

ISSUES AND TRENDS IN GOVERNANCE IN THE 21st CENTURY: THE IMPERATIVE OF GOVERNANCE BASED ON AN INTEGRITY SYSTEM BY **OSITA NNAMANI OGBU** SECRETARY GENERAL, TRANSPARENCY IN NIGERIA & HEAD, DEPARTMENT OF COMMERCIAL AND PROPERTY LAW, ANAMBRA STATE UNIVERSITY. PRESENTED AT A 2-DAY WORKSHOP ON DUE PROCESS, TRANSPARENCY & ACCOUNTABILITY ORGANIZED BY THE OFFICE OF THE DUE PROCESS, DELTA STATE AT NEL ROSE HOTEL, ASABA 28th-29th **July 2008**

INTRODUCTION

Abraham Lincoln defined democracy as government of the people by the people and for the people. Government of the people means that it is the people who own the government and not the rulers or the functionaries of government. Government by the people implies that the people are the source of political power. Government for the people implies that the object of government is the promotion of the interest and welfare of the governed, and that government is not for the personal benefit of the government functionaries.'

Unfortunately the concept of governance and democracy has been perverted and corrupted. It has become government for the personal aggrandizement of the government functionaries. Corruption is one of the deadliest maladies that afflict human society and governments today, hence the need for government to be based on an integrity system.

But what do we mean by integrity? Integrity and corruption are conceptually linked terms - with one the obverse of the other. In fact corruption has been defined as acquired integrity deficiency syndrome. Transparency International defines {public sector} corruption as the 'misuse of entrusted powder for private benefit'

Then, what do we mean by integrity. Integrity in the context of this work is the use of public power for officially endorsed and publicly justified purposes. In a democracy, the officially endorsed uses of public power are those set by the constitutions and the laws of the country.

What is an Integrity System?

A national integrity system is a term that encapsulates the interconnecting institutions, laws, procedures, practices and attitudes that promote integrity and reduce the likelihood of corruption in public life. In placing powder in the hands of individuals or groups, human communities are taking a risk that the benefits to be gained from use for the justified purposes of the institution outweigh the risks of its abuse. Integrity systems are designed to increase the likelihood of the benefit of the intended use of power and reduce the risk of the abuse.

Basically, the task in developing countries and countries in transition, is to move away from a system which is essentially top down: one in which an autocratic ruling elite gives orders which are followed, to a greater or lesser degree, by those down the line. The approach is to move instead to a system of horizontal accountability"; one in which power is dispersed, where one has a monopoly, and where each is separately accountable.

Under a system of horizontal accountability, a virtuous circle is perfected: one in which each actor is both a watcher and is watched, is both a monitor and is monitored."

The MIS adopts a holistic and systemic approach to tackling corruption by providing for the building into government mechanisms institution parapets for transparency and accountability.

The national integrity system is predicated on the assumption that it is better to prevent corruption than to fight it when it occurs. In fact the occurrence of corruption is a mark of breakdown in the system.

The Institutional Pillars of the National Integrity System

The national integrity system consists of the key institutions, laws and practices that contribute to integrity, transparency and accountability in a society. When it functions properly, the national integrity system combats corruption as part of the larger struggle against abuse of power, malfeasance, and misappropriation in all its forms. The national integrity system approach provides a framework with which to analyze both the extent and causes of corruption in a given national context, as well as the adequacy and effectiveness of national anti-corruption efforts.

The main pillars of the national integrity system are considered to be the following:

Executive, Legislature, Political parties, Electoral commission, Supreme Audit Institutions, Judiciary, Public sector, Police and prosecutors, Public procurement, Ombudsma, Anti-corruption agencies, Media, Civil Society, Private Sector, Regional and Local Government, International institutions, Human Rights commissions.

It must be emphasized that these institutional pillars are qualified. Their mere existence is not enough.

The "executive" should read "elected, transparent and accountable executive", the "legislature" should read "elected and independent legislature", the "police and prosecutors" should read "independent law enforcement and prosecution agencies", "anti-corruption agencies" should read "independent anti-corruption agencies", the judiciary should read "independent and impartial judiciary", "civil society" should be qualified as "virile civil society". The phrase "political parties" should be qualified, as "credible political parties' public service should read "impartial and apolitical public service."

