

**Speaking Notes on
The Real Challenges of Fighting Corruption in Nigeria:
What to Do When Corruption is the Norm?”
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Introduction

It is not disputable that corruption holds the ace for Nigeria's sorry state of underdevelopment. Like cancer, it has eaten deep into the organs of national physiology emaciating its victim to near coma until the election of President Muhammadu Buhari in 2015. Buhari's surgical procedures have however been resisted by two groups of people - a vocal well resourced corruption-complicit minority of "native doctors" suggesting somewhat hypocritically to themselves that the patient is not ill, and if ill, the sickness is not terminal nor life threatening and a passive majority of cynical on-lookers who have often been disappointed in previous fights against corruption and whose social and psychological construct directly or indirectly tolerate rather than challenge the status quo of systemic corruption. In between these two groups is a minority army of activists who have determined to speak out against corruption win or lose.

Lets take a short primer of what corruption had done to Nigeria before President Buhari's election.

- 24 out of 36 states were technically economically insolvent due to diversion of state allocation by previous political leaders, huge arrears of workers wages, non utilization or maximization of economic comparative advantages in agriculture and mineral development and persisting structural constitutional and political imbalances;
- the North West geo-political zone of the country was almost lost to insurgency fuelled and escalated by diversion of funds meant to empower military and paramilitary agencies to defend the nation's territorial integrity;
- Over 10,000 abandoned projects at state and national levels whose financial allocation had over the years been swallowed by corruption;
- dilapidated or non existent key infrastructure in spite of increase revenue over the past 15 years;
- depleted foreign reserves in spite of providential increase in revenue;
- high youth unemployment and destruction of social safety nets
- inability of law enforcement agencies and the criminal justice system to sanction suspects who used various excuses and shields such as perversion of constitutional safeguards of presumption of innocence and fair hearing, retention of archaic rules of criminal procedures and dilatory tactics of delay, toleration of incompetent investigation and prosecution, corrupt judicial personnel, and equally corrupt and unethical legal practitioners, lack of monitoring framework and data on the negative impact of delay and escalation of impunity in criminal justice administration

➤ etc.

Revelations of mind boggling cases of corruption emanating from only two sectors of the economy defense contracts and the oil and gas sectors kept many, but not all ardent cynics and most probably collaborators of corruption, spell bound and grudgingly admitting the role of corruption in Nigeria's sorry state as not exaggerated but perhaps understated.

However, like all cynics and self-fulfilling prophets, once cynicism and prophecy fly in the face of reality, the cynical prophet shifts to the next absurd conclusion that nothing will change and that socio-legal chemotherapy will not work. Such conclusion though fatalistic, is promoted by a minority of complicit, stupid or both section of the political, private sector elite and the press compromised by self interest and the minority well resourced group of looters who know that if nothing changes the patient or the society, as we know it cannot and will not survive but nevertheless promote a contrary narrative to mislead the ignorant passive majority.

Add to this an administrative framework dominated or led in many areas by a compromised and complicit civil/public service and constitutional arms of executive, legislature and judiciary and levels federal, state and local government who traditionally benefited from corruption and the dysfunction called the Nigeria state and was thus emotionally tied to the status quo rather than fighting corruption. By implication, the fight against corruption became a lonely walk in the park and the focus of very few players in government led by President Muhammadu Buhari.

Finally is the observation that in Nigeria, the social contract between government and the people is local and not national although the constitution presumes it to be national. Historically, there is a deep-seated lack of confidence in government and official institutions, or in the universal application of a fair and neutral rule of law. Less effective social contracts are forged around ethnic or religious identities – an arrangement that fuels inter-communal distrust – and increasingly fragmented social identities impede the construction of a national social contract that could form the basis of collective action to overcome corruption.

