

African Parliamentarians Network against Corruption

Annual General Meeting

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Golden Tulip Hotel, Accra Ghana

How to Strengthen the APNAC Network: Short and Long Term Strategies on Fighting Corruption

Good morning.

I am honoured to be invited to address this, the second AGM of APNAC.

As you know, the first Annual General Meeting was held in Nairobi in 2003.

At that conference delegates deliberated on issues such as the role of parliamentarians in the fight against corruption, access to information as an anti-corruption mechanism, political party funding, international anti-corruption conventions as an instrument in the fight against corruption, the role of parliamentarians in preventing corruption in public procurement, and various APNAC member countries experiences in creating and sustaining the political will to fight corruption. Out of these deliberations resolutions and some useful recommendations were made. The conference was, I believe successful in giving a new impetus to the activities of APNAC and we can see this from the reports of the CPC on the expansion of the network and its activities. Some of the resolutions have been implemented and on others progress is being made as we have been informed.

I have been asked to speak on short and long-term strategies in the fight against corruption with a view to strengthening the APNAC network and I will attempt to do this referring to the concept paper distributed before the meeting but also referring to experiences and progress in the fight against corruption.

Speaking particularly from the vantage point of experiences in Kenya (which I am most familiar with), it is clear that the fight against corruption must be seen as a long-term battle which will experience many setbacks along the way. It is important to understand the context we are operating in when we attempt to bring about anti-corruption reform through policy change. We should have no illusions, all policy change is difficult. This is so for three main reasons:

First, it creates winners and losers. Second, it usually requires radical organisational change within government. Third, it almost always cannot happen without **a fresh injection of resources**, financial and human. Yet in

the typical case these resources are not available or if they are available, they are already earmarked for other things.

How does policy change create winners and losers? Every proposed change of policy is a shift in power relations. When we plan policy change we must expect the losers to fight back and to resist. Unfortunately, though we face resistance from losers, we cannot always count on the support of the winners. This is because the benefits of policy change may take years before they are visible and people rarely provide support for benefits they have not yet received. Also, the prospective winners of policy change are a much more dispersed and disparate constituency than the losers, hence much more difficult to organise collectively to militate in favour of the policy reforms. The prospective winners may not even be aware of the potential benefits of policy reform and have to be won over through consciousness raising, persuasion - all of which take slow and hard work with uncertain and often intangible results, as you can probably yourselves testify.

On the other hand, the losers of anti-corruption reform are usually a small group, quickly united by the potential losses in the massive benefits of corruption, much quicker to scent emerging threats to their position and therefore more swiftly mobilised. In addition to which they have through corruption amassed the resources to wage a punishing struggle against anti-corruption reform. The risk of counter-reform should not be underestimated by potential reformers.

Policy change also demands organisational change; it questions old ways and propose new ways of doing things. Yet old ways that we are used to are comfortable and reassuring; new ways can be unfamiliar and threatening. Successful policy reforms often demands a radical change in both the organisation and in the personnel of institutions. If you change the organisation without injecting in fresh blood you must expect resistance. And if you change the personnel without changing the organisation you can expect old habits and outdated bureaucratic rules to slow down your new staff and even, perhaps, to undermine the very changes you had hoped for.

But as important, policy change requires an injection of fresh resources. This seems obvious but it is amazing how often it is overlooked in the process of policy change. We pass laws, sessional papers and other policy instruments every day but only very rarely do we ask where the money needed to implement these changes will come from. We often forget that governments do not have cash reserves floating somewhere. The policies we make must mean that

something has to be sacrificed in the next year to fund our new policies. We can also expect that those who benefit from the thing we want to sacrifice will resist. The whole process then becomes highly political.

These introductory remarks are true of most policy change but they are particularly true of anti-corruption reform. Much more than other reforms, anti-corruption policies cause a great deal of pain and therefore a great deal of resistance. First, anti-corruption policies undermine the large procurement economy that is driven by bribery, kick-backs and other illegal commissions. Secondly, and in addition to the impact they have on the underground procurement economy these policies cause criminals a lot of pain. Corruption, where it is endemic, also supports a whole underground economy of police rackets; protection rings, drug-runners etc... The connections between this illegal economy and law enforcement means that the police and judicial institutions designed to fight the vice are themselves sometimes beneficiaries of it. Such connections also mean that these institutions cannot, therefore, always be relied upon to help fight graft.

By shutting down the underground economy and reforming the procurement economy anti-corruption reforms unites the truly bad guys and the not-so-bad and, I might add, those not yet bad but who are very keen to learn. As you can imagine these groups have enough resources to fight back. They always do. In some extreme cases such as Italy, they will murder reformers. In most other cases, they will fund your opponents and compromise your supporters.