Some Indicators For Assessing The Performance Of The Integrity Pillars

The Legislature

- Are there clear and well-understood conflict of interest laws, which are an effective barrier to elected members of the legislature using their positions for personal benefit?
- Are there arrangements for the monitoring of the private interest and personal incomes of elected officials and members of their immediate families?
- Do legislators who oppose the government have a reasonable opportunity to express their views in the Legislature? Are debates open to the public?
- Do committees meet in public? Are their reports made public? Do they make a practice of hearing submissions from members of the public and civil society organizations?
- Are the recommendations of the Public Accounts Committee generally accepted and acted upon by the Executives? Do the Public accounts Committee have power to call officials (including Ministers or commissioners as the case may be) for questioning? As a matter of practice or requirement, is the chair of the Public Accounts Committee chaired by a member who is independent of the government of the day, preferably from the opposition parties?
- Are convicted criminals barred from running for election?
- Is the legislature generally ready to lift the immunity enjoyed by one of its members, regardless of the party to which the member belongs, where there

are serious grounds for believing that he or she may be guilty of a serious criminal offence?

- Are there laws preventing persons of questionable integrity from running for election for legislative positions?
- Is there regular consultation with civil society when policy is being developed?
- Are there procedures for the monitoring of assets and life-styles (e.g. disclosure provisions)? (If disclosure provisions exist, are the disclosures checked or subject to random checking? And are they either made to an independent body or made available to the public/media?)
- Are there clear conflict of interest rules? (If so, are these generally observed?)
- Are there registers for (a) gifts and (b) hospitality? (If so, are these kept up-to-date? Do the public/media/political opponents have access to them?)
- Are members of the Executive obliged (by law or by convention) to give reasons for their decisions?
- Are there clear rules against political interference in day-to-day administration i.e. formal rules requiring political independence of civil servants?
- Are transparent methods used to sell government assets?

- Do sales of public assets take place which are seen as unduly favouring those with close links to the ruling party?

The Judiciary

- Do Judges have the jurisdiction to review the lawfulness of government decisions? If so, are these powers used? Are decisions respected and complied with by the government? Is there a perception that the Legislature gets special treatment, be it hostile or preferential?
- Have the judges adequate access to legal developments in comparable legal systems elsewhere?
- Are members of the legal profession making sufficient use of the courts to protect their clients and to promote Just and honest government under the law/? If not is access to the courts as simple as it can be? Are the legal requirements unnecessarily complicated?
- Are appointments to the senior Judiciary made independently of the other arms of government? Are they seen as being influenced by political considerations?
- Are judges free to enter judgments against the government without asking retaliation, such as the loss of their posts, the loss of cars and benefits, transfers to obscure and unattractive parts of the country?
- Are cases brought on for trial without unreasonable delay? If not, are these delays hearings? Are delays in implementing/executing orders of the court? Example. Issue of summons, service, grant of bail, listing for hearing? Are there delays in delivering judgments?
- Is court filing system reliable?
- Is the public able to complain effectively about judicial misconduct (other than appeal through the formal court system)?

Chief Law Officer

- Is the Attorney-Generals role as guardian of the public interest understood by the government, the office-holder and the public?
- Do the Attorney General's colleagues in government understand the issue of the office's independence and the distinction between the public interest as opposed to political party interest?

- Has the attorney General the power to override a decision of the Director of Public Prosecutors? If so, is the Attorney General required to report the circumstances of the case to the legislature?
- Is there a legislative statement of the powers, functions and responsibilities of the Attorney General? If not is it needed or desirable?
- Where an application by a member of the public to bring criminal prosecution is of a type, which requires the consent of the Attorney General? is there any formal way in which the Attorney-General must account for refusal to grant consent?

Prosecutors

- Is the public at large generally convinced that decisions on whether or not to investigate and to prosecute are taken fairly, reasonably, and without being influenced by political considerations or connections?
- Is the office-holder responsible for these operating under published guidelines? If not, would confidence in the office be increased by these being developed and published?
- If guidelines already exist, are they accessible to the public? If not, what are the reasons for the lack of disclosure?

