

CATALYSING GLOBAL ACTION FOR THE RECOVERY OF CORRUPTION PROCEEDS

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INTRODUCTION

The resilient effort of Transparency International (TI), the Berlin based NGO that took up the mantra of placing the devastating impact of corruption on economies, people and polities within a global consciousness has unarguably catalysed unprecedented action for the combat of this very corrosive and rather epidemic phenomenon. There is presently a consensus that corruption pollutes the social, economic, political and moral fibre of nations particularly of ones within the developmentally challenged continent of Africa. Corruption costs African countries several billions of dollars annually, diverting scarce resources and further diminishing the possibilities of development.

The many years of development policies and strategies, which brought no significant change in the fortunes of the poor citizens of most African nations, have brought some revelation to the malignant impact of corruption on the continent and its people. Corruption more than any other structural or qualitative factor has constituted the greatest bondage to the realisation of the development potentials of African economies, impoverished the states and consequently rendered the masses of the continent victims of pernicious poverty. For Africa unlike all other continents that equally have their fair share of the corruption problem, corruption is not just a social issue but a development one.

Corruption manifests in two forms to scourge development in African economies. The first form is *grand* corruption, which is enabled by the aberrant form of governance like military or civilian dictatorships whereby power is concentric and so leaders and their cronies are not accountable to the people. Therefore in the exercise of their political authority, these leaders and their appointees are motivated not by the common good of the larger number, but by their personal gain. Public policy decisions are thus made with intent to divert and misappropriate public resources on such scales that vary with the amount of control their position bequeaths. The political terrain exhibits an absence or weakness of the rule of law and of institutions like the legislature and the judiciary; and a system of political patronage that becomes a weapon of legitimacy. All of these operate to feed the greed of senior public officials who through bribery, inflation of project costs, and outright diversion of public funds into personal purse rob the people.

A significant feature of this type of corruption is that it is frequently trans-national in nature, i.e. involving a local and a foreign collaborator; usually another government official, a private individual or a corporation. Developed countries must bear 50% of the responsibility the existence of grand corruption. It is the collusion of North based

governments, corporations and individuals with African leaders in the course of the competitive madness of international trade that gave a cancerous personality to the syndrome of foreign bribery and corruption. It is estimated that such corruption accounts for 20% of the total expenditure of the continent, which mathematically translates to almost \$100 Billion for the past three decades. It is further estimated that more than \$80 Billion of these corruption proceeds are domiciled abroad by these leaders. Recent reports estimate that past leaders of a naturally endowed Nigeria embezzled and exported almost \$50 Billion dollars of the country's resources into foreign economies pathetically yoking over 45% of Nigerians to below poverty level existence.

As grand corruption causes diversion of state resources into private ownership, resources required for running efficient bureaucracy, implementing social, and education and health programs for the hapless majority become non-existent. The attendant poverty of the majority necessitates improvisation of ingenious mechanisms of survival one of which is the second form of corruption, known as *petty* corruption. This corruption is practised among the lower cadre of public officials who seek bribes or extort from users of their services across the entire spectrum of a nation's bureaucracy. It is thus the one that people more frequently experience as they traverse the continent's landscape.

However, it is important to note that while this form of corruption usually becomes systemic, pollutes and stigmatises the continent, it is fed by need and not necessarily by greed. While the underlying motivation of need does not excuse any form of corruption, it is necessary to recognise petty corruption as a derivative of the more devastating grand corruption that essentially consigns majority of the continent's work force to a life of economic and social deprivation. Unfortunately mankind's predilection to focusing on the things which can be seen or felt has ensured that petty corruption and not grand corruption (usually clouded in secrecy) has elicited a more co-ordinated and targeted civil action.

Thanks to the pioneering work of Transparency International, global recognition of the need to pursue anti-corruption programs has been overwhelming. Initiatives for developing diverse range of anti-corruption strategies have been generated at local, national and international levels through a coalition of partners from government, private sector and civil society. Hence organisations, governments and NGOs like the UN, OECD, World Bank, IMF, GAS, COF, TI, ICC etc have all variously designed and/or implemented some form of transparency and accountability frameworks. However, the constellation of global effort at engendering very laudable systemic or structural reforms for preventing corruption has left out a very important aspect of any truly comprehensive anti-crime strategy: investigation, criminal prosecution and sanctions which take the form of forfeiture of proceeds.

Our strong conviction is that unless and until co-ordinated global effort declares corruption a trans-national crime placed on the same pedestal as narcotics, money laundering and terrorism grand corruption will continue to be a low risk, high profit venture for leaders in the continent. The weapon of deterrence must include forfeiture and recovery of its proceeds. The strategy for combating corruption need be an encompassing cradle-to-grave one, which places equivalent premium on programs of prevention like institutional and societal reforms as well as on programs of deterrent like prosecution, punishment and sanctions specifically forfeiture and recovery of loot.

