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ANALYSES OF LEGAL FRAMEWORKS FOR FIGHTING CORRUPTION IN NIGERIA: PROBLEMS AND CHALLENGES

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Abstract

The objective of this study is twofold: to explore the legal framework for the fight against corruption in Nigeria, and to offer some reform measures for the reduction of corruption in the polity. It is hopeful that the public sector will become more efficient and effective if the recommendations delineated in this analysis are implemented. This is because with a number of empirical studies and theoretical policy debates linking corruption to a series of accountability failures, which lead to socio-economic cum political pathologies, especially, poverty and underdevelopment, transparency and accountability based on this prognosis, are prescribed as palliatives for political corruption, and developmental failures. Framed in the development context, the argument is that accountability is a path to empowerment in terms of both answerability, and enforceability of public duty-bearers to provide information and justification about their actions, and penalties for accountability defaulting, above all, a means of repairing the 'leaky pipes' of corruption and inefficiency. Hence channeling national resources more effectively towards result oriented development initiatives. In other words, anti-corruption war was made one of the foremost features of the "effective state", and a movement for good governance, albeit the latter, not a democratic principle. Realizing that corruption is not, intrinsically a crime, until it is expressly prohibited and made punishable under the law, several anti-graft programmes which include preventive, and punitive measures have been implemented in fighting the scourge of corruption. The paper is structured into various sections. The introduction is closely followed by a literature review on the corruption, theoretical framework of analysis, the legal framework for anti-corruption and the need for government accountability. In order to accomplish the study purpose, the analysis uses an exploratory case method to give a historic synopsis of the Nigerian anti- corruption institutions. In sum, the paper concludes with some recommendations on how to increase accountability in the public sector.

Keywords: Corruption and anti-corruption strategies, Nigeria, Development failures, Legal-frameworks and graft

Introduction

Beginning from May 29, when he officially assumed duty as the nation's new president, Muhammadu Buhari will be confronted by the challenge of how to tackle the menace of corruption. Perhaps his first litmus test will be how his government will fast track the trial of some politically exposed persons accused of embezzling public funds while in office. For Buhari, this assignment is self-imposed. The four times he has asked Nigerians to elect him as president, fighting corruption has been a major thurst of his campaign. He promised Nigerians that if voted into office, he would tackle corruption with vigour.

While delivering a speech at Chatham House, London, United Kingdom, in the heat of the campaigns in February, Buhari posited that recovered loot would be used to fund his party's programmes on education, health, social infrastructure, youth employment and pensions for the elderly. Today, Nigerians and members of the international community alike are waiting on the president-elect with great expectations to translate his words into action by taming corruption and stabilizing the economy. Buhari cannot afford to disappoint on this promise, as the opposition Peoples Democratic Party, PDP and those who doubted his ability to fulfill his promises in this regard are already reminding him of his words even when he is still weeks away from being sworn in as a substantive president.

But this is a season that some former and serving governors and other public officers linked with corruption may not wish to come. With bated breath, they are now waiting on Buhari to see how he would handle their cases, some of which have been in courts for some years. The general perception is that some, if not all, of these people have worked through their lawyers, mostly Senior Advocates of Nigeria, SANs, to ensure that the cases against them go on almost indefinitely. Certainly, some of the suspects may have to pay direly for their acts if found guilty and if Buhari would match his words with action. Buhari's resolve to deal with corruption is hinged on the wide belief that corruption and other related vices have hampered economic development in the country and also robbed it of its rightful place among the comity of nations. But even more disturbing is that most of the people alleged to have contributed in moving the country backward through corrupt practices are still active in government, and have constituted a clog in the wheel of efforts to fight corrupt.

Last February, the EFCC declared Nyako and Abdul-Aziz, his son, wanted for allegedly laundering N15 billion funds belonging to the state into the accounts of five companies allegedly owned by Abdul-Aziz. In a press release, EFCC alleged that the fund was funneled into the companies from the state accounts domiciled in one of the new generation banks by the account officer and bank manager who is also an in-law to the ex-governor. Nyako, according to the release, had, between 2007 and 2011, allegedly directed that all of the state-owned accounts domiciled in various banks be transferred to the new generation bank. It also maintained that one of the companies traced to the younger Nyako, owns, among other investments, an estate in Abuja while the ex-governor's account officer also owns several properties and investments located around Abuja, Yola and Kano. Whereas Abdul-Aziz was arrested and questioned in February, the former governor, according to the EFCC, is yet to be seen.

