

# **GOOD GOVERNANCE ACCOUNTABILITY IN NIGERIAN PUBLIC SERVICE: INTERROGATING THE ROLE OF INDEPENDENT CORRUPT PRACTICES COMMISSION (ICPC) AND STATE CORRUPTION**

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## **ABSTRACT**

Good governance is associated with the provision of administrative, institutional, economic, social and political framework that fosters development. Its discourse therefore, focuses on public' sector management. It thus calls for emphasis on the role of a "sound " system of public management and administration, which underpins the development quest. Indeed, its supportive pillars for achieving this essence can be located in accountability, transparency and effective enforcement of laws and regulations. But this seems quite scarce in the Nigerian State as can be gleaned from a number of functioning institutional complexes. Lately, the Independent Corrupt Practices Commission (ICPC) impasse sharply interrogates this recurrent dilemma. In the light of the above, the paper examines the politics of the ICPC to highlight upon the oddities of public corruption with legislation under the Fourth Republic. It also probes the symbiotic connection between accountability and good governance, and analyses this raging problematic in the Nigerian case. Lastly, it explores opportunities for reinventing a corrupt-free governance programme that denigrates graft.

**Key Word:** *Corruption, Institution, Governance, Accountability, Development*

## **INTRODUCTION**

To say that Nigeria is perilously plagued with corruption at all levels is to say the obvious. This social cancer which is not limited to only Nigeria rears its ugly head in all societies. It is the degree that differs from one society to another. As far back as the Second Republic, Smith (1976) depicted Nigeria as 'a country where human society is plunging compulsively into ever greater depths of corruption and decay'. The greater the development plans, 'the larger the scale of corruption which their implementation encourages by diverting efforts that are being made for the benefit of the community into private gain at the community's expense.

Nigeria's nascent democracy is confronted with problems of institutionalized corruption, the laceration of the average Nigeria citizen's psyche and its heightened progressive and profound encroachment on the nation's fabric in the Malthusian speed of "geometric rather than arithmetic progression". This situation institutes politics of self-aggrandizement where the unwritten rule is "make your financial hey while the sun of

political office yet shines" (Adekunbi, 2000). Following from the above, the national firmament is besieged by widespread abandonment of the pursuit of excellence but the glorification of mediocrity in practically every area of life - politics, economy, education, healthcare, judiciary, law enforcement agencies traditional institutions and religion. The mind set is that the price to pay for honesty, fidelity, truth, hard work and diligence are too high hence the need to settle for the shortcuts and quick fix resort to mutual betrayal, opportunism and manipulation all in the bid to make it at all costs and by any means (Ehusani, 2003).

Following from the foregoing, the ravenous and devastating issue of corruption and corrupt practices touches all in its various shades of gratification, influence peddling; tardiness etc. In awareness of this fact, Rtd Gen Olusegun Obasanjo as the presidential aspirant during the election campaign of 1998 promised a total war against corruption as the priority of his administration coupled with it being a major election manifesto of his party the People's Democratic Party (PDP). In fulfillment of that promise, after his election and inauguration, the first bill, he sent to the National Assembly in June 1999 was on anti - corruption. The bill was passed into law after almost a year with the president's assent to it on Tuesday, 3th June 2000 as the Law of the Corrupt Practices and Other Related Offences Act 2000 (Anti - Law, 2000). This Anti - Corruption Law demonstrated the renewed commitment to rid Nigeria of Corruption that has made transparent accountability in governance at all levels. It is also geared towards redeeming Nigeria's image abroad, which has been sacrificed and massacred. To curb this scourge Justice Akanbi (2003) Chairman of the Independent Corrupt Practices Commission (ICPC) reiterated that combating this plague cannot therefore "be wished away or left in the exclusive domain of the politicians" It is expected that the establishment of the Commission which is supposedly not like other isolated pieces of legislation of past administrations will ensure that corruption will be handled from different integrated fronts such as legislative, sociological, economic and political thereby purging out corruption not merely in-the public sector but the private sector as well.

The festering tumor of corruption within the polity has continued to cause the steady decline in the quality of governance and in the commitment to accountability. As it were, crisis of transparency rejoices under the different appellations of gratification considered as settlement thus causing a conspicuous lag in the achievement of good governance. The practice in many democracies in ensuring accountability to and for the public's interests is, perhaps the most vexing problem due to the pervasive lack of accountability with government and the public departments under their charge, Moncrieffe, (2001). However, the loss of faith in accountability in governance cannot be entirely blamed on military regimes having in mind that civilian, politicians, public office holders, organized and unorganized private sector, institutions, corporations and agencies are collectively culpable.

This paper attempts to provide a realistic mid-term review of the ICPC and its priorities and to create a clearer picture of the prospects and challenges facing the government in its quest to achieve socio-economic progress. The greatest challenge that emerges from this study is that of the deepening difficulties with building institutions that can practice accountability. Pertinent questions such as. Are the strategies designed by ICPC to build accountability sufficiently reflective of and responsive to the different contexts they are meant to assist? Or better still how does the ICPC Commission's strategy that seems to represent the most articulate vision of public accountability have some 'sacred cows' that seem to escape the dragnet of the commission. The paper also tries to bring into relief how successful its enforcement mechanisms are bearing in mind it's most daunting "constraints" especially the National Assembly's failure to appreciate the poignancy and central position occupied by the rule of law in a democracy especially with the challenge of the enactment of the ICPC Act 2000 and its subsequent repeal.

The paper will address the following: Conceptual Clarifications, An Overview of Measures at Combating Corruption, Analysis of the ICPC, Evaluation of the Achievements and Constraints and Establishing the relationship between "Good Governance" and Accountability as it relates to checkmating Corruption.

