

CONCRETE MEASURES TO LINK ANTI-CORRUPTION EFFORTS WITH THE REALIZATION AND PROTECTION OF HUMAN RIGHTS.

By George-Hill Anthony, Executive Director, Niger Delta Budget Monitoring Group.
georgehill@nigerdeltabudget.org. www.nigerdeltabudget.org

How anti-corruption efforts can be effectively complemented through the use of human rights standards, methods and mechanisms:

Corruption is the most perilous form of crime against humanity. Some intellectuals may argue, how and why (?). That is because, grievous human atrocities, wars, genocides, ethnic cleansing, nuclear threats, among others, are what is commonly known for what constitute or could constitutes serious crimes against humanity. But within the contexture of this essay, it goes beyond that. I would explain!

A critical interrogation of factors, which lead to crimes, such as, ethnic cleansing, genocide, terrorism, state capture, nuclear threats, cultural oppression, fiscal injustices-that fuels inequality, irredeemable environmental destruction, among others, be it locally or as international crimes, are issues of weak institutions and systems, which are overtly fueled by corruption or coarse compromise. Take issue of Syria, for example. Aura of diplomatic surreptitiousness, which to this paper, is duplicitous corruption against the United Nations architecture by Russia, through supporting the Assad regime, who is suppressing his people against the tenets of human rights, freedom of expression, electoral supremacy, but clandestinely, have (Russia) conspired with the regime to undermine freedom of thought, right to life, equality and dignity of Syrians, which are in line with Article 1 of the Universal Declarations on Human Rights is a form of tacit corruption. China have also succeeded to oppressed the people of North Korea, a regime, ever restocking heavy arsenals with the full support of China, even when, ordinary citizens of North Korea, do not have basic necessities of life, freedom of thought, social protection or economic freedom. Yet, both Russia and China are members of the United Nations Security Council. There was genocide in Rwanda, because, state institutions were manipulatively weak due to bureaucratic and cultural corruption, just like in many countries within Africa and Asia. Sadly, in the case of Rwanda, over a million people lost their lives, through genocide and cruel killings, because, ethnic centered hatred, competition for resources, bias military, cultural and bureaucratic corruption led to the collapsed of the state. The world saw it as witty entertainment and had looked on. The United Nations could not also help at a precious time, before millions were slaughtered like fowls. Presently, in the case of Syria, the world is looking..., even as Europe is being captured due to the sins of Assad, China and Russia, with a far retroactive effect on the future of the children of Europe.

The above shows, modernity and civility have been chained by direct and indirect corruption globally. A point to ponder about is, why has human rights standards, methods and mechanisms not able to transform our modern world as intended? The answer could be hypochondriacally disturbing; hence, this paper would not bother readers with it.

The United Nations is suffering from diplomatic sleaze, through veto choreography of the five permanent members, which has made democratic civility a mockery. Such is holding down the entire world, even when, precious lives are choked with lethal weapons in unnecessary wars, just because, some developed countries, want to secure their trade corridors, through conventional, diplomatic, surreptitiously or by any other irreverent means, either, through oppressive EPAs, Public Private Partnerships, diplomatic clutch of the UN Security Council or “regime protection”. Manipulation is a form of corruption, hence democratic

inclusion and reforms at the UN Security Council, should be a prioritize emergency. Such would immediately halt problems of conflicts, killings and rights violations globally. Veto power was a diplomatic prerequisite to stop repeated world wars among the world powers. It should not hold back the world in a democratic millennium, such as we are. *If done, it would be a generational success against corruption.*

National human rights institutions (NHRIs) identified corruption as a cause of human rights violations and effective remedial measures taken:

In Nigeria, the National Human Rights Commission (NHRC) was established, through the National Human Rights Commission's Amendment Act of 1995, as amended by the National Human Rights Amendment Commission's Act of 2010, which, among its objectives, is to safeguard human rights of Nigeria's population.