The agency allegedly discovered massive looting, as a result of which it froze the account of the state government in a move to safeguard the state treasury. The EFCC alleged that

Nyako's government looted the state treasury through an illegal department called Special Programme and Project Units, SPPU, which engaged in over-invoicing and inflation of contracts. If Nyako was then on the run, as the EFCC alleges, Daniel, Lamido, Ohakim are very much around. Since he left office in 2011, the former Ogun State governor has been on EFCC'S most wanted list for allegedly squandering N211.3 million of state funds. He is facing trail on a 38-count charge of stealing was the governor.

The purpose of this study is twofold: to explore the legal framework for the fight against corruption in Nigeria, and to offer some reform measures for the reduction of corruption in the polity. It is hopeful that the public sector will become more efficient and effective if the recommendations delineated in this analysis are implemented. This is followed by a literature review on the corruption and the need for government accountability. In order to accomplish the study purpose, the analysis uses an exploratory case method to give a historic synopsis of the Nigerian anti- corruption institutions. In sum, the paper concludes with some recommendations on how to increase accountability in the public sector.

Literature Review

Corruption is a behavior, which deviates from the normal duties of a public role because of private relationship. This includes such behaviour as bribery (use of reward to pervert the judgment of a person in a position of trust); nepotism (bestowal of patronage by reason of inscriptive relationship rather than merit); and misappropriation (illegal appropriation of public resources for private-regarding uses, Nye (in Heidenheimer, 1970). A patter of corruption can be said to exist whenever a power-holder who is charged with doing certain things, i.e., who is a responsible functionary or officeholder is, by monetary or other rewards not legally provided for, induced to take actions which favour whoever provides the reward and thereby does damage to the public and its interests (Carl Friedrich, Heidenheimer, 1970). Corrupt transactions usually include bribery; fraud such as inflation of contract sums by public officials; unauthorized variation of contracts; payment for jobs not executed; payment of ghost workers; overpayment of salaries and allowances to staff; diversion of government revenue by public officials; deliberate irregularities in the management of accounting procedures (Ubeku, 1991:41-43).

Corruption is defined as "an arrangement that involves an exchange between two parties (the demander and the supplier) which (i) has an influence on the allocation of resources either immediately or in the future; and (ii) involves the use or abuse of public or collective responsibility for private ends" (Macrae 1982, 678; cf Salisu 2006, 3). The International Monetary Fund defined corruption as "abuse of authority or trust for private benefit: and is a temptation indulged in not only by public officials but also by those in positions of trust or authority in private enterprises or non-profit organizations" (Wolfe and Gurgen 2000).

The Transparency International defines corruption as involving "behaviour on the part of officials in the public sector, whether politicians or civil servants, in which they improperly and unlawfuly enrich themselves or those close to them, by the misuse of the public power entrusted to them" The ICPC Act(2000) states that corruption includes bribery, fraud and other related offences. No doubt, the scope of corruption is elastic and includes: use of one's office for pecuniary advantages, gratification, influence peddling, insincerity in advice with the aim of gaining advantage, less than a full day's work for a full day's pay, tardiness and slovenliness etc

Taiwo Osipitan() identified three classes of corruption namely:

(a) Collusive corruption which involves planned cooperation of the giver and receiver.
(b) Extortionary corruption which involves forced extraction of bribes and other favours from vulnerable victims by those in authority and,
(c) Anticipatory corruption which occurs when bribe or gift is offered in anticipation of favour from the recipient of the gift to the giver of the gift (9).

Corruption is therefore multi-faceted affecting all spheres of our socio-economic life and politics. Both the legislature, the Executive, the Judiciary, the private sector, the civil society are all involved. Thus an all embracing and universally acceptable definition is not possible. Table1 captures the various forms of corruption identified in the definitions.