This grim picture means that the battle for anti-corruption reform must never be under-estimated.

The foregoing provides the context in which all those intending to bring about anti-corruption policy reform must situate them if they are to have any chance of success¹.

Policy Partnerships to Implement Anti-Corruption Reform

Civil society

In implementing any kind of reform, policy partnerships play an essential role, no one group can go it alone, networks and coalitions must be established or strengthened. In this sense, APNAC's strategy of building on partnerships with

¹ I am grateful to my colleague Wachira Maina, constitutional lawyer and governance expert, for his thoughts on implementing anti-corruption reforms.

other actors is well thought out. A question we must ask ourselves is if expansion of the APNAC network is in itself always beneficial and at what rate the network should expand and for what reasons. Expansion for its own sake is in my view, dangerous; it must be at a controlled pace at which APNAC can manage relations to new chapters and keep on supporting and building the capacity of existing ones. Expansion must also be driven not just by the desire to increase numbers, it must be driven by the nature of the work that APNAC is doing; form must follow function. Networks which are not tightly structured around implementation of a programme of work will quickly deteriorate into talking shops and lose meaning and momentum.

In terms of partnerships, the relationship to civil society has proved particularly beneficial for APNAC chapters. It can be said that the more successful APNAC chapters are those which have managed to build up a strong working relationship with one or more CSOs.

There are reasons for this I think. Usually, politicians have a somewhat uneasy relationship with civil society. It is very easy for politicians to overlook civil society and the constructive and necessary role it plays in policy reform and especially anti-corruption reform. (This is particularly influenced by whether politicians are in or out of power. When out of power politicians seek strong relations to civil society which can offer valuable support in terms of intellectual resources, and access to material resources. Unfortunately once in power that relationship changes and many of the politicians who were making progressive noises from the opposition start viewing civil society with suspicion). But studies have shown that without a doubt there cannot be successful implementation of any policy in a **democracy** if a large part of the society does not believe that change **is not just desirable** but also **necessary**. Many desirable policies fail simply because citizens do not believe that those policies are necessary.

Gender policies are a good example of what I mean. Policy makers often believe that it is desirable to change the lowly status of women in order to improve the economy. Research has actually confirmed that gender makes a difference and that the difference gender makes in policy success depends on a clear focus on the status of women. But on the ground in many places in Africa, there are deep-rooted patriarchal cultures. In such cultures the majority of citizens are not convinced that gender policies are necessary. Inevitably, when gender policies are enacted, they are subverted and they eventually fail or are only partially successful. In the area of governance, it has often been demonstrated that those countries with a higher participation of women in

public life are also better governed, with much lower levels of corruption. It cannot, and should not, be claimed that women are inherently better, or less corrupt, human beings than men. However, women bear the brunt of mitigating many of the social and economic problems brought about by corruption and their social roles are often associated with a more highly developed altruistic and ethical consciousness. The increased participation of women in politics, and in APNAC, is likely to be positive for the fight against corruption in Africa. Integrating gender issues into the fight against corruption is something we have not yet achieved and APNAC needs to take this up as a challenge.

What applies to gender is also true of anti-corruption reform. We have yet to convince the African public, a) that corruption is bad for them, and b) that a reduction or elimination of corruption will be to their advantage.

And it is here that civil society groups and organisations can help in the policy process. We now know that citizens will not believe in and support anti-corruption reform, unless they see such reforms as necessary. Our first task as civic groups is to help people see how corruption hurts them.

Civil society organisations can help citizens make these connections. They can do so through action research, advocacy workshops, disseminating information, town meetings and other such like forums.

If they are successful in making obvious the links between their poverty and corruption, citizens will come to see themselves as the ultimate beneficiaries of anti-corruption reform. In short, citizens themselves become the key **constituencies for reform**. Without the strong support of such a constituency no government would have the political legitimacy to overcome resistance that will be mounted by the past beneficiaries of corruption. And when executive will to fight corruption slackens, groups such as APNAC can rely on public support and vigilance against corruption to pursue the campaign for reform even in the face of executive resistance.

One of the benefits of the partnership is the ability to tap expertise and resources which are often lacking for the work of Parliament, e.g. TI-Kenya has over the years provided APNAC-Kenya with legal expertise and access to the latest developments in anti-corruption strategies through e.g. facilitating attendance at the International Anti-Corruption Conferences. And also through mobilising resources for the work of APNAC Kenya and acting as its

Secretariat. TI Kenya also facilitated consultations between APNAC Kenya and other civil society organisations depending on the issue at hand.

And it also works the other way around, particularly when civil society comes under attack. Parliamentarians can provide beleaguered civil society organisations with protection and support e.g. in Zimbabwe, APNAC has played the role of providing an endangered TI chapter with cover and support, for which they need to be congratulated.

