

FIGHTING CORRUPTION IN THE ADMINISTRATION
OF JUSTICE SYSTEM - OPTIONS AND PROSPECTS

BY

CHIEF ROTIMI WILLIAMS, CFR, SAN

P R E F A C E

The subject assigned to me for the purpose of this summit is an ugly and unpleasant subject. In a sense, it is like Cancer. By that I mean that it is something which we have to address and remove otherwise its corrosive effect will destroy the system. It gives no pleasure to me to talk about it yet it is not possible for anyone to ignore it or to pretend that it does not exist.

Although the scope of what I have to say is limited to the area of the administration of justice, nevertheless, it is necessary to remind ourselves of the imperative need to tackle the problem of corruption in all sectors of our economy. The impact of corruption on the highly sensitive area of the Administration of Justice cannot be over emphasized. I have no doubt that many of what I have to say on the problem may well be applicable outside the narrow but highly sensitive and important field of the Administration of Justice.

We must all bear in mind that corruption takes various forms and it is impossible to define it with accuracy. It includes every form of abuse of Judicial Powers in partial or total disregard of the duty and obligation of a judicial officer to dispense Justice according to law without fear or favour and without affection or ill-will. It is immaterial whether the disregard of such duty and obligation arises from what is commonly known as bribery or out of a desire to show favour to some particular person or as a result of ill-will or prejudice against any person or the expectation of favour or reward from any quarter. Such abuse of Judicial Powers corrupts the source from which the stream of justice flows.

THE LEGAL FRAMEWORK FOR FIGHT AGAINST CORRUPTION

I very firmly believe that we have in our Statute Books sufficient provisions which ought to enable us to punish all persons guilty of corruption in our society. Both the Criminal Code of Southern Nigeria and the Penal Code of Northern Nigeria deal extensively and effectively with these matters. These provisions have been reinforced by the Code of Conduct for Public Officers and enable those guilty of corruption or abuse of office to be dealt with by the law.

Some of you will be aware that I have publicly stated my reservations about President Obasanjo's Anti-corruption Bill which has since been enacted into Law. In my opinion the provisions of the law as enacted went beyond the Legislative competence of the National Assembly. In the result, if any person is prosecuted under the Anti-corruption Law of the President, he stands a jolly good chance of being acquitted on the ground that the enactment under which he is alleged to have committed an offence is unconstitutional and void.

What we really need is not additional legislative enactments, but an improvement or upgrading of our machinery for the detection and apprehension of corrupt practices in our society. The Nigeria Police must be encouraged and adequately funded in building up an elite personnel dedicated to the eradication of corruption, by the use of the most up to date equipment and police strategy in their operations. I personally want to see a situation in which anyone who is offered a bribe or unlawful gratification will be made to look over his shoulders wondering whether the offer is from a genuine litigant or a police agent!

FIGHTING THE EVIL

In early 1993 or thereabouts I found myself assuming the (at that time) unpopular role of blowing the whistle and taking steps which were available to me at that time to see that something is done about the evil of corruption in our profession. It is interesting to recall that the person who gave me positive assistance in transmitting the alarm I raised to the highest authority in those days is now the Head of State. That initiative undoubtedly contributed to the setting up of the Eso Panel. I think it would be a matter of interest to read a few citations from the memorandum submitted to the Honourable Mr. Justice Kayode Eso by the Body of Senior Advocates who represent the leaders of thought in the Legal Profession. The first citation reads as follows:

“3.1 Evidence of Corruption: We presume that the intention of the authorities is to rely on evidence of ‘high profile life style’ of ‘*some*’ of the Judges to draw the inference of corruption on their part. We fail to see how an exercise limited in duration to 3 or even 6 months can produce any useful result. We think that it would be more beneficial to the nation if the Panel were to recommend *a system for periodical monitoring of assets acquired or owned by judicial officers during the course of their career*. If the Panel is unable to do this, it should at least recommend that the Government should set up a Panel of experts in the relevant field to device such a scheme.