## **CONCEPTUAL CLARIFICATIONS**

To pave a way to understanding the problem on hand let us define the following concepts:

### **CORRUPTION, GOOD GOVERNANCE and ACCOUNTABILITY.**

Among Social Scientists the question of what is Corruption is not that easily settled however, a definition mostly adopted is that of the Oxford English Dictionary which defines it more broadly, as "perversion or destruction of integrity in the discharge of public duties by bribery and favour. However, this definition fails to capture the developed meaning of corruption as related to behaviour. To this end, Smith (1976) defines it as 'diversion of material wealth, intended for effective achievement of socially desirable ends, into the pockets of individuals'. Adebite (1976), Director of the Corrupt Practices Bureau in 1976 defined corruption as, 'change from sound to putrid state, or from a state of uprightness, correctness or truth to a bad state or to a tainted use to which money is put to get things done illegally.' Hoogvelt (1976) says it is a process of trade in societal rewards.

Following from the above, Adebite and Hoogvelt see corruption as a curable mechanical fault in the societal machinery, Smith sees it as the way the machinery normally functions, a view he shares with Ola Oni and Bade Onimode who state that, "the basis of corruption is the system of bankrupt capitalist values which are essentially materialistic, selfish and depraved". By Its very nature, every capitalist society, because

it is selfish and exploitative, is a corrupt society. Behavior typically extolled under capitalism includes an infinite capacity to take advantage of other' people, a ruthless determination to get one's way by all means and an insatiable obsession for material accumulation which are also the source of corruption. By and large, corruption involves the acceptance of he accepts money or money's worth for something under ones duty not to do or to exercise a legitimate discretion for improper reasons.

Definitions are by nature elusive owing to the fact that words, their interpretations and applications sometimes vary from one culture to the other. However, the operational definition for corruption in this paper will be against the background of the anti-corruption Act which covers a wide spectrum or acts more than the simple act of giving and. receiving of bribes. These are the use of one's office for pecuniary advantage, gratification, influence peddling, insincerity in advice with the aim of gaining advantage, less than a full day's pay, tardiness and slovenliness (Anti-Corruption Law, 2000). Thus, achieving the objective of clarifying the meaning of "good governance" lies in recognizing that the concept determines accountability and transparency in governance In line with the widespread corruption that is siphoning a nation's resource. According to the Oxford Dictionary, governance means "the act or manner of governing, of exercising control or authority over the actions of subjects or a system of regulations." Governance, as distinct from government refers to the relationship between civil society and the state; between rulers and the ruled; the government and the governed". Mccarney, Halfani and Rodriguez (1997), The implication of the above is that the concept of "governance" transcends that of "government" to include civil society. To the African Regional Seminar (1997) Governance is a new agenda for inclusion of civil society in the process of government. It is the inclusion of human intentions, the identification of peoples' needs, their priorities, thereby responding to the increasing need to establish an exchange system beyond prescribed rules. Governance is thus more than good government. It is a process, the operations of which require honesty, accountability, transparency, consultation, participation and consensus-building

In essence, therefore, governance may be taken as denoting how people are ruled, and how the affairs of a state are administered and regulated. Given that there are different views as to what constitutes good governance, some of which are culturally determined, the central focus is to highlight the core characteristics which are widely accepted. These derive from the Universal Declaration of Human Rights (1948) that has been signed and thus accepted which include the following:

- The political rulers and government officials are both held accountable to the ruled for their actions through clearly formulated and transparent processes, and more particularly that the legitimacy of a government is regularly established through some well defined open process of public choice such as elections, referendum, etc (Article 21)
- The safety and security of citizens is assured (Articles 3 & 5) and the rule of law prevails,

such that contracts can be fairly enforced both among private operators (Individual or enterprises) and between a private operator and the state.

- The ready availability of information that will permit accountability to be practiced, laws to be correctly applied, markets to function, and people to be creative and innovative (Article 19)
- Public agencies are responsive to the need of the public and social and economic development is promoted for the benefit of all citizens in an equitable manner (Articles 22,23,24 &25)
- Freedom of association and expression of opinions (Article 19)

The above features capture the idea of good governance especially as it relates to its two distinct but intertwined dimensions of governance. The political dimension relates to the degree of genuine commitment to the achievement of good governance and the technical aspect relates to the issues of efficiency and public *management*. Without political commitment there will be *no* efficiency in public administration. This goes to show that state's responsibilities for the provision of public social and infrastructural services and in creating an enabling environment is the bane of governance. In the same light, accountability will not assure better governance unless public agencies are made more competent.

The above, brings the concept of accountability to the fore as it relates to governance. Accountability thus emphasizes the 'answering for the use of authority'. This is known as Ex-post Accountability which in principle refers to holding public officials accountable through the law, other monitoring and sanctioning mechanisms, and ultimately through elections. Accountability can be viewed in another dimension described as Ex-Ante or Positive Accountability. This suggests that in order to act effectively in the citizen's interest, representatives must -as a general principle- know what these interests are; allow for deliberation and consultation so that policies may be correct where appropriate; keep the public apprised of policy choices and provide explanations and opportunities for the public response, particularly where It is not obvious that actions are in accordance with the public's expressed interests and provide the appropriate mechanisms and act in such a way that citizens are able to assess the quality of their representation. Ex-ante accountability allows for continual check on policies, it also aims to enhance the responsiveness of agents of those whom they are expected to serve (Johnson, 1974).