The dynamics of globalisation clearly underline the need for law enforcement to cut across

global boundaries and for it to be blind to the socio-economic class, political position and most contextually, the location of a perpetrator and the loot. The only way we can reduce the operational capacity of corruption is to take the profit out of it. The deprivation and forfeiture of the proceeds of corruption through confiscation should be the next bold step in the global anti-corruption effort. Except this is done, trans-national corruption will continue to threaten the fragile democracies of the continent as whether in or out of office those corrupt leaders of Africa who are strategically empowered by their embezzlement will influence the political and economic processes of the continent to the detriment of the people and governance. What the world needs is a zero-tolerance policy in order to comprehensively combat trans-national corruption. Such a policy starts with the global community taking co-operative and co-ordinated action as in the case of Recovery of Assets of Holocaust Victims. When African public officials know that they can no longer find safe havens or sanctuaries of corruption for their loot, grand corruption will cease to have its present appeal.

The existence of the loot that rightly belongs to an impoverished and debt -saddled continent within the territory and coffers of institutions of the North certainly presents a moral dilemma for developed countries who themselves committed significant portions of these development resources to the continent. It equally questions the moral justice in having the poor in African countries continue to pay for the gigantic debt which lenders know were diverted by corrupt leaders. For instance, a country like Nigeria with a foreign debt of \$28 Billion has almost twice the same amount (\$50 Billion according to recent reports) as stolen loot in foreign havens. Positively, the current momentum of global pursuit of transparency as a governing concept for all actions would substantially gain invaluable potency if it also galvanised and predicated action by Western countries toward tracing, identification and extradition of these stolen loots. Second should be the developing of a mechanism for pooling the resources and distributing in such manner as guarantee impact on the social and economic well being of the African people.

RATIONALE

- The antecedents of the Jewish campaign at procuring concerted global action yielded concrete results in the recovery of the wide gamut of monies, properties and all other forms of assets of victims of the Holocaust. Unarguably, nothing compares to the wicked and systematic genocide and persecution of the Jewish race by the Nazis. However, the damaging impact of grand corruption on the African people as epitomised by the indignity of abysmal poverty, burgeoning mortality rate and perennial ethnic conflicts arising from economic tension qualifies the people as modern day victims of oppressive and corrupt leadership. As victims, the African people equally need to secure a measure of justice. Thus the "Bring Back the Loot Campaign" will be following in the pattern of its precursor by seizing the impetus and momentum that the Jewish Campaign provided.
- The present campaign for Debt forgiveness has met with a negligible measure of success with the Heavily Indebted Poor Countries (HIPC) Debt Initiative which in absolute terms neither reduces the debt service nor the debt. The argument of those critical of debt forgiveness campaigns has centred on the principle that it is irresponsible for debtor nations to request creditors to forgive sums of money belonging to taxpayers of other countries. Our campaign for recovery of stolen loots extends this argument by emphasising the principle that Lenders have a duty to recover loan proceeds which are reasonably believed to have been misappropriated or diverted

from its intended use. The active engagement of the international community in the recovery of corruption proceeds needs to be linked to the very intractable debt issue.

- Presently, the existence of a myriad of legal, procedural and technical complexities severely limits the capability of African countries to attempt a country -by- country process for recovery of corruption proceeds even from countries like Switzerland which opened a tiny window of opportunity in that regard. Furthermore, corruption proceed does not currently attract the same measures as proceeds of laundering. The campaign shall thus aim at providing the platform for the countries of Africa united by a common purpose to partner with the rest of the globe in extending the frontiers of current initiatives to combat trans-national crime. A successful campaign will be catalytic to an accelerated harmonisation of national, regional and global legislations and frameworks that are based on co-operation and co-ordination and which include trans-national corruption as an inseparable part of trans-national crime; propel an international reform of bank secrecy laws and establish effective and enforceable international judicial assistance mechanisms.
- The wave of economic and political reforms in African countries would receive a major boost from a successful campaign because it would potentially re-define the power dynamics between the governed and the leadership. It would usher democratic consolidation across the continent as the people become awakened to their own overarching power to determine the character of leadership across board. The collateral effect of such envisaged political landscape would provide fresh impetus for economic development that is driven by the engine of accountability and transparency for optimal efficiency in the use of state resources.

In conclusion, an extension of the current wave of advocacy on corruption and promotion of transparency and accountability needs to commence to give completeness to the present process. The mandate and focus of this complementary campaign should be on the recovery of the huge corruption proceed looted from African countries as an effective way of bringing closure to an issue that remains an albatross to development. Like its precursor, it should be a coalition of partners from the North and the South, working together to define a new global landscape hostile to the proceeds of crime in its full ramification. The local ownership of this issue by developing countries is needless to say, imperative for a successful campaign and it therefore calls for the co-operation and alliance of civil society, government and the private sector. However, it is the political will of the governments, institutions and individuals of developed economies that will ultimately give reality to the mission.

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