This background and context is what makes the observation that fighting corruption is not a tea party very true in the case of Nigeria because corruption by its nature plays true to type. It refuses to accept noble values and strategies set to displace it because those values are antithetical to its character. Thus corruption fights back using different collaborators and strategies. Where it is systemic as in the case of Nigeria, it pushes back through passivity or activity of the various frontiers mentioned above indicating that there are more traitors in the powerful minority than patriots, more back stabbers than supporters. The strongest indicator of such push back is in the contradictory desire of those who wish to eat omelet without breaking eggs or go to heaven without death.

Bearing in mind such a confounding dilemma, fighting corruption demands stamina and resilience. A strategy and determination to go the long haul claiming victory in silos of short, medium and long term impact, with sector by sector focus and by separating the wheat from the chaff and isolating what works from what does not or

will not work.

Nigeria's experience reflects that of other countries who have in remote or recent past fought or is fighting corruption most notably Singapore, Botswana, Hong Kong, South Korea, Estonia, Georgia, Qatar, Chile, Uruguay, Ukraine Tunisia, Egypt etc. just to mention a few. In each of these cases political will and leadership example ranked first in factors that changed the matrix. Next was pressure from citizens and the civil society on the leadership to continue to do what was right in the context of society. Finally is the role of the international community typified by Liberia as an example of a positive outcome in anti-corruption campaign in post war effort.

What has Worked

1. **Political Will:** Unequivocal leadership examples to lead the fight upfront and by personal examples. In this regard Nigeria is fortunate to have the unequivocal leadership example of President Buhari and the Vice-President Prof. Yemi Osinbajo.



2. Strategy:

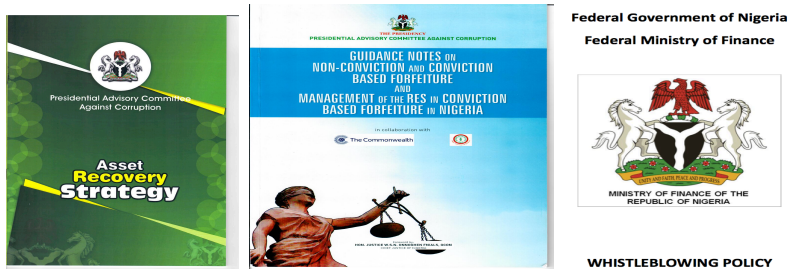
- a. Developing and implementing a credible strategy to guide the anti-corruption agenda in a way that articulates the objective of the state and its ability to realistically achieve its goals and objectives using short, medium and long term milestones. In Nigeria we had the PACAC Anti-Corruption Plan of PACAC that preceded the most expanded National Anti-Corruption Strategy (NACS). The anti-corruption action plan was prepared by the government before it assumed office and it was handed over to PACAC to implement. So PACAC took ownership of the document. The NACS on the other hand had been incubating for nine years. Due to lack of political will, previous governments were unable to conclude with stakeholders comprising MDAs and civil society a credible strategy document in spite of huge funding provided by development partners most notably UNODC and DfID. PACAC coordinated the process that led to the completion of the NACSs thus ending a nine year deadlock. Both the PACAC Action Plan and NACS outline government strategy for addressing the corruption malaise. Both select priority sectors and outcomes.



- b. In Nigeria, return of stolen assets is clear priority for the government given the dismal level of state finances. This is not just by taking back from prebendal looters but also by

blocking leakages in the system that hitherto enable illicit outflow of capital viz. eliminating ghost workers; avoiding double or over budgeting; reducing the cost of governance by reducing the size of government without sacking workers etc.