### **MEASURES AT COMBATING CORRUPTION - AN OVERVIEW**

In the years before and immediately after independence, Nigeria was not that known to be a corrupt nation. Indeed, conviction of honour and integrity was the watchword.

Tafawa Balewa left no record of any attempt to admit there was corruption and indiscipline in his government, let alone controlling it (Agang, 1983). Unfortunately, following the various coups d'etat the average Nigerian's value judgement changed. One of the major and incontrovertible reasons for the January 1966 coup d'etat and collapse of the First Republic was the massive corruption of the governors and the regime. Reports abound of a man who became the Minister of Works who had the road to his village quickly tarred, secondary schools cited and pipe borne water provided (Ibid). Some gave contracts to people from their *villages*, tribes, thereby denying capable artisans contracts thus making tribalism on the ascendance resonating the fact that tribalism, nepotism, perfidy and corruption were the enemies of Nigeria (Ibid.). Major Nzeogwu who led the coup underscored the significance of corruption and the aim of the coup plotters "to establish a strong, united and prosperous nation, free from corruption and internal strife". He warned that "embezzlement, bribery or corruption, obstruction of the revolution are all offences punishable by death sentence" (Kirk – Green, 1971)-

Subsequently, the hijackers Ironsi and Gowon who accused the Balewa administration of corruption and indiscipline ended up being accused of corruption and indecisiveness. For example. during Yakubu Gowon's regime, the Godwin Damon's Affidavit could not remove Gomwalk but just managed to retire 2 Brigadiers on account of corruption after heavy pressure. Yet the 2 Brigadiers were turned millionaires through cement contracts (Agang, 1983). The regime also instituted probes into the operations of the marketing boards system and unearthed the structural linkages between the marketing boards and the dominant political parties that controlled the regional and Federal Government in terms of the pockets of individuals. The regime did not actually have any mechanism to combat corruption though it campaigned against corruption in the news media.

The overthrow of Gowon's regime in July 1975 by a new regime in the mantle of General Murtala Muhammed and later General Olusegun Obasanjo who took over in August of 1976 on the grounds of corruption and indiscipline further dramatised the role of corruption in illegitimising the authority of rulers and *Government*. In Murtala's October 1<sup>st</sup>, 1975 address to the nation he complained bitterly of indiscipline thus: "the slackening and the traditional checks, the general tune and efficiency of the services *have* progressively deteriorated to an intolerable limit" (Muhammed, 1983). Considering this a serious threat to *government*, all members of staff found wanting in efficiency and probity in any way were retired with full benefits and in cases of misconduct dismissed out rightly as a disciplinary measure. This Idea was laudable but after his demise in the hands of Dimka and his clique, corruption found its way back into the exercise. Murtala's administration also created purges in the setting up of public complaints commissions and probe panels. The Public Complaints Commission was established by the Decree (now Act) No 31 in October, 1975 to checkmate malpractices and the bureaucratic mistakes, abuse of office and Incompetence of those in authority that have their roots in corruption. However, the common complaints lodged before the commissions are in respect of delay in payment of retiring benefits (pensions and gratuities), death gratuities, wrong dismissal, termination of appointment and loss of the postal, money orders and parcels (Ibid).

Obasanjo on taking over the mantle of leadership reasoned that people should exercise self - control so that society does not generate into indiscipline, lawlessness and corruption (Agang, 1983). To this end, this administration established the Jaji declaration to also combat corruption but in the long run managed to leave governance more immoral than it was met. Take for instance, it was alleged that a Federal Military Government Contract of N45,216,000 for some international trade fair Job was revised by his administration to the tune of N95,820,000 rose to N116,257,893.00 (Ibid)

The administration of Alhaji Shehu Shagari was no better despite his administration's launch of an Ethical Revolution to intensify the fight against corruption and to reinforce the National Ethics of Discipline, self-reliance and patriotism' contained in Section 22 of the Nigerian Constitution, 1979. This revolution did not create any wonders for the simple reason that the problems thrown up by corruption are taken to be the cause of the menace. The root causes are what Smith (1976) noted as being "the phenomenal growth of organized deceit in public life, unprecedented increases in organized crime and general lawlessness, profiteering and sharp practices of all kinds, decay in sexual immorality, disintegration of the family, class conflict and brutality of so called law enforcement agencies" Thus, to Smith, it is impossible to fight an enemy unless the enemy is correctly identified rather than the perennial concern with superficial symptoms that 'evades probing the roots of the disease, perhaps for fear of the pain this may cause.

Buhari / Idiagbon (December 31, 1983 - May 25, 1985) administration showed more mettle in the combat for corruption with their institution of War Against Indiscipline (WAI). With this measure, many Nigerian's desisted from many corrupt and indisciplined acts until their overthrow by the Babangida regime (August 1985-1993) whose administration had no agenda for corruption. In fact during his era corruption knew no bounds in Nigeria. It is no accident that Advanced Fee Fraud (419-ners) had their 'golden' age during his era. To this end, more than any other regime Babangida's administration carried "moral devaluation to its apogee" Okey, (2003).

Abachas era (1993-1998) suffered the same wobbling spate of gratification despite his shoddy WAI-C (War Against Indiscipline and Corruption) where he practically garnered all the country's wealth to himself. A regime that once sent his security operatives to go to Central Bank and pick up more than one billion dollars (Ibid). Thus, under his administration, corruption, lack of accountability, mysterious deaths and intimidation assumed human focus so much so that no one dared ask for accountability.