The Auditor-Generals Office

- Is there security of tenure for the office-holder (is the post constitutionally protected or otherwise guaranteed against political interference)?
- Is the post a non-political appointment?
- Is the post adequately remunerated?
- Is the Office adequately staffed? Are reports to the Legislature up-to-date?
- Are Reports made public promptly?
- Does a public Accounts Committee of the Legislature or another equivalent body follows up Reports regularly?
- Is action taken on Reports?
- Are there rules requiring annual auditing of financial accounts of state and parastatal institutions by independent auditors, and requiring public disclosure of the results? Is the Auditor-General responsible for the conduct of these audits?
- Is there an assets tracking system to enable periodic evaluation of assets so as to ensure that assets purchased by' the state remain in the states control until they are properly disposed of?
- Does the Office meet appropriate accounting and auditing standards?
- Does the office in fact receive what is budgeted for it by the Ministry of Finance or by the Legislature?

Office of Ombudsman

- Is there Office of the Ombudsman or a comparable institution?
- Is the public generally aware of the existence of any such Office? If so is the Office respected by the community?
- Does the Office have adequate budget and is it adequately staffed?
- Is the appointment of an Ombudsman made in a non-partisan manner?
- Is the Office-holder protected from arbitrary removal from office by the government of the day?
- Does the Executive respect and act on the reports of the Office?
- Is there ease of access for complainants?

- Can complainants complain anonymously where they believe they might suffer reprisals if their identity is known?

Anti-Corruption Agencies

- Are the appointing procedures for the head of the Agency such as to ensure that he or she is competent, independent of the party in power and likely to discharge the Agency's duties without fear or favour?
- Once appointed, is the head of the Agency independent from political control in the day-to-day conduct of the Agency's affairs?
- Is the Agency adequately resourced?
- Does other staff enjoy independence from political interference in the discharge of their duties? Are there "no go" areas for investigators?
- Are staffs adequately trained? Are staffs adequately remunerated?
- Is the Office of the President or Prime Minister within the Agency's jurisdiction? (If so, are the staffs confident enough to exercise jurisdiction should occasion arise?)
- Are staff in sensitive areas subjected to random "integrity test"?
- Are there arrangements to ensure that the Agency itself cannot become a source of corruption?
- Can the service of staff whose integrity has become doubtful be quickly dispensed with?
- Is the Agency accountable to the Executive, the Legislature, the courts and the public?

The Public Service

- Do Ministers or commissioners respect the independence and professionalism of their senior civil servants? Are they generally expected to provide "frank and fearless" advice to Ministers?
- Are there continuing efforts to streamline bureaucracy to render it more open efficient and more user friendly towards the public?
- Are citizen's charters" (or similar undertakings) published the obligations of service providers and the rights of users?
- Are department clients surveyed from time to time to ascertain levels of satisfaction (e.g. through Service Delivery Surveys)?
- Are civil servants obliged to give reasons for their decisions?
- Is there a clear understanding on both sides that Ministers should not interfere in the day-to-day running of the departments for which they are responsible?
- Are government departments generally accessible to the media? Is information made available regularly without individual requests being first approved by the minister responsible or the departmental head?
- Can members of the public easily discover the identities of those civil servants they are dealing with?
- Are managers held accountable for the corruption/inadequate performance of their subordinates?
- Are there complaint mechanisms (whistleblower protection) for staff in which they have confidence?
- Are there gifts and hospitality registers etc. for civil servants in vulnerable positions?
- Is there a regular rotation of employees in vulnerable position so as to periodically change their physical and functional assignments?

- Are there periodic publicity campaigns" (In local languages) explaining the procedures and the criteria for administrative decisions or processes (granting permits, licenses- bank loans, building plot assessing taxes etc.)?

