

THE RIGHT TO A CORRUPT FREE STATE: PROBING THE PROVISIONS UNDER THE CRIMINAL JUSTICE ADMINISTRATION AND INSTIGATING THE UNITED NATIONS LEGAL PARADIGM TO THE RESCUE¹

Abstract

Corruption is a major societal crisis in the 21st century. It is widespread in both developing and developed countries. During the 1980s and 1990s, foremost banking frauds and corruption scandals occurred in many countries. Nigeria has witnessed its fair share of such scandals, particularly during the military era and also in its current democratic dispensation. The consequences of corruption on Nigeria's economy can be found in other areas of the country's institutions such as government, politics, both public and private establishments, schools etc. This article probes the domestic legal framework under the criminal justice administration and insinuates the possibility of adopting the United Nations legal paradigm as an escape route. In carrying out the assessment, the study examined the causes and consequences of corruption. It also undertook a comprehensive study of domestic legal framework on corruption and the United Nations legal paradigm on corruption. It is therefore contended that the existing reforms and policies on corruption need to be genuinely appraised and fortified to ruthlessly deal with the causes of corruption rather than its effects.

Keywords: Right, Corruption, Criminal, United Nations and Justice

Introduction

"We've got some leaders of some fantastically corrupt countries coming to Britain... Nigeria and Afghanistan, possibly the two most corrupt countries in the world".

David Cameron.²

Corruption has existed since the beginning of mankind. It is found in public and private sectors, profit and non-profit organizations as well as benevolent firms. The developed and the developing countries are afflicted with this nuisance called corruption; however, it is more pronounced in the latter, it is therefore usually seen as a feature of a defective country.³ Corruption is not particular to just one country, therefore, no country can be solely stigmatized with corruption since it transcends "national boundaries and frontiers and symbolizes out of the ordinary widespread unwholesomeness politically".⁴

This vice has a ripple effect on other aspects of the country's affairs, hence bringing about problems like unnecessary hikes in prices of goods and commodities which leads to inflation, erratic power supply in developing nations, inefficiency in government establishments and offices, police extortion of toll fees, port congestion, ghost-worker factors, election malpractices, among others.⁵ Government officials

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²PM: "We've got the leaders of some fantastically corrupt countries coming to Britain", <http://www.asianimage.co.uk/news/14483208.PM__We_ve_got_the_leaders_of_some_fantastically_corrupt_countries_coming_to_Britain_/Check_it_up.....>, accessed October 9, 2020..

³ *Ibid*.

⁴ Aluko, Y, "Corruption in Nigeria: concept and Demission in Anti-corruption Reforms in Nigeria since 1999: Issues, Challenges and the Way Forward", Vol.3, (2009), *IFRA Special Resources Issues*.

⁵ *ibid*

corruptly enrich themselves by unduly embezzling Government funds which is earmarked for public goods, services and projects; they compel citizens to pay bribe, and citizens also stimulate the officials with bribes to get whatever they want from Government establishments.⁶ The level of corruption in Nigeria is so distressing; it has penetrated into the even lowest cadre of the society which is the family. Corruption not only inhibits progress and effective democratic governance, it is also a wormhole for malicious external influences, subverting sovereignty and regional stability.⁷

The onset of corruption in Nigeria cannot really be tied down to a particular time; nonetheless, it has been asserted that it can be traced to the period of colonization when Nigerians were bribed with different foreign goods in exchange for local products and for slaves.⁸ Also, different regimes have participated with various forms of corrupt practices. The hydra-headed twins in Nigeria are bribery and corruption and they have eaten deep into the fabrics of the society. From the colonial era in Nigeria, these vices have made steady and seemingly unstoppable progress till the present. Considering the colonial era and Nigeria's post-independence or even the long years of military rule, bribery and corruption have become a recurring factor.⁹ It is one of the many unsettled issues hindering development¹⁰ and it remains a long-term major political and economic challenge for Nigeria.¹¹ It ranges from trivial corruption to political and bureaucratic corruption or Systemic corruption of enormous gravity.¹² Studies from World Bank leave corruption at over \$1 trillion per year; this therefore accounts for up to 12% of the Gross Domestic Product of nations like Nigeria, Kenya, Venezuela and so forth.¹³ It is speculated that the underprivileged are the victims of corruption while the ruling class hypocritically condemn corruption while enjoying its benefits.¹⁴ Over the years, majority of Nigerians have learned about and experimented on bribery and corruption. It seems then that corruption has become part of the daily life of Nigerians; this is made even more possible because of the situation in which most Nigerians find themselves today. It is only when good and responsible governance prevails that corruption will recede. Not many Nigerians believe that hard work pays off and only a few are of the opinion that honesty is worth trying.¹⁵

The level of concentration dedicated to the topic is not only prompted by its ability to enhance rapid and extraordinary development to all facets of human endeavour as well as its frightening social and

⁶ *ibid*

⁷George, K, "Here are One Bureau's Country-Specific Plans and Unique, Multivector Approaches", <<http://www.afsa.org/countering-corruption-regionally-eur-initiative>>, accessed October 9, 2020.

⁸ Benjamin, O, "Monitoring Corruption: Evidence from a Field Experiment in Indonesia", Vol. 115, (2007), *Journal of Political Economy*, 2.

⁹ Achunike, H, "Thematic Analysis of Corruption in Nigeria: An Ethical Standpoint", Vol. 2, (2006), *Journal of International Politics and Development Studies*, 1.

¹⁰ Ayobolu, J, (2006), "EFCC, Corruption and the Due Process", in Obayelu, A. "Effects of Corruption and Economic Reforms on Economic Growth and Development: Lessons from Nigeria", <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Knowledge/25068317-EN-OBAYELUS-PAPER-ON-CORRUPTION-MODIFIED-VERSION.PDF>>, accessed October 9, 2020.