The Abdusalami Abubakars brief stay in government (1998-1999) before handing over to the incumbent civilian president Major Gen. Obasanjo rekindled the dwindling hopes of Nigerians when he said that "under this administration, all rules and regulations designed to help honesty and transparency in dealing with government will be restored and enforced" (Ologunde, 2002). He further re-affirmed that there would be no sacred cows to get away with the breaching of the rule of law, or the proper action of corruption and evil but at the end of the day his government was indicted of misappropriation (Ibid)

The above cited antecedents of corruption prompted retired General Olusegun Obasanjo's administration in the fourth republic setting up an Independent Corrupt Practices and Other Related Offences Commission (ICPC) also known as Anti-Corruption Law with a focus to stamping out gratification and other related offences (Anti-Corruption Law).

The above overview of past administrations and strategies adopted for corruption reveals an endemic situation, so much so that the enthroning of accountability is an uphill task. This then projects Nigeria as a country where human society is plunging compulsively into ever-increasing abyss of corruption and decay, the paradox of a developing society.

### **THE ANTI-CORRUPTION LAW:**

#### **ESTABLISHMENT OF COMMISSION AND POWERS**

The Anti - Corruption Law of the Federal Republic of Nigeria 2000-cited as "Corrupt Practices and Other Related Offence Act" came into force on **the** 13<sup>th</sup> of June, 2000. Its section 3(1) established a commission to be known as the Independent Corrupt Practices and Other Related Offences Commission (ICPC) otherwise known as Anti-corruption Law. This law in its section 3(2) states that "the commission shall be a corporate body with perpetual succession and a common seal and may sue and be sued in its corporate name. Section 3(6) states that the chairman of the commission which must be a person of proven integrity shall be appointed by the president, upon confirmation by the senate and shall not begin to discharge the duties of their offices until they have declared their assets and liabilities as prescribed in the constitution of the Federal Republic of Nigeria.

In this law **CORRUPTION** includes bribery, fraud and other related offences. **PROPERTY** means real or personal property of every description including money whether situated in Nigeria or elsewhere, whether tangible, and includes an interest in any such real or personal property.

**GRATIFICATION** means:

- a. money, donation, gift, loan, fee, reward, value security, property or interest in property being property of any description whether movable or immovable, or any other similar advantage, given or promised to any with intent to influence such a person in the performance or non-performance of his duties
- b. Any offer, dignity, employment, contract of employment or service and any agreement to give employment or render services in any capacity
- c. Any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- d. Any valuable consideration of any kind, any discount, commission. Rebate, bonus, deduction or percentage
- e. Any forbearance to demand any money or money's worth or valuable thing
- f. Any other service or favour of any description, such as protection from any penalty or disability incurred or apprehended from any action or not, already instituted, and including the exercise or the forbearance from the exercise of any official power or duty;

- and
- g. Any offer, undertaking or promise, whether conditional or unconditional, of any gratification within the meaning of any of the preceding paragraphs (a) to (f) Anti - Corruption Law 2000).

### **SOME PROVISIONS OF THE ANTI-CORRUPTION LAW**

Provisions in 19, 21, 22, 23, 29 and 40 of the Act which have influence peddling, inflation or over-pricing of contracts, awarding contract when no budgetary provisions have been made, failure to report corruption and virements as crimes/offences punishable under the promulgated Corrupt Practices and Other Related Offences Act (Anti-Corruption Law,2000) shall be used for evaluation. Thus:

**Section 8(1)** states that any person who corruptly:

asks for, receives or obtain any property or benefit of any kind for himself or for any other person on account of (1 )anything already done or omitted to be done, or for any favour in discharge of his official duties or in relation to any matter connected with the functions, affairs or business of government department, or institution in which is serving as an official in the discharge of his official duties or in relation to any such matters aforesaid is guilty of an offence of official corruption and is liable to imprisonment for seven (7) years.

**Section 9 (1)** states that any person who corruptly (a) gives, confers or procures any property or benefit of any kind to, on or benefit of any kind to, or for a public officer or to, on or for any other person is guilty of official corruption and shall on conviction be liable to imprisonment for seven (7) years.

**Section 13:** any person who receives anything, which has been obtained by means of act constituting felony (a serious crime e.g. 419) or misdemeanor by means of all act done at a place outside Nigeria, which if it had been done in Nigeria would have constituted a felony of misdemeanor and which is an offence under the law in force in the place where It is done, knowing the same to have been so obtained, is guilty of felony.

**Section 19:** Any public officer who uses his office or position to gratify or confer any corrupt or unfair advantage upon himself or any relation or associate of the public officer **or any other public officer** shall be guilty of an offence and shall on conviction be liable to imprisonment for five (5) years without option of fine. This is otherwise known as the offence of using office or position for gratification.

**Section 21 (1):** Any person who without lawful authority or reasonable excuse offers any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's refraining or having refrained from bidding at auction conducted by or on behalf of any public body, shall be guilty of an offence and on indictment pay a fine of the current price of the property and imprisonment for three (3) years.

**Section 22 (I):** Any person who, without lawful authority or reasonable excuse, offers an advantage to a public servant as an inducement to or reward for or otherwise on account of such public servant's giving assistance or using influence in, or having given assistance or used influence in subsection (b) which posits also that the payment of the

price, consideration or other money's stipulated or otherwise provided for in any such contract or sub-contract as aforesaid, shall be guilty of an offence.

**SECTION 22 (4) :** Any public officer who, in the discharge of his duties awards or signs any contract without budget provision, approval and cash backing, shall be guilty of an offence under this Act and on conviction be liable to three (3) years imprisonment and a fine of one thousand naira.

