who were excluded by apartheid defraud it for their own enrichment, then we must admit that we are a sick society”*

A multipronged approach to anticorruption has its own challenges relating to coordination. An audit by the Public Service Commission in 2001 found that coordination between different agencies was the worst obstacle to their proper functioning. It is also important that these agencies are seen to lead by example.

The last challenge relates to awareness on the part of society. This has to do with inculcating a culture of revulsion at acts of corruption and bad governance. All such acts should be accompanied by opprobrium and a sense of duty to bring such acts to light where known. Without the active participation of society, the fight will not be effective. Whistle-blowing without fear of reprisals is a very important factor. Currently we are also battling as a

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<sup>59</sup> WB, Governance and Development, Washington DC, 1992, p9

<sup>60</sup> Opening address to Parliament in 1999

society to encourage whistle blowing and to assure potential whistle blowers that they will not be victimised<sup>61</sup>.

### **Role of the Public Protector**

Shortly after assuming office as South Africa's third Public Protector, I decided to add a unit that focuses on Anti-corruption and Good Governance on the establishment of the Office of the Public Protector. I also publicly committed the institution to the strengthening of its forensic competence. The implementation of these initiatives is underway and is included in our draft institutional vision and strategy.

However, the Public Protector has, as indicated earlier, a long history of playing an effective role in the combating of corruption. This is not surprising as maladministration often involves abuse of power for personal gain, which is corruption. The approach of the Public Protector is two pronged. The first element of the approach is ensuring remedial action and ending impunity where the state's action has been improper or prejudicial. The second element is to introduce or support systemic improvements with a view to promoting good governance.

Many of the investigations have decisively dealt with corruption at all levels of governance. A few of our cases studies are summarised below. For further information, I recommend a visit to our website at [www.publicprotector.org](http://www.publicprotector.org)

### **Case studies**

#### *Joint Investigation into the Strategic Defence Procurement Packages*

This was a joint investigation by the Public Protector, the Auditor General and the National Director of Public Prosecutions into the Strategic Defence Procurement Packages for the acquisition of armaments for the South African

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<sup>61</sup>Hennie van Vuuren, National Integrity Systems: Transparency International Country Study Report, Final Draft, South Africa 2005

National Defence. The investigation found no evidence of any improper or unlawful conduct on the part of the government.

*An investigation of a complaint of improper conduct by the President of the Republic of South Africa, Mr T Mbeki*

The Public Protector investigated a complaint lodged by a member of the official opposition in Parliament. He alleged that the President had abused his office by calling a medical centre insisting that the Minister of Health receive a liver transplant operation as soon as an organ became available, irrespective of other patients on the waiting list. It was also alleged that the doctors at the medical centre were instructed to describe the Minister's condition as being the result of autoimmune hepatitis rather than its true cause, which was alleged to be alcoholism.

The investigation found that allegations against the President were without foundation or substance.

*Investigation of an allegation of the misappropriation of public funds by the Gauteng Department of Housing*

This was also a complaint lodged by a member of the official opposition in Parliament. He alleged that the placement of an advertisement by the Gauteng Housing Department in a newspaper of a tribute to a deceased Member of the Executive Council responsible for Housing in KwaZulu Natal amounted to abuse of public funds in an attempt to benefit the ruling party, as well as abuse of power.

It was found that the expenditure was unauthorised, and fruitless and wasteful, and did not comply with the requirements of the Public Finance Management Act, as the advertisement did not directly or indirectly relate to the purpose for which public money was allocated to the department.

*Investigation into allegations of the misappropriation of public funds by the Tsantsabane and Mier Municipalities*

The ANC had made an invitation to its members to attend a fundraising banquet on 13 January 2006. In response to this invitation, the two municipalities made payments of R20 000 and R10 000 respectively into the bank account of the ANC on 13 January. The ANC did not accept the donations as they were made by municipalities and returned the money on 19 January.

It was found that the payments amounted to fruitless and wasteful expenditure and that the CEOs of both municipalities had committed acts of financial misconduct and breached the Code of Conduct for Municipal Staff Members. By requesting authorisation of the payments, the Mayors of both municipalities had breached the Code of Conduct for Councillors and acted contrary to the Municipal Finance Management Act.