¹¹ Sachs, G, "Corruption Remains Nigeria's Long Term Challenge", *The Daily Independent Newspapers* Tuesday, 24 April 2007

¹² International Center for Economic Growth, ICEG Information Brief 6, Causes and Effects of Corruption, Nairobi, (1999).

¹³ Nwabuzor, A, "Corruption and Development: New Initiatives in Economic Openness and Strengthened Rule of Law", Vol. 59, (2005), *Ethics*, 121-138.

¹⁴ Kalu, O, (2007) "Faith and Politics in Africa: Emergent Political Theology of Engagement in Nigeria", available at < www.calvin.edu/henry/archives/lectures/kalu.pdf>, accessed February 10, 2020.

¹⁵ Achunike, H, "Thematic Analysis of Corruption in Nigeria: An Ethical Standpoint", Vol.2, (2006), *Journal of International Politics and Development Studies*, 1.

economic consequences, it is also because of the apparent ineffectiveness of previous attempts to combat it. Today, this problem has penetrated the different cadres of the national polity to the level that scholars and commentators now discuss what they call a political culture of corruption in Nigeria.¹⁶

This article therefore, seeks to examine the causes and consequences of corruption, domestic legal framework on corruption, United Nations legal paradigm on corruption, after which recommendations will be drawn from the review and conclusion, will be made on how to tackle the issue of corruption in Nigeria using the scope of the United Nations legal framework on corruption.

Conceptual Framework

Many scholars have a keen interest in the literature on corruption as a social nuisance. For Mauro, the term “corruption” can be seen as “the abuse of public office for private gain”.¹⁷ While corruption also represents “the antithesis of accountability and transparency”.¹⁸

Ekiyor in his broad perception about corruption defines it as the unsanctioned use of official authority or influence by an official of the government either to enrich himself or to further his course and/or any other person at the expense of the public, in infringement of his oath of office and/or opposing to the conventions or laws that are in force.¹⁹ It is very unfortunate that this vice is not restricted to any period, it happens at all times in all nations. Furthermore, Alatas views corruption as a situation where two people engage in activities to increase their own pay-off at the expense of a third person.²⁰ He adds that this does not mean that just one individual cannot perpetrate the act; rather, it often involves at least two people to perfect an act which is probably conceived by one individual.²¹

There are two types of corruption as established in the existing literature; these are petty and grand corruption. For the first scale, it is known as “corruption of need” and it is set apart by such practices as bribing a policeman for traffic contravention or a government worker in order to pass a file to the next table for signing purposes. This act of corruption is perpetrated so as to make ends meet, particularly when salaries are inadequate for day-to-day expenses.²² The second type is termed “corruption of greed” and it involves public servants and leaders who have sufficient incomes and properties for their daily and future needs but who still engage in such malevolent practices for further self-enrichment and wealth-gathering, hence contravening tender laws and regulations and giving tax allowances to inappropriate people and so forth.²³ This may involve or may be attached to scam, extortion and misappropriation.²⁴ But van der Merwe disputes that corruption is “supply-driven when instigated by civil servants and demand-driven when instigated by private citizens”.²⁵

¹⁶ *ibid*

¹⁷ Mauro, P, “The Effects of Corruption on Growth, Investment, and Government Expenditure: A Cross-Country Analysis”, (1997), in Kimberly, E. (eds.), “Corruption in the Global Economy”, Washington, DC: Institute for International Economics, 83-107.

¹⁸ Kyambalesa, H, “Corruption: Causes, Effects, and Deterrents”, Vol. 36, (2006), *Africa Insight*, 102 – 122.

¹⁹ Humphrey, E, “Corruption in Local Government Administration: An Historical summary”, as found in Local Government Administration in Nigeria: Old and New Vision, (2009).

²⁰ Alatas, V, (2008), “Gender and Corruption: Insight from an Experimental Analysis”, <<http://www.economics.unimelb.edu.au/lcameron/papers/gender/pdf>>, accessed October 9, 2020..

²¹ *Ibid*

²² Kyambalesa, H, “Corruption: Causes, Effects, and Deterrents”, Vol. 36, (2006), *Africa Insight*, 102 – 122.

²³ *ibid*

²⁴ *ibid*

²⁵ Van, M. A, “The nature and causes of corruption: The perceptions of KZN Public Service managers and Anti-corruption Agents”, Vol. 41, (2006), *Journal of Public Administration*, 32-46.

On the forms of corruption, Gray and Kaufmann view acts of corruption as including bribery and extortions, fraud and embezzlement. According to them, it is observable in government activities through the appropriation of public assets for private use and embezzlement of public funds by politicians and high-level officials.²⁶ Agbaje creates a context for corruption within the terrain of public service; he lists factors as pervasion of public rules, misuse of official power for selfish motives and the frustration of electoral process to make free and fair elections as pervading features of corruption with the public service.²⁷ According to him, other forms of corruption are the deliberate refusal to declare one's assets on assuming and vacating a public office and of course using one's official status to prevent the dispensation of justice as common to the executives (past and present) of different capacities in Nigeria. Also, Gray and Kaufmann identify seven causes of corruption.²⁸ These include the value of remuneration, the abundant opportunities and awareness of corruption perpetration, weak measures for facilitating accountability, population manipulation, misdirection of natural resources, lack of political will and indecisive pressure.²⁹ These scholars maintain that the factors that enhance corruption vary from one culture to the other and from one political system to the other.³⁰

It is also argued that corruption is widely known in developing countries because of high level of poverty and a dearth of strong supervisory agencies.³¹ Also according to Ariu and Squicciarini, it has been perceived that skilled labour usually abandons their own countries for those where jobs have more security based on merit, skill and performance; while expatriates avoid such countries where high-status jobs are got through favouritism, connections, string-pulling and political affiliations.³² They argue that in the long term, the effects will be intense and will reflect in such factors as the erosion of human capital, a net shortage of skills, reduced productivity and consequential weakening in economic conditions.³³ Given such background, African countries plagued with this vice have been incapable of tapping into their numerous resources to benefit their citizens, hence engendering joblessness, illiteracy, poverty, diseases, crime and lack of control.³⁴

The consequences of corruption are generally intense as it weighs down on investment, blemishes the country and citizens' and it is a nuisance to both social justice and sustainable development. Kyambalesa further argues that in order to curb corruption, it is important for a country to have good governance, zero tolerance of corruption, an orderly civil service, good remuneration of public servants, obligatory ethics education as well as a stipulation of anti-corruption hotlines.³⁵ But Ruzindana, as cited by Oyinlola, asserts that corruption in Africa is a daily problem of divergence from known standards and norms by public officials and parties with whom they interrelate. He also recognises the types of

²⁶ Gray, C, and Kaufmann, D, (2008), "Corruption and Development", <http://www.worldbank.com/fandd/english/0398/articles/020398/html>, accessed November 16, 2020.