Local Government

- Is local government democratically accountable?
- Is it subject to independent audit?
- Are meetings of local bodies required to be held in public "unless there are special reasons why they should be- held in private, whether by laws or by convention? If local bodies have powder to close meetings lo the public, are tie grounds for doing so limited, and must they debate in public the necessity for closing the proceedings before a decision 10 do so is taken?
- Are local, authorities subject to the jurisdiction for those of an Ombudsman or a similar independent body?
- Are gift and hospitality registers maintained for those in sensitive posts? If so, is there a right of public access to these registers?
- Is there freedom of information laws and/or do procedures exist to ensure that members of the public can obtain information/documents *from* public authorities?
- Does the country have an "Official Secrets Act" or something similar, if so, is it used as a tool to effectively secure censorship of the media by the government?
- Are libel laws used, in effect to censor the media and curb the dissemination of information about persons who influence the community?
- Do Journalists have to be 'licensed? If so, is this a *device* to effectively curb journalistic freedom?
- Is the publicly media independent of government control as to editorial content? If not, does the public at large, as a credible news source, rely upon, the publicly -owned media in practice?
- Does the publicly owned media routinely carry stories critical of the administration (e.g. quoting opposition politicians etc.)?

Ownership

- Is there competition within the (a) print media, (b) television (c) radio and do anti- monopoly laws exist to secure competition and, if so, are they enforced?
- Is there a growing independent media sector- including internet media, informal journals and newsletters, and is this growing?
- Do media entities (print, audio-visual, and other) have to obtain special licenses/permits from the public authorities? If so, is this a device that is used to censor the media?
- Does the foreign media have the same right as the domestic media to cover and report stories?
- Are the non-media business interests of media owners (and business that such owners may have with the government) public knowledge?

Investigative Journalism

- Are journalist paid a living wage?

- Are individual journalists physically safe if they expose corruption and/or investigate the interests of power private and public sector leaders?
- Are criminal libel actions against journalists rare or common?
- Does the (a) print media, and (b) television media, regularly carry articles by investigative journalists?
- Is there a good school for the training of journalists, including in investigative journalism

Civil Society

- Are there restrictions on the ability of civil society to organize itself through the formation of non-governmental organizations?
- If so, are these reasonably necessary in terms of ensuring accountability by the NGOs? Or do they constitute unjustified obstructions?
- Are there restrictions on the holdings of public meetings, which act as a barrier to the mobilization of NGOs?

Private Sector

- Are national private associations active? Do they take an active interest in developing an honest market –place? Does the national section of the international chamber of commerce actively promote the ICC’s code of good business practices?
- Does the private sector take part in a continuing dialogue on competition policy, which recognizes the benefits for all, which a sound policy can bring?
- Do leading companies have codes of conducts? Do these cover corruption and gift- giving? Are the codes well published?
- Does the private sector acknowledge that cartels and biddings rings are both illegal and damaging to the development of the private sector?
- Do companies in general obey the law?
- Do major companies have policies on gift giving? Are these appropriate?
- Do businessmen in general avoid bribing to obtain government contracts? If this is a common practice, is it one that is disliked and discouraged? Or is it tolerated and accepted?
- Do leading local companies play an active role in developing ethical business standards?
- Are political office holders active in private sector activities? If so, are conflicts of interests’ situation avoided? Is their involvement transparent?

Best Practices In Relation To The Private Sector

Best practices dictates that private sector companies should:

- Obey the law in all countries in which they operate.
- Ensure that directors are fully aware of their legal liabilities.
- Press for clarification or strengthening of the law, if current law places the company at a disadvantage relative to its competitors.
- Introduce specific anti-bribery clauses into corporate codes of conduct and ensure that all employees know that these must be observed.
- Encourage directors to actively monitor the application and effectiveness of corporate codes of conduct.
- Encourage a national anti- bribery pact in relation to any major offshore tender where this is offered by the government; and
- Press relevant government, directly or through the company's relevant commercial or professional body, to support the anti- corruption initiative and to encourage the world Trade Organization to recognize grand corruption as a barrier to fair trade.

Conclusion

The national integrity system is proactive. It is predicated on the assumption that it is better to prevent corruption than combat it when it occurs. The occurrence of corruption represents a breakdown in the system.

The Federal, State and Local Government are encouraged to build an integrity system as the basis of the nascent democracy in order that our democracy will be government of the people, by the people and for the people.