The Forms of Corruption

Type	**Status of Main Perpetrator**	**Enabling Means**	**Usual Motive**	**Victims of Corruption**
Political corruption	-Chief Executives -Other Political Office Holders	-political power -economic power -social power	-to gain or retain political power -to victimize	-ideals and values of the polity -political opponents
Economic and commercial corruption	-businessmen -contractors -consultants	-economic power -political and social connections	-to make more profits and money	-the generality of tax payers and other citizens
Administrative and professional corruption	-highly place civil servants and executives of parastatals	-Administrative authority -technicality, exclusivity and -professional such as lawyers, doctors, engineers, university teachers etc.	-material wealth -cultivation of political and social connections autonomy of the professions	-the generality of tax payers and other citizens -consumers of the professions
Organized corruption	-political, economic, social and bureaucratic elites -high echelons of control agencies	-influential connections to information sources -control and enforcement authority	Money and material wealth	-government treasure -private individuals
Working class corruption	-artisans -junior and intermediate staff -market women and men	-technicalities of occupational skill -ignorance and carelessness and acquiescence of	Money and material wealth to make ends meet	Consumers of goods and services

		the public		

Source: Adekunle, Femi, (1991:9) "illustrations of Types, Patterns and Avenues of Corruption in Nigeria: A Typology", Perspectives or Corruption and other Economic Crimes in Nigeria, Lagos: Federal Ministry of Justice.

Corruption can be very tragic to nations and its pervasiveness can lead to low economic performance of countries, especially those in developing countries like sub-Saharan African nations. It has been documented by analysts that corruption in Nigeria has been a hindrance to its

economic development (Iroghama 2011).
Nigeria has been ranked very low on the Berlin-based
Transparency International of corrupt countries in the world. The rankings were based on weighted average of corruption perception indices. The overall index measures the degree to which public officials and politicians in particular countries are involved in corrupt practices such as accepting bribes, taking illicit payments in public procurement and embezzling public funds (Salisu 2006).
The Corruption Perception Index evaluates government corruption on a global scale and the Transparency International (TI) has been evaluating government corruption perception since 1995 and has been monitoring Nigeria's CPI since 1996. The organization has a mission of stopping corruption and promoting transparency, accountability, and integrity around the world. The organization produces a specific report annually on Nigeria that evaluates the perception of government corruption in the society based on several surveys taken among the public (Stewart 2012).

Of course, the serious concern attached to this hydra-headed monster by the electorate cannot be misplaced because corruption, as of today, has become a difficult problem Nigeria has for long been among the most corrupt nations in the world. The 2014 report by the global graft watchdog, Transparency International (TI), has again confirmed this status as it placed Nigeria 39th on the corruption ranking of 175 countries. The country, however, recorded a marginal improvement on the global Corruption Perception Index, moving four points from the previous 35th position in 2012. The latest ranking is a giant leap from that of 2000, when Nigeria was rated the world's most corrupt country by Transparency International. Nonetheless, there is little to cheer in the latest report. Rather, it shows that we still need to do a lot to address corruption in a way that can boost confidence in the citizenry and the international community.

According to the report released on December 3, 2014, Nigeria scored 27 out of out of a maximum 100 marks to clinch 136th position out of the 175 countries surveyed. This means that Nigeria has 'improved' by eight points against its 2013 rating as 144th out of 175 countries. A statement issued from the Berlin office of Transparency International shows that more than two-thirds or over 75 percent of the 175 countries surveyed this year scored below 50, on a scale from 0. Countries within the 0-50 range are perceived to be strikingly corrupt (New Telegraph Editorial, 2014). Table 11 below equally captures Nigeria's rating by Transparency International between 1996 and 2014.

Table I1: Nigeria's Corruption Perception Index Rankings, 1996-2014

Year	CPI Score out of 100%	Rankings
1996	6.9	54 out of 54
1997	17.6	52 out of 52
1998	19	81 out of 85
1999	16	98 out of 99
2000	12	90 out of 90
2001	10	90 out of 91
2002	16	101 out of 102
2003	14	132 out of 133
2004	16	144 out of 145
2005	19	152 out of 159
2006	22	142 out of 163
2007	22	147 out of 179
2008	27	121 out of 180
2009	25	130 out of 150
2010	24	134 out of 178
2011	24	143 out of 183
2012	27	139 out of 176
2013	25	144 out of 177
2014	27	136 out of 174

Put together, a few things stand out in the report regarding corruption in Nigeria. First, the document indicates that the tag of corruption in Nigeria is quite high, while public perception of government's crusade against graft suggests that it may be nothing more than a façade. This view is reinforced essentially by the perceived kid gloves with which both government and anti-corruption agencies like the Economic and Financial Crimes Commission (EFCC), the

Independent and Corrupt Practices and Other Offences Commission (ICPC) and the Code of Conduct Bureau (CCB) treat corruption related offences (Daily Vanguard Editorial, 2014).