The (NHR) Commission was largely ineffective in Nigeria, until the advent of Professor Chidi Anselm Odinkalu's led Governing Board, which was appointed in December, 2011, and was subsequently inaugurated several months later, which leaped the commission from its passive state to rejuvenation. However, besides tackling matters of Section 6 (1) (e), (2), (3), (4) and Section 22 of the Act, which deals with providing remedies for victims of human rights violations in Nigeria, with much, still left to be done, even as the commission is grappling with issues of underfunding, uncertainty concerning political will and a huge gap regarding human rights awareness among an average Nigerian on the streets. However, much is yet to be seen, with reference to how the NHRC is connecting its work at identifying corruption as causes of some of the human right abuses in Nigeria. Predominantly, the commission's concentration has been on seeking remedies and justice for some victims of extra-judicial killings, gender related violence, child rights protection, among others.

In explicit terms, addressing identifiable corruption, which influences human rights violation is colossal in a country like Nigeria and cross-cutting (as many knows), through stratum of economic, social and cultural interwoven. Enforcements through weak law enforcements and "tainted" judiciary is also problematic. Notwithstanding these catalogs of drawback, largely, Nigeria made a *landmark* step at reforming and addressing infamous quagmire, which had bugged down human rights protection, through which, corruption fed fat in the procedural wheel of criminal justice administration in the country. This was done, through the Administration of Criminal Justice Act, 2015, an enactment, which hypothetically, is expected to revamp criminal justice administration, procedurally and obligatorily, either from the demand or supply side, though at the moment largely untested, being a new law. Unfortunately, without *prejudice* to this landmark legislation, the problems in Nigeria are not laws, upon laws, but the effective and practicable implementation of these laws... Literally speaking, Part 2, Sections 4-34, Part 4, Sections 50-64, Part 6, Sections 72-79 and Part 8, Sections 86-92, down to Part 14, 15, 18,19, 21, 23, 24, 25, 30, 31,34,36, 38, 40 and 46 (precisely; 46, provides a framework for the setting up of Administration of Criminal Justice Monitoring Committee, with a composition of the committee, made up of representative of the civil society) are reassuring. Notwithstanding this anticipated window of positive change as contemplated by this new law, at present, detention of persons without trials on matters bail able, but which the suspects are thrown into security agencies' cells, just because, they (suspects), could not part with illegitimate "donations" for bail, thus, languishing in detention, further with incessant adjournment of cases in courts, due to underhand deals, in addition to frivolous granting of interlocutory injunctions by

judges, overcrowded prisons, (mostly by awaiting trial suspects), amongst others, are prevalent in Nigeria's criminal justice sector to this present day.

How the work of national anti-corruption agencies (ACAs) and NHRIs can be interlinked:

At the moment in Nigeria, there is no Memorandum of Understanding between the ACAs in Nigeria and National Human Rights Commission, that is: Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices and Other Related Offences Commission (ICPC), Code of Conduct Bureau, the Nigerian Police, Nigeria Intelligence Agency, National Agency for the Prohibition of Trafficking in Persons (NAPTIP), among others, being agencies, with powers to arrest suspects, and could have mainstream human rights protection within operational equilibrium of these agencies, synergically with the National Human Rights Commission (NHRC). Furthermore, the Inter Agency Task Team (IATT) Against Corruption, which has agencies, such as, Independent Corrupt Practices and Other Related Offences Commission (ICPC), Economic and Financial Crimes Commission (EFCC), Technical Unit on Governance and Anti-corruption Reforms (TUGAR), Code of Conduct Tribunal (CCT), Nigeria Police Force (NPF), Public Complaints Commission (PCC), Bureau of Public Procurement (BPP), Federal Ministry of Justice (FMoJ), Nigeria Financial Investigation Unit (NFIU), Special Control Unit against Money Laundering (SCUML), Federal Inland Revenue Service (FIRS), National Drug Law Enforcement Agency (NDLEA) and Department of State Services (DSS), do not also have an operational MoU with the NHRC.

Therefore, to add thrust and steam to human rights protection as a guaranteed imperative in a democracy, which would further consolidates Nigeria's democracy, such a MoU is urgently needed, and the time is now!