²⁷ Agbaje, A, "Corruption, Accountability and Good governance: Reflections on governance in Nigeria Fourth Republic 1999-2003", Vol.2, (2004), *International Review of Politics and Development*, 2.

²⁸ Gray, C, and Kaufmann, D, (2008), "Corruption and Development", retrieved on September, 20 from <http://www.worldbank.com/fandd/english/0398/articles/020398/html>, accessed November 16, 2020.

²⁹ *ibid*

³⁰ *ibid*

³¹ Vyas-Doorgapersad, S, "Corruption in the public sector: a comparative analysis", Vol. 42, (2007), *Journal of Public Administration*, 275-299.

³² Ariu, A, and Squicciarini, M, "The balance of brains—corruption and migration", Vol. 14, (2013), *Science and Society*, 502-504.

³³ *ibid*

³⁴ Kyambalesa, H, "Corruption: Causes, Effects, and Deterrents", Vol. 36, (2006), *Africa Insight*, 102 – 122.

³⁵ *Ibid*

corruption in Africa as bribery, private gain and reimbursement to non-existent workers and pensioners (also known as ghost workers).³⁶ The fraudulent and unlawful behaviour exhibited especially by people in authority for personal gains is corruption. According to the ICPC Act (section 2), corruption includes vices like bribery, deception, and other related offences. Corruption is the mistreatment or abuse of power or position of trust for personal or group benefit (monetary or otherwise).

Causes and Consequences of Corruption

Some reasons have been listed for the causes of corruption in Nigeria; these range from leadership type, cultural system, poverty, and are facilitated through a weak legal system. Corruption can be thought of as an outcome of the unholy partnership between 'self-interest' and 'opportunity', accompanied by a submission to the ensuing temptation.³⁷ These forerunners are the root of the problem; they are also sustained by country-specific predisposing factors; some of these may help to explain its prevalence in Nigeria. Whether or not these country-specific factors include cultural factors has been a subject of controversy among scholars. Some opine that corruption is facilitated in certain societies by traditional concepts of gift-giving and family or ethnic commonality.³⁸ Perhaps, this claim contains some modicum of truth, given the likelihood that these concepts are effortlessly vulnerable to abuse in a modern situation. Nevertheless, it is argued that since the enthusiasm in the manifestation of the concepts in the post-colonial socio-economic legal order is radically very far from the underlying principle for analogous cultural practices in the pre-colonial era, the newly evolved practices cannot be termed "cultural practices".³⁹ They are more suitably referred to as consequences of a new socio-legal order.

A more solid point of view appears to be a dismissal of the conception that high-level corruption in many countries is rooted in certain cultural practices.⁴⁰ Nevertheless, there are other reasons which continue to encourage or aggravate human 'self-interest', such as: "extreme or wretched poverty which causes ethical standards to drop and moral lines to blur;"⁴¹ a vicious description of the capitalist ideology which idolizes private wealth and its accumulation;⁴² deficiency of honest, transparent and accountable leadership, predominantly from the time of the colonial administration;⁴³ and rareness of information in the public arena on the dangers posed by corruption to societal development.

Also, according to Maduegbuna, the remuneration and rewards of corruption are greater than the consequences to be suffered when caught and disciplined. A high occurrence of poverty, which according to National Bureau of statistics is at 54.1% contribute in no little way to the extreme anxiety

³⁶ Oyinlola, O, (2011), "Corruption Eradication in Nigeria: An Appraisal", available at <[www.webpages..uidaho.edu](http://www.webpages.uidaho.edu)>, accessed November 16, 2020.

³⁷ Ware, G, and Noone, G, "The Culture of Corruption in the Post conflict and Developing World", (2003), in Chayes, A. and Minow, M. (eds), "Imagine Coexistence: Restoring Humanity after Violent Ethnic Conflict", PON Books/Jossey-Bass, San Francisco CA, 191-192.

³⁸ Harms, B, "Holding Public Officials Accountable in the International Realm: A New Multi-Layered Strategy to Combat Corruption", Vol. 33, (2000), *Cornell International Law Journal*, 159-185.

³⁹ Hotchkiss, C, "The Sleeping Dog Stirs: New Signs of Life in Efforts to End Corruption in International Business", Vol. 17, (1998), *Journal of Public Policy and Marketing*, 108-111

⁴⁰ Akinseye, G. Y, "Legal System, Corruption and Governance in Nigeria", New Century Law Publishers Ltd, Lagos, (2000), 11-15.

⁴¹ Oyebo, A, "An Overview of Corruption in Nigeria", (2001), in Ayua, I.A. and Guobadia, D.A. (eds), "Political Reform and Economic Recovery in Nigeria", Nigerian Institute of Advanced Legal Studies, Lagos, 603-611.