Other policy partnerships are or should be important to parliamentarians, I have focussed largely on civil society but further important partners are the private sector and the media.

Media

Politicians have a love-hate relationship with the media; they love good coverage but react sensitively to negative criticism. APNAC chapters should seriously consider, where they have not done so, developing ongoing relationships with the important media houses in their countries perhaps by inviting their senior editors and journalists to periodic briefings which can be kept off-the-record and thus keeping them informed on developments in their efforts as well as to public events. A thoroughly briefed media will be more likely to report accurately and sympathetically. However, it is important to develop and adhere to policies on how media relations are to be conducted and by whom since in their other lives APNAC member MPs represent competing interests and may be tempted to use the access to the media inappropriately to pursue other agendas. And speaking of inappropriate relationships, the practice of offering bribes for favourable coverage is something APNAC members should explicitly condemn and refrain from.

Freedom of information was one of the themes of the last AGM and a resolution was adopted to push for Freedom of information legislation; in this connection Uganda is to be congratulated for achieving this. Those countries who do not yet have such legislation should continue pushing for it. But as important as legislation - if not more- is a change in culture, (and this is a theme which I will keep returning to –legislation may be necessary but it is never by itself sufficient). All across Africa, with a few laudable exceptions such as South Africa, which we heard about in Nairobi in 2003, our governments resist the push for greater access by the public to the information which should be theirs by right. We need to target Official Secrets Act legislation in those countries

where it exists, limiting the boundaries of official secrecy to the absolute minimum necessary.

Promoting media access to Parliament and particularly to such sessions as those of the Public Accounts and similar committees would be one way of developing that culture of openness. Access to procurement information, to pick up another recommendation of the last AGM, should also be a matter of course, preferably, one day soon, continual access on the internet, even on closed defence bids, where there is considerable potential for abuse: this could be done by, for example, providing background information on company's involved in bidding for security contracts and any other information which it is not absolutely necessary to withhold for security reasons.

Protection of whistleblowers is another necessity if the fight against corruption is to succeed. Whistleblowers take immense risks to bring public attention to abuse. Without whistleblower protection, comprehensively defend to introduce a culture of whistleblower protection in both the public and private sectors, the fight against corruption cannot succeed. Apart from pushing for legislation on this, parliamentarians can use their parliamentary immunity to good account to cooperate with whistleblowers and protect them, as has been done in the past if too rarely.

The Private Sector

Unfortunately, with the private sector the issue is not as straight-forward. The key problem here is the companies that are part of procurement and other types of corruption. This poses a serious challenge. In the initial phase of anti-corruption reform such companies are the best resourced and the most determined opponents of reform. Because they have the resources to fight back, they can buy off the politicians who make the laws or the bureaucrats who will implement those laws if they are passed.

But I want to emphasize the positive and constructive role that the private sector can play:

First, fighting corruption is more and more being seen as the best business strategy. The private sector's commitment to anti-corruption reform within their own companies is not just a moral question; it is a matter of self-interest and survival. Corruptly run companies have no future, no matter how prosperous they are today, this is a lesson we learn from the collapse of the Enrons etc. Therefore cultivating relationships with private sector umbrella organisations and other representatives should be part of an APNAC chapter's strategy. Working with initiatives such as the EITI, as envisaged by APNAC, is

also an appropriate strategy particularly in resource dependent countries, but not only, as the search for resources, particularly oil, extends to cover countries which were previously ignored. Here, APNAC can work with private companies coming from countries with stricter legal requirements than our countries to promote a culture of greater transparency and accountability not only on the corporate side but also on the side of government, allowing it to develop more rapidly than it otherwise might have. Here initiatives like the “Publish what you pay” international campaign, which calls particularly on corporations in the extractive industries to disclose what they pay to governments in countries where they are active, are also important potential allies.

APNAC chapters should also consider using international instruments such as the OECD Convention Against the Bribery of Foreign Public Officials much more offensively than they do now. Parliamentarians are best placed to use such instruments to hold Western companies accountable for their activities in Africa; the relevant authorities in signatory countries are legally bound to act on credible reports of misdeeds by their nationals abroad. This could be a cooperative exercise between, the media (who receive such reports) civil society (who also receive reports or can do in-depth research) and APNAC chapters (who can ask questions in Parliament and present dossiers to the relevant embassies).

There remains the work of convincing the bad guys in the private sector that anti-corruption reform is ultimately to their benefit. Solutions could include those which contain punitive measures for transgressions but which allow for rehabilitation and do not destroy businesses- which would be counter-productive- unless of course, their activities are particularly harmful or dangerous (e.g. counterfeit products such as pharmaceuticals) in which case punishment should be swift and harsh.

