GUARDIANS OF JUSTICE
Judicial Power in the Fight Against Corruption

Policy Brief Series Three
Addressed to the Nigerian Judiciary

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(Addressed to the Nigerian Judiciary)

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INTRODUCTION

Aim of this policy brief

This policy brief was informed by the discussions and recommendations from experts and stakeholders at the 30th Anti-Corruption Situation Room (ACSR), a two-day, premier National Conference on Anti-Corruption which was held on Tuesday 11, and Wednesday 12, July 2023 in Abuja, Nigeria's Federal Capital Territory; with the theme: “Nigeria and the Fight Against Corruption – Reviewing the Buhari Regime and Setting Agenda for the Tinubu Administration.” Hence, drawing from the discussions and recommendations of the conference, this policy brief seeks to provide strategic recommendations to the Judiciary as custodians, guardians and interpreters of the laws which is central to the fight against corruption in the new government.

Summary

This policy brief sets the tone by contextualising corruption and highlighting its implications in the Nigerian context, chief of which is the increasing millions of Nigerians who are extremely poor. It contends that the judiciary plays a pivotal role in the fight against corruption. As the guardians of the law, the judiciary’s responsibilities include interpreting and upholding the law, ensuring justice is served, and holding individuals and institutions accountable for corrupt practices. It observes that the Nigerian Judiciary’s core roles in combating corruption in Nigeria can be achieved from several fronts and there are several opportunities for interventions. The brief further recognises that the judiciary is confronted with numerous challenges. It notes that central among the challenges that the judiciary encounters in the fight against corruption includes judicial delays. These delays are often caused by overburdened courts which apparently lead to significant delays in the adjudication process. The policy therefore recommends judicial reforms to strengthen and restore dignity in the justice system, prioritization of regular capacity-building training and programs for judges and court employees, employment of digital technology and the creation of specialized anti-corruption courts, among others.
The implications of grand corruption are devastating, far-reaching and cross-cutting. Corruption remains a major barrier to meeting the UN Sustainable Development Goals (SDGs); fighting climate change; promoting democracy and human rights; establishing international peace and security as well as securing a just society.

In Nigeria, corruption has remained the biggest problem that has inhibited the development and growth of the country since independence with pervasive and deep-rooted consequences. As a result, anti-corruption slogans and mantras are often exploited by political office seekers to garner votes from the citizens, who obviously are fed up with the festering state of corruption and impunity in the country.

Every year, Nigeria loses between $15 billion and $18 billion to Illicit Financial Flow (IFF), an amount far above what the country needs to address climate change annually. Diezani Madueke, former Petroleum Minister alone allegedly superintended over the stealing of $20 billion; Sambo Dasuki, former National Security Adviser is standing trial for over $2 billion; Former Attorney General, Muhammad Bello Adoke’s OPL 245 supervised deal short-changed Nigeria by over $1 billion; and it’s doubtful if the country will ever finish recovering the Abacha loot. When all of these are added to the P&ID case which former President Buhari in 2019 referred to as an “international conspiracy to defraud Nigeria of over $9.6 billion,” then it is safe to conclude that there is danger ahead unless an aggressive action is taken.

According to Chatham House, between 1960, when Nigeria gained her independence, and 2014, up to $582 billion has been stolen from the country. The HEDA report independently researched and published by HEDA Resource Centre in 2022, titled: “Impunity Galore: A chronicle of some unresolved high profile corruption cases in Nigeria, 1999 – 2022,” is not any less revealing. Shockingly, the report states that over $825 billion and another N1.6 trillion are involved in the unresolved corruption cases within a 23-year period.

In yet another report, specifically the fifth Edition of “A Compendium of 100 High Profile Corruption Cases in Nigeria”, also released by HEDA Resource Centre, in May 2022, over 17 trillion Naira (about 35.4 billion US Dollars) is involved in pending (non-exhaustive) high profile corruption cases. This is the equivalent amount of Nigeria’s 2022 budget. Nigeria’s 2022 budget is 17.1 trillion Naira with a deficit of 6.4 trillion Naira.

The implication of this is that, the amount of money pending in some high profile corruption cases alone can conveniently finance Nigeria’s budget without any deficit or loan. Hence, assuming the 100 cases captured in our publication is exhaustive, save for corruption, in 2022 alone, Nigeria can TWICE complete over 6,000 old projects and over 11,000 new projects cutting across water, health, education, road, power and electricity, etc.
Corruption undermines the effectiveness and efficiency of public institutions, including government agencies, ministries, and local authorities. Bureaucratic processes are often marred by corrupt practices, such as bribery, embezzlement and nepotism. This results in a lack of public trust in these institutions and a decline in their capacity to deliver essential services such as healthcare, education, and infrastructure development.