There are also allegations that these agencies are selective in their prosecution of corruption cases. We do not have many cases of diligent prosecution of corrupt persons. Corruption cases are hardly ever pursued to a logical conclusion. There are so many inconclusive cases, and many instances of corruption that the agencies declined to prosecute. In many of these glaring cases, successive governments in the country have failed to convince anyone that Nigeria is committed to checking graft (PointBlank Editorial, 2014).

Reacting to the report, one of the Special Assistant to former President Goodluck Jonathan Mr. Reno Omokri, noted that the Transparency International's Corruption Perceptions Index 2014 confirmed the success of the anti-corruption fight of the president. Nigeria improves on the CPI from 144 in 2013 to 136 this year. He attributed the success to the clinical surgical incision made by the then President Jonathan at the centers of corruption in the country. According to him, the significant improvement Nigeria was made in the 2014 Corruption Perception Index released by Transparency International was as a result of the clinical surgical incision made by President Jonathan at the centers of corruption in Nigeria. You may recall that the Fertilizer Procurement and Distribution regime of the Agricultural sector used to be a cesspool of corruption. Billions of dollars were lost as middlemen inflated costs yet supplied subpar products to our farmers. But under the guidance of President Jonathan, 14 million farmers were registered by the Ministry of Agriculture and were connected directly to the product through the e-wallet system which allowed the Ministry sends texts to farmers to go and pick up their fertilizer and seeds direct from the depot. Nigeria has saved close to $2 Billion that would have gone into the pockets of corrupt officials and middlemen by this system (Fabiyi & Adetayo, 2014).

According to Point Blank Editorial (2014), the Administration took the unprecedented step of auditing the workforce of the Federal Civil Service and in the process weeded out fifty thousand ghost workers saving Nigeria almost 350 billion Naira per annum. Due to the President's determination to punish this economic sabotage, those responsible have been forwarded to the Economic and Financial Crimes Commission, EFCC, for prosecution to the highest extent of the law.

Theoretical Perspectives on Anti-corruption Strategies

A lot of strategies were introduced or adapted to curb corruption activities in Nigeria. The institutional model started in 1977 by the Jaji declaration by president Olusegun Obasanjo; the Ethical Revolution of Shagari in 1981; War Against Indiscipline by Buhari in 1984; National Orientation Movement by Babangida in 1986; Mass Mobilization for Social Justice by Babangida in 1987; War Against Indiscipline and Corruption in 1996 by Abacha to the Independent Corrupt Practices (and Other Related Offences) Commission by Obasanjo in 2000 and the Economic and Financial Crime Commission 2002 by Obasanjo. The institutional strategic model for anti-corruption is therefore fathomed on the wisdom that anticorruption institutions/agencies were established in Nigeria to administer the following policy prescriptions "deterrence, prevention, and public sector reforms". They are:

a. To establish and maintain a high standard of public morality in the conduct of Government Business and to ensure that the actions and behaviors of the Public Officers conforms to the highest standard of public morality and accountability. The Code of Conduct Bureau and Code of Conduct Tribunal was established. The Bureau therefore prescribes standard codes of conduct and appropriate penalties for violation of such conduct(s). Public Officers are regarded as elected or appointed public office holders.

b. To address public sector corruption, through education and prevention by examining, reviewing and enforcing correction of corruption-prone system and procedures of public bodies, with a view of eliminating or minimizing corruption in public life. Thus, the major focus of the Independent Commission against Corruption (ICPC) was structures of government, public institution and public corporations. It has powers to investigate and prosecute all public officials including the police, except those officers that have immunity as prescribed in the constitution. It remains the most powerful anti-corruption legislation ever passed in Nigeria to deter public official from massive looting and plundering of public funds. The ICPC therefore, is Nigeria's last hope to deliver the public service from corruption.

c. To ensure that government contracts are awarded in accordance with the best practices and universal standards for tendering and procurement of contracts around the world. The Due Process Office was established in 2003 under the Office of the President. Specifically it was targeted to curb or minimize the reckless abuse inherent in the Government's tendering procedures and the procurement process.

d. The Economic and Financial Crime Commission (EFCC) was a major departure from the past enabling laws for fighting corruption or economic and financial crimes in Nigeria, in terms of powers, functions and responsibilities. It was borne out of international pressure as a precondition for the removal of Nigeria from the list of Non-Cooperative Countries and Territories (NCCTs) of the Financial Action Task Force (FATF) on Money Laundering. The EFCC is the designated Nigeria Financial Intelligence Unit (NFIU). The NFIU is expected to receive and analyze financial information - Currency Transaction Reports (CTRs) and Suspicious Transaction Reports (STRs) - from Financial Institutions and Designated Non-Financial Institutions with a view to disseminating intelligence information arising thereof. Besides, the Commission is charged with the following responsibilities among others;

