



# INNOVATIVE OR INEFFECTIVE? REASSESSING ANTI-CORRUPTION LAW ENFORCEMENT IN NIGERIA

## POLICY BRIEF

This brief highlights key takeaways and recommendations published in the report 'Innovative or Ineffective? Reassessing Anti-Corruption Law Enforcement in Nigeria' (2021) GI-ACE Working Paper No. 9 by Matthew Page (Chatham House)<sup>1</sup>. It is one of two country case studies of the project 'Fighting high-level corruption in Africa: Learning from effective law enforcement' funded by the Global Integrity-FCDO Anti-Corruption Evidence Program (2019-21). The research project is the first systematic study of law enforcement efforts targeting high-level (grand) corruption in Africa, presenting case studies of Nigeria and Malawi. It aims at identifying both enabling and constraining factors for effective law enforcement. The focus on the specifics of enforcement practice is new and provides evidence that has been missing in anti-corruption research.

Nigeria's anti-corruption law enforcement efforts are incrementally growing more effective as practitioners adapt, innovate, and leverage recent legislative reforms as they navigate many persistent challenges. Sometimes caricatured as sclerotic, politicized, or error-prone, high-level anti-corruption efforts are becoming noticeably more innovative and pragmatic.

Instead of being abandoned under pressure or grinding to a standstill, high-profile corruption cases increasingly involve new, more pragmatic resolutions. These include plea bargains and asset forfeiture as well as probationary and non-custodial sentences. In instances where political stakes are high and the likelihood of conviction is low, these tools are now seen as faster, more straightforward, and more viable than traditional criminal prosecutions.

Despite these modest gains, however, anti-corruption law enforcement still faces significant challenges. Some are age-old, such as attempts by senior politicians to derail or influence agencies' efforts. Others are still coming into focus, such as the use of cryptocurrencies. By drawing upon this balanced look at both the progress made and the obstacles remaining—rather than apocryphal accounts or stereotypes—policymakers, practitioners, civil society, and international partners can work together to support anti-corruption law enforcement in Nigeria more effectively.

<sup>1</sup> The paper is available at <http://gint.info/NigeriaPage>

## KEY TAKEAWAYS

- The prosecution of high-level corruption cases in Nigeria has progressed somewhat in recent years, yet many shortfalls and obstacles to additional gains remain. Key legislative reforms as well as innovations and adaptations like a greater use of non-conviction-based asset forfeiture and plea bargains have helped maximize success.
- The relative effectiveness of Nigerian anti-corruption efforts defies simple definition. Undue focus on a single metric such as conviction rates ignores other vernacular measures of effectiveness. These include making recoveries, satisfying domestic perceptions, ensuring deterrence and prevention, promoting the rule of law and developing anti-corruption institutions.
- Inter- and intra-agency cooperation is improving but remains inadequate. Prosecutors and investigators do not always work together effectively, especially during the early stages of a case when close cooperation can help ensure that prosecutions do not flail or founder in court, as happened in the three high-level corruption prosecutions examined in this report.
- Shortfalls in judicial integrity and independence also impede effective anti-corruption law enforcement efforts in Nigeria. Many judges also lack familiarity with money laundering and other complex issues that arise during corruption trials. Some judges are skeptical or even hostile toward anti-corruption prosecutions.
- Anemic budgets and staffing limitations also hurt the effectiveness of Nigeria's anti-corruption agencies. Nigeria's anti-corruption agencies suffer from a deficit of skilled, apolitical, independent oversight. They function more effectively when led by non-partisan practitioners and decline when run by stop-gaps or political proxies.
- The politicization of anti-corruption prosecutions is a double-edged sword. Political interference happens often and is highly disruptive. But while powerful high-level suspects are often untouchable, they can suddenly become vulnerable when political winds invariably shift. Such strategic patience leads to more successful prosecutorial outcomes.
- Nigeria's anti-corruption agencies have yet to strike a stable, sustainable equilibrium in their high-level corruption investigations by seeking both 'easy wins' like non-conviction-based asset forfeitures as well as undertaking riskier prosecutions that aim to secure convictions.
- The Economic and Financial Crimes Commission (EFCC) is a robust and effective organization but risks becoming a bloated bureaucracy that loses its elite reputation. The agency's mandate to fight cybercrime, for example, distracts from its core mission of fighting high-level corruption and strategically significant economic crime. The EFCC is also too vulnerable to disruptive high-level political influence.
- The Independent Corrupt Practices and Other Related Offences Commission (ICPC) and Code of Conduct Bureau (CCB) possess significant untapped potential but are constrained by legislative shortcomings, political interference, inadequate interagency collaboration, staff and budgetary shortfalls, and unmet training and equipment needs.
- Western and other international financial actors and government institutions tolerate—or even actively facilitate—corruption in Nigeria. Therefore, any international efforts to improve the effectiveness of anticorruption law enforcement in Nigeria will require domestic policy changes in those jurisdictions where Nigerian kleptocrats stash their ill-gotten gains.

