WINSTANLEY BANKOLE JOHNSON'S "THE GAPS IN THE PROPOSED ACC AMENDMENTS 2019"
A REJOINDER BY SORIE-SENGBE MARRAH
March 24, 2019

I pored through Winstanley Bankole Johnson's above-titled article interrupting my typically restful Sunday. I must admit that much as the article betrays expectations for substance, I must commend the writer, whose post-mayoral life is now spent on scholastic contribution to governance since his brief stint at the helm of the Freetown City Council exposed his lack of practical skills in running even a local government institution. What is also quite revealing and compelling to hypothesize is that had he opted for journalism instead of politics, he would not have suffered a cadaverous achievement, as he does in the latter. Although, I would also think that blunders like consistently misspelling a public figure's name would deny him any stellar spot in journalism either.

I agree with Winstanley that the proposed amendments by the Anti-Corruption Commission (ACC) to the Anti-Corruption Act of 2008 should be thoroughly scrutinized by our representatives in Parliament. Yes, exactly why the amendments are proposed and are not fashioned in stones. However, the entirety of his piece seems imbued in prevarication. Aside the excursion on trivialities such as an attempt on attacking the current young, fierce and dogged leadership of the Anti-Corruption Commission instead on staying on the intellectual route of assessing the proposed amendments and contributing a perspective perhaps not contemplated by the ACC, the writer concluded (abductively—*hypothesis rather than facts*) that the proposed amendments were bad but unwittingly ended up supporting the spirit of the proposed amendments—which is to further dismantle the sanctum of corruption. For instance, how can a man who prefers nothing short of prosecution and conviction for corruption, opines that the proposed amendments are unreasonable and questionable? It sure beggars belief!

Permit me to expose the holes in Winstanley's piece so that you would see for yourself see whether Winstanley has any morsel of legitimacy to speak about gaps in the proposed amendments. Don't get me wrong, I am a stickler for constitutional adherence and rule of law and I have no hesitation to call out constitutional infractions on any day—as manifested in my recent fellowship

with the Sierra Leone Bar Association on the demand for the appropriate constitutional making of the rules of procedure for the ongoing commissions of inquiry.

Order for Restitution

Johnson's assertion that the ACC is seeking to arrogate to itself the power of restitution after conviction is a grave and deliberate misconstruction of the simple language used in the proposed amendment. The proposed amendment to Section 36 of the Anti-Corruption Act is seeking to impose a mandatory obligation on the court to order restitution of the full amount adjudged to be misappropriated into the Consolidated Fund in addition to any pecuniary sentence. How is this unreasonable but not the extant regime which this aspect of the amendment seeks to alter—where folks who are convicted of misappropriation of billions of Leones are fined almost one-hundredth of what they had stolen?

Payment settlement

The proposed amendment to grant clear powers to the ACC to exercise discretion to either institute proceedings in Court or enter into payment agreement with a suspect, has been censured by Winstanley. Firstly, the practice of prosecutorial discretion is known in almost all legal systems in the world and this is not a novel practice has been a practice since the birth of the ACC. What the amendment seeks to do in this regard, is to clearly defined the powers to enter into settlement agreements with suspects and to impose addition penalty (such as banning the suspect from holding public office for three years; which by the way I think should be at least five years). It is a widely-held view that the proposed power to enter into civil arrangements to get defalcated sums repaid to the state would effectually reduce the burden on the prosecutorial machinery of the commission and similarly, reduce the workload on the court. The ACC's directorate of investigations and prosecutions is staffed with professionals who are able to judiciously exercise that discretion having regard to the need for deterrence in some instances. Since the amendment seeks to toughen the civil powers of the ACC to enter into settlement arrangements, such civil processes like other administrative processes are open to appeal and courts cannot be ousted. This is elementary law! Winstanley's worry that some people may have been coerced into paying those staggering sums which have been published on social media in recent times, shows his paltry experience with the

ACC. With the names being published on social media, I do not see any one of them being deprived of an opportunity to adequately consult counsel. I have on many occasions well before this current commissioner took the reins of office, had clients who were accorded opportunities to consult with me on a number of issues, and certainly that practice of respect for constitutional right of suspects, still persists in the current administration.

Directive not to proceed with contract

Besides Winstanley, many neutral consciences have questioned the proposed powers of the ACC to meddle in contractual relations even for the short period of time as in the proposed amendment. I must admit I had similar apprehension when I first read the proposed amendment. On deeper reflection, I had to agree that government contracts are the most fertile soil for corruption in our nation. They say "an ounce of prevention is better than a pound of cure", the proposed amendment seeks to prevent bad contracts which invariably would result in the depletion of the little resources of the state towards a fanciful end. What Winstanley got spectacularly wrong was his equating the remedial processes which parties to a contract can adopt under any law, to an intervention by the Commissioner, which according to the proposed amendment, he would not be doing on behalf of any of the parties. So, there can be instances were both parties may concur in opposition to the Commissioner's intervention. The fact that the proposed amendment includes a provision for judicial redress and the onus of the ACC to justify a continuing suspension of the contract before the High Court serves as a sufficient check on any abuse of the said powers. The safeguard against government resources being squandered in palpably bad contracts, which the said proposed amendment seeks to forestall, should override the temporary disruption of contractual processes. Unlike those who sound the doomsday trumpet that this would scare investors, the converse is the case—only unscrupulous investors and business people would be scared away, the commercially-ethical ones who understand the need to have a transparent and corrupt-free business ecosystem would flock in notwithstanding.

Evidential burden of proof

Winstanley's doubt, which he erroneous couched as a gap, is that the shifting of the burden of proof to a person being prosecuted for a corruption offence, as in the proposed amendment would be contrary to the constitutional right of that accused. The burden which the ACC seeks to shift in the proposed amendment

is the evidential burden not the legal burden, which throughout the course of legal history rests with the prosecution. The House of Lords was also confronted in the case of Director of Public Prosecutions, Ex Parte Kebeline and Others, R v. [1999] UKHL 43 with the question of constitutionality of shifting evidential burden of proof to accused/defendants, and they held that mere evidential burden does not breach the fundamental right to presumption of innocence—also contained in section 23(4) of our 1991 Constitution. This is the same proposition which informs the burden placed on accused persons for the offence of unexplained wealth under the current Anti-Corruption Act 2008—section 27(1). So yes, Winstanley's alleged gaps in the proposed amendments are only but his own gaping knowledge on the issues contained in the said proposed amendments.

Without the slightest hint of perfection in the proposed amendments, I think Winstanley's characterization of the proposed amendments to the Anti-Corruption Act 2008 as laden with gaps is with respect a naked intellectual disingenuity. The fight against corruption, which I sense from his piece he associates albeit with tongue in cheek, can be made better with these amendments. There are no gaps in the amendments, there are only holes in Winstanley's appreciation of the proposed amendments. Such comprehension, seemingly handicapped by other sentiments and prejudices for the current leadership at the ACC.