Engagement with regional and international human rights mechanisms that brought about change in anti-corruption efforts:

This piece is conscious of the fact, UNODC played an important role for the development of a National Strategy for Combating Corruption in Nigeria, a strategy, which this writer have never seen nor heard about, until when researching for this paper. But even from a face value, it is necessary to agree that, such would have strengthened the fight against corruption. Regrettably, as we speak, the "strategy" in questioned, is gathering dust within cubicles at Abuja, though hopefully, may be invigorated by the Buhari's government, may be, within the approaches of the new government's effort towards a National Anti-corruption Strategy and Whistleblowers Protection concept for Nigeria. That is; if the ever estranged civil society in Nigeria, demands for it.

Importantly, UNODC played a significant role for the enactment of the Bayelsa State Expenditure and Income Transparency Initiative (BEITI) Act, which is supposed to be a subset to the global (N) EITI in Nigeria, though unfortunately, have remained largely unimplemented till date. On issue of Illicit Financial Flows, Trust Africa and Third World Network, in collaboration with others in Nigeria, have held a Two Day engagement for some stakeholders across African Continent, on how to tackle the scourge of illicit financial flows across the continent, that was in March, 2014. Sorry to say, the impact of such engagement has not gone beyond the comfort of hotel rooms that these engagements are held. Reasons for such are well known to many non-state actors in a country like Nigeria. Furthermore, there are engagements on other platforms, such as NEPAD, which has a monitoring, evaluation and tracking mechanism for measuring quality of governance across Africa. But sadly, NEPAD has not brought any

tangible results to governance or anti-corruption efforts in Africa, in view of an African adage, that says, *you are narrating your tales to the very oppressor that caused it...*

Incorporation of human rights considerations in self-assessment of implementation of the United Nations Convention against Corruption:

This paper is constructively refraining from the subject, which concerns UNCAC, in view of the fact, the coalescing of actors into UNCAC is fraught with hoggish interest, and frustrates entrant of new groups or individuals, who does genuine anti-corruption work but cannot have access to engage and synergize with UNCAC for better result. UNCAC is just a hypocorism of nomenclature! UNODC has not done enough to put a mechanism in place to checkmate persons and organizations, culpable of frustrating many activists around the globe, who genuinely want to interlock with UNCAC, but are encumbered by politics played by some “country representatives”, said to have emerged across country’s structure, but only to turn around to undermine others, who want to synergize, partner, collaborate, associate, even on ordinary membership into UNCAC. Incongruously, such is to enable such “country representatives’ to continue to monopolize UNCAC’s structure for (their own) pecuniary purposes. It would be laughable, if UNODC feigns ignorant of this... The idea of countries’ representatives, consenting or vetoing any (new) membership of an interested party into UNCAC should be modified, to lift the veil of frustration, politics, and personalization of access to UNCAC for selfish reasons of some individuals or groups.

Successful human rights litigation, or of investment disputes or civil law cases, where human rights arguments played a decisive role, in corruption cases:

There are several instances within Nigeria, where protection of human rights, played a remedial role against rights violations in civil or investment disputes. Examples of such are: award of N1 million naira, through Court Judgment to Reverend David Ugolor of African Network for Environment and Economic Justice (ANEEJ) for his wrongful arrest, detention and seizure of his private properties by the Nigerian Police in 2012. The judgment was delivered, through Suit No: B/57M/14, where, he sued the Nigerian Police and the Attorney General and Minister of Justice. Also recently, a Federal High Court, sitting in Owerri, Imo State, awarded N3 million naira against the Nigerian Police for unlawful arrest, torture and detention of one Nze Damian Onyinye. In the judgment for suit No: FHC/OW/CS/82/2013, Justice Mohammed Shuaibu, after considering the submission from both counsels, held that, the detention, harassment, intimidation and torture of Nze at Enugu, South Eastern Nigeria and at police cell from 24th February, 2013 till May, 2013 without trial was unlawful, unconstitutional and illegal. The judge ruled... “consequently, I also find that the applicant has established the violation of his fundamental human rights to dignity of human person as provided for in section 34 (1) (a) of the 1999 Constitution of the Federal Republic of Nigeria, as amended”. Also, a Federal High Court in Lagos refused an application filed by the Nigerian Navy and five others, praying it to set aside a N100 million judgment sum, awarded against the Naval Command. Justice Ibrahim Idris had in his judgment, ordered the Nigerian Navy, Chief of Naval Staff, Flag Officer Commanding (Western Naval Command), Commanding Officer of Nigerian Naval Beecroft, Naval Base, and a Naval Officer, Ikhifa Joven, to pay N100 million as damages to an operation manager with Yusmed Oil and Gas Company, Atom Zaga, who was shot by Naval Personnel. There are other remedial cases, like a Federal High Court case, which sat in Enugu and had awarded to some litigants, N41.8 billion as compensation for the massacre of people in Zaki Biam and environs, following an aftermath of military invasion of the communities. However, following prolonged negotiations between the litigants and the Federal Government, the N41.8 billion was negotiated downward to N8 billion, which the Federal government agreed to pay to the people. The Court of Appeal in Lagos also ordered the Nigerian Maritime Administration and Safety Agency, to pay into its account, the judgment sum of N6.8bn, which was awarded in favour of a vessel owner, Hensmor Nigeria Limited. This was in relation to a Federal High Court judgment, delivered in December 2011, which awarded the sum in favour