⁴² *ibid*

⁴³ Akinseye, G. Y, "Legal System, Corruption and Governance in Nigeria", New Century Law Publishers Ltd, Lagos, (2000), 11-15.

of Nigerians to acquire wealth at all costs.⁴⁴ While the few who are employed receive low earnings for their services, joblessness remains high in the nation. The unemployed people are mostly the youths who engage in anti-social activities such as sale of hard drugs, cybercrime, prostitution, political thuggery, assassination, oil bunkering, kidnapping, militancy among others; these are usually done solely to earn money. While some of these factors encourage petty corruption or what is also known as the low-level corruption, others help to explicate the incidence of high-level corruption. The awareness on corruption as a vice unavoidably promoted in Nigeria is that any attempt to root out well-seated corruption is almost always bound to be a futile exercise and corruption will always fight back. This general feeling of despair helps to advance and produce confident perpetrators. Concerning the weak and corrupt legal framework, Sowunmi *et al* opine that a weak implementation instrument such as lack of judicial sovereignty, a weak prosecutorial institution and so forth are part of the major causes of corruption in Nigeria.⁴⁵

The forces which discourage corruption are often very weak; also, some, if not most, of the law enforcement agencies are in themselves corrupt. In addition, rulers, politicians and civil servants are also highly corrupt, and professional organizations may not be competent enough to sanction their members. Dandago observes that the poor level of remuneration of most public servants have not been updated to match the rate of inflation in the country, hence the purchasing power of workers' salaries is very low. It is also obvious that the procedure of acquiring power in Nigeria is either by armed force or the influence of money.⁴⁶ Through corruption, individuals, groups and firms appropriate, or rather embezzle certain benefits which flow from policies of government or other institutions and which are intended for a much larger group of people; this is done to the disadvantage of these other people. As a result, economic productivity is reduced since incentives increasingly become disfigured to favour unproductive activities like spendthrift diversion of scarce state resources and disfavor productive and proficient use of resources.⁴⁷

In sum, corruption, waste and poverty are inextricably intertwined. Since the poor are also less likely to have access to alternative services (in the private sector for instance), or to resources for fighting corruption, they are more likely to give way to its demands. Furthermore, by the rationale that a larger portion of their income is eventually used to compensate both visible and invisible middlemen during corrupt exchanges, it becomes undeniable that the poor, when compared to the rich, have a higher price to pay for corruption.⁴⁸ Corruption engenders replicated hike in the prices of goods and services for end-users and this therefore reduces the profits that traders and service providers ought to get because the operational costs increases.⁴⁹ Partly, corruption is also to blame for the increased rate of unemployment,⁵⁰ the undemocratic allocation of wealth, and the erosion of the authenticity and

⁴⁴ Maduegbuna, N, "Anti-Corruption in Nigeria: Public Communications Perspective", Vol.1, (2005), *Corporate Mirror*, 16-18, 48.

⁴⁵ Sowunmi, A. et al. "The Role Of Media In Curbing Corruption In Nigeria", Vol.2, (2010), *Research Journal of International Technology*, 7 – 23.

⁴⁶ Dandago, K, "The Constitutional Fight against Corruption in Nigeria: Is It Enough?" Vol.8, (2008), *International Journal of Government, Finance and management*, 61-70.

⁴⁷ Adeyemi, A, "Corruption in Africa: A Case Study of Nigeria", in Tibamanya, M.M. (ed). "Criminology in Africa", Fountain Publishers, Kampala, Volume 83, (9), (1992).

⁴⁸ Carr, I. "Strategic Improvements in the Fight against Corruption, International Business Transactions", *Journal of Business Law*, (2006), 375-376.

⁴⁹ Ayua, I, and Guobadia, D, (eds), "Political Reform and Economic Recovery in Nigeria", (2001), Nigerian Institute of Advanced Legal Studies, Lagos, 603-611.

⁵⁰ Dankoj, M, "Socio-Economic Costs of Corruption to the Nigerian State", (1996), *Nigerian Current Law Review*, 256-266.

credibility of political and economic institutions, as well as the corrosion of societal morality. Another major outcome of corruption is that it is discovered to have an unwavering negative influence on the level of local and foreign investment in a country.⁵¹

Domestic Legal Framework on Corruption

As extensive as corruption is in Nigeria, the country has had the needed mechanisms to battle it for a long time. The first mechanism is in the form of traditional laws which was later supported by legislative enactments.⁵² Bribery has always been prohibited in the Yoruba tradition.⁵³ Under the indigenous law and tradition, a person who receives or offers bribes in order to mislead the sentence of the law is liable to a heavy fine or imprisonment, or both.⁵⁴ Narration also has it that the punishments for any behaviour that amounts to egregious corruption often included banishment and death sentences, even for traditional rulers.⁵⁵ In the same vein, in pre-colonial Ghana, public officials who were found to be corrupt were usually removed from office or made to suffer one form of public embarrassment or another.⁵⁶ In present day Nigeria, there are some legal instruments that have been established to eradicate corrupt behaviour. These include the Code of Conduct under the Constitution of the Federal Republic of Nigeria,⁵⁷ the Economic and Financial Crimes Commission (Establishment) Act of 2004,⁵⁸ and the Corrupt Practices and Other Related Offences Act of 2000 (the Anti-Corruption Act).⁵⁹ In addition, certain corrupt practices are criminal offences under the Criminal Code⁶⁰ and the Penal Code.⁶¹ Unfortunately, the conveners of these instruments paid exceptional attention to the role of law enforcement agencies, quasi-judicial bodies, prosecutors and judges in the fight against corruption, to the disregard of civil society organisations.⁶² This oversight is grave, because it accounts for one of the reasons why Nigeria has not won the battle against corruption. As Transparency International has noted, “any attempt to develop an anticorruption strategy that fails to involve civil society [neglects] one of the most potentially useful and powerful tools available”.⁶³ Here lies the main setback of the contemporary legal framework for combating corruption in Nigeria. Without the involvement of the civil society, it becomes difficult to put pressure on the state actors who for whatsoever reason are unwilling to practice anti-corruption laws. Moreover, without active support from the general public, especially in systems where there is a general disbelief in the government, any government-driven initiative to tackle encompassing corruption is likely to struggle for legitimacy.⁶⁴ Still more essential in

⁵¹ Shang-Jin, W, “How Taxing is Corruption on International Investors?” Vol. 82, (2000), *Review of Economics and Statistics*, 1.