- Enforcement and administration of the Act in the overall context of preventing, detecting, investigating and prosecuting all cases of economic and financial crimes in Nigeria.
- Charged with the responsibility of enforcing other laws and regulations relating to economic and financial crimes
- In addition, the Commission is the coordinating agency for fighting economic and financial crimes in Nigeria, including fighting terrorism and terrorist financing.

Anti-corruption legislations have been codified in relevant sections of the criminal code and penal code ordinance. Although the first separate law that prescribe offences and penalties is the Miscellaneous Offences Act of 1985, essentially anti-corruption legislations has not changed substantially. In most cases, the old laws are slightly modified and a new agency will be empowered to handle it. The following legislations are either wholly exclusive or partly targeted to anti-corruption in Nigeria, they are:

- Relevant sections of the criminal code and penal code.
- Miscellaneous Offences, Act 1985
- The National Drug Law Enforcement Agency Act (NDLEA) of 1988.
- Code of Conduct Bureau and Tribunal Act, 1990
- Banks and other Financial Institutions Act of 1991 (amended in 2002)
- Money laundering Act of 1995 (amended in 2002 & 2004)
- Foreign Exchange Act of 1995.
- Failed Bank (Recovery of Debts) and Financial Malpractices in Banks Act of 1994 (amended in 1999)
- Advance Fee Fraud (otherwise known as 419) and Related Offences Act of 1995.

In spite of these enabling laws and the relevant institutions/agencies of government to administer them, corruption activities still thrived in the economy unabated. Therefore, two special Anti-corruption legislation were enacted to handle corruption with a view of addressing the entire anti-corruption strategy and framework in Nigeria, they are;

I. Independent Corrupt Practices (and other related offences) Commission (ICPC) Act 2000.

The ICPC is vested with the powers to educate, prevent, detect, investigate and prosecute all offences under the Act. Sections 8-26 of the ICPC Act clearly spell out offences and penalties covered by the Act if committed after 13th June 2000, the effective day of the law. These offences equally prescribed severe penalties ranging from 1 to 7 years, imprisonment with hard labour, imprisonment and fine depending on the gravity of the offence. An offence under this category includes; giving or accepting gratification by an official in person or through his agent, fraudulent acquisition of property, deliberate frustration or hindrance or obstruction of investigation activities, transferring money from one vote to another, false statement and fraudulent disclosures, electoral fraud such as bribery of electoral officials. The Commission also has powers to tap telephone lines and freeze bank accounts of suspects. Indeed the ICPC Act criminalizes virtually all loopholes and lacunas public officials exploited before the law was enacted.

II. Economic and Financial Crimes Commission (EFCC) (Establishment) Act 2002

The EFCC is an inter agency commission; it is the co-coordinating agency for the enforcement of all economic and financial crimes laws in Nigeria. Apart from the administration of the EFCC Act, the Commission is vested with powers of enforcement of all other laws relating to economic and financial crimes in Nigeria, including;

- Relevant sections of the criminal code and penal code.
- Banks and other Financial Institutions Act of 1991 (amended in 2002)
- Money laundering Act of 1995 (amended in 2002 & 2004)
- Failed Bank (Recovery of Debts) and Financial Malpractices in Banks Act of 1994 (amended in 1999)
- Advance Fee Fraud (otherwise known as 419) and Related Offences Act of 1995.

Under the EFCC (Establishment) Act 2004, the Commission has powers to investigate and prosecute offences such as advance fee fraud, money laundering, counterfeiting, illegal funds transfers, futures and market fraud, fraudulent encashment of negotiable instrument, fraudulent diversion of funds, computer credit fraud, contract scam, forgery of financial

instruments, issuance of dud cheques. Others are powers to freeze account, tap telephone lines, identify, trace and seize proceeds of terrorist among others.

Today, we have mechanisms, such as the UN Convention against Corruption and an array of regional anticorruption agreements that together form a new global anticorruption regime. We have a vibrant, energetic and vocal civil society movement that operates on a global level to keep the spotlight on the corruption issue and holds governments accountable. Many new initiatives, like the Extractive Industries Transparency Initiative, are aimed at bringing together governments, the private sector and civil society to solve difficult problems. The G-8 and cooperating governments are fighting kleptocracy and the misuse of financial systems by high officials to plunder the national treasury for their own private gain.

