Political Terrorism As Anti Corruption In Nigeria: Saving The Rule Of Law From Brink

(Intersociety, Onitsha Nigeria, 22nd of October 2016)-It is no longer hidden that President Muhammadu Buhari and his co-travellers in the country's current state of toxaemia have fully resorted to ***political terrorism and barbarism*** in their so called "anti corruption crusade". Hiding under the guise of "anti corruption" to perpetrate heinous State crimes such as ***treason, State murder and other forms of official terrorism***, had been a recurring decimal in Nigeria; dating back to January 1966, during Nigeria's first military coup. Major Gen Muhammadu Buhari (as he then was), used the same excuse to oust the democratically elected Presidency of Shehu Shagari on 31st December 1983.

Since then, successive military and civilian governments in Nigeria had laid claims to "fight against corruption" as the corner stone of their administrations. The Obasanjo civilian administration of 1999-2007, was exceptionally noted to have gone extra mile in creating visible anti corruption agencies such as EFCC and ICPC, created between 2000 and 2004. His anti corruption policies were also relatively proactive, civil and rule of law compliant; whereas those of the past military and civilian administrations particularly that of the Buhari military regime (1984-85) were archaic, retrogressive and repressive. This is on repeat mission in the current Presidency of Muhammadu Buhari with worst yet to happen.

In all these, Nigeria has ended up losing billions of dollars to its criminal political gangsters with over 90% of the looted funds ending up not recovered. The worst is that the more the host administration shouts "fight against corruption", the more public funds are looted in its present and connivance with reckless abandon. Corrupt practices in Nigeria have not only gone ***e-gold*** or electronically undetected, but they have also been entrenched and clothed with ***impunity.*** As we speak, criminal enrichment in the country going viral with illicitly acquired properties springing up in leading Nigerian cities. A trip to Nigerian roads and security checkpoints is another eye opener and a fundamental measurement of President Buhari's ***policy-noise*** on corruption. Extortion at military (including soldiers and navy) checkpoints is now scientific and artistic with civilian agents recruited as collection agents under negotiated percentage settlements.

In Nigeria of present political composition, ***looters are endlessly looking for the looted with the looting going on rampage underneath or expressly.*** A president who is flown in a private jet, acquired with looted funds, is busy looking for the looters. Lawyers particularly the Silk, who illicitly charge roguish serving and former political office holders hundreds of millions of naira as consultancy and professional fees in high profile State graft or electoral cases, from illicit public funds, have joined "the fight against corruption". Those who milked dry States like Rivers, Lagos and Edo and left them in quandary of indebtedness and penury are now "agents of anti corruption"; likewise print, visual and a number of pro establishment online media, acquired with looted public funds.

Some mainstream CSOs and their leaders with juicy cuts from looted funds; propertied and motorized, are also "singers of anti corruption in Nigeria". Today, in Nigeria of Buhari's Presidency, political opponents and opponent activists and independent senior judicial officers are cajoled, threatened, repressed and labelled "looters" and treated like violent criminals. These respected citizens are routinely ***taken into custody before investigation*** with prima facie evidence thousands of miles away to be laid on against them. When in custody, torture becomes a routine to force them to admit committing non-existent crimes or offences. Where reverse is the case, they are held incommunicado for months with impunity and untried.

Fighting corruption with "captains or doyens of corruption" leading the way or procuring the "government in power", is akin to inviting a serial human parts dealer to come and become a defender of human rights in the human rights community. These explain the current State of bastardized and corrupted anti corruption policy direction of the Buhari Administration; where political terrorism and barbarism now hold sway.

Having carefully studied the recent late night State violence by President Buhari's DSS against some respected senior judicial officers and associated revelations by some of them including Hon Justices John Inyang Okoro and Sylvester Nwuta Nwali (serving Justices of the Supreme Court of Nigeria) as well as Hon Justices Adeniyi Ademola, Mu'azu Pindiga and Nnamdi Dimgba (serving Judges of the Federal and State High Court); we are, again, shocked and dismayed as what Nigeria has turned into in the past 17 months of Buhari's Presidency. The roles of the print and visual media and a number of pro establishment online media are also very saddening; likewise the ***turn-coat*** position of the NBA.

