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Confronting Corruption in Ghana and Africa

by

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■ Introduction

In recent years, the problem of corruption, and especially how to control it has reemerged as a central issue in the discourse on and programs of African/Ghanaian renewal and sustained development. The essay reviews how the problem of corruption in the African and Ghanaian body politic, governance and administrative systems is being remedied today and examines how effective such remedy has been. Lastly, the essay explores what can be done to achieve greater effectiveness in the efforts to control corruption in Ghana and in Africa today and tomorrow – within the context of the concurrent quest for democracy and good governance.

The term “corruption” is used as a shorthand reference for a large range of illicit or illegal activities. Although there is no universal or comprehensive definition as to what constitutes corrupt behavior, most definitions share a common emphasis upon the abuse of public power or position for personal advantage. For instance, the Oxford Unabridged Dictionary defines corruption as “perversion or destruction of integrity in the discharge of public duties by bribery or favor.” Webster’s Collegiate Dictionary defines it as “inducement to wrong by improper or unlawful means (as bribery).” A succinct definition of corruption used by the World Bank is “the abuse of public office for private gain.” This definition is similar to that employed by Transparency International, a leading NGO in the global anti-corruption effort: “Corruption involves behavior on the part of officials in the public sector, whether politicians or civil servants, in which they improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them.

■ Remedying the problem of corruption in Africa and Ghana today: the good news

Remedying the problem of corruption begins from an awareness of prevalence, recognition that corruption is a

serious problem, and a commitment to tackle corruption. Fortunately, the last decade has witnessed a growing awareness of the problem of corruption and the need to control it. Happily, there is growing consensus on the baneful nature of corruption in developing societies. The old academic arguments over whether corruption represents a net gain or net loss for developing countries have given way to an acceptance that its effects on development are indisputably harmful. The claims of an earlier generation of social scientists that corruption may be functional to development appear to have been effectively debunked. Corruption is now understood to distort economic development by rewarding the dishonest rather than the most competent. It also impedes effective service delivery and undermines state legitimacy.

There is also growing international interest in the problem of corruption and the need to control it. Corruption has moved from being a taboo subject to a very popular subject at international forums and among bilateral and multilateral donors – ranging from G8 Summits through Global Forum II and I to Transparency International

meetings. In addition, member countries of key multilateral economic and regional groupings, including the Organisation for European Development Cooperation (OECD), have adopted anti-corruption conventions to show their good faith commitment to dealing with the problem. (This convention, which came into effect on 15th February, 1999, has been signed by all 29 members of the OECD and others. It makes bribing any foreign official to win or retain business or for any other improper advantage an offence.) Many funding agencies and grantors from George W. Bush’s 5 billion dollar Millennium Fund to HIPC have made corruption control or a commitment to undertake corruption control reforms a key feature of donor conditionality.

In Africa, corruption control now features prominently in

the conditions attached to the lending operations of the African Development Bank. Corruption control is also among the key goals and commitments of the New Partnership for African Development (NEPAD). Among the measures to be taken to establish the conditions for sustainable development under NEPAD is an explicit commitment to “strengthen(ing) parliamentary oversight,” “adopt(ing) effective measures to combat corruption,” and to “review economic and corporate governance practices in the various countries and regions, and to make recommendations on appropriate standards and codes of good practice....”

Even more encouragingly, leaders of newly elected African governments, among them Tanzania’s Ben Mkapa, Nigeria’s Olusegun Obasanjo, and our own John Kufuor, have expressed a commitment to fight corruption. President Mkapa made a dramatic gesture of voluntarily and publicly declaring his own assets and those of his wife; President Obasanjo has embarked on wide ranging anti-corruption activities, including retrieval of assets looted from Nigeria and stashed overseas by public officials; and President Kufuor voluntarily promised to pursue a policy of zero tolerance for corruption in his inaugural address.

Today, Africans seem to readily accept that corruption is a major national problem, even if it had not been a big problem in traditional and pre-colonial societies. Africans appear to have come to some realization that the days are long gone when corruption was controlled primarily on the basis of the “paternal” obligation rulers had to their people and by relying on their sense of custodianship and stewardship anchored in prevailing religious beliefs (e.g., that ancestors in the spirit world were supervising the conduct of the living, including the ruler). There appears to be a clear recognition that after years of systematic assault and neglect in the post-colonial era, the formal structure’s anti-corruption and accountability mechanisms bequeathed by colonial rule (parliaments, courts, audit services), poorly entrenched and inadequately internalized in the first place, have been destroyed. And nationalist paternalism has proved to provide a highly unstable and unsustainable basis for clean government.