⁵² Oko, O, “Subverting the Scourge of Corruption in Nigeria: A Reform Prospectus”, Volume 34, (2002), *New York University Journal of International Law and Politics*, 397-424.

⁵³ Oyewo, A, and Olaoba, O, “A Survey of African Law and Custom—With Particular Reference to the Yoruba Speaking Peoples of South-Western Nigeria”, (1999), Jator Publishing Company, Ibadan), 180.

⁵⁴ Ajisafe, A, “The Laws and Customs of the Yoruba People”, (1924), George Routledge & Sons, London, 32.

⁵⁵ Akinyemi, B, “Corruption, a Battle Nigeria Must Win”, *This Day Online* 22 August, 2004, available at <http://thisdayonline.com/archive/2004/08/22/20040822dis01.html>, accessed January 16, 2020. The practice was also confirmed by elderly members of the author's family.

⁵⁶ Gyekye, K, “Tradition and Modernity”, (1997), Oxford University Press, New York, 202.

⁵⁷ The Constitution of the Federal Republic of Nigeria, 1999.

⁵⁸ Economic and Financial Crimes Commission Act 2004, Section 1.

⁵⁹ *Ibid*, Section 5.

⁶⁰ The Criminal Code Act, Chapter 77.

⁶¹ The Penal Code Act, Chapter 89.

⁶² Economic and Financial Crimes Commission Act 2004, Section 6 (e and f).

⁶³ John, P, “Confronting Corruption: The Elements of a National Integrity System”, Volume 29, (2009), TI Source Book, <http://www.transparency.org/publications/soiu'cebook>, accessed January 16, 2020

⁶⁴ Olaleye, O, “Anti- Graft War: Between Belief and Cynicism”, *This Day* 10 April 2005, available at <http://allafrica.com/stories/printable/200504110754.html>, accessed November 16, 2020.

the framework of a post-colonial state, with a newly imported legal system and a government which is far more imperceptible to the common citizen than what beforehand obtained in the traditional setting is the need for extensive citizen participation in law enforcement for the reason of affording civil society the opportunity to internalize and agree to relatively unknown statutory rules as socially obligatory principles pertinent in a modern setting.⁶⁵ Any anticorruption approach that is not readily embraced by the public - the ultimate victim of the crime, as is the case at present - is bound to have very limited results.

The need to energise the civil society and other groups outside the public sector, such as the media, non-governmental organisations and community-based organisations features outstandingly in the two international anti-corruption instruments most relevant to Nigeria which are the United Nations Convention against Corruption (UN Convention)⁶⁶ and the African Union Convention on Preventing and Combating Corruption (AU Convention).⁶⁷ Article 12(2) of the AU Convention enjoins State Parties to take on to “create an enabling environment that will enable civil society and the media to hold governments to the highest levels of transparency and accountability in the management of public affairs.”⁶⁸ Under both treaties, State Parties have a responsibility to establish suitable measures, legislative or otherwise, to make sure that the public has effective access to information required to assist in the fight against corruption.⁶⁹ State Parties are also encouraged to agree to measures that will ensure that informants and witnesses are protected against any unwarranted treatment, prospective retribution or intimidation.⁷⁰ Nigeria has ratified both the UN and AU Conventions. In spite of these ratifications and on the other hand, the conventions do not have the force of law in Nigeria because they have not yet been enacted into law as mandatory by the Constitution.⁷¹

The institutionalization of the Independent Corrupt Practices and Other Related Offences Commission (ICPC) under the Anti-Corruption Act and the Economic and Financial Crimes Commission (EFCC) under the EFCC Act in 2000 and 2002 respectively, marked a new phase in the fight against corruption in Nigeria. While the enabling decree of the EFCC empowers the commission to look into all financial crimes,⁷² it is the Anti-Corruption Act (the Act) that deals more directly and expansively with the crime of corruption. The Act requires that the ICPC shall consist of a Chairman and 12 other members to be selected from each of the six geo-political zones of Nigeria.⁷³ It is required that the Chairman be a person who is an experienced Judge of a better-quality court of record in Nigeria and he is to be appointed by the President upon authentication by the Senate.⁷⁴ Section 6 of the Act provides for the duties of the ICPC; these include to “investigate complaints and prosecute offenders under the Act; supervise the review of practices, systems and procedures of public bodies which aid or facilitate corruption; and instruct, advice or assist any officer, agency, or parastatal on ways to minimize fraud or

⁶⁵ Gower, L, “Independent Africa: The Challenge of the Legal Profession”, (1967), Harvard University Press, Cambridge MA, 33-34.

⁶⁶ Webb, P, “The United Nations Convention against Corruption: Global Achievement or Missed Opportunity”, Volume 8, (2005), *Journal of International Economic Law*, 191.

⁶⁷ Carr, I, “Corruption in Africa: Is the African Union Convention on Combating Corruption the Answer”, (2007) *Journal of Business Law*, 111.

⁶⁸ Article 13 (1) of the UN Convention.

⁶⁹ Article 13(1) (b) of the UN Convention and Article 9 of the AU Convention.

⁷⁰ Articles 32 and 33 of the UN Convention and Article 5(5) and (6) of the AU Convention.

⁷¹ Section 12 (1) of the Constitution of the Federal Republic of Nigeria, 1999.

⁷² Section 6(b) of the Economic and Financial Crimes Commission (Establishment) Act No 1 of 2004.

⁷³ Section 3 (3) of the Corrupt Practices and Other Related Offences Act, No 5 of 2000.