These quickly remind us of an immortal advice handed down to one Chris Ubah by Mr. Peter Obi (as he then was), who later became the Governor of Anambra State. The latter had advised the former to "guide his unguided utterances against judges handling the then Anambra State Governorship Election Petition Tribunal (September 2003 to August 2005) because it will take him 20 years to become a judge, that is if he so wishes and goes back to school to continue from where he dropped in junior secondary school"

These explain our deep sadness over coordinated attacks and image damnation launched by the Buhari Administration against the named serving senior judicial officers, using its riotous DSS and compromised media. While we have no apologies for any serving senior judicial officer that corruptly enriches him/herself or that allows him/herself to be corrupted, provided he or she is processed, prosecuted and punished in accordance with due process and constitutionalism; we condemn in unequivocal terms the deliberate and coordinated ruination of innocent others who have toiled and laboured to build and protect their integrity by being contented and refusing to be corrupted or tainted.

Launching campaigns of calumny and criminal stigmatization against a set of innocent serving senior judicial officers on account of their refusal to pervert the course of justice to impress the riotous agents of the Buhari Administration, is totally ***an irreparable damage***, not only to the judges and their career but also to the collective image of Nigeria as a whole. This is more so when it is logically grounded that three out of every five Local Government Areas (LGAs) in Nigeria's 774 LGAs may most likely not produce a Supreme Court Justice in twenty years, if not more than that.

It is also tearful and heart-bleeding as how ***the conscience of the nation or democratic institutions in the country has turned over night*** into ***agents of darkness and layers of dictatorship and lawlessness***. Rather than standing up at all times in defense of democracy and rule of law, reverse is now the case. To the extent that Senior Advocates of Nigeria (SANs) (staunch defenders of the rule of law) now call for the suspension of rule of law in a democratic setting; likewise defense of illegalities by some, if not many of Nigeria's foremost professors of criminology, constitutional and criminal laws as well as human rights activists, stomached by the Buhari Administration; Nigeria and its democracy are doomed.

In all these, our questions to the Buhari Administration and its riotous DSS are: ***What is the difference between a mad man running amok with a sharp knife in a crowded market and a perceived sane man running behind and chasing him with another sharp knife in the same crowded market? Between two of them; who is insane and who is sane?***

We asked the above questions because it has become an entrenched routine for the Buhari Administration to bend rules and resort to short-cut, lawlessness, illegality and unconstitutionality in its governance approaches, particularly in its so called "anti corruption crusade". Though President Muhammadu Buhari himself, seconds President Jacob Zuma of South Africa in the world ranking of the least educated Presidents, yet it is also an incontestable fact that his Administration parades an assemblage of leading scholars in law and criminology. The movers and shakers in Nigeria's mainstream CSOs are also part and parcel of its Administration; yet the Administration has continued to behave or operate as an outlaw or a brigand political entity.

For the purpose of putting the records straight and advocacy and technical enlightenment, ***crimes***, as we have them today in the globe are divided into two major categories of "***mala inse" (crimes with global application and acceptance such as murder, armed robbery, asportation, carjacking, aviation terrorism, rape, arson, burglary, etc) and "mala prohibita" (anti social conducts defined differently by different countries as crimes or otherwise, such as adultery, victimless crime (i.e. prostitution) and some categories of white-collar crimes).***

Further, "corruption" and most of its agents as a crime appear to fall under "***mala inse"*** because of its global reprehension leading to the adoption of ***the United Nations' Convention against Corruption (UNCAC)*** by the member-States of the United Nations including Nigeria in 2003. The UN Anti Corruption Convention entered into force on 14th of December 2005 with 176 signatories and 140 full State-Parties including Nigeria, which signed it on 3rd December 2003 and ratified same on 14th December 2004.

"Corruption", globally is a complex social, political and economic phenomenon which still battles with a uniformed global definition. It involves misconducts in public and private sectors for the purpose of illicitly obtaining material and non material gains or favors. To be punishable, ***corruption*** must pass through the process of codification in a written and known criminal law by a member-State of the UN. ***Corruption,*** on its own, cannot a constitute crime or an offense, except aided by its agents such as bribery, fraud, kickbacks, extortion, embezzlement, money laundering, obtaining by false pretence, etc.

Corruption also belongs to the family of ***invisible crimes*** called "***white-collar crimes"***. "***Invisible crimes***" are so called because of difficulties in detecting them. Most importantly, they are ***nonviolent in nature (***i.e. their perpetrators do not use physical violence in perpetrating them). They are very common in "***white-collar"*** society or civil service or pen-culture society, dominated by government and corporate entities. The opposite of "***white-collar crimes"*** are "***blue-collar crimes"*** or "***street crimes" (stealing, robbery, auto theft, burglary, youth crimes, abduction, arson, etc),*** usually common in "blue-collar society" or commercial areas or ***cash-economy***.