**SECTION 23 (1):** Any public officer to whom any gratification is given, promised, or offered, in contravention of any provision of the act shall report such gift, promise or offer together if known, of the person who gave, promised or offered such gratification to him to the nearest officer of the commission or police officer. Any person who fails without reasonable excuse, to comply with sub-section (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding one hundred thousand naira or imprisonment for a term not exceeding two years or both fine and imprisonment.

**SECTION 29:** Subject to the provision of section 29 to 34 of this act the commission may, issue summons directed to a person complained against or any other person to attend before the commission for the purpose of being examined in relation to the complaint of in relation to any other matter which may aid or facilitate the investigation of the complaint, and the time and place at which the inquiry is to be held.

**SECTION 40:** Subject to such limitations as is provided under this act, every person required by an officer of the commission to give any information on any subject which it is the duty of such officer to inquire into under this act and which it is that persons statutory power to give, shall be legally bound to give information, failing which he shall be guilty of an offence on conviction liable to imprisonment for six (6) months or a fine (₦10,000) ten thousand naira,

### **ACHIEVEMENTS SO FAR**

The ICPC has scored a number of feats despite the daunting tides it has had to cope with. Accordingly, the springboard for evaluation shall be some facts from the chairman's recent accounts of his stewardship, which are:

The score sheet records that most African countries see the ICPC Act as a model on which to fashion their own legislation, as the Act *is* more efficacious and effective in tackling the menace of corruption and corrupt practices. The pertinent question then is how can the efficacy be measured? To this end, the chairman posits that the Act unlike earlier legislations blocked all loopholes which often provided escape route for criminally minded persons who plunder and loot the nation's wealth with impunity.

However, despite the ploy to delay most of the cases in court or stalling them ostensibly on the ground of the constitutionality of one section or another the Act has been tried and tested in the Supreme Court judgment delivered on the 7th of June 2002 where its validity and constitutionality were challenged in the case of Ondo State and Abia State governments (between Governor Orji Kalu, who on the suggestive grounds of political animosity to the president was one of the first political office holders to challenge the law in court) vs Federal government of Nigeria and the Act was held to be valid (Emmanuel, 2003)

The dismissal by the courts of the legal entanglements allowed the Commission to initiate investigation and consequently prosecution of public and private individuals indicted in corrupt practices. Sequel to this, the Anti-Corruption Commission on September 30, 2002, achieved its first conviction in the contravention of Ss22 (4) of the Anti-Corruption law as stated above when a Kogi State High Court judge sentenced Egwuba, the former Chairman of Ibaji Local Government Council in Kogi State to a compulsory three years imprisonment on the charge of awarding a contract without budgetary approval (Ibid). The Commission justifies its feat by stating despite the arguments advanced by critiques some years before the Anti-corruption Law Act 2000 was promulgated, no single recorded prosecution for corruption was made in any of the regular courts (Akanbi, 2003). This then goes to show the high rate of cover up of criminal practices and the lip service paid to the purging of corruption in the system by the various Codes and Policy frameworks of past administrations.

Moreso, the claim by critiques is that the Penal Code (1960) used in the North and Criminal Code used in the South contained adequate provisions, which dealt with cases of corruption, gratification and other matters which invariably makes the promulgation of the Anti-Corruption Law unnecessary. The former which is a compromise between the English and Islamic Law modeled after the Indian and Sudanese Penal Codes makes it an offence for a person/public servant to accept gratification as a motive/reward for rendering official act or service to any person with the public service. The latter (Criminal Code) is divided into official and Judicial corruption. The former centres on any form of gratification by the public servant while the latter involves judicial officers who ask or receives any benefit so as to influence their judicial duties (Okonkwo and Naish, 1980).

The Commission also boasts of some cases under prosecution - 17 criminal matters in various designated courts, involving 39 accused persons, 287 petitions have reached various levels of investigation with 518 petitions being processed (Akanbi, 2003).

The Anti - Corruption Law is the toughest in the history of our nation by its incorporation of the spirit of national rebirth which is the driving principle of the Obasanjo administration (Anti - Corruption Law, 2000) in the provisions of the ICPC Act, 2000 which has special provisions as

regards the admissibility of evidence, the burden of proof in a given case, and the special powers of the chairman - all of which facilitate effective and expeditious handling of corrupt cases. The Act also contains provisions which enable the commission to set into motion the machinery for the appointment of independent counsel by the Chief Justice of Nigeria to investigate all chief executives of states and their deputies (Ibid)

These cases which involve men of substance and position who are directors in government establishments, parastatals and ministries further debunks the 'sacred cow' phenomenon. A cogent example, is in the complaint against 2 former ministers after they had left office with the prosecution of one of them which is now at an advanced stage because it falls within the operative date of the Act While the other case that was committed before his appointment as minister cannot be treated because the commission has no retroactive measure (Ibid). Accordingly, it is remarkable that for the first time in the annals of this country, a high court Judge, directors, business tycoons, commissioners of states have been put in the dock to answer charges of corruption. More so, no fewer than 15 governors have their cases pending before the commission with investigations in many of them nearing completion (Ibid)

### **CONSTRAINTS OR POLITICS OF THE ANTI - CORRUPTION LAW**

A number of constraints hamper the exercise of the Independent Corrupt Practices and Other Related Offences Commission (ICPC) otherwise known as the Anti-Corruption Commission.