The U.S. Government, for its part, supports these efforts as well as other multilateral and bilateral efforts to expand the circle of free-market democracies that can create the incentives for open, competitive economies with political systems based on free and fair elections, the rule of law and the checks and balances that are necessary to prevent, deter, detect and prosecute corruption when it occurs. President Bush's Freedom Agenda underscores this commitment to advance democratic principles and processes throughout the world.

USAID, along with other USG agencies, will continue to work closely with cooperating governments, multilateral institutions, and the NGO community, to ensure a strategic and effective correlation between USG diplomatic and programmatic activities. Good governance and accountability creates conditions that lift people out of poverty, raise education and health levels, improve the security of borders, expand the realms of personal freedoms, nurture sound economic and sustainable development strategies, and create healthier democracies.

The International Anticorruption Conference continues to play a unique and valuable role in nurturing and sustaining the international anticorruption movement. From the above theses, there are various ranges of approaches drawing from various disciplines to the understanding of anti-corruption strategies. Approaches to anti-corruption grounded in public choice theory emphasize economic reforms and downsizing/rightsizing the state as the principal route to reform, whereas the political economy approach advocates conscious political intervention as the fundamental vehicle for anti-corruption efforts.

The pluralist approach, in contrast assumes that political initiatives centered on the creation of new democratic institutions – such as elected parliamentary committees and watch dog bodies – are central to the success of efforts to control corruption. Political reforms are thought to contribute towards an environment which is more conducive to reduced corruption because they can increase the responsiveness of political elites to the will of the people (Little, 1996).

Anti-corruption efforts centered on institutional reforms are premised on a multi-pronged approach which combines reforms in the legal spheres (such as enforceable property and contract rights and measures to enhance the credibility of the judiciary), innovations in the governance sphere (strengthening mechanisms of accountability, controls over discretion and resource use

and improvements in terms and conditions of employments for civil servants) and specific institutional mechanisms (such as creating an anti-corruption agency, special courts to review corruption cases, and asset declaration for politicians and civil servants) (Robinson, 1998).

This approach may be appropriate and effective in countries where corruption is not entrenched and where anti-corruption laws, agencies and organizations are in place and have public support. Such societies invariably tend to have the institutional trappings of democracy with governments that are subject to electoral contestation and popular accountability. But while political competition offers opportunities for new political elites to gain legitimacy by taking action against corruption, it can also enable such elites to secure greater access to existing rent-seeking opportunities as evidence from Africa appears to indicate. However, approaches rooted in these traditions tend to confine analysis to particular countries and institutions and frequently overlook the role international actors in shaping the form and content of corrupt practices at the national level.

The creation of democratic institutions and special agencies to combat corruption will only succeed if citizens organize themselves effectively. In this respect Riley (1997) advances the notion of "social empowerment", which he uses to refer to the range of political and economic resources and alternatives available to citizens, as an integral element of an assault on entrenched or systemic corruption. Actions by organized citizens on complement institutional reforms and provide them with a proper social foundation which is indispensable to their success.

Spontaneous public demonstrations against corrupt politicians have been effective in prompting authorities to remove them from office in some polities (the dismissals of the governments of late Benazir Bhutto in Pakistan, Color de Melloin Brazil, Shurhato and Thaistinawat in Indonesia) and the recent clamour for the arrest and retrial of James Ibori, Babangida among others are examples but they do not take tackle the root causes of the problem when it permeates all levels of government machinery. At best such actions can lead to a temporary abatement of the problem but it soon resurfaces in other guises. Today, "social empowerment" framework has been strengthened by the activities of the organized civil society organizations such as Transparency in Nigeria (TIN); Coalition Against Corruption (CACOL); publish what you pay Nigeria (PWYPN) among others. But while some organizations with civil society can be a potent force for anti-corruption efforts, other groups benefit from corruption and are resistant to change. This suggests that independent actions by Independent Civil Groups have its limitations, the needs to be complimented by institutional interventions.