⁷⁴ Section 3(4) and (6) of the Corrupt Practices and Other Related Offences Act, No 5 of 2000.

corruption.”⁷⁵ The duty to investigate is activated where an officer of the ICPC has reason to suspect the commission of an offence under the Act following the receipt of a report made pursuant to the Act.⁷⁶

Section 5 vests officers of the ICPC with all the powers and immunities of a police officer under the Police Act⁷⁷ and under any other law which empowers and protects law enforcement agents. The ICPC also has the power to order the attendance of any person for the purpose of being examined,⁷⁸ and to obtain a court order to compellingly enter any premises to look for, seize and take ownership of any book, document or other article evidencing the commission of an offence under the Act.⁷⁹ Seen as a fundamental figure in the battle against corruption, the Chairman of the ICPC is vested with additional powers which includes the authority to confiscate movable property in the guardianship or control of a bank or financial institution, where the property is the subject matter of any investigation under the Act;⁸⁰ the power to obtain information from any person as well as relatives and associates and their banks who have been assumed to have committed an offence under the Act;⁸¹ and the power to make a submission to court for an order keeping out any person from dealing with any property which is the subject matter of an offence under the Act, where the property is held or deposited outside Nigeria.⁸²

The Act as a group established and redefined 19 offences which relate to corrupt practices and abuse of office; among these offences are: accepting gratification⁸³; fraudulent acquisition of property⁸⁴; fraudulent receipt of property⁸⁵; making a false statement or return⁸⁶; bribing a public officer⁸⁷; use of office or position for gratification⁸⁸; bribery in relation to auctions⁸⁹; bribery in relation to contracts⁹⁰; and failure to report bribery transactions.⁹¹ It established a presupposition of corrupt enrichment against any public officer who fails to give details of the source of excessive interests in property having regard to his past and present emoluments.⁹² As expected, the meaning of gratification' under the Act is quite broad and goes beyond the general restraining approach of equating it to monetary gain or money's worth.⁹³

From an individual jurisdiction point of view, the reach of the Act is effectively extensive.⁹⁴ It concerns offences committed outside Nigeria and it applies to officials in the public and private sectors⁹⁵ and to

⁷⁵ Section 6 of the Corrupt Practices and Other Related Offences Act, No 5 of 2000.

⁷⁶ Section 27 (1) and (3) of the Corrupt Practices and Other Related Offences Act, No 5 of 2000.

⁷⁷ Cap 359, Laws of the Federation of Nigeria (LFN), 1990.

⁷⁸ The Anti-Corruption Act, S. 28.

⁷⁹ *ibid*, S. 36.

⁸⁰ *ibid*, S. 45.

⁸¹ The Anti-Corruption Act, S.44.

⁸² *ibid*, S. 46.

⁸³ *ibid*, S. 8.

⁸⁴ *ibid*, S. 12.

⁸⁵ *ibid*, S. 13.

⁸⁶ *ibid*, S. 16.

⁸⁷ *ibid*, S. 18.

⁸⁸ *ibid*, S. 19.

⁸⁹ *ibid*, S. 21.

⁹⁰ *ibid*, S. 22.

⁹¹ *ibid*, S. 23.

⁹² *ibid*, S. 42(2).

⁹³ *ibid*, S. 2.

⁹⁴ In *Attorney General of Ondo State v Attorney General of the Federation* Vol. 9, (2002), Nigerian Weekly Law Report, 222-306

⁹⁵ *ibid*, S. 2.

citizens and individuals who have been granted permanent residence in Nigeria.⁹⁶ Even the President and other high-ranking officers of the executive arm of the government are affected by its provisions. By section 52⁹⁷, the Chief Justice of Nigeria is permitted to empower an independent counsel such as a legal practitioner of not less than 15 years' standing to investigate an accusation of corruption made against the President or Vice President, or against any State Governor or Deputy Governor. The independent counsel is required to make a report of his findings under this section to the Federal Legislative House or to the appropriate state legislative house as the case may be. Given the legitimate immunity from prosecution that these officers enjoy when they are in office, it is still relatively undecided what underlying principle this is meant to serve.⁹⁸ The thought of being investigated and even the findings of the investigation may further pave way for the commission of more acts of corruption as the concerned executive officer will try to bribe his or her way out.

It is important to note at this juncture that although the foregoing laws are fairly robust, they have failed to achieve the purpose of considerably reducing the prevalence of corruption in the society. Nigeria still occupies one of the lowest positions in the Transparency International Corruption Perceptions Index⁹⁹ and may just be getting to know how corrupt certain individuals in the contemporary civilian administration are.¹⁰⁰

However, there is still room for progress relative to these laws. There is a need for greater enforcement of these laws; also, simultaneously placing more importance on the role of non-state actors in fighting corruption is another way to do this.

United Nations Legal Paradigm on Corruption

Establishing a legal framework to combat corruption nationally and internationally is not a simple task. Although many states have, before now started a national strategy to fight corruption, and have criminalized it when committed locally, there is no standard approach taken by these countries. Furthermore, the issue of corruption as a global crime poses many challenges. The different legal systems do not share the same perceptions about establishing “criminality” on the subject of corruption as a crime. The lack of efficient collaboration in distribution of information and investigation, the obstacles in judicial assistance, bank secrecy regulations and so on, are just few examples which create enormous problems.

Since corruption is a universal hiccup with transnational consequences, a worldwide action is highly needed and it has been acknowledged that an international anti-corruption instrument in the form of a convention or treaty is essential not only to cover up the void in national legal systems but also to develop a close cooperation among states. As causes of corruption vary from one country to another, and restraining, implementation and prosecutorial measures that work in some countries may not work in others, the United Nations, an organization with worldwide membership and a global mandate, is

⁹⁶ *ibid*, S. 6.

⁹⁷ *ibid*, S. 52.

⁹⁸ Section 308 of the Constitution of the Federal Republic of Nigeria, 1999.

⁹⁹ Transparency International, “Corruption Perceptions Index”, (2006), <http://www.transparency.org/policy_research/surveys_indices/cpi/2006>, accessed November 16, 2020.