The instructive principal constraint of the ICPC is the accusation in line with the commission's crisis of definition and relevance due to the various executive and Legislative wrangling on its operational law. The Commission has suffered having some of its sections being knocked down as being unconstitutional especially these two controversial sections of (Ss 26(3) and 35. The former states that "a prosecution for an offence shall be concluded and judgment delivered within(90) working days of its commencement save that the jurisdiction of the court to continue to hear and determine the case shall not be affected where to hear and determine the case shall not be affected where good grounds exist for a delay" while the other states that "where the commission is satisfied that a summons directed to a person complained against or any person has been served and that person does not appear at the time and place appointed in the summons, the commission shall have' power to arrest and detain any such person complies with the summons"(Anti - Corruption Law Act,2000).

The other legal obstacle is the non-proactive nature of the ICPC law. Nigerians had expected the commission to swoop down on past military administrators who misappropriated public funds. But contrary to expectations, the commission turned out to be another hoodwink employed by Obasanjo to portray his sense of seriousness and

commitment. It came as a rude shock when the chairman of the commission Justice, Mustapha Akanbi at a symposium on corruption organized by members of the NYSC ( anti-corruption community service Group) said "the ICPC act was enacted long after the tenure in office of these heads of state. If you want us to investigate Generals Babangida, Abdulsalami and Buhari, we lack the power to do so as the act is not retroactive having in mind that the operative date was 13<sup>th</sup> June, 2000, Oliver and Enewan (2000). Moreover, the act acts only when an act of corruption is reported it formally in writing or orally.

The Obasanjo's administration winning the war against corruption appears to be a pipe dream with the ICPC already being branded a "toothless" for its failure to prosecute the "big-catch" since its inception whilst the ordinary Nigerian gets harassed by the Anti-Corrupt Commission. For instance President Obasanjo a few years back challenged Nigerians to show him proof that Babangida corruptly enriched himself (Oke 2003). It was a silly burden to trust upon the poor, abused Nigerians, since all and sundry know a corrupt man when they see one. The joke would be on Babangida and indeed the ICPC that is waiting for a written conviction that characters like Ibrahim Babangida who after ruling Nigeria for eight years, emerged as a stupendously wealthy man. Public estimates of his assets are in billions of dollars. It is public knowledge that he lives in a 50-bedroom mansion, that he owns a private jet as well as a fleet of expensive cars (Ibid.). No body in the presidency, the National Assembly or the stooge ICPC has ever sought to ask the man how he accumulated all the wealth. Why does the President, an avowed crusader against corruption still insist that he has no evidence that Babangida stole public funds?

Witch-hunting has been a major forte on which the ICPC has been criticized. A cogent example is that, apart from the late General Sani Abachas family and his cronies who were compelled to return large sums of money to the government, Nigerians are still waiting for questionable characters who had stupendously embezzled public fund" to be brought to book Nwana, (2003). A character like Mbadinuju (the Ex-Governor of Anambra State), who has broken all records in graft, by brazenly pocketing public funds through giving a standing order to a bank to pay forty million naira each to a none existent contractor in Anambra State. This was a state whose citizens suffered untold hardships because for many months neither teachers nor civil servants could be paid salaries (Ibid). This whole situation smacks of double standards as it seems to appear that the chairman of ICPC does not understand the meaning of corruption or does it mean that anti-corruption laws are meant primarily for the recovery of the Abacha loot and taming the National Assembly and dealing with lesser citizens?

Another nagging constraint is the decision by the legislators to repeal the Anti-Corruption Act 2000 by a section of the new bill that is to be cited as Corrupt Practices and other related offences Commission. This came on the heels of the political contrivance by opponents of the Obasanjo administration in the House of Representatives who on August 13,2002 initiated an impeachment

motion alleging sundry corrupt practices against the speaker of the House, Alhaji Ghali Na 'abba (Emma, 2003). On the heels of the above petition was another filed on October, 27, 2002 against Senate president Anyim Pius Anyim by the Maverick Senator Arthur Nzeribe, on the camp of the presidency was targeted at achieving political points at the expense of the senate (Ibid). These reasons advanced though are altruistic but, in truth, did not tally with their concealed objective which was to extort funds from the target for self-fortification against impending challengers in the coming elections (Ologunde, 2002). This, Arthur Nzeribe, alluded to as regards the fraudulent collection of money in his honesty (at least according to him "even among thieves, there should be honour") admitting that he collected three million naira bribe together with others so as to soft pedal on the impeachment bid of the president (ibid). The allusion then is the situation in the House of Representative who was the arrowhead of the impeachment process. What is the source of the funds being used by "unknown Nigerians "to bribe legislators? And this leads one to querying why the ICPC is still tarrying to investigate all the Senators since the allegation contravenes section 19 and 21 of the graft law as mentioned above.

With the investigation against the senate president on course the senate purportedly claimed to review the powers and appointments of the members into the ICPC. The aim of the reviews initially was to whittle down the perceived influence of the executive arm of government over the commission through stripping the president of his power of appointing the commission's members and chairman as stated in section 3(6) of the ICPC as cited above. However, with the accelerated rate of the investigation almost at the nip of nailing both of them and subsequently put an end to the impeachment saga, the senate moved from the threat to review to the repeal of the Anti-corruption Law, 2002 Act in its entirety. The court order by Justice Egbo - Egbo who is hearing the case brought by the aggrieved lawmakers at the Abuja High Court had issued an order asking both parties to the case to maintain status quo pending the determination of the case Soniyibi, (2003). The senate's disregarded this injunction and proceeded with repealing the Act. The repeal determines the deceitful camouflage by the legislators especially in their repeal with the existing Act Vide 50 in the law without a saving provision. The repealed Act provides that all offences committed under the provisions of the 2002 Anti-corruption Act would not be liable to prosecution in the new law thus inevitably, conferring immunity on all those presently being investigated by the commission (Olojede, 2002). This action in George Orwell's 'Animal Farm' implies that the Assembly Members are more equal' than others.