Correspondingly, corruption erodes the trust citizens have in their government and public officials. This is evidenced by another report released by HEDA Resource Centre in 2023, titled: “Botched hope: a report of people’s assessment of President Muhammadu Buhari Administration 2015 – 2023,” where most of the respondents across all states of the federation gave a low rating to the Federal Government in key indices such as health and education.

When citizens perceive that those in power are corrupt, they become disillusioned and cynical about the state’s ability to serve their interests. This erosion of trust can lead to social unrest, political instability, and a loss of confidence in democratic processes.

The negative impact of corruption is often felt most acutely by the vulnerable populations – women, young people and Persons With Disabilities (PWDs). Resources intended for poverty alleviation programs, healthcare, education, and social welfare are siphoned through corrupt practices. This diversion of funds exacerbates poverty and inequality, as it prevents these resources from reaching those who need them the most. It is therefore not surprising that in 2018, Nigeria took over from India to become the poverty capital of the world with over 80million extremely poor people despite its globally acknowledged oil fortunes spanning decades.
IN THE FIGHT AGAINST CORRUPTION: WHY THE JUDICIARY?

The judiciary in Nigeria plays a pivotal role in the fight against corruption. As the guardians of the law, the judiciary's responsibilities include interpreting and upholding the law, ensuring justice is served, and holding individuals and institutions accountable for corrupt practices. The judiciary is responsible for hearing and deciding corruption cases brought before the courts. This includes cases involving bribery, embezzlement, fraud, and other corrupt practices. Fair and impartial trials are essential to ensuring that corrupt individuals are held accountable.

The judiciary interprets and clarifies the provisions of anti-corruption laws in Nigeria. Their interpretations can set important precedents that guide the enforcement of these laws. Further, the judiciary has the power to review the actions and decisions of government agencies and anti-corruption bodies to ensure that they are acting within the bounds of the law. This oversight helps to prevent abuse of power and ensures due process.

Through objective interpretation of various transparency, accountability and anti-corruption laws such as the Freedom of Information (FOI) Act for instance, even in the absence of a whistle-blower law, the judiciary can play a crucial role in protecting whistle-blowers who report corruption. This protection encourages individuals to come forward with information on corrupt activities without fear of retaliation.

The Courts have a role in ordering the forfeiture of assets acquired through corrupt means; in curbing the bar's manipulation of the justice process. Unless the bench purposively address this, it will be near impossible to get justice as there are always loopholes and technicalities to exploit and justice system will only move at a snail pace.

The judiciary have a role in ensuring that the rights of individuals accused of corruption are upheld, including the right to a fair trial, legal representation, and the presumption of innocence until proven guilty. Yet, it has a role in ensuring that court orders related to corruption cases are judiciously enforced. This includes orders for the arrest of suspects, the freezing of assets, or the payment of fines or restitution.

To this end, it suffices to submit that upholding the independence of the judiciary is vital to ensure that judges can make impartial decisions free from external influence, particularly in cases involving powerful or influential individuals. If the courts are compromised, the fight against corruption is dead on arrival because no effective action can be taken if not sanctioned by the Courts.
CHALLENGES OF THE FIGHT AGAINST CORRUPTION: THE NIGERIA JUDICIARY IN CONTEXT

While the judiciary plays a pivotal role in the fight against corruption, it faces a range of challenges in effectively addressing this issue. Central among these challenges that the judiciary encounters in the fight against corruption includes delays in the court processes. Justice delayed, they say, is justice denied. The Administration of Criminal Justice Act (ACJA) has not made any radical difference in this regard.

The FOI Act provides that FOI cases should be adjudicated summarily, yet, cases arising from FOI Act still span up to seven months or more before they are even assigned or listed for hearing while the actual cases take years - appeals last a minimum of three to four years. Some corruption cases have lasted over a decade or more despite that there are new cases all the time. Before some corruption cases are decided, the proceeds of crime would multiplied by perpetrators and used to enrich themselves such that even if the proceeds are recovered, it is no longer of notable value to either party.

These delays are often caused by overburdened courts. Also, inefficient case management and administrative processes can contribute to delays, thus allowing corrupt individuals to manipulate the system and avoid timely justice. Complex legal procedures and loopholes are usually exploited to prolong cases, enabling corrupt individuals to evade prosecution.