Applying these approaches to the study, various African leaders had proclaimed an "ethical revolution" as in Nigeria to combat corruption. The governments had included a code of conduct for public servants in their various constitutions and had established code of conduct Bureau to enforce the "prescribed behaviours". The leadership had even appointed a Cabinet Minister of National Guidance to provide moral eldership against corruption. More recently, anti-corruption agencies such as the EFCC and ICPC among others and special courts have been established to tackle practices in the continent. Yet according to popular accounts, Africa had

grown even more corrupted, leaving its populace more alienated from government and her economy more vulnerable to official venality. The next section of the paper will examine selected cases across the continent to add currency why the continent is losing the war against corruption. As a result of the obvious damage that corruption has done in many African societies, politicians and public management specialists and technocrats have made numerous attempts to reduce or minimize the effects of corruption with a series of anti-corruption strategies. While we now have legislation to regulate the conduct of both public officers and the private sector for corrupt practices, the vices are still very much with us. Bank frauds are in the upsurge, foreign exchange abuses and manipulations are still the stock in trade of many banks, 419 stills looms large, money laundering from corrupt proceeds is visible and apparent. It was in these circumstances that the FAFT threatened to impose counter measures on Nigeria in 2001 if she did nothing to update her laws and take steps to check the perpetration of economic and financial crimes. All these have contributed to keeping investors away.

It is for this reason and the international dimension, which these crimes had assumed that the promulgation of the EFCC Act 2002 became inevitable. The act, which was re-enacted in 2004, is revolutionary in many respects. For the first time, powers of coordination and enforcement of varied but related economic and financial crimes laws are vested in one body. The definition of economic and financial crimes in S.46 of the act is all encompassing. Secondly, because the nature of the crimes handled by the commission is at the heart of the economy, all critical stakeholders including security, law enforcement agencies and apex financial regulators are made members of the commission. Thirdly, apart from the offences created by the EFCC Act itself, the Commission has responsibility to specifically enforce the provisions of other principal laws bordering on economic and financial crimes including: The Money Laundering Act, 2004; The Advance Fee Fraud (and other related offences) Act, 1995; the Failed Banks (Recovery of Debts and Financial Malpractices in Banks) Act, 1991, as amended. The Banks and other Financial Institutions act, 1996. The Miscellaneous Offences Act, 1985. Any other law or regulations relating to economic and financial crimes include the Penal Code and Criminal Code See S.7 EFCC Act. It is therefore not so much the lack of laws of deficiencies in them, but the total neglect to enforce them that have been our bane as a nation. The next section of the paper will address these issues.

Serious attempts to control corruption are often as old as corruption itself (Riley, 1998:132). A recent study by Sen (1997) and Noon (1984) point to some early examples. In ancient China, many public officials were paid a corruption-preventing allowance to try to ensure their continued honesty. This illustration relates to recent debates about the linkage between the low salary levels of junior civil servants and levels of corruption in the continent. Kautilya, a fourth century BC Indian political analyst, sought to identify forty different ways in which public officials could be corrupt. He also developed a system of spot-checks to reduce corruption, which were accompanied by a rewards and penalties system. Such ancient examples of attempted corruption-control are similar to those developed by public officials and academic analysts in recent years, in the period since the 1960s (Riley, 1998:132). Broadly speaking, there are four

levels or types of anti-corruption strategies which can be identified in operation in most post-independence Africa: International, national, local; and populist (Theobald, 1990).

Since the mid-1990s a series of international anti-corruption initiatives has emerged (OECD, 1997; Kaufmann, 1997; Rose-Ackerman, 1997], but earlier decades saw African countries themselves develop strategies based upon national and local action including anti-corruption agencies, public inquiries, inspector-general systems, legal and quasi-legal trials, complaints procedures, and public awareness campaigns [Clarke, 1983; Doig, 1995; Heidenheimer, LeVine and Johnston, 1989; IRIS, 1996]. Often a key issue in assessing the effectiveness and sustainability of such strategies is the commitment of the powerful to act effectively to curb corruption (Klitgaard, 1997; Kpundeh, 1997]. Populist initiatives such as purges of civil servants and former politicians have not had much success, although the issue of corruption has acquired great political salience in recent years due to the actions of NGOs and activism by lawyers and other public interest groups [Doig and Riley, 1998; Harsch, 1993; Theobald, 1990; Transparency International [1996]. The harsh punishment meted out to former public officials in Ghana and Liberia in 1979 and 1980 – which involved populist revolutions (in effect, coups d'etat), dubious trail and speedy public executions for several former heads of state, such as President William Tolbert of Liberia – illustrates a general paradox: extensive high-level corruption can contribute to profound political upheavals, but the problem of corruption does not disappear with the removal of those key officials identifies as corrupt [Jefferies, 1982].