The ICPC experience of crisis of expectations has further placed Nigeria as the second to the last most corrupt nation in the world by the transparency International who still question Nigeria's readiness to combating corruption Bideh, (2003). The palpable advance fee fraud (419) scam in Nigeria projects a false image about Nigeria and indeed is a blow to the hue and cry against corruption and financial crimes. Infact, had the federal government faithfully executed the provisions of the ICPC Act. the most recent blacklisting of Nigeria by the International Financial Watchdog. the Financial Action Task Force (FATF) Olawale, (2003) would have been averted. The blacklisting by International Task Force's was on the failure of Nigeria to legislate on such as

issues on finance houses, stock broking firms, investors' advisers, thrift collectors which are veritable for ICPC combating financial crimes. However, it is believed that the new commission on Independent Economic and Financial Crimes Commission will address the shortcomings which ICPC suffered.

It is however, important to note that with the new administration still under Rtd General Obasanjo and the Senate under a new mantle of leadership of Adolphus Nwabara as President, a new ICPC bill. With this bill, it is hoped that the areas of conflict between Obasanjo and the National Assembly in the application of the former Anti-corruption Law, 2000 Act, which the former leadership of the National Assembly said was "a weapon of intimidation' by the president against political opponents would have been achieved, Murray, (2003). So far the bill has scaled through the first reading on the floor of the House of Representatives (Ibid).

### **GOOD GOVERNANCE, ACCOUNTABILITY AND THE POLITICS OF CORRUPTION.**

In consonance with the popular definition of democracy as the government 'of the people, by the people and for the people, the concept of good governance is created with the impression that trappings of political power have been extended to the masses. Thus, the end of all government is in the enjoyment of their rights without oppression. The question then is what conditions must operate in order to enable us confirm that a government is for the people? This question finds leaning in the extent to which government is perceived and accepted by the citizenry to be legitimate, committed to improving public welfare and responsible to the needs of the citizenry; competent in ensuring law and order and in delivering public services, able to create an enabling policy environment for productive activities, and equitable in its conduct, favouring no special interest or groups" Ismail and Pierre, (1991).

Following from the above, the legitimacy and perhaps, the stability of the democratic system is, in part, dependent on the extent to which the electorate are operating in the public interest. Political accountability then becomes critical to representative democracy. However, in practice there is a pervasive lack of accountability because "as the political and bureaucratic elites holding office will manipulate state power for their own benefit unless constrained" Bayart, (1989). The lag in accountability by public officials as is evident in Nigeria today in the monster of corruption might not have developed to this scale if governments have been able to enforce financial discipline along with efficient management control. For instance, President Obasanjo has been criticized at home and abroad for a penchant to spend huge government money on unproductive ventures such as the Abuja Stadium that was built for more than 50 billion Naira and the spending of more than 700 billion on repairing the country's refineries yet they are not functional. Okey,(2003). This Indiscipline in reckless spending brings to bear the idea of ex-post accountability which implies that a public official is liable to sanction, if in the citizens' perception, the responsibilities of the office have been executed inappropriately or satisfactorily, Monclieffe, (2001).

To be fully effective, measures to achieve political and legal accountability used to be accompanied by arrangement to make bureaucracies accountable. To this end, the performance of public agencies and officials require monitoring so as to correct bureaucratic abuses and inefficiencies. Waste in the bureaucracy in Nigeria has been going on as far back as the “60’s” when it over bloated to the extent that a public servant could have as many as 16 cars or more in their fleet, purchased by government, maintained and serviced by government including free houses to the public servants and a retinue of stewards and aides just for the convenience of few, Nwana (2003). It is believed that this unpatriotic wasteful indulgence which Nigeria leadership have goaded civil service into allowing will find relief in this administration’s decision to address the issue of waste through the monetization policy. The savings that the government will now make from monetization would be used to provide more amenities and infrastructures for the citizens. To serve the public interest, there should be financial and managerial accountability, which will ensure circumspect accounting and financial procedures so as to reduce waste.

Consequently, there should be emphasis on parliamentary accountability and transparency for effective administration of law in the public interest. In this wise the legislators choice to ignore and disrespect the restraining order from the court to maintain status quo ante on the ICPC was purposive in disregarding of the rule of law. The situation in Awka and indeed the entire Anambra state has defied the functions of government for the common good as regards the maintenance of law and order. When few individuals without the people’s mandate take it upon themselves to define the political power configuration of the state, there is bound to social and political disequilibrium (Dayo, 2003), thus denying the citizens the essence of governance since May 29, 1999, when PDP government assumed power in the state. Thus, when a leadership lacks standards the government becomes deficient in values and morality, which are tell-tale signs of the negation of democratic/good governance principles. Sequel to this, instituting good governance in a system that thrive on treachery, falsehood, corruption and indiscipline resonates. Moncrieffe, (2001) position that “elected representatives ought to have objectives that are designated not to benefit themselves or their favored associates but the entire electorate, that they are under contract to serve”. The non-delivery or at best very poor delivery of public service or programmes by government has created a pall on the degree of responsiveness to the peoples designated end and expectation is a measure of a competent government.

