

ANTI-CORRUPTION POLICIES IN NIGERIA UNDER OBASANJO AND YAR'DUA:

WHAT TO DO AFTER 2011

-Reflections

Today FES Nigeria is launching the maiden edition of its Discussion Paper Series with the theme: **Anti-Corruption Policies in Nigeria under Obasanjo and Yar'dua: What to do after 2011?** I have been granted the rare privilege of sharing my humble reflections on the commissioned paper. I begin by commending the author for doing an excellent job of situating the anti-corruption war in the context of Nigeria's political history. The Paper is quite illuminating, lucid and highly readable. It comes across to me as an essential agenda – setting endeavor which it interrogates our collective experience, while dispassionately assessing successes and failure of the past eleven years. The author challenges each and every one of us to take a stand on the issues and make our own personal contributions to the struggle. I believe that this conversation could not have come at a better time. As we march on towards the 2010 Elections it is importance that we retreat to take stock, reflect and re-strategize to confront the enormous challenges ahead.

I will quickly recap the paper's highpoints and set the stage for a more robust, interactive analysis and discussion of the issues. The four main parts of the Paper are:

- i. **Genesis of Nigeria's Anti-Corruption Campaign;**
- ii. **Nigeria's Anti-Corruption Campaign under Obasanjo;**
 - a. ICPC,EFCC and the War Against Corruption under Obasanjo-
 - b. Explaining Failure: The Institutional and Political Dimensions-
- iii. **Yar'dua and the War against Corruption: A New Dawn or Business as Usual?**
 - Slow down in the prosecution of top public officials-
 - Harassment of former anti-corruption crusaders-
 - President Yar'dua's close relations with ex-governors-
 - Anti-corruption campaign as non-priority-
- iv. **Concluding Remarks and Lessons for the next administration**

➤ THE GENESIS

In this part of the paper the author reminds us that in this country, anti-graft legislations and enforcement agencies have always existed in one form or the other right from colonial times. But it was Obasanjo's second coming in 1999 that ushered in the present all-out war against corruption and abuse of office. Upon assumption of office as civilian president, Obasanjo declared it was not going to be "business as usual". Certain factors were identified by the author identified as responsible for Obasanjo's anti-corruption posture .First was the brigandage and rapacious looting that characterized successive military administration culminating in Abacha's money stashed in foreign banks. The second was the need for the country to redeem its image and extricate itself from the pariah status which corruption had earned it in the committee of nations; the third was the need to secure a measure of debt forgiveness from the Paris Club. The Fourth was the consistent ranking as one of the most corrupt countries in the

world by Transparency. These forces were to be later joined by the global war against terror spearheaded by the United States of America.

➤ **THE ANTI-CORRUPTION WAR UNDER OBASANJO:**

The author notes that Obasanjo took some laudable decisive steps to make good his threat of “no business as usual”:

- (i) Commenced the process of recovery of looted funds from foreign banks;
- (ii) Set up ad-hoc panels of inquiry to investigate and report on allegations of corrupt practices especially failed contracts
- (iii) Caused the ICPC and subsequently the EFCC to be established for investigation and prosecution of persons implicated in corrupt practices and economic crimes;
- (iv) Initiated reform of the public sector through privatization and commercialization of government business ventures; monetization of benefits of public servants, guaranteeing pensions and retirement benefits;
- (v) Signed international anti-corruption instruments such as the UN Conventions, the AU convention, the ECOWAS protocol; and
- (vi) Ceased every opportunity to reaffirm zero tolerance for corruption and the need for ethical and values reorientation.

❖ **ICPC, EFCC and the War against Corruption under Obasanjo-**

The author notes that the first anti-corruption agency to be set up by the Obasanjo administration was the ICPC which focused on the public sector. Upon its establishment in 2000, the Commission earnestly began to exercise its powers and discharge its functions, but in 2003 it was prosecuting barely 49 public servants, which was considered a drop of water in an ocean of official corruption and a burgeoning regime of ‘kleptocracy’. However, in the aftermath of 9/11 and the global war against terror the EFCC was set up to combat the threats posed by money launderers and other organised trans-border criminals operating in Nigeria. The author included statistics of prosecutions, convictions, and funds recovered to show that the EFCC was more effective than the ICPC during the period under review. But the data relied upon apparently did not take into account the fact that the ICPC focuses on public sector crimes, while the EFCC mandate embraces both the public and private sector. Without disaggregated data it would be impossible to determine the relative effectiveness of the two agencies using prosecutions, convictions, and recoveries as parameters.

Accordingly, we think that any unbiased comparison of the achievements of the EFCC and the ICPC in the areas of prosecution and recovery of proceeds of corruption has to take into account the differences in their mandates and their operational jurisdictions. It will also not be fair to conclude that it was only the activities of the EFCC

that resulted in positive changes in the perception of corruption in Nigeria by Transparency International and the Paris Club; other anti-corruption agencies should partake of glory and credit for the contributions however insignificant they may appear.