*Investigation into allegations of irregular appointments at the Premier's Office in Limpopo*

The Public Protector investigated an anonymous complaint relating to the appointment of different levels of managers in the Premier's office. It was alleged that 11 posts had been advertised as a mere formality as individuals had already been earmarked for the posts.

It was found that:

- the Premier's office did not abide by the requirements of the advertisement when making some of the appointments, and that this prejudiced other candidates who met all the advertised requirements, as well as those who did not apply under the impression that they did not qualify as they were not informed of alternative competencies that would be taken into consideration;
- the Premier's office failed to implement recommendations made by its Risk Management section when making the appointments; and
- That this creates the impression that there was nepotism and favouritism in the Premier's office, and that public funds were wasted by advertising posts that were already earmarked for certain individuals.

## Conclusion

I have sought to sketch out the framework within which anticorruption and the promotion of good governance are pursued in South Africa and the role of the Public Protector in this regard. As indicated earlier it is a multi-pronged approach. At the heart of it is the changing of societal values with a view to ensuring that society understands that venal acts are against society itself. The big cars and houses that corrupt people own are financed from funds that should go to the building of schools, health care, maintenance of roads, provisioning of houses and other public projects.

Without society owning the fight against corruption and seeing as an affront on it, we will not win the fight. It's important that each ordinary person understands that corruption deprives them of what is rightfully theirs. It is also important that the dangers of corruption are understood by all, including school going children. We also need to enforce international instruments such as the OECD Convention on Bribing Corruption of Foreign State Officials.

One of the strategic entry points for the Public Protector is the monitoring of government pronouncements on corruption and to use these as points of leverage in holding state entities accountable. For example, the ruling party has identified as a priority, the eradication of corruption and ending impunity for those responsible for corruption.<sup>62</sup> In our interface with state entities we draw attention to such pronouncements, especially when our interventions seem to be resisted. Furthermore, in all our interactions with state entities and other stakeholders we consistently refer to the values of accountability, integrity and responsiveness as pillars of the good governance that the Public Protector seeks to promote.

As you may have noted, our own framework constitutes work in progress. I do hope, however, that it is of some help in your gallant fight against this global scourge.

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<sup>62</sup> See among others the January 8<sup>th</sup> Statement of the National executive Committee of the African National Congress, page 7.

# Part Three

## **COMMUNIQUÉ**

### **Introduction**

Aware of the challenges posed by corruption to good governance and national development in Nigeria and the efforts being made to combat it, which have not brought the desired results, CLEEN Foundation in collaboration with the organised a two-day national conference on Corruption and Governance Challenges in Nigeria: Breaking the cycle.

The conference was organised as second in a series to commemorate 50 years of Ford Foundation's grant making on governance and human rights in Nigeria, held at the De Renaissance Hotel, Ikeja, Lagos, January 20-21, 2010.

The conference was attended by a cross section of the major stakeholder groups including representatives of the Chairperson of the Economic and Financial Crimes Commission (EFCC) and the Governor of the Central Bank of Nigeria (CBN), security agencies, civil society organisations, organised private sector, international development agencies, civil society organisations, women and youth organisations and the media. In all about 75 persons took part in the conference.

The Chairperson of the EFCC and the Governor of the Central Bank through their representatives made opening and keynote remarks. Two commissioned papers were also presented by Dr.Chidi Anslem Odinkalu, Director, African Programme of the Open Society Justice Initiative, on Corruption and Governance Challenges in Nigeria: Breaking the Cycle and, Advocate Thuli Madonsela, Director, Office of the Public Protector, South Africa on Corruption and Governance Challenges: The South African Experience. After exhaustive discussion of the presentations and other interventions, participants focused on considering strategies for minimising the negative impact of corruption on governance and development. The entry points for discussing the strategies were: *Strategies for curbing Public Sector Corruption: Legislative, Policy*

*and Administrative Solutions; Strategies and action plan for curbing Private Sector Corruption in Nigeria: Legislative, Policy and Administrative Solutions; and Strategies for mobilising popular anger against Corruption in Nigeria.*

### **Observations**

The conference participants observed as follows:

1. That corruption is assuming an alarming proportion in Nigeria needed to be tackled through the renewed efforts all stakeholders.
2. That the Institutions of state seem overwhelmed by the rate of corruption and so unable to adequately and effectively respond in the best interest of the state and its citizens
3. That there is a near total collapse of our national integrity systems like elections, the political parties, anticorruption agencies, and a continuing efforts on the part of some unscrupulous persons to compromise the integrity of the judiciary.
4. That while there has been significant improvement in the availability of information on incidences of corruption there is no commensurate improvement in the number of convictions
5. That there is a real fear of selective justice given the fact that many high level corruption cases remain unresolved.
6. That civil society, the media and Labour are not collaborating as well as they should given their strategic importance in fighting social and political injustice.

### **Recommendations:**

Considering the strategic roles the public sector, private sector and civil society have to play in stemming the tide of corruption and bad governance in Nigeria, the conference made the following recommendations:

#### **Curbing Public Sector Corruption:**

1. Whistleblowers in public service should be encouraged and protected by legislation, policy and administrative practices.
2. The salary and benefit regimes in the public service should be enhanced so that people can live by their wages.

3. Public accountability mechanisms such as audit, monitoring and evaluation strengthened by making them truly independent and adequately resourced.
4. The appointment process of heads of Ministries, Departments and Agencies (MDAs) should be advertised in the media and public hearings conducted on shortlisted persons so that people who have had dealings with them can come and testify about their integrity.
5. There is need to review downwards the perks of public office so that people who have interests other than the good of the people would be discouraged from seeking office.
6. All Public office holders especially those in leadership positions in education, health and power supply should be made to consume what they produce.
7. There is need to institute clear performance indicators for public servants to ensure efficiency.
8. There is need to insist on full implementation of the Fiscal Responsibility Act and the Public Procurement Act.
9. There is need for the immediate passage of the freedom of information Bill now pending before the National Assembly.

**Curbing Private Sector Corruption:**

1. All stakeholders should support the Central Bank of Nigeria in the ongoing sanitisation of the banking sector and the prosecution of heads and officials of banks found to have abused their office. However, we reject any efforts to sell Nigerian banks to foreign interests.
2. Professional bodies within the financial sector should adopt and enforce effective code of ethics regulating their members and discipline those found guilty of misconduct and other financial malfeasance.

3. Shareholders and Boards of Directors of banks and other financial institutions should take seriously the issue of corporate governance in order to check corruption within the sector.
4. There is need to improve the observance of respect for the rule of law in the fight against corruption in Nigeria
5. The organized private sector should adopt a code of business ethics to regulate the activities of their members and should sign up to the convention on business integrity
6. The Standard Organisation of Nigeria (SON) should step up mechanisms for checking the importation and production of sub standard and fake goods.
7. There is need to improve the effectiveness of the taxation regime to prevent abuse and control the influence of unearned income in the economy
8. There is a need for the establishment of consumer pressure groups to liaise with organized Private sector to improve the quality of goods and services delivered to the Nigerian consumer.
9. There is a need to reduce the rate of cash transactions in Nigeria through the use of checks and other financial instruments

#### **Mobilising Popular Anger against Corruption**

1. The conference participants identified the following issue-based campaigns as entry points for mobilizing popular anger against corruption and:
  - a. Campaign for Regular Electricity in Nigeria (CARE)
  - b. Campaign for Drinkable Water (CDW)
  - c. Campaign for Good Roads in Nigeria (C4ROADS)

- d. Campaign for Effective Health Care Systems in Nigeria (CEHCS)
- e. Campaign for Credible Elections as presently championed by the Alliance for Credible Elections (ACE)
- f. Campaign for Life Style Checks (CLC)

### **Resolution**

The conference participants resolved to continue to engage with the anticorruption processes at all levels and arms of government and, in the private sector using their primary constituencies.

Innocent Chukwuma  
Executive Director-CLEEN Foundation

## **II**

### **Report of the Conference Proceedings**

#### **Introduction**

The CLEEN Foundation in collaboration with the Ford Foundation to organised a two-day national conference on Corruption and Governance Challenges in Nigeria at the De renaissance Hotel, Lagos from January 21 – 22, 2010. The objective of the conference was to provide a platform for stakeholders to reflect on the issue of corruption and governance challenges in Nigeria and suggest measures that could be fed into national laws, policies, administrative practices and citizens’ actions with a view to reducing corruption and bad governance in the country.