The review of the relationship between good governance, accountability and the eradication of corruption in Nigeria, unearths in all the sectors of the society an unprecedented rot and decay, which could lead to imminent collapse. This protracted nightmare thus imposes on the people a weakness to hold on to any dream that there exists an Incorruptible Nigerian (even if there exists people like late Dr Dora Akunyili of NAFDAC who returned 12 thousand pounds sterling of the

medical allowance for a surgery that she did not undergo to the PTF and has recently become the first African to clinch the much coveted Transparency International Integrity Award for fighting and defying corruption) let alone being able to find citizens that can stand tall and say with conviction the national anthem "I pledge to Nigeria my country. To be faithful, loyal, and honest. To serve Nigeria with all my strength, to defend her unity and uphold her honour and glory.

### **RECOMMENDATION**

To a large extent, it can be acknowledged that inculcating disciplinary values in the Nigerian system is a gigantic task. Thus, it is beyond the capacity of a few in a commission like the ICPC to combat in a short while but rather a call for a combined effort of all citizens to combating the menace of corruption. To achieve this, the following recommendations will aid in minimizing the scourge:

- The Judicial system must be strengthened and the law enforcement agencies thoroughly cleaned up, restructured and re-oriented so that they can efficiently combat corruption.
- Government should ensure that the rate of unemployment is reduced and those already employed should be well remunerated so as to check gratification.
- Creating awareness on the ills of corruption through enlightenment programmes in the media and through seminars
- Religious values of honesty, probity and hard work should be revisited in the teachings of the church more than teachings on prosperity.
- Nigerians should be alert to ensure that their elected representatives carry on their official duties without gratification.

### **CONCLUSION**

The paper has revealed that corruption is a malignant tumor that feeds on its hosts to death if not quarantined. The struggle therefore of checkmating this scourge is one for the survival of the Nigerian polity having in mind that it has been the major cause of the failed attempts at democracy since independence. What then is on trial is not so much the triumph of the Commission over corruption. In its short span, but the realization that the Anti-corruption Law Act 2000 was on its way to being antidote to the cankerworm when it was blighted by the untimely repeal by the legislators. Thus pursuing the shadow of the ideological, constitutional shortcomings of the Law/Act will succeed in drawing a red herring on the path of the nefarious act of corruption that may not in any way ameliorate the problems raised.

## REFEENCES

- Adekunbi, Ero (2002), " An Intoxicated Political Class", Tell Magazine
- Akanbi, Mustapha (2003), "My Stewardship", Tell Magazine
- Adegbite, J (1976), "How it All Began", The Daily Times Newspaper, Lagos
- Anti-Corruption Law of the Federal Republic of Nigeria. Times Press Limited
- Agang (1983), Effects of Indiscipline and Corruption-Workers Attitude to Work at the National Seminar on " Ethical Re-orientation's Committee on " Indiscipline and Corruption and their Adverse Effects on the Nigerian Society and Economy" Kongo Conference Hotel, Ahmadu Bello University, Zaria, April II-15<sup>th</sup>
- Bayart, Jean-Francois (1989), L'Etat en Afique: La Politique du Ventre. Paris Fayard
- Dayo Benson (2003), "Quest for Peace", Sunday Vanguard, Lagos.
- Emmanuel Aziken (2003), "Amended ICPC Act: Anti Graft Law or Legitimizing Corruption" unday Vanguard
- Ehusani George (2003), "The Corruption of Religion", Sunday Guardian.
- Hoogvelt (1976), The Sociology of Developing Societies. Macmillan. London.
- Ismail Seragelding and Pierre Landell-Mills (1991), "Governance and the External Factor" The World Bank Annual Conference on Development Economics, April 25-26, 1991.
- Kirk-Green, A. (1921), Crisis and Conflict in Nigeria: A Documentary Source Book, 1966-1967, VoL. I
- Johnson, N. (1974), "Defining Accountability", Public Administration. Vol 17
- Sola Williams (2002), " How Nigeria Earned Second Position" News watch Magazine.
- Mohammed, H (1983), " Public Complaints Commission as an Instrument for Controlling Corruption-Assessment and Suggestions" A Paper presented to the Ethical Committee's National Seminar on " Indiscipline and Corruption and Their Adverse Effects on the Nigerian Society and Economy", Kongo Conference Hotel, Ahmadu Bello University, Zaria, April II-I5
- Moncrieffe, J. (200I), "Re-Conceptualizing Political Accountability", International Political Science Review, Vol 19, No 4
- Murray, J. (2003), "Obasanjo sent new Anti-graft Bill to the National Assembly, the Punch, Thursday, July 10, P 3
- Nwana Harry (2003), "By the Way Column" Vanguard Newspaper, Wednesday. July 9, p.10
- Olawale Ronke (2003), Bank Chief Blames Government for Sanction Over Financial Crimes", The Guardian, Friday, August 15
- Ologunde Funso (2002), "Bribe Givers and Takers", Sunday Champion, November 24.
- Okey Ndibe (2003), "Combating the Scorge 24of 419" The Guardian, Thursday, July 26, p 65.
- Oyatomi Kunle (2003), "Monetization: A Right Step" Sunday Vanguard, August 10, p 9
- Oni O and Onimode, B. "Economic Development of Nigeria. The Social Alternative", Nigerian Academy of Arts. Sciences & Technology. Ibadan, PP. 6& 75.
- Oliver O and Enewan Ekpenyong (2002), "Civil Society, Democracv and,Accountability", Human Rights Defender. 1st Quarter Magazine. Vol. 4, No 2, pp'2 & 13

Okonkwo and Naish (1980), *Criminal Law in Nigeria*. Ibadan. Spectrum Books.

Smith Abdullahi (1976), "The development of Corruption", *New Nigerian Newspaper*, Jan. 26.

Seniyibi Tobi (2003), "ICPC, Legislative's Disregard for Judiciary" *The punch*, Friday, May 16, p. 38