- c. In this regard, government introduced a number of anti-corruption measures to tackle corruption in the expenditure and revenue side of governance and to recover stolen public assets. In the revenue side the TSA – Treasury Single Account policy of government was enforced and tax administration was strengthened with new policies like tax amnesty vide the VAIDS – Voluntary Assets and Income Declaration Scheme; and for the expenditure side the BVN – Bank Verification Number policy was enforced fully to eliminate the phenomenon of ghost workers and to track all those receiving revenue from government through public procurement.
- d. Recovery of stolen public assets remains a major component of government anti-corruption strategy. In realization of the challenges dogging criminal justice administration and the weaknesses attending criminal sanctions and enforcement including custodial sentences, PACAC's first strategy document was an Asset Recovery Strategy Document that focused on enhancing civil recovery process and use of non-conviction based asset forfeiture mechanisms.
- e. Furthermore, recovering stolen assets is hitting criminals in the pocket and it is important in the reform process. Having a robust NCB process with lower standard of proof alongside the full criminal process is also fundamental.
- f. To recover stolen asset there must be intelligence. Thus a whistleblowing policy was introduced in 2016 to enhance the asset recovery effort of government. The policy goes slightly beyond cash recovery to matters of public interest including breach of financial regulations, mismanagement or misappropriation of public funds and assets (e.g. properties, vehicles etc.) information on stolen or concealed public funds fraud, corruption, theft, bribes, improper conduct or unethical behavior, information on actions with negative impact on integrity of Nigeria; calculated attempt to suppress or conceal information relating to any of the above. The policy introduced a reward no more than maximum of 5% for information leading to cash recoveries only. There is however no reward for publicly known information. In the absence of a whistle blower protection law, the policy has robust measures for protection and anonymity of whistleblowers. There is however a penalty for false or malicious information.



3. Communication and Information Sharing:

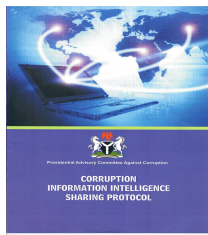
a. Communicating the negative impact of corruption in a graphic and sobering manner to underscore the inevitability of a negative outcome of the state failing if it does not fight corruption is important. Effective information management system that enables the citizens appreciate the objective of the state and what it is achieving and what it is not achieving is a key part of fighting corruption. Proper information management help win converts to the fight against corruption rather than antagonists. For citizens to effectively participate access to information is crucial. Unfortunately, government has not done enough in this regard. Although this is due to myriad factors including constantly putting out fires in other sectors of the economy, nevertheless effective communication to secure the interest and cooperation of society remains a key factor. Government could do more to effectively communicate its efforts and challenges in fight against corruption. Leveraging on technology makes this achievable at least cost.



b. Information on governance issues improves perception about prevalence of corruption. Information sharing on budget, expenditures, contracting processes and public procurement are sine qua non in succeeding in anti corruption efforts. Implementation of commitments made by the country at the 2016 London Anti-corruption summit has improved the scenario. Specifically, Nigeria is improving

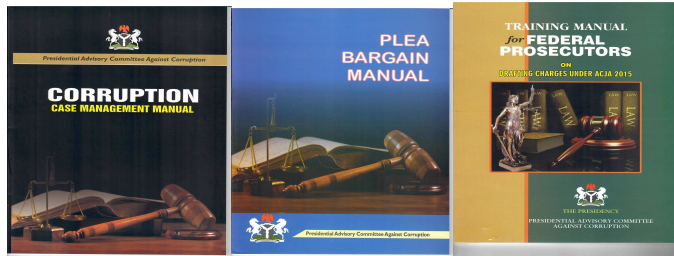
- i. transparency in the management of natural resources and public funds as well as strengthening citizen engagement in the activities of government. CSOs co-chair the OGP initiative of government.
- ii. Government is working towards open contracting in the procurement process. All things being equal, the pilot of the open contracting and procurement portal should be open before end of the year. This initiative would increase beneficial ownership transparency.
- iii. The law regulating information on beneficial ownership of companies is also being reviewed. Ultimately, this will help in identifying individuals hiding behind corporate vehicles while laundering public funds in offshore territories as we recently found in the Panama Papers.