Over 70 stakeholders attended and actively participated in the conference proceedings. Attendees included representatives of government departments, security agencies, anticorruption agencies, academia, organised private sector, civil society organisations, media, community based organisations, international community and women and youth organisations. The following highlights the proceedings of the conference.

#### **Opening Session**

In his welcome remarks, Mr. Innocent Chukwuma, Executive Director of CLEEN Foundation, expressed the view that corruption has undermined and continues to frustrate development in all fronts in Nigeria. He noted that since the return too civil rule after years of military rule in 1999, some reforms aimed at curbing corruption in the polity has not had the desired results. These include the establishment of anticorruption agencies like the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices Commission (ICPC), and, the civil service, public procurement and fiscal regime reforms of the Obasanjo administration and; the ongoing sanitisation of the banking sector, by the Yar’ Adua administration. He noted that despite apparent public anger at the level of corruption and its negative impact on our collective well being, there is no national consensus of repulsion against

the perpetrators with a view to changing the status quo. He outlined the objectives and structure of the conference and thanked Ford Foundation for its support to governance and human rights work in Nigeria and working with CLEEN Foundation on the conference series.

In her remarks, Dr. Adhiambo Odaga, Regional Representative of Ford Foundation in West Africa traced the history of the organisation's involvement in Nigeria and the West African Region. She stated that the organization's passionate interest in the region can be seen through its work in such areas as democracy and governance, human rights, social and human security amongst others.

Dr. Odaga particularly mentioned the Ford Foundation's International Fellowship that provides opportunities for participants from across the world including Nigeria and West Africa, to undertake studies in several fields and return home to meet labor needs in their respective countries. She thanked CLEEN Foundation for being a very good ally of Ford Foundation with whom they have built enduring relationship over the years. She concluded that the conference series is another contribution of the Foundation in the quest for improving the living conditions of people of the sub-region.

Kabir Shehu, Head Economic Governance Crime Section, on behalf of Mrs. Farida Waziri, Chairperson of the Economic and Financial Crimes Commission (EFCC), gave the Chairman's opening remarks. In her speech, she noted that corruption has caused much harm to the nation as people in public office have taken it as normal to loot public resources and convert same to own use. Mrs. Farida recounting some of the recent corrupt practices investigated by the Commission, urged Nigerian's in all works of life to reject corruption in its entirety because of the danger that it imposes in the life of the nation. She pointed out, in conclusion, that Nigerians cannot continue to allow endemic corruption to deny the present and future generations of their joint heritage and, that it is a war for all sectors and strata of the society to fight and win.

Mr. Shola Awoyungbo presented the keynote address on behalf of Mr. Sanusi Lamido Sanusi, Governor, Central Bank of Nigeria. He pointed out that there is high correlation between corruption, poor governance and high incidence

of poverty and, posited that the war on corruption must be multifaceted and not only through empowering the active poor but also by ensuring that institutions are transparent, accountable and citizens rights are well protected. He linked it with the global economic recession, which is because of the failure of the regulatory frameworks and the regulated to abide with sound business practices and laws in conducting their affairs. Using the recent ongoing banking and financial systems reform as case study, he highlighted some of the institutional and governance challenges hitherto prevalent in some of the banks. In conclusion, he argued that the war against corruption and poor governance in the financial system has just begun and implored the assistance and support of all stakeholders.