It must however be observed that instead creating the EFCC, ICPC's enabling law ought to have been amended to broaden the agency's mandate to include corruption in the private sector. Even if there was an overriding need to create another agency, the jurisdiction of the new agency should have been limited to corruption in the private sector, thereby leaving public sector corruption to the ICPC.

With the creation of the EFCC we now have two main anti-graft agencies dealing with public sector corruption, with ill-defined jurisdictional boundaries and operational limits. These agencies co-exist with the Police and the Code of Conduct Bureau. The result is the collateral turf war and struggle for supremacy amongst the agencies, stepping on one another's toes, sabotaging and undermining one another, seeking credit and applause, self aggrandizement by leadership of the agencies, and playing to the gallery instead of getting the job done.

❖ **Explaining Failure: The Institutional and Political Dimensions**

The paper considers the war against corruption under Obasanjo to be a failure. The author submits that the ICPC and EFCC could not solve Nigeria's corruption problem. That Obasanjo recorded only two high profile convictions: Mr. Tafa Balogun (IGP) and Mr. DSP Alamiyeseigha. Despite their best efforts, the perception of the public was that the agencies were overwhelmed by the problem, thus the ICPC was seen as a toothless bulldog while the EFCC was an Alsatian readily turned loose on political opponents.

Three main reasons have been adduced for this apparent failure by the agencies to deliver on the mandates and meet the high expectations of Nigerians. The first has to do with poor funding; the second is slow judicial process; and the third is lack of political will resulting in selective deployment of the agencies for political ends especially towards the end of the administration when indictment by the EFCC was deployed to frustrate the political ambition of the former Vice President, Atiku Abubakar, and his associates.

➤ **Yar'dua and the War against Corruption: A New Dawn or Business as Usual?**

The paper notes that Yar'dua vowed to continue with war against corruption but insisted that it was not going to a "no holds barred" war as it was degenerating to under Obasanjo. Yar'dua's zero tolerance for corruption was going to be within the context of respect for rule of law and human rights. However, it was observed that the change of approach resulted in a "slow-down" of the war. Complaints became

rife that the war was losing momentum by the day. Some reasons have been put forward by the author as accounting for the deceleration and loss of the grounds gained under the Obasanjo era:

- Slow down in the prosecution of top public officials-
 - Harassment of former anti-corruption crusaders-
 - President Yar'dua's close relations with ex-governors-
 - Anti-corruption campaign as non-priority
- ❖ **Slow down in the prosecution of top public officials-** There was the perception that the Yar'dua government was vacillating concluding the conclusive prosecution of top government officials already investigated under the Obasanjo administration, especially the ex-Governors and other Politically Exposed Persons (PEPs). However, the Paper agrees that this charge was not borne out by the facts the EFCC continued with pending cases and indeed initiated several fresh investigations and prosecutions. Notable prosecution and conviction of Mr. Lucky Igbinedion, an ex-Governor.
- ❖ **Harassment of former anti-corruption crusaders-** Another criticism is that Yar'dua deliberately set out to harass and hound Obasanjo's main anti-corruption crusaders into exile. The cases of Malam el-Rufai and Mr. Nuhu Ribadu were cited in support of this assertion. But it must be noted that Malam el-Rufai left office as Minister of the FCT at the end of Obasanjo's administration and was later indicted by the Senate for acts bordering on abuse of office for personal gain. The Senate conducted a public hearing pursuant to its oversight powers in the Constitution, the EFCC picked up from there and sought to charge the el-Rufai to court but he was unavailable to face the charges then, because he was attending a course of studies abroad. It will, therefore, not be a fair to say that he was being harassed because of he was an anti-corruption crusader. In the case of Mr. Ribadu, there can be no doubt that the EFCC would have become more effective if he had continued as Chairman during Yar'dua's administration. He was better placed to consolidate on the successes recorded under the Obasanjo years and built up the Commission as a formidable institution. However, we should not aim at building institutions around persons; the EFCC should be able to function, no matter the person that happens to be in the saddle of administration. Clearly the arguments and counter-arguments as to whether Mr. Ribadu was entitled to remain as chairman of EFCC contributed in no small measure to the perceived ineffectiveness and inefficiency of the EFCC under Yar'dua.
- ❖ **President Yar'dua's close relations with ex-governors –** Before he later became the President, Yar'dua was the Governor of Katsina

State for 8 years. In the run up to the 2007 General Elections, it is generally believed that some of his fellow governors then facilitated his emergence as the PDP candidate and subsequent election as President, thus it was only natural that they should remain his political allies. It did not help matters that some of this people happen to be Governors already investigated by the EFCC waiting to be charged to court. There was justifiable disquiet in many circles when the names of some of this people, especially Mr. James Ibori, did not appear on the EFCC's list of "Ongoing High Profile Cases". The attitude of the EFCC to the Yar'dua's allies heightened the perception that rather than fight an all out war against corruption, the Commission was pandering to the dictates of the government in power.