4. **Cooperative Government:** Securing the cooperation of all arms and all levels of government is important. This should not be assumed in systems where one or more arms or levels of government prefers the status quo and will actively or passively hinder the fight either due to fear of the searchlight coming its way or due to chronic insensitivity to the effect of corruption to the polity.
5. Tension between Nigeria's executive and the legislature is public knowledge. Although it is not new and did not start with the current regime, it is widely believed that lack of unanimity in the approach to fighting corruption is a major source of tension apart from other possible dynamics. Given the economic realities of Nigeria we know that unless there is a paradigm shift there will be a catastrophe.
6. Allied to this is the need for information sharing amongst agencies of government. Agency rivalry is a well known phenomenon in every society. In order to diminish the negative effect of working in silos, PACAC designed a corruption information and intelligence sharing protocol for anti-corruption agencies. The manual has not entirely succeeded in diminishing rivalry or democratizing intelligence sharing but it is work in progress.



7. **Strengthening Institutions:**

- a. **Independence** of anti-corruption agencies from political interference and manipulation is central if they are to fulfill statutory mandate. Years of corruption have no doubt weakened systems and institutions and anti-corruption agencies were not left out. Character, integrity and pedigree of those appointed to public office or elected into office whether in private, professional and public sectors of national life is important. More critical is that a key factor in diminishing corruption is the character of persons who lead anti-corruption agencies and those who work with them. If scoundrels dominate the landscape fighting corruption will be a mere joke. PACAC advised that government critical consider the pedigree of persons appointed to lead key anti-corruption institutions.
- b. **Capacity** – PACAC built the capacity of ACA staff to improve sanctions and enforcement. PACAC worked with stakeholders to develop two key documents to impact the prosecution of cases and diminish prospect for compromise and build the confidence of the public to share information with ACAs.



c. **Oversight** - Transparency and oversight of the work of ACAs sometimes in the absence of Governing Board. Effective oversight to avoid abuse of power and witch hunting thus becomes crucial. This is rightly a role for the Attorney-General however, this role is sometimes not played effectively or not at all. PACAC has tried to close this gap by acting as channel for feedback from the public for effective ACA oversight.

d. **Under-Funding** of criminal justice administration generally impacts fight against corruption. It affects investigation, prosecution, judiciary and the prison system. Whereas high profile criminals are very well organized because they have the financial resources to fight back the state often is not. Corruption having weakened the state structurally also affects its capacity to fight back. In Nigeria, evaluation of legal representation in high profile corruption cases is indicative of impairment of state capacity. Suspects parade high profile defense counsel while the state depends on law officers who are not as well resourced to do their work.

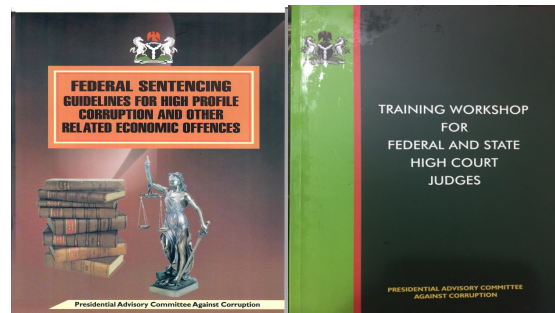
8. **Legal Framework** - Effective legal framework is a key factor in any anti-corruption campaign. Nigeria is not short of laws but is rather under the yoke of poor implementation. Nevertheless, there are still some gaps in the legal framework in fight against corruption. The most notable relate to Proceeds of Crimes bill, whistleblower protection, witness protection and special crimes courts.

9. Stronger Judiciary –

a. The judiciary is crucial to any anti-corruption initiative. Unfortunately, systemic corruption in Nigeria has not left out the judiciary. The courts are expected to do justice according to law however this cannot be achieved by focus on technical rather than social justice. Weak investigation and prosecution undoubtedly leads to poor results. However, a sensitized adjudicatory and justice system also recognizes the effect of impunity in the medium to long term. Therefore, the courts strike a balance not to tolerate manipulation of the criminal justice system by technicalities. In this regard, Nigeria parades a long list of judicial precedents where justice has been sacrificed on the alter of technicality. This outcome is not entirely rooted in the conservative attitude of the courts but also in the unseen hands of corruption. Some Nigerian judges have in recent times been under the glare of public scrutiny and criminal justice process due to indiscretions. Happily the leadership of the judiciary is taking measures to respond to criticism

and flush out bad eggs.