### **First Plenary Session**

Two commissioned papers were presented in first plenary session. The first was on Corruption and Governance in Africa: How Do We Break the Cycle in Nigeria, presented by Dr. Chidi Anselm Odinkalu of the Opens Society Justice Initiative (OSJI). The second was on Corruption and Governance Challenges: The South African Experience, presented by Advocate Thuli Madonsela, the Public Protector of South Africa. Dr. Odinkalu in his paper analysed how Nigeria got to the present situation of corruption and argues that our governance challenge of combating corruption confronts four cumulative crises of political legitimacy; agency credibility; elite values and institutional capabilities. He asserts that breaking these habits could only happen if the fight against corruption is normalised through ‘investments in the capacities and values that underwrites the access to a secure public space in a nation-state’. He briefly outlined how Nigeria has since independence in 1960 prospered corruption and denuded governance. In outlining, the regional context in which the challenges lay he specifically referred to the environment of total misgovernance around Africa and the many fights of civil society to reclaim the Continent from its Army of corrupt leaders who reduced elections to:

- administrative processes of manufacturing figures unrelated to ballots; an expensive race to finagle three or four judicial votes from panels of five or seven judges, depending on the country or office in dispute; or a diplomatic debacle in which disputants for office are persuaded to

settle their difference at the risk of mass slaughter. Whichever option it is, they have become tools for affording a veneer of public legitimacy to plunder' (8)

Using various milestones in Nigeria's nationhood to dramatise, he asserted that Nigeria's problem with can be situated in its inability to count. Its inability to conduct a free and fair election, conduct a credible census and more so determine the amount of resources available for its development and the uses to which they are put to. He rounded off by bemoaning the difficulty in achieving any meaningful reform because of the poor state of infrastructures in Nigeria, especially power supply, as a cabal of generator suppliers seems to hold the nation hostage. He emphasised the need for an elite that is development minded rather than consumption minded while admitting that the desired progress may be long in coming he pointed out that occasional convictions of out of favour politician would not hurt the march.

The second paper of the plenary was that of Advocate Thuli N. Madonesia, the Public Protector of the Republic of South Africa. Her presentation focused on strategies her organisation uses in fighting public sector corruption and ways of mobilising public anger against corruption in Africa. She situated the problem of corruption within the ambit of human element and values of the community where corruption is being fought. She spoke of the need to understand the level of political will, which transcends grand speeches and, an independent anticorruption agency that is not beholden to the government of the day.

On the Legal Framework, she identified a number of laws that empower anticorruption work in South Africa, including the Constitution of the Republic of South Africa Act, 1996 that set out the basic values and principles that govern public administration in every sphere of government, organs of state, and public enterprises. The Prevention and Combating of Corruption Activities Act, 2004, which amongst others creates the offence of corruption, places a duty on any person who holds a position of authority to report transactions; and grants the courts extraterritorial jurisdiction in respect of corruption offences committed outside South Africa in certain circumstances. The

Prevention of Organised Crime Act, 1998 provides for amongst others that any person who is in charge of a business undertaking has to report unlawful activities or proceeds. The Protected Disclosures Act, 2000 encourages whistle blowing, while the Promotion of Access to Information Act, 2000 gives effect to the Constitutional right of access to information. The Promotion of Administrative Justice Act, 2000 promotes transparency by giving effect to the Constitutional right to administrative action that is lawful, reasonable and procedurally fair, and the right to written reasons where one's rights have been adversely affected by administrative action. The Witness Protection Act, 2000 encourages state witnesses to give evidence in trial proceedings and commissions and, the Public Finance Management Act, 1999 promotes the effective and efficient use of resources by departments and Constitutional institutions, while the Financial Intelligence Centre Act, 2001 aims at combating money-laundering activities. In the Section on Anticorruption and other bodies, Advocate Madonsela, said that there is a multi-agency approach to fighting corruption, which has remained contentious overtime as some argue for a single agency approach even as it is admitted that there is need to strengthen independent institutions such as the judiciary and Parliament. She went on to outline the role of each of the key agencies as summarised hereinafter.

The last section of her presentation focused on the Office of the Public Protector. She spoke of recent changes that she made following her appointment. This includes the creation of unit that focuses on Anticorruption and good governance, aside from making a public commitment to strengthening the forensic competence of the Office. She used case studies to expatiate on the role and functions of the Office of Public Protector. In conclusion, she said that at the centre of any successful anticorruption effort is the changing of societal values and citizens' involvement in the fight. She called for the enforcement of international instruments such as the OECD Convention on Bribing Corruption of Foreign State Officials.