Of course, corruption control in Africa comes as part of the overall agenda to promote and institutionalize good governance - an agenda whose key elements include transparency, accountability, inclusive civic participation and the rule of law - all of which are important for controlling corruption. Indeed, properly elaborated and entrenched, the ideals and practices of good governance can and do help to combat corruption. By placing their faith in democratic governance, Africans are effectively saying today that unlike yesterday, they are a little more careful about concentrating autocratic powers in the hands of the

national leader and the single party. They are also less inclined to rely excessively on the patriotic and nationalist commitments of leaders and public officials.

The new legal, constitutional and democratic approach to fighting corruption in Africa today is reflected in the emergence of constitutionalism following the promulgation of more or less liberal constitutions in the 1990s. The new constitutions typically prescribe limited government, formal separation of powers, checks and balances, judicial independence, and protection of civil liberties and freedoms. They also attempt to ensure more or less competitive, free, fair and regularly scheduled multi-party elections in which incumbents face some possibility of losing. They also seek to resurrect multi-party parliamentarianism, foster a degree of opposition presence in parliament, and oversight over the executive branch, and the national budget. Indeed, the new constitutions have helped to create opportunities for some corrupt incumbents to be thrown out of office through the ballot box.

But perhaps, the creation of specialized and autonomous anti-corruption agencies, horizontal and vertical oversight bodies, and other agencies of external restraint and public accountability represents the best expression of the new and institutional approach to corruption control in Africa today. Particular reference may be made to the creation of Ombudsman’s Offices; independent election commissions; official independent anti corruption bodies (such as Ghana’s Commission on Human Rights and Administrative Justice, Kenyan Anti Corruption Authority, the South African Office of the Public Protector, the Nigerian Anti-Corruption Commission), supreme audit bodies; and even independent central banks. It is instructive that the independence of these bodies is now likely to be protected by constitution.

Efforts to curb corruption in Africa today are not confined to state and public agencies. Non-state and civil society bodies are also active in corruption control. Thanks to the expansion of media freedom, relaxation of censorship, and overall liberalization of the media environment, an independent media with a zeal for investigating and exposing official wrongdoing has emerged. Additionally, the expansion of associational freedoms in the new era have spawned the growth of civil society organizations, including anti-corruption focused non-governmental organizations such as national chapters of Transparency International and other citizen watchdog groups. More than 30 national chapters of Transparency International now operate in Africa, all of them having emerged within the last decade.

Together, these new developments have helped to produce Africa’s first real examples of powerful incumbent public

office holders who have suffered exposure and punishment for corruption. The return to constitutional rule and the growing emphasis on constitutionalism has brought Africa and Ghana closer to the establishment of rule-based governance and corruption control. It has also brought Ghana and some African countries to a refreshing position of trying to combat corruption within the tenets of the rule of law and most significantly without resorting to unsustainable and human rights negating kangaroo trials and extra-judicial remedies.

■ **Remedying the problem of corruption in Africa today: the bad news**

But corruption control in Africa today is beset with severe problems and inadequacies. Constitutionalism is severely constrained by poorly designed, defective, yet to be tested, or relatively untested constitutions. African constitutions have been designed largely as if they are meant to regulate saintly and patriotic nationalists and not imperfect and power abusing human beings. The constitutions have tended to entrench executive dominance thereby leaving the prospects of effective curbs on executive power extremely weak. Moreover, in many places, elected leaders are busy rendering constitutions illiberal and trying to restore some of their autocratic powers with the help of conservatively minded and pliant judiciaries, and even new parliamentary majorities. Judiciaries continue to be packed and have limited staff and resources. They are also dogged by allegations of corruption and perceptions of professional and political compromise.

Specialized anti-corruption agencies lack full independence and government support. They are denied resources, and their leaders harassed, especially if they assert too much independence from political authorities (as in the case of Kenya when Mr. Leakey headed the Anti-Corruption Authority).

For all their enthusiasm and promise, African parliaments remain weak. Typically, they are yet to recover confidence and autonomy; they lack experience; they have few resources; they lack access to information; and they are vulnerable to executive manipulation. For instance, African parliamentarians have sometimes been pacified with presidential largesse in the form of vehicles, housing, and board appointments. Parliamentary effectiveness is severely hampered by the weakness of opposition parties and the somewhat “Leninist” and oppressive manner in which the doctrine of “party discipline” has been applied in African legislatures. But if ruling party MPs vote strictly on party lines, how would they be expected to vote to censure a corrupt or errant ruling party MP or official?