- b. **Effective sentencing** regime to punish offenders, diminish impunity and assuage society is a critical element of effective judicial response to corruption. Until recently, public perception is that courts punish high profile corruption with kid gloves while using the sledge hammer on small fry. In response to this, PACAC designed the Sentencing Guidelines to assist the courts evaluate the impact of high profile corruption and economic and financial crimes cases. This is in addition to organizing a series of capacity building activities for judges in their role in fight against corruption.



- c. **Punish abuse** - of the criminal justice process by corrupt prosecutors and unethical defense lawyers who deride the system by grandstanding thereby escalating a culture of impunity in the name of protecting or promoting the rule of law; In the same vein, the judiciary must punish its members who equally abuse the justice process and undermine legislative reforms designed to improve the criminal justice system. Grant of incessant adjournments in contravention of the law and extant practice directions is rampant in the criminal justice process. Sometimes such adjournments are at the behest of the courts. This must be measured and effectively sanctioned.

10. **Stronger Civil society and Media** - This remains a key factor in any anti corruption initiative. So far Nigeria scores well in having a robust civil society and a vibrant committed media.

Conclusion and Recommendations

1. Institutionalization of a more open and transparent government will definitely diminish corruption. In this regard we must strengthen the capacity of citizens to access information about governance and their leaders. Citizens must know the commitment that leaders make and be able to evaluate if those commitments are met. Furthermore, citizens must be able to demand that leaders and state justify their actions. Leaders who are unable to justify their actions must be sanctioned not only by not being re-elected but by the prospect and actual criminal prosecution.
2. Improvement of sanctions and enforcement remains the only route to diminishing impunity. Until the proverbial big fish criminals are prosecuted and jailed there will be no deterrence. Happily, Nigeria is on track with the recent

convictions of two former governors by the same upright courageous and highly intelligent judge.

3. Escalating preventive measures in tandem with enforcement measures. As the saying goes that prevention is better than cure, we need to work more for preventive rather than curative measures. Fighting corruption is expensive and we must be careful not to get into a catch 22 situation whereby the willingness to fight corruption is crushed by the lack of tools to fight corruption.
4. Institution strengthening by ensuring that people of questionable pedigree do not get into public office e.g. anyone with corruption cases against them should not be nominated by political parties for election nor be appointed into government by ruling parties
5. Better funding of the criminal justice system institutions generally – Police, EFCC, ICPC, Courts, FIU, etc. Funding should however not be at large but must be monitored for effective application otherwise systemic corruption and impunity will absorb the extra funds without corresponding improvement in service delivery.
6. More effective communication is required to change public perception that corruption pays or that grand corruption and looting is the real corruption and that petty corruption is either cultural, economic survival or social norm. Grand and petty corruption are equally corrosive. According to the Chatham House Report, petty corruption is corrosive for four major reasons –
 - a. it is widespread and though seemingly innocuous it disproportionately targets the poor, and help keep them poor;
 - b. It diverts resources away from legitimate and beneficial activities to illegitimate and unproductive ones;
 - c. it tends to be linked to, or is indicative of, more substantial forms of corruption, as senior officials or employees allow petty corruption by junior ones to continue so that collusion in systemic corruption is assured;
 - d. fourth, and perhaps most important, the aggregate effects of widespread petty corruption serve to undermine the legitimacy of government institutions in general, and their capacity to fairly administer public goods and services as well as protection under the law.

In the final analysis we can soberly conclude that if we do not kill corruption, grand or petty, corruption will kill us.