### **Questions, Comments and Answers**

The Conference had two sessions where questions were asked and, comments made and clarifying answers given by the speakers. The first was after the

opening ceremony and the other was at the end of the first plenary session. In summary, the issues that created much interest include:

- The need to tighten regulatory controls on the private sector, especially the financial sub sectors
- The need to ensure that government continues to take citizens welfare into consideration in policy making especially in the light of recent retrenchments in the banking sector as a result of the reforms in that sector.
- The need to make government institutions more accountable to the people rather than beholden to particular individual or a small group of persons
- The need for a regime of freedom of information that would grant citizens right of access to public information in order to hold public officials accountable.
- The need to ensure that the anticorruption agencies step up their investigation and prosecution of corrupt public office holders especially those who have assumed the toga of untouchables.
- The need to strengthen the participation of labour, civil society and the organised private sector in the fight against corruption

### **Plenary Interactive Discussion**

The plenary interactive session comprised of three panels

#### **Topic One:**

Strategies for curbing Public Sector Corruption: Legislative, Policy and Administrative Solutions. Mr. Shehu A. Kabir, Head of the Economic Governance Crime Section of the Economic and Financial Crimes Commission, chaired this topic discussion.

**Topic Two:**

Strategies and action plan for curbing Private Sector Corruption in Nigeria: Legislative, Policy and Administrative Solutions. Mr. Osidipe of the Manufacturers Association of Nigeria chaired this topic discussion.

**Topic Three:**

Strategies for mobilising popular anger against Corruption in Nigeria. Emma Ezeazu, General Secretary of the Alliance for Credible Elections in Nigeria, chaired this topic discussion.

The core of the discussions at this session is reflected in the Communiqué, which forms part of this report.

**Second Day****Second Plenary Session**

The second day of the Conference was used by the participants to discuss groups' reports, agree on the main issues in the Communiqué, discuss, and clarifies frameworks for taking the issues raised forward.

## CLEEN FOUNDATION'S PUBLICATIONS

### **JOURNEY TO CIVIL RULE**

A Report on the Presidential Primaries of the All Peoples Party (APP) & Peoples' Democratic Party (PDP) February 13-15, 1999  
Published in 1999

### **POLICING A DEMOCRACY**

A Survey Report on the Role and Functions of the Nigeria Police in a Post-Military Era  
Published in 1999

### **LAW ENFORCEMENT REVIEW**

Quarterly Magazine  
Published since the first quarter of 1998

### **CONSTABLE JOE**

A Drama Series On Police Community Relations In Nigeria  
Published in 1999

### **POLICE-COMMUNITY VIOLENCE IN NIGERIA**

Published in 2000

### **JUVENILE JUSTICE ADMINISTRATION IN NIGERIA**

Philosophy And Practice  
Published in 2001

### **GENDER RELATIONS AND DISCRIMINATION IN NIGERIA POLICE FORCE**

Published in 2001

### **FORWARD MARCH**

A Radio Drama Series on Civil Military Relations In Nigeria  
Published in 2001

### **HOPE BETRAYED**

A Report on Impunity and State-Sponsored Violence in Nigeria  
Published in 2002

### **CIVILIAN OVERSIGHT AND ACCOUNTABILITY OF POLICE IN NIGERIA**

Published in 2003

### **POLICE AND POLICING IN NIGERIA**

Final Report on the Conduct of the Police In the 2003 Elections  
Published in 2003

### **CIVIL SOCIETY AND CONFLICT MANAGEMENT IN THE NIGER DELTA**

Monograph Series, No. 2  
Published in 2006

### **CRIMINAL VITIMIZATION SAFETY AND POLICING IN NIGERIA: 2005**

Monograph Series, No. 3  
Published in 2006

### **CRIMINAL VITIMIZATION SAFETY AND POLICING IN NIGERIA: 2006**

Monograph Series, No. 4  
Published in 2007

### **BEYOND DECLARATIONS**

Law Enforcement Officials and ECOWAS Protocols on Free Movement of Persons and Goods in West Africa  
Published in 2007

### **POLICE AND POLICING IN WEST AFRICA**

Proceedings of a Regional Conference  
Published in 2008

### **IN THE EYES OF THE BEHOLDER**

A Post-Election Survey Report  
Published in 2009

### **CRY FOR JUSTICE**

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