At the same time, key oversight committees of parliament are under-resourced, overloaded, or inactive. Public accounts committees have a backlog of audit reports to

review and or lack the resources for full scrutiny of government expenditure; sectors such as defense and the presidency unilaterally exempt themselves from external audit by the Auditor-General or Parliament. The example of Uganda where the public accounts committee of parliament has vigorously scrutinized government expenditure, exposed official malfeasance, and forced corrupt officials out of government is all too rare in Africa today. Ghanaians may well ask the question: “Where was the Parliamentary Select Committee on State Enterprises when all the rot at Social Security and National Insurance Trust and other public enterprises was going on?”

Elections continue to be flawed by imperfections, manipulations, unequal access to campaign funds and other key election resources. Election administration is weak in many places and the electoral playing field remains uneven and incumbents over-advantaged in many countries. Thus, elections in Africa remain largely a case of “to the rigger, the victory,” thereby undermining an important source of vertical accountability.

Deeply entrenched corruption is difficult to tackle. Many have hailed the efforts of the media to halt corruption. But the media landscape in Africa is fraught with problems. Though media censorship may have been relaxed, it changes the operative rule only from one that says “don’t say anything critical about powerful office-holders”, to one that says, “you better watch what you say or else.....”. Powerful but corrupt forces in African societies appear to be using the crude weapon of assassination of journalists to counteract investigative journalism (as has happened in recent times with Zongo in Burkina Faso and with Cardoso in Mozambique). Additionally, huge gaps exist in levels of professionalism and integrity among media practitioners; and there are disturbing credible reports of an emerging practice of media practitioner shake-down/blackmail and “pocket-book” journalism.

Civil society is enthusiastic, but often weak, divided, vulnerable to manipulation and sometimes not accountable. The sector continues to labor under official mistrust and the need to fight off co-optation. Moreover, civil society organizations, including ones that preach good governance and anti-corruption do not always practice the virtues of transparency, accountability, and anti-corruption that they preach. The average civil society body does not adhere to any credible code of conduct or basic rules of corporate governance. Some are veritable personal empires, with no succession plan or meaningful accountability. Many practice a form of accountability best described as “struggle accounting”, in the immortal words of Dr. Allan Boesak of South Africa.

Corruption control in Africa is also seriously undermined by failure to undertake credible institutional reforms – reforms that would enhance transparency and

accountability and reduce corruption. For instance, lack of administrative reforms means that many African countries, including Ghana are trying to fight corruption in conditions of entrenched bureaucratic red tape and opacity.

A respectable body of opinion insists that simply raising salaries would not necessarily abate corruption. I disagree. It is anybody's guess how a police officer bearing significant authority over the ordinary person and possibly bearing arms could resist the temptation to augment his/her salary by taking bribes and legitimately survive on three hundred thousand cedis a month in Ghana today. Non payment of a living wage and lack of meaningful wage reform policies have meant that many African countries are trying to address the problem of petty corruption without paying a living wage.

Moreover, failure to elaborate and promulgate a credible code of conduct for public officials, public official asset declaration regulations, corporate governance and conflict of interest avoidance rules has meant that African countries are still trying to pursue anti-corruption without vital preventive components. Typically, public office holder assets are infrequently declared and done behind closed doors, they are not ordinarily accessible to the public, and they are lodged with agencies that are not very independent of the executive branch. The South African model of public office holder asset declaration regulation providing for annual declarations, easy verifiability and monitoring, is the exception rather than the rule in Africa.

There has also been a universal failure in Africa to update and promulgate comprehensive anti-corruption legislation. This means that many African countries are still using antiquated constitutional and legal instruments to fight the complex and multifaceted canker of corruption in today's highly modernized context.

It is noteworthy that, on the whole, a negative political culture has persisted in new African democracies. The political culture vitiates many otherwise well-designed governance and corruption control structures and institutional arrangements. A key element of this negative political culture is patronage. Patronage remains a defining feature of contemporary African politics, even in new African democracies. Thus, the hope in the early 1990s of an emerging new breed of politicians, technocrats, and business owners who are not engaged or interested in cronyist and rent-seeking activities is quickly giving way to the specter of a well-trained, well-spoken, well-connected class of people highly adept at taking the spoils of office, influence peddling, and exploiting the huge loopholes in their respective countries.