In the same vein, cases of corruption within the judiciary need to be accentuated. For instance, some judges and court officials may be susceptible to bribery, influence, or pressure from corrupt individuals, compromising the impartiality and integrity of the judicial process. In some cases, political figures or powerful individuals may attempt to manipulate the judiciary to protect their interests, hindering the prosecution of corruption cases. Thus, a lack of accountability mechanisms within the judiciary can make it challenging to identify and address corrupt practices among judges and court personnel.

Additionally, the lack of transparency in court proceedings can erode public trust. Closed-door or non-publicized hearings may lead to suspicions of corruption or bias and inadequate access to case information and court records can hinder public oversight and make it difficult to track the progress of corruption cases.

The inconsistent interpretations of the law by different judges can raise questions about the fairness and transparency of the judicial system. Take for instance, there are two subsisting appeal court judgements – one sitting in Ondo and the other in Benin – on the FOI Act, with the former deciding that the FOI Act applies to state governments and the later deciding the exact opposite. This is not only unhelpful, it makes mockery of the essence of seeking interpretations from the court.

Another challenge that must be surmounted very quickly by the Nigerian judiciary is that judges must adhere to strict ethical standards to avoid conflicts of interest. Failure to do so can undermine the credibility of their decisions, especially in corruption cases. Upholding professional conduct and ethical principles is essential to ensuring that judges remain impartial and free from corruption or undue influence.
It is sometimes unclear whether some judges act ignorantly or they were being influenced. For instance, where human rights organisations were seeking leave of the court to compel public institution to comply with the law, we have seen some judges not only denying the application for leave, but also ruling on the substantive motion that was not before the court.

Consequently, continuous training and accountability mechanisms are necessary to ensure that judges are well-equipped to handle corruption cases with integrity and impartiality.
Judicial Reforms to Strengthen and Restore Dignity in Justice System
The leadership of the judiciary should note that judicial reforms aimed at strengthening and restoring dignity in the justice system are essential to promote fairness, accountability, and the rule of law. They should ensure that judges are appointed, promoted, and disciplined based on merit, legal expertise, and ethical standards, rather than political influence. Efforts should be rededicated to enforcing clear ethical guidelines and codes of conduct for judges, justices and court staff.

Role of Digital Technology
The judiciary should consider investing in the ICT systems to improve efficiency in the court processes. Taking of court records, applying for CTC, filing cases, service notices, court archives, etc are some of the key processes delaying justice. This can be minimised with radical investment in the digital technology tools relevant to each issue area.

Prioritization of Regular Capacity-Building Training and Programs For Judges and Court Employees
Prioritizing regular capacity-building training and programs within the judicial system is a crucial action point in the fight against corruption in Nigeria. Such initiatives can have a profound impact on building the skills, knowledge, and ethical values of judges and court officers, ultimately strengthening their capacity to prevent and combat corruption. Regular training programs can help judges and court employees develop expertise in handling complex corruption cases, including financial crimes, money laundering, and asset recovery.

This expertise is essential for fair and effective adjudication. Since corruption methods and techniques evolve over time, on-going training ensures that judges and court staff are aware of these changes and can adapt their approaches to address new challenges effectively. Additionally, specialized training can lead to the development of judges and court staff who are experts in anti-corruption matters.

Specialized courts or divisions within the judiciary dedicated to corruption cases can benefit from such training. Also, an informed and well-trained judiciary is more likely to inspire public confidence in the legal system. When citizens believe that the judiciary is capable and impartial, they are more likely to cooperate with the legal process and support anti-corruption efforts.

Serious Consideration for the Creation of Special Courts
The creation of special courts dedicated to handling corruption cases can be a strategic and impactful action point for the judiciary in Nigeria. This approach can help address some of the specific challenges associated with corruption cases within the judicial system. Specialized anti-corruption courts can be staffed with a judicial team who have expertise in handling complex corruption cases.
This specialization ensures that cases are heard by individuals with a deep understanding of the nuances and intricacies of corruption-related offences. Also, corruption cases are often complex and involve extensive documentation and evidence. Specialized courts can streamline case management processes, reduce delays, and expedite the resolution of cases, which is crucial in the fight against corruption.

Corruption cases can accumulate as backlogs within the regular court system, leading to significant delays in the administration of justice. Specialized courts can focus exclusively on corruption cases, helping to clear these backlogs and prevent new cases from piling up. Additionally, these specialized courts can contribute to greater consistency in legal decisions related to corruption cases. Consistency is essential for creating legal precedents and ensuring that similar cases are treated similarly.