## RECOMMENDATIONS

- The Presidency should ensure the timely release of budgeted funds to anti-corruption agencies and work with them to develop strategic, multi-year spending plans that aim to build long-term capacity. It should appoint respected technocrats, jurists, and civil society figures to serve on the boards of these agencies and invite civil society groups working on anti-corruption issues groups to help interview candidates for these roles.
- The Presidency should foster greater judicial independence by giving the judiciary real financial autonomy by releasing all funding immediately after the annual budget is passed into law. It should institute a zero-tolerance policy toward executive branch interference with the courts and anti-corruption agencies.
- The National Assembly should partner with anti-corruption agencies and the Nigerian Law Reform Commission to harmonize, consolidate, and modernize legislation. It should also amend the CCB Act to codify the use of online asset declarations, modernize them to reflect new types of assets, set guidelines for their public disclosure, and increase penalties for those who fail to make them.
- The EFCC should avoid 'mission creep' and refocus its resources on high-level corruption cases. It should relinquish secondary mandates by transferring most cybercrime cases to the police. It should institutionalize increased cooperation between investigators and prosecutors from the start of an investigation through the end of a prosecution.
- The EFCC should balance the agency's increased focus on non-conviction-based asset forfeiture with the continuing need to secure high-profile convictions. It should systematically disclose to the public synopses of all conviction- and non-conviction-based asset forfeiture, plea bargains, and deferred prosecution agreements.
- The ICPC should sustain and deepen collaboration between prosecutors and investigators. It should also forge closer partnerships with state governments willing to allow closer scrutiny of their ministries, departments and agencies or allow the agency to conduct systems studies of them. The ICPC should also work with the Attorney General to launch an appeal to the Supreme Court aimed at restoring key sections of its establishing act struck down by lower courts.
- International partners should reinvigorate financial and technical assistance to Nigeria's anti-corruption agencies and judiciary akin to the level provided in the early 2000s. They should also rethink their permissive attitude toward suspicious spending on high-end property, luxury goods and private education by politically exposed Nigerians suspected of corrupt practices. Partners should leaven discussions of how Nigeria is able to 'push' proceeds of corruption into the international system with how partners' policies and practices exert a strong 'pull' on those monies.

## RESEARCH TEAM MEMBERS

### **GERHARD ANDERS (PRINCIPAL INVESTIGATOR)**

✉ [gerhard.anders@ed.ac.uk](mailto:gerhard.anders@ed.ac.uk)

Associate Professor at the Centre of African Studies, University of Edinburgh. His research focuses on international development, good governance, international criminal justice and the rule of law. He is the author of 'In the Shadow of Good Governance: An Ethnography of Civil Service Reform in Africa' (2010), and co-editor of 'Corruption and the Secret of Law: A Legal Anthropological Perspective' (2007) and 'Transition and Justice: Negotiating the Terms of New Beginnings in Africa' (2014).

### **MATTHEW PAGE (NIGERIA EXPERT)**

Associate Fellow, Chatham House, non-resident scholar, Carnegie Endowment for International Peace, non-resident fellow, Centre for Democracy and Development, Nigeria. He is the co-author of 'Nigeria: What Everyone Needs to Know' (2018).

### **NICK STAITE (LEGAL EXPERT)**

Solicitor-Advocate England and Wales. Nick is an experienced legal advisor with 30 years' experience in public prosecutions (Crown Prosecution Service).



*Our research is funded by the Global Integrity-FCDO Anti-Corruption Evidence Program (2019-21).*