■ **What Needs To Be Done: Towards Confronting Corruption In Ghana And Africa Tomorrow**

Corruption has deep roots in contemporary African and Ghanaian society, culture, economy, and politics. The prevalence of corruption reflects a toxic combination of motive (reflecting material needs in a low income and non-living wage economy, high dependency ratios, weak social insurance, and the usual human greed) and opportunity (provided by huge system loopholes, laxities in legal and administrative systems, a culture of non-transparency compounded by wide discretionary powers at the disposal of public officials, low likelihood of detection of wrongdoing and abuse of office, especially in these conditions of non-transparency, low likelihood of punishment and high likelihood of evasion of punishment in the context of a flawed and corrupt criminal justice system, weak enforcement of rules etc). Confronting corruption in a sustained manner would require comprehensive and integrative approaches that combine preventive, public education and punitive elements. We cannot pretend to exhaust the list of possible measures. We can only mention a few crucial ones.

First, we must move away from mere exhortations and sloganeering to concrete preventive actions and system-based solutions. As rightly captured in the final report of the Anin Commission (1974): "(U)nderlying much of the persisting corruption in the public services are the cumbersome or ambiguous administrative procedures and certain government policies which the public consider irksome, unjust or discriminatory." Reform of administrative procedures and policies and elaboration of administrative law must feature prominently in efforts to control corruption. We must deepen administrative and political decentralization, simplify rules, streamline procedures, make them fully transparent, reduce official discretion, develop equitable and meaningful wage policies, reform public procurement processes and regulations, award public contracts strictly on the basis of open tender, and recruit for public service jobs strictly on the basis of open advertisement and merit.

Corporate governance reforms would be highly complementary to administrative reforms. Such reforms normally confined to the private sector are sorely needed in the public and civil society sectors as well. Bad corporate governance and accompanying self-dealing, collusion, and nepotism have been some of the main causes of poor performance in parastatal organizations in Africa. It has also eroded the social gains derived from and undermined public confidence in the divestiture of state owned enterprises in Ghana and Africa.

African parastatal leaders, in particular chief executive officers and directors, might take their fiduciary responsibilities seriously if we elaborate and rigidly enforce

credible rules of corporate governance, including avoidance of conflict of interest rules. The King Report of South Africa offers a best practice model in corporate governance for other African countries. In the case of Ghana, a useful starting point would be to elaborate and actively enforce article 284 of the Constitution, which provides that “(a) public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office.” Corporate governance in Ghana’s public sector might also benefit significantly from a directors’ liability law as recommended recently by Dr. Prempeh. The Commission of Human Rights and Administrative Justice (CHRAJ) may take this up as a natural extension of its original constitutional mandate to fight corruption and abuse of office.

Comprehensive anti-corruption legislation - encompassing a “reasonably comprehensive and unambiguous definition of bribery and corruption,” credible access to information and whistle-blower encouragement and protection laws, and clear guidelines on conflict of interest is also crucial. A country like Ghana can use a less ambiguous law for ensuring public official accountability than Section 179 A of the criminal code, which criminalizes “willfully causing financial losses to the state.” A major flaw in this law is that it appears to deduce criminal intention and motive mainly from the “harmful consequences” of official decisions and actions. It does not give adequate notice to public officers as to what actions of theirs could constitute corruption or abuse of office.

The independence and capacity of constitutional and statutory oversight bodies should be significantly enhanced. In most cases, this would require enhancing the constitutional, operational, and financial independence of anti-corruption commissions, and insulating them from the very institutions and officials they are set up to oversee. For a start, the practice in Ghana whereby ministers, judges, and MPs serve on the boards of state-owned-enterprises, including enterprises they are supposed to oversee, must cease. It would also require that we place legal and constitutional limits on how long leaders of oversight agencies such as the Serious Fraud Office and the Audit Service could serve in those positions in an “acting” capacity and without confirmation. Insecurity of tenure surely undermines self-confidence and independence.