**Reward and Sanction System**

The leadership of the judiciary should initiate reforms to strengthen and restore the integrity of the justice system through motivation and sanctions of judicial officers. It is rare to see judges sanctioned for misconduct or even miscarriage of justice. An improved reward and sanction system will go a long way in addressing corruption within the judiciary and ultimately impacting positively on the adjudication of corruption cases.

To this extent, the National Judicial Council and Heads of Courts should monitor activities of judges and legal practitioners for commendations in good practices and sanctions for professional misconducts.
ABOUT HEDA RESOURCE CENTRE

The Human and Environmental Development Agenda (HEDA Resource Centre) is a prominent Nigerian organization committed to promoting good governance, combating corruption, and advocating for environmental justice. Founded in 2001 and officially incorporated as a non-governmental organization in 2004, HEDA conducts research, policy advocacy, training, and citizens' awareness campaigns in various areas such as anti-corruption, food security, climate change, human rights, public sector accountability, and electoral reform.

VISION & MISSION
HEDA’s vision is an Africa where all persons regardless of locations and situation have the freedom and ability to enjoy the benefits of good governance, and respect for human dignity in a sustainable environment. Its mission is serve as a policy and campaign centre for research, training and advocacy on the environment, good governance, and human rights.

PARTNERSHIPS AND RECOGNITION
HEDA is a member of the United Nations Convention Against Corruption (UNCAC) Coalition, a global network of over 350 CSOs and 100 individual members in more than 100 countries. HEDA has observer status with the UN Economic and Social Council (ECOSOC), the UN Framework Convention on Climate Change (UNFCCC), and the Green Climate Fund.

CONTRIBUTION TO TRANSPARENCY AND ACCOUNTABILITY
HEDA has made significant contributions to transparency and accountability in Nigeria through extensive research and advocacy efforts.

The organisation's "A Compendium of 100 High Profile Corruption Cases in Nigeria" has garnered attention from local and international partners, including the UK’s National Crimes Agency (NCA). This publication has served as a basis for investigations on illicit asset tracing and recovery.

HEDA's transparency and anti-corruption campaigns, along with its media engagement, have exposed scandals such as the Malabu Oil Deal (OPL245), leading to the suspension of the mining lease. The Organization also published: “Corrupt Practices in Nigeria’s Oil Industry: OPL245 Case Study” and this has attracted a refund of $85 million to Nigeria from the United Kingdom. The organisation and its partners blew the whistle on a private jet belonging to former Petroleum Minister, Dan Etete, believed to be a proceed of the OPL245 deal and the Nigerian Government had it seized when it was moved out of Dubai to Canada.

In a continual effort to promote transparency and accountability, also published a collection of corruption cases not investigated by the EFCC, ICPC, Senate and House Committees of the Nigerian law-making body- The National assembly between year 1999 till 2022 in a published article titled; "Impunity Galore: A Chronicle of Some Unresolved High Profile Corruption Cases in Nigeria (1999-2022)". HEDA's activism in the judiciary also earned it recognition, as it became part of the National Judicial Council's Committee on the Monitoring of Trials of Financial Crimes and Corruption Cases in Nigeria.
LEADERSHIP AND COLLABORATION
HEDA has played leadership roles in various civil society collaborations, both locally and internationally. It hosts the secretariat of the Civil Society Network Against Corruption (CSNAC), a network of over 150 anti-corruption organizations and individuals in Nigeria. HEDA is also an active member of the Procurement Monitoring Working Group (PPMWG) and the Anti-corruption thematic working group of the Open Government Partnership (OGP) Nigeria. The organization continues to collaborate with critical stakeholders, such as Integrity International Institute (III), to advocate for the establishment of an International Anti-Corruption Court (IACC).

WHISTLE-BLOWERS AND ANTI-CORRUPTION TOLL FREE LINE
HEDA has a whistle-blowers toll free line: 08004332277, which has received hundreds of phone calls from members of the public on sundry issues of corruption, human rights abuses, transparency and accountability. Some of the cases have been taken forward through petitions, Freedom of Information (FOI) requests and public interest litigation.

ABOUT CEFTIW
The Centre for Fiscal Transparency and Integrity Watch (CEFTIW) is an NGO established in 2016 with the aim of promoting accountability, transparency within the public sector, and ensuring good governance at all levels. While it promotes open governance at national and sub-national levels, it also serves as a credible hub for resources related to criminal justice such as crime, compliance, asset recovery and illicit financial flows.

The Center has over time worked with both government and CSOs to implement programs and interventions aimed at strengthening democracy and improving governance in Nigeria.