¹⁰⁰ Human Rights Watch, “Chop Fine: The Human Rights Impact of Local Government Corruption and Mismanagement in Rivers State, Nigeria” Vol, 19, (2007), 24-39, <http://hrw.org/reports/2007/nigeria0107/>, accessed January 7, 2020.

preferably positioned to deal with this global challenge. It was in this situation that the States mandated the UN Office for Drugs and Crime (ODC) through the UN General Assembly to establish an ad hoc Committee to negotiate a comprehensive United Nations Convention against Corruption (UNCAC), which was implemented in December 2005.

The United Nations Convention against Corruption (UNCAC)

The UN Convention against Corruption is the first universal, worldwide, all-inclusive and legally mandatory anti-corruption instrument. Calls for an accurately global anti-corruption instrument followed a wave of regional and international instruments aimed at addressing the menace of corruption including the Inter-American Convention against Corruption, the OECD Convention against Bribery of Foreign Public Officials in International Business Transactions, and the Council of Europe's Criminal and Civil Law Conventions on Corruption. Although these instruments provided an outstanding foundation for action in relation to specific forms of corrupt conducts or in relation to precise regional areas, a yearning had developed in the international community for a global anti-corruption instrument to curb the global plague of corruption. Nevertheless, it was amidst the negotiations for the United Nations Convention against Transnational Organized Crime that the initiative of an overt international instrument addressing corruption began to crystallise. Capitalizing on the motion following the agreement of UNTOC, the General Assembly established the United Nations Ad Hoc Committee for the Negotiation of a Convention against Corruption, charging them with the responsibility outlining a Convention with an ambitiously extensive range of mechanism.¹⁰¹

A little further than eight years after the official signing of the Convention in Merida, Mexico on December 9, 2003, 159 States are now parties to the Convention and it is hoped that progressive advancement will persist towards a universal ratification. The Convention takes an overall examination of the actions that are core from States in order to fight corruption. Rather than simply focus only on the criminalization of specific conducts, the Convention also includes requirements relating to avoidance, international cooperation, asset recovery and the provision of technical assistance. It is this all-inclusive approach of fighting corruption that has led the Convention to be acknowledged as the crucial yardstick by which State actions against corruption will be measured.

In terms of prevention, the Convention mandates States to build and use efficient coordinated anti-corruption policies, with a particular focus on encouraging the proper management of public affairs including the importance of transparency, the sovereignty of the judiciary and the inclusion of the private sector and civil society in efforts to combat corruption. State Parties are also compulsory to establish an all-inclusive regulatory structure for financial institutions with the aim of fighting all forms of money-laundering. The Open-ended Working Group on the Prevention of Corruption has been charged by the Conference of State Parties to the Convention with the responsibility of supporting the achievement of these provisions of the Convention. To date, the Working Group has provided a forum for the sharing of best practices relative to issues like public procurement, the role of the media in anti-corruption efforts, and the use of alertness raising initiatives¹⁰², public reporting and codes of conduct¹⁰³ in combating corruption.

¹⁰¹ United Nations General Assembly Res. 55/61 of 4. December 2000.

¹⁰² CAC/COSP/WG.4/2011/2.

¹⁰³ CAC/COSP/WG.4/2011/3.

Chapter III of the Convention requires States Parties to criminalize a collection of corruption-related offences which include bribery of national public officials, foreign public officials and officials of public international organizations.¹⁰⁴ States Parties are also obliged to consider executing procedures so as to criminalize unlawful self enrichment, bribery in the private sector and trading in authority. In line with its holistic approach, the Convention does not stop at just requiring the criminalization of particular forms of conduct but it also places requirements on States concerning the efficient execution of sanctions where an offence is committed¹⁰⁵, the institution of jurisdiction over corruption offences¹⁰⁶, and requires States to take procedures to make sure there is cooperation between national powers that be, financial institutions and law enforcement bodies in their anti-corruption efforts.¹⁰⁷

Collaboration at the international level is also a very important subject matter; the aim of the Convention and a comprehensive variety of provisions in Chapter IV present an international cooperation framework for State Parties, predominantly in relation to extradition and mutual legal assistance.¹⁰⁸ It is in these conditions that the power of the UNTOC can most clearly be viewed, with the outstanding work from that Convention being simulated in the provisions of UNCAC, thereby ensuring that there is a level of coherence between these corresponding international instruments.¹⁰⁹

The provisions in Chapter V which is linked to asset recovery were one of the accurate innovations of the Convention¹¹⁰; no other international instrument had previously addressed this issue. In addition to providing that the return of assets is an essential principle of the Convention, UNCAC compels States Parties to initiate processes that require financial institutions to verify the identity of customers, to take reliable steps to ascertain the identity of beneficial owners of funds and assets and to conduct improved investigation of the accounts of senior public officials. In addition, the Convention requires States Parties to take measures to ensure direct recovery of property that has been obtained as a result of corruption, predominantly through international cooperation with other States Parties and through mutual acknowledgment of confiscation orders.

The work of the Working Group on Asset Recovery, the longest-standing implementation group under the Convention having been established at the first Conference of State Parties in 2006,¹¹¹ has provided momentum for States Parties in the implementation of the asset recovery provisions of the Convention. In particular, the Group has provided a forum for talking about new legislation introduced by States Parties; it has also encouraged negotiations between State parties concerning the practical aspects of asset recovery cases and is at the moment supporting the development of a global network of asset recovery focal points. Simultaneously, as a consequence of the acknowledgment in the Convention of the growing significance and importance of asset recovery to the battle against corruption and economic crime, more generally, the United Nations and the World Bank in 2007 inaugurated the Stolen Asset Recovery Initiative (StAR), intended to maintain international efforts to end safe havens for corrupt funds. Since its inauguration, StAR has played a vigorous role in supporting States in their asset-recovery efforts, providing professional assistance to countries in relation to precise asset recovery cases

¹⁰⁴ UNCAC Chapter III.

¹⁰⁵ UNCAC Article 30.