The relationship to the Bureaucracy

Parliament makes laws, the bureaucracy implements them. Anti-corruption reform depends on the collaboration of the two. The corrupt also know this. If they find that they cannot corrupt members of Parliament (and would that were true), they will attempt to corrupt bureaucrats. This means that if they cannot stop a law from being made, they can stop it from being implemented. MPs and bureaucrats committed to anti-corruption reform must understand this. Parliament provides oversight by periodic review of government accounts and investments through the Public Accounts Committee, PAC, and (in Kenya)

the Public Investment Committee, PIC. To be effective, these oversight committees need timely and digestible information. This suggests the first challenge that MPs must face: how to ensure that they get timely information from the bureaucrats.

The last AGM recommended that Parliament should either enforce or introduce a requirement that government presents its accounts within six months of the end of the financial year. This is adhered to in South Africa and perhaps other countries. It was also recommended that public procurement be reformed to make the process more transparent and to give more teeth to auditing and oversight bodies. This was in addition to recommending a strengthening of the strategic links between APNAC and GOPAC to deal with transnational issues relating to procurement. Further actions such as the introduction of legislation enabling Parliament to impound the budgets of ministries where there are serious questions relating to those ministries annual allocations could be effective. And parliament should work to criminalise delay in giving information to parliament.

I think what always needs to be stressed is the importance of enforcement, of implementation. I note that one of the indicators of APNAC's success is identified as the "*Number of anticorruption draft legislation and policies recommended in various regional and national parliaments and the degree to which these draft proposals are adopted as national policy*" –

Let us recall that most countries have and have long had laws criminalising various forms of corruption, some dating from colonial times. The challenge is in enforcement of these laws. The danger in this indicator is that the mere agitation for, or passage of laws should be taken as adequate measure of progress on anti-corruption. Unfortunately these laws are often more honoured in the breach. Or the routine implementation of an anti-corruption programme in itself can become the occasion for the distribution of patronage in the form of highly paid jobs etc.

For example in Kenya, the government has devoted a great deal of energy to passing laws. This strategy is oblivious of the fact that the most serious failures and reversals in the fight against corruption in the last 10 years have actually been in enforcement not in the lack of a proper legal framework. Past efforts in the fight against corruption skirted this question and concentrated instead, perhaps deliberately, on stiffening penalties, creating more investigatory and advisory agencies and generally multiplying oversight mechanisms. Yet studies have shown that the growth and inflation in laws and institutions in environments characterized by low enforcement merely increases opportunities and incentives for corruption and crime. For example, the Kenya Bribery

Index, while recording a decrease in the overall levels of bribery, documents a significant increase in the size of individual bribes, showing the higher premiums attached to the greater risk of punishment for corruption.

While all our legislative frameworks need strengthening, APNAC should make sure to devote adequate resources to monitoring enforcement of and compliance with existing legislation and holding government to account on these issues. This is essential. Perhaps APNAC might consider developing a monitoring or compliance watch for publication on its website and in member countries. An AU Convention ratification and implementation watch might also work to encourage laggards. The development of objective tools to name and shame has in other contexts proven to be an effective strategy.

Lastly, and probably most importantly, APNAC can only do all these things if it leads by example. In this regard APNAC chapters must develop, strengthen and enforce their Code(s) of conduct. One of the more discouraging aspects for civil society of cooperating with MPs on anti-corruption is the knowledge that some of those shouting the loudest against corruption are the most corrupt. APNAC chapters must ensure that they do not become a haven for corrupt MPs on the prowl for opportunities for travel, associated allowances, and polishing up of their images, or whatever other pickings. If MPs are corrupt, they cannot credibly lead an anti-corruption campaign. APNAC must police itself to discourage corruption.

At the same time, in recognition of the context in which African MPs are operating, APNAC must continue to conduct research and promote public awareness and provide support to member chapters for debate on the true role of Parliamentarians. African MPs are subject to huge demands for direct contributions to alleviate their constituents various social and economic problems. APNAC must work to protect MPs from being forced into situations where the expectations of the public force them to search for resources to satisfy these demands, resources which may be of questionable provenance and result in compromising dependencies. Of course, the passage of legislation on political party financing as discussed in Nairobi is one possible contribution to reducing these pressures. But the bottom line is that the fight against corruption must be based on the bedrock of the ethics and integrity of APNAC members. Compromise on this issue would be suicidal.

Ladies and Gentlemen, once again thank you for the opportunity to address this gathering. I look forward to working with you to achieve our aim of transforming Africa into a continent whose resources are devoted not to the

obscene enrichment of a greedy few but to the development and welfare of its people.

Thank You.

Gladwell Otieno, Accra, November 21, 2005.

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