3.2 Corruption: Whilst we support the instant removal of any judicial officer found to be corrupt we must point out that in the public interest great care should be taken to protect them from baseless accusations by people who have private grievances against them. It

must be constantly borne in mind that judicial officers, like other law enforcement agencies, are unusually prone to receiving attacks and unfounded accusations from certain classes of people who feel threatened by the exercise of the lawful functions of law enforcement agencies. Moreover, the idea that judges can be removed on information supplied to the authorities by persons who are not subject to close scrutiny or cross-examination, can only damage the public image of the judiciary which this panel is set up to repair. It must be said that the large scale removal of judicial officers some years ago on charges with which some of them were not confronted did more harm than good to the public interest. It is therefore essential that where accusations are made against judicial officers before this panel right thinking members of the society expect that the panel would give them the opportunity to be heard before any recommendation is made for their removal. It is also of vital importance, in the context of the Terms of Reference of this Panel that it should recommend to the Government in unequivocal terms that one of the most important policy decisions that will enhance the public image of the judiciary is the protection of our Judges from spurious and unsubstantiated allegations of wrong doing. Let it be emphasised that without credible and concrete evidence established in accordance with universally acceptable rules of natural justice, no Judge in the realm, whatever his rank, ought to be removed from office on an allegation of wrong doing. Finally

on this issue we respectfully submit that no one ought to be removed because of some alleged error in his judgment or decision. The remedy for an erroneous or defective judgment or decision is an appeal or review by a higher court and not the removal of the judge. To remove a judge on this ground would, in our humble view, be a gross abuse of power on the part of the authorities. Having said this we are prepared to concede that it is possible for a judge to give a decision or judgment which flagrantly manifestly and outrageously offend against all reason and good sense that any right thinking lawyer would immediately say without hesitation that the adjudicator is unfit to be a judge. However, such cases must be very rare and far between."

Finally the memorandum further stated as follows:

"9.1 Salaries: It must be recognised that in order to attract the best material to the bench, the salary structure must be attractive. No successful legal practitioner would be willing to leave his practice to take up an appointment on the bench if the remuneration paid for the job is ridiculously low. On the other hand, it is recognised that Government cannot match the remuneration earned by private legal practitioners. Account must be taken of the fact that appointment of a judicial officer, particularly to the higher bench confers on the appointee enormous honour and prestige. However unless judges and magistrates are well paid, corruption can never be

completely eradicated or at least whittled down. In fixing remuneration for the higher Bench, there ought also to be the consideration that once judges are appointed to the bench, they cannot return to full legal practice in that they are barred from making court appearances.

9.2 Perquisites: We believe that Government policy in paying certain perquisites to judicial officers should be continued. This policy has had the effect of insulating their emoluments from increases in costs of services and assets which must be available to them to perform their work efficiently and to maintain their standing in Society. Such perquisites should be reviewed from time to time to ensure that they do not fall below what is appropriate.

9.3 Quantum of Pay: It will be observed that we have not mentioned any specific amount on the pay or salary appropriate for the various grades of Judicial Officers. This is because we believe that these must change from time to time. We believe however that there ought to be an acceptable basis for fixing these salaries, the starting point must be the salary appropriate for the Chief Justice of Nigeria who is the head of the very important third arm of the Government such salary must have respectable relationship with that payable to the head of the Executive branch of the Government. What that relationship should be ought to be a matter for the Legislature. What ought not to happen is to put the pay of the Chief Justice of Nigeria at a level which reduces the office of the Head

of the third arm of the Government to a low level subordinate of the Head of the Executive branch of the Government. The salaries of the Justices of the Supreme Court and the President of the Court of Appeal should also reflect a reasonable differential vis-à-vis the pay of the Chief Justice of Nigeria. And so on down the line. The present percentage difference between the various grades of Judicial Officers must be a relevant guide to the authority that will fix the salaries, as already stated this authority should be the legislature whose powers are for now exercised by the Provisional Ruling Council."

I must say a few words about the Report of the Eso Panel. I have earlier mentioned the role of the current President of the Federal Republic of Nigeria when I decided to blow the first whistle. That fact underscores my surprise that even under his Administration, no positive action has been taken about the Report.

What has made matters worse is the fact that a popular views magazine has published what it claims to be the contents of the Report. The whole situation is, to say the least, unfortunate and very unsatisfactory. We should stop packing the buck of responsibility on this issue. The Report ought to be referred by the President to the National Judicial Council for advice. The National Judicial Council may wish to receive and consider comments from those affected by the Report and make further inquiries before tendering advice on the matter to the President and the State Governors. What is totally unacceptable is for everyone to fold his arms as if the Eso Panel never happened.

It is no doubt in the interest of those among our judges who do their work with diligence and constant adherence to their oath of office that the Nation should eradicate corruption from our judicial system and flush out those who fail the test of incorruptibility. Our judges do not deserve the image given to

our judiciary by the bad eggs among them. The norm ought to be that any one who speaks ill of the integrity and impartiality of our Judges ought to be regarded as either crazy or mischievous. That should be our goal. When that goal is achieved the periodical monitoring contained in the memo of SANs will die a natural death. Public ought to be in a position to say – ***“This periodical monitoring is unnecessary. It is an insult to the transparent honesty and integrity of our honest hard working Judiciary!”***