- ❖ **Anti-corruption campaign as non-priority-** The war against corruption was on course under Yar'dua and has continued under his successor, President Jonathan; but it no longer appears to be governments No.1 priority. The war has lost its sense of urgency. The paper attributes the relaxation of efforts to the near absence of local and international pressure on the government.

➤ **CONCLUDING REMARKS AND LESSONS FOR THE NEXT ADMINISTRATION**

Since the return to democratic governance under the 1999 Constitution, how to effectively combat the menace of corruption has been a main policy thrust of successive administrations, though the approaches and operational tactics may have differed. On the whole the agencies performed creditably well given the operating environments – poor funding, insufficient stakeholder support, political interference and all. However, the stark reality is that there is room for improvement. As the 2011 elections draw near this forum offers an opportune moment to appraise their efforts so far so that an agenda can be proposed for the next four years. The paper concludes that the agenda could be set for the incoming administration against the lessons learnt from the efforts of Obasanjo and Yar'dua.

- ❖ In the author's view, the first lesson to be learnt is the need to make the crusade against corruption government's No. 1 priority and constantly communicate that commitment; the war must not only be on track, but must also be seen to be on track irrespective of whose ox is gored- there should be no feeling that there are some people above the law. The war with its slogans has to permeate and inform decisions and actions of all levels of governance in line with the Fundamental Objectives and Directive Principles of Government set out in Chapter Two of the 1999 Constitution.

- ❖ The second lesson is that there is the need to strengthen the independence of the anti-corruption agencies. The perception that the anti-graft agencies have turned to tools for political witch-hunting does not augur well for the on-going war. We think the EFCC Act should be amended to include a provision similar to 3(8) of the ICPC Act which subjects the President's power to remove the Chairman and members of the Commission to support of 2/3 majority of the Senate; while Section 3(12) provides that the Commission shall not in the discharge of its functions be subject to the direction or control of any other person or authority. Currently Section 3(2) of the EFCC Act provides that **a member of the Commission may at any time be removed by the President for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misconduct of if the President is satisfied that it is not in the interest of the Commission or the interest of the public that the member should continue in office.** This makes the Chairman's position precarious; and exposes the holder of the office to manipulation by the President.

- ❖ The third lesson is that there is need to enlist and empower complementary governmental agencies and civil society organisations so as to engender the feeling of ownership the war. We think there is also the need to enact and implement complementary legislations, such as **Freedom of Information Act, Whistleblowers and Witness Protection Act.** The National Assembly has passed the Freedom of Information Bill, the Fiscal Responsibility Bill and the Public Procurement Bill during the Obasanjo era but the President refused to sign the Bills into law. By withholding assent to these sunshine laws, the President demonstrated his unpreparedness to go the whole hog in the anti-corruption crusade. For his part Yar'dua assented to the FRB and the PPB but refused to constitute their governing councils.

- ❖ Another concern is that the war is being waged against the backdrop of archaic legislations that have lost touch with reality. **The Criminal Procedure Act/Code and the Evidence Act** are colonial legislations that have hardly been updated in the last 50 years to take into account technological advancements. For instance at the trial of Femi Fani-Kayode the EFCC sought to tender an electronically generated bank statement , but the defence objected relying on the Evidence Act, the issue had to be resolved by the Court of Appeal. The creation of **special courts** for corruption cases will expedite trials; this has been done for labour matters taking advantage of Section of the Constitution which gives the National Assembly powers to create other courts. As an interim

measure **special divisions** could be created out of existing Federal and State High Courts that will handle only corruption and related cases. Judges should be made to undergo constant **training and retraining** to keep abreast of best practices in criminal law and procedure.

- ❖ Officials of the anti-graft agencies should be adequately remunerated and honoured; they should benefit from well funded life insurance schemes; and their acts of exemplary courage and bravery should not go unappreciated and rewarded.
- ❖ The hitherto existing anti-graft agencies such as the Police and Code of Conduct Bureau should be strengthened while the media and other civil society platforms should be co-opted into the crusade. The national orientation agency and other information and communication organs at all level of governance should be pressed into service to publicize the on-going war with a view to garnering greater citizens' buy in and ownership. The Government cannot win the war without the support of the masses. Curricula should be developed for anti-corruption education in our schools. Churches, mosques and other faith-based organisations should not be left out. All hands must be on deck!

Thank you.

Nigeria: Good People; Great Nation!

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