¹⁰⁶ UNCAC Article 42.

¹⁰⁷ UNCAC Articles 37 – 39.

¹⁰⁸ UNCAC Chapter IV.

¹⁰⁹ Articles 16–18 UNTOC and Articles 44–46 UNCAC.

¹¹⁰ UNCAC Chapter V.

¹¹¹ COSP Res. 1/4 Establishment of an Intergovernmental Working Group on Asset Recovery.

and acting as a centre of distinction, producing comprehensive publications and training materials including the Asset Recovery Handbook for Practitioners.¹¹²

In addition requiring all-inclusive range of actions from States, the Convention also provides a foundation for the provision of technical assistance to those States who need assistance in meeting their responsibilities under UNCAC. Particularly, States Parties are called upon to afford each other the widest measure of technical assistance in their particular programmed to fight Corruption,¹¹³ to help each other in conducting assessments and studies as to the causes of corruption¹¹⁴ and to create tangible efforts to augment their cooperation with developing countries with a view to enhancing their capability to combat corruption.¹¹⁵ These provisions also make available a foundation for the provision of technical assistance by the United Nations Office on Drugs and Crime to developing countries. Take for example, UNODC provided technical support to a range of States through its universal Anti-Corruption Mentor Programme. This programme provides focused proficiency through the situation of anti-corruption experts in government institutions. In 2011, regional mentors provided support in Central America and the Caribbean, East Africa, East Asia and the Democratic Republic of the Congo.

The UNCAC is more comprehensive than the domestic legal framework on corruption in Nigeria. Since the domestic law is still with loopholes that corrupt persons use to escape convictions, the UNCAC should form part of the law to fight corruption in Nigeria. Although UNCAC remains a comparatively young instrument in international law terms, real results are already being acknowledged as a consequence of its implementation. The mounting body of knowledge that it is up-and-coming through the Implementation Review Mechanism, and the dynamism with which states have contributed in that process, also make obvious the significance and energy with which States Parties have required to put into practice their obligations under the Convention and evidences the necessary role that international cooperation can play in combating economic offense.

Recommendations

In order to put to an end the problem of corruption in Nigeria, a combination of national and international strategies is necessary especially the adoption of United Nations Convention against Corruption so that even if corrupt officers outsmart the domestic laws during prosecution, the UNCAC will come to the rescue of the prosecutor and ensure convictions if found guilty. At the national level, unlike all other previous administration, the current presidency of Buhari has shown commitment to break with the bad practices of previous administrations, especially the political interference with anti-corruption investigations and prosecutions. This should be combined with strong political will to ensure that those accused of corruption are properly investigated, punished and blacklisted from politics if found guilty, irrespective of their positions and connections.

The significance of public enlightenment campaigns cannot be exaggerated, and for this, there is a specific role to be played by families, schools, churches, mosques, social clubs, professional organizations, and the print and electronic media. It is also hard to refute that inadequately paid workers are somewhat worse prepared to oppose the temptation of low-level corruption. The imbursement of more sensible wages and salaries to civil servants and the provision of improved managed pension

¹¹² http://www1.worldbank.org/finance/star_site/documents/arhandbook/ar_handbook_final.pdf, November 16, 2020.

¹¹³ UNCAC Article 60, para. 2.

¹¹⁴ UNCAC Article 60, para. 4.

¹¹⁵ UNCAC Article 60, para. 7.

schemes and other welfare packages for all workers are examples of objectives that can be introduced into anti-corruption programmes to tackle poverty.

Also, the judiciary needs to be more proactive in the fight against corruption as many of the corrupt government officials use the legal system as an escape route from prosecution from charges of corruption. Many of the judges in the judiciary are corrupt. Take for example, the recent crackdown on judges in Nigeria by the DSS on allegation of corruption in which cash of over 200 million were found in the houses of the judges arrested is to show the level of decay the judicial system is in Nigeria.

At the international level, Nigeria's international partners must uphold strong political pressure on the Nigerian government to allow anti-corruption institutions, including the Economic and Financial Crimes Commission (EFCC), to hunt vigorous and autonomous investigations of high-level corruption. They must also vigorously pursue opportunities to convey criminal charges against Nigerian government officials who commit financial crimes in foreign jurisdictions and make wide and proactive use of visa bans to refute Nigerian government officials believably caught up in corruption the opportunity to journey or invest their ill-amassed wealth abroad. The names of all Nigerian government officials deprived of visas on accusations of corruption should also be made public.

Conclusion

The key to a triumphant anti-corruption campaign lies in the design and introduction of a persuasive anti-corruption programme, applicable on a sectorial basis, by the appropriate non-state actors. The programme must be the product of substantial research and careful planning and should consist of the right blend of anti-corruption activities not only suited to the targeted sector, but which address the underlying causes of corruption in that sector. Also the existing reforms and policies on corruption need to be genuinely appraised and fortified to mercilessly deal with the causes of corruption rather than its effects. With these, the roles of the agencies and commissions which is to monitor corrupt practices must be encouraged. This will amount to strictly enforcing due process and the rule of law in the public administration where corruption is at the highest level. Furthermore, in fighting against corruption, measures and strategies should consist of Private Anti-Corruption Initiatives, Public anti-corruption initiatives and Public education campaign/programmes. If this is accomplished, it will generate a long lasting intuition in the mind of those that may further want to engage in corruption and with time, this will progressively correct damages caused to the economy in such a way that those effects on the economy will be inconsequentially conspicuous. Moreover, it will make corruption further hard and more perilous to engage in. In conclusion, disciplinary measures must be put in place to guarantee transparency, monitoring, and accountability through an effective fair and just system. This is because some people will engage in corrupt practice simply because of the belief and considerate that they can go scot free. The economy also necessitates that the political arena develop a solid and uncorrupt legal monitoring system that will establish and guarantee that corruption will not take place in the planning and execution of public sector budgets while social and internal control mechanisms are required for civil society and autonomous state auditing agencies.