More recently, several countries have adopted public integrity reforms which are associated with the 'New Public Management' approach to governance in western societies. These initiatives are often linked to the influence of aid donors or the activities of pressure groups such as Transparency International (TI). Examples include new administrative procedures such as overlapping jurisdictions (where two or more officials are responsible for an administrative action), service delivery surveys (for example in Tanzania and Uganda, in cooperation with the World Bank), and structural reform, where an administrative machine is decentralized or deregulation takes place. However, there are several potential problems with such strategies. For example, decentralization, a widely touted remedy for many of the African state's contemporary ills, can also create lower-level corruption unless it is accompanied by some of the range of possible anti-corruption strategies. Nevertheless, aid donors and others hope that these reforms will improve public integrity either directly or indirectly.

Many of the less coercive anti-corruption efforts are based upon the manipulation of incentives for, and the potential punishments to be meted out to, public officials. These modern strategies are often accompanied by attempts to improve both recruitment of public officials who are more likely to be honest and better information upon their preferably honest public studies [Gould, 1980; McKinney and Johnston, 1986; Klitgaard, 1988]. The anti-corruption strategy proposed is usually based upon a distinctive view of the causes and character of corruption and anti-corruption strategies: economic analyses; mass public opinion perspectives; and institutional viewpoints. Developed since the 1960s, these are outlined and evaluated in a wide variety of publications [Heidenheimer, LeVine and Johnston, 1989]. Economic analyses prioritize the

principal-agent market relationship to identify corruption and anti-corruption strategies, whereas mass public opinion perspectives examine the social or cultural context of corruption and suggest as a result mass attitudinal change or civic awareness anti-corruption strategies. These two approaches are well established and well regarded, with an extensive academic literature and some policy applications. A third and newer, institutional approach focuses upon the public sector and institutional reform [Doig, 1995; Stapenhurst and Langseth, 1997]. This is important because it enables the analyst of corruption to suggest short-term and specific policy recommendations which focus upon, low-level corruption. This newer approach has yet to have a major impact upon policy formation.

Analyses of Legal Frameworks of the Fight against Corruption in Nigeria

It may not be possible to recount all the laws, institutions and structures involved in the fight against corruption in Nigeria. We shall here only attempt a summary of the major laws and institutions.

The Criminal Code/Penal Code (10)

Both the Criminal Code and the Penal Code have provisions prohibiting corruption. However both codes focus on corruption in the public sector thereby neglecting the private sector which now constitutes the engine of growth in every economy. The Criminal Code provides for official corruption and judicial corruption. According to Okonkwo, offences of official corruption can be roughly divided into the offences of bribery and the offences of extortion (11). The offences of bribery are mainly contained in sections 98 and 116 of the Criminal Code and the elements common to both sections are as follows:

(i) the public officer corruptly asks, receives, or obtains or agrees or attempts to receive or obtain a bribe

(ii) The act of asking, receiving obtaining or agreeing or attempting to receive or obtain the bribe by the public officer must have been done "corruptly' and

(iii) There should be offered, demanded or received 'any property or benefit of any kind for the public officer or any other person on account of anything already done or omitted to be done or t be afterwards done or omitted to be done by him'.

The offences of extortion by pubic officers are provided in section 404(1) a-d of the Criminal Code and involves a public servant taking advantage of his position (Colour of employment) to extort money from any person. Section 114 defines the offence of judicial corruption and a private person who offers a bribe to any judicial officer on account of anything already done or omitted to be done or to be afterwards done or omitted to be done by him in his judicial capacity is liable to fourteen years imprisonment. The provisions of the Criminal Cod on Corruption have been seriously criticized (12). The criticisms include: its inability to deal effectively with both private and official corruption and its complex and difficulty worded provisions relating to corruption and kindred offences which despite their similarity are inexplicably scattered throughout the Code; (13) and its failure to make provisions for restitution and or forfeiture of corruptly acquired property or money. The result, according to Okonkwo is the uncomfortable number of cases where the courts have felt compelled to acquit an obviously dishonest accused simply because he was charged under the wrong section (14).

Commenting on this situation, T.A. Aguda stated that:

> "in so far as corruption is concerned, the Criminal Code is a completely confused piece of legislation. I say this with the greatest sense of responsibility. Many of the sections of the Criminal Code deal with various aspects of the same matter…