African and Ghanaian Parliaments would also have to play a more proactive role in combating corruption. They would have to take their oversight responsibilities seriously and initiate credible and comprehensive anti-corruption legislative reforms. Parliament has a special role to play in helping to empower, protect and resource public

accountability agencies such as anti-corruption commissions and audit services. However, Parliament can only perform its oversight functions effectively where it is not politically compromised, adopts and abides by a sound code of ethics, boasts of strong and proactive oversight committees (such as public accounts and government assurances) and asserts its independence from other branches of the state. In this context, the partial fusion of the executive and legislative branches of the state in the constitutional and governance arrangements of the 4th Republic must be seriously reviewed because it hinders the exercise of inter-branch oversight.

It is also important to establish equitable party financing arrangements in order to strengthen multi-party competition, enhance the prospects of vibrant opposition parties, and reduce the rampant corruption associated with multi-party elections. It is equally important to enforce party finance regulations and penalize parties that flout such regulations. In the case of Ghana, this would require a more effective and consequential auditing of political party accounts by the Electoral Commission (EC). In short, the auditing of political parties by the EC must lead to sanctions where violations are detected.

If corruption is to be controlled then offenders must be frequently exposed and severely punished. To do so would require the strengthening of law enforcement mechanisms, which in turn requires strengthening the independence and credibility of the judiciary. It requires insulating judicial and quasi-judicial bodies and processes from the executive. For this reason, serious consideration must be given to the idea of separating the Attorney-General’s position from the politically partisan position of Minister of Justice, or at least insulating the prosecutorial function from political manipulation, so that decisions to prosecute cases of corruption involving members of government are not subjected to a strict partisan political test.

Corruption is an equal opportunity victimizer of the state and government, the private sector and civil society. Because its victims cut across all sectors (state, private, civil society, elite and non-elite) there is a natural but often latent multi-stakeholder group that could be mobilized to confront the canker. Moreover, the control of corruption is best done by creating “pillars of integrity” that are said to include strong political will, effective administrative systems, strong state watchdog agencies, an effective parliament, independent judiciary, vibrant civil society, and independent media. A sustained and comprehensive approach to confronting corruption would necessarily require a coalition approach. Effective state/government, private sector, civil society collaboration would generate synergies and complementarities needed for a sustained

assault on the canker of corruption in Africa.

International cooperation and collaboration is also crucial. Donors must continue to insist on meaningful corruption control as a condition for grants and assistance. External donors make a better contribution to sustained African development if they apply a code that says “no accountability, no aid.” In addition, corruption fighting African governments and in particular the efforts to retrieve stolen wealth from abroad could use technical, legal, and political support from the developed world. For instance, relaxing banking secrecy regulations, enforcing local and international conventions against bribery, protecting whistle-blowers and investigative journalists (who provide leads on looted assets hidden in developed countries), providing investigative and forensic, as well as, legal services towards asset recovery would be extremely helpful to African countries trying to recover stolen wealth from developed countries.

Finally, confronting corruption requires a demonstration of political will, beyond mere rhetoric. Political will to fight corruption is best demonstrated through leadership by example, enforcement of a leadership code of conduct/ethics, and whenever the occasion presents itself, willingness to prosecute and punish corrupt and or proactively protect and empower those who blow the whistle on corrupt insiders and key political allies. A great deal of credibility is lost when the public believes that prosecution for corruption is reserved exclusively for ex-leaders and leaders who are out of favor.

Another important means by which leaders could demonstrate the political will to fight corruption is to promulgate and enforce credible asset declaration regulations, especially ones that conform to international best practices that have easy verifiability and easy monitoring. Properly and credibly done, these devices do not only demonstrate a political will to fight corruption, but they also represent a form of public accountability, which Schedler considers as the more serious side of accountability (as opposed to private and confidential accountability, which tends to be farcical).

Indeed, the future of a well-governed and developed Africa belongs to governments, peoples and countries that act proactively and comprehensively to curb corruption today, using system-based approaches and multi-prong instruments of deterrence, punishment, and public education. It is noteworthy that more than thirty years ago, the Busia-Progress Party administration established the Anin Commission to enquire into bribery and corruption in Ghana. The final report of the Commission was submitted in 1974, though the first interim report had been submitted on 15th February 1972, two days after the

overthrow of the Busia government. This serves as a reminder that there is a treasure trove of information on corruption in Ghana, at least up to 1972. Most significantly, it serves to remind us that there is a precedent in Ghana for an administration to initiate a major enquiry into bribery and corruption, even in the absence of a major scandal. The Kufuor-NPP administration would do well to take up the challenge of matching or beating the record of the Busia-PP administration in proactively initiating a major move to confront corruption in Ghana unprovoked by a serious scandal. ■■■

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