of Hensmor over NIMASA's illegal detention of its vessel, MT Aigbomien, on March 14, 2006. NIMASA, had however, appealed against the judgment, urging the Court of Appeal to set it aside. The appellate court, in a unanimous ruling, read by Justice Adamu Jauro, gave NIMASA seven days ultimatum to pay the money into an interest-yielding account of the court's registrar. The appeal court panel, ordered, for the money to be paid into the account domiciled with the First Bank of Nigeria Plc. The money, according to the appeal court, is to remain in the account "pending the hearing and final determination of the appeal".

In summary for this section on human rights litigation, Justice Lambo Akambi of the Federal High Court in Port Harcourt, Rivers State, had also described as "frivolous and lacking in merit", the application by the Federal Government, seeking for a stay of execution, against the N37.6 billion judgment, awarded in favour of the people of Odi community in Bayelsa State, which was filed, pending the determination of an appeal against the judgment. The judge, while ruling on the application, said, it would be unfair to grant the request of the Federal Government, since it took the people of Odi, about 10 years to secure judgment in the issue. The judge, also said, the Federal Government, had not advance convincing reason, why its application should be granted; adding that, the government had the capacity to pay the compensation awarded the community. According to Justice Akambi, any legal hurdle to delay payment of the compensation will amount to "robbing the people of justice".

Good as the above may sound, the fact remains, enforcement of these judgments are fundamental, to measure, if there are effective remedial processes, against human rights violation in Nigeria. For now, the answer wobbles, beyond the contexture of this essay.

Safeguarding human rights, while combating corruption, in particular with regard to: a) the criminalization of corruption (e.g. illicit enrichment), b) the detection and investigation of corruption, c) the prosecution and judicial proceedings (including *suo motu* powers) and d) in the recovery of illicit assets:

This is the most intriguing component on the fight against corruption vis a vis the protection of human rights in Nigeria. Holistically, there is a divorce between the United Nations Voluntary Principles, such as, the UPR, which presupposes, in this paper's opinion, to downplay the importance of civil society's human rights intelligence pointer, ordinarily, which should be factored into specific country's periodic indicators for the UPR's, but woefully have failed in that direction. It has at the same time, swallowed the voices of the civil society, thus, ironically fuelling human rights violations around the world. The pro-nature of multilateral institutions (including the UN) that tilts towards state actors, which is a serious dislocation for the sustenance and protection of human rights. This hypothetical accident has oozed to influence the very nature of legislations against corruption, self enrichment, including assets forfeiture, in countries, such as Nigeria. A critical look at the Economic and Financial Crimes Commission's (EFCC) Establishment Act of 2004 and Section 270 of the Administration of Criminal Justice Act, 2015 reinforces this opinion. Remedially, Nigeria may overcome these challenges, if Sections 469, 470, 471, 472,473,474, 475 and 476 of the ACJA is structurally implemented.

Protection of victims, witnesses, reporting persons, anti-corruption activists, whistleblowers and other persons involved in the fight against corruption which explicitly build on human rights standards:

Nigeria does not have any whistleblowers protection law or any form of protection for anti-corruption activists, beside the constitutional rights of every Nigerian. This is a big drawback in the fight against corruption.