To **Prof Edwin Sutherland (1949)** of **the Chicago Criminological School,** "***white-collar crime"*** is a crime committed by a person of respectability and high social status in the course of his or her occupation or office business. It arises from fraud, embezzlement, electronic or cyber crime, bribery, insider trading, kick-backs, contract inflation, over-invoicing, identity theft, forgery, money laundering etc. The concept of ***white-collar crimes*** was popularized by Prof Sutherland in 1949.

Pieces of evidence required for an offense of **corruption** against any perpetrator substantially start from ***electronic and paper based evidence*** and end in same. Investigations associated with corrupt practices start from ***behind-the-scene*** (i.e. data mining with or without the knowledge of the suspect) and end with ***investigator-suspect interface (***for clarifications and pre-prosecutorial fair hearing). Investigations into corrupt cases do not require late night invasion of homes and other dwelling houses as well as breaking into such homes with sledge hammers, acid substances, etc or corruption and abuse of search warrants (if any). The ***defence of retrieval of criminal proceeds*** is watery and impeachable; even if the movement of criminal proceeds was detected by secret police at ungodly hours, ***intelligence and policing surveillance methods*** remain the legally acceptable or permissible approaches until the godly hours return.

Search warrants must not be executed unless the suspects are present and put on credible notice. Forcing suspects (i.e. Justices and Judges) to sign such warrants or purported inventories for items purportedly recovered, amount to armed robbery, burglary, torture, assault and threats to life and properties. Besides, corruption must be handled by the requisite anti graft agencies such as Police, EFCC and ICPC. DSS has no statutory or constitutional duties whatsoever in the law enforcement aspect of anti corruption crusade. If for any reason, it has intelligence, it should be exchanged or passed to anti corruption agencies like EFCC, Police and ICPC.

It is therefore, in recognition of hefty challenges and difficulties associated with detection and punishment of crime of corruption that the United Nations strongly recommended "**Prevention"** as the most effective approach at curbing it. The UN, through its ***Convention against Corruption (UNCAC)***, specifically allocated 60% to ***Prevention,*** 20% to ***Prosecution/Punishment*** and 20% to **international cooperation, technical cooperation and information exchange among Member-States.**

According to **the United Nations Convention against Corruption (UNCAC), *corruption can be prosecuted after the fact*, but first and foremost, it requires prevention. An entire chapter of the Convention is dedicated to prevention, with measures directed at both the public and private sectors. These include model preventive policies, such as the establishment of anticorruption bodies and enhanced transparency in the financing of election campaigns and political parties. States must endeavour to ensure that their public services are subject to safeguards that promote efficiency, transparency and recruitment based on merit.***

Once recruited, public servants should be subject to codes of conduct, requirements for financial and other disclosures, and appropriate disciplinary measures. Transparency and accountability in matters of public finance must also be promoted, and specific requirements are established for the prevention of corruption, in the particularly critical areas of the public sector, such as the judiciary and public procurement. Those who use public services must expect a high standard of conduct from their public servants.

Preventing public corruption also requires an effort from all members of society at large. For these reasons, the Convention calls on countries to promote actively the involvement of non-governmental and community-based organizations, as well as other elements of civil society, and to raise public awareness of corruption and what can be done about it. Article 5 of the Convention enjoins each State Party to establish and promote effective practices aimed at the prevention of corruption. The ***UNCAC*** also recommended domestic criminalization of agents of corruption in line with international best practices as well as strict adherence to rule of law and human rights in tackling the perpetrators.

Tackling corruption can only be meaningful and result-oriented if ***Government or Political Corruption*** is curbed or tamed drastically. By ***Government or Political Corruption,*** it simply means when a public office holder or other government employees act reprehensively in an official capacity for personal or material gain. It is also official misuse of powers or public resources for personal gain.

Others amounting to encouragement of corruption and abuse of office are: ***Patronage***: Undue favors given to supporters of government officials. ***Nepotism/Cronyism***: Illegitimate act of favoring relatives and personal friends of government officials as well as shielding them from investigation.

Apart from the fact that there are 22 or more anti graft agencies and criminal enactments in Nigeria, which include the EFCC Act (2004), the ICPC Act (2000), the Money Laundering Prohibition Act of 2004, the Advance Fee Fraud & Other Related Offenses Act (1995), the Failed Banks (Recovery of Debts) & Other Financial Malpractices in Banks Act (1994), the Banks & Other Financial Institutions Act of 1991; and Miscellaneous Offenses Act, the Corrupt Proceeds & Properties' Forfeiture Act of 1999, and the Criminal and the Penal Codes of 2004 and the ***ACJA 2015***; ***corruption and abuse of office*** are also constitutionally prohibited in Nigeria in Section 15 (5) of the 1999 Constitution. Section 15 (5) of the Constitution provides as follows: "***the State shall abolish all corrupt practices and abuse of office".***

In fighting corruption in Nigeria, the rule of law and constitutionalism must remain its benchmark at all times. Turning fight against corruption into instruments for political vendetta, terrorism and brigandage is democratically dicey and disastrous. The agencies in charge of investigation and prosecution of corruption cases in Nigeria including the Buhari Administration are constitutionally restrained from stigmatizing and criminalizing those under investigation or using corruption as a cover to unleash State terror, falsehood and propaganda against them. Till date, offense of corruption in Nigeria is not a capital offense, but substantially misdemeanour; easily investigative and triable; substantially requiring ***paper and electronic evidence;*** once detected. Corruption also belongs to the family of ***nonviolent crimes;*** just like **victimless crimes (i.e. alcoholism and commercial sex habits).**

While Section 35 of the 1999 Constitution guarantees the citizens' right to personal liberty, subsections (8) and (12) of Section 36 forbid the Buhari Administration from subjecting the citizens to ***trial-by-ordeal or jungle justice*** and guarantee the citizens' rights to fair hearing and presumption of innocence unless found guilty by courts of competent jurisdiction. The citizens' right to privacy is also protected by Section 37 of the Constitution.

The Presidency of Buhari is also guilty of ***favouritism and nepotism***, which belongs to family of corruption and amounts to ***corruption and abuse of office,*** contrary to Section 15 (5) of the 1999 Constitution. Till date, despite the seriousness of allegations made against Mr. Rotimi Amechi by two respected Justices of the Supreme Court in their recent letters to the CJN, concerning the late night invasion of their homes by the DSS, which raises a serious image and credibility challenge to the Administration's so called "fight against corruption", Mr. Rotimi Amechi, who is a Minister of the Federal Republic of Nigeria; has neither been invited nor under any form of criminal investigation by the DSS or Police or EFCC or ICPC.

We call on the affected serving senior Judicial Officers particularly Hon Justices Sylvester Ngwuta Nwali, John Inyang Okoro, Nnamdi Dimgba, Adeniyi Ademola and Mu'azu Pindiga to use all means constitutionally available to clear their names and seek remedial and compensatory justice against the named riotous agents of the Buhari Administration. With the exception of those judges indicted and sanctioned by the NJC, the judges above named and others singled out for further intimidation, must stand firm at all times and refuse to be intimidated. The courage and sagacity of the named respected serving senior Judicial Officers are totally commendable. We rise in strong solidarity with the Nigerian Judiciary to save the rule of law from brink and executive bastardization.

The Buhari Administration is, therefore, called upon to retrieve from the DSS files containing its so called "ongoing investigation of the judges" and transfer them to the office of the Deputy Inspector General of Police in charge of Force Criminal Investigation Department (FCID) and its fraud unit. Any would-be outcome of the so called DSS probe is already dead, biased, corrupted and malicious on arrival.

The Buhari Administration must also sack Hon Rotimi Amechi as a Minister of the Federal Republic of Nigeria in charge of Ministry of Transportation so as to pave way for his criminal investigation on account of strong allegations against him bordering on corruption and electoral fraud as contained in the letters of Hon Justices Sylvester Ngwuta Nwali and John Inyang Okoro (serving Justices of the Supreme Court of Nigeria), to the CJN; which are now in the public domain. This is because ***Their Lordships are incapable of making such weighty allegations without knowing their accompanying consequences; if untrue.***

Signed:

Emeka Umeagbalasi, Board Chairman
International Society for Civil Liberties & the Rule of Law (Intersociety)
Mobile Line: +2348174090052

Obianuju Igboeli, Esq.
Head, Civil Liberties & Rule of Law Program
Mobile Line: +2348180771506

Email: info@intersociety-ng.org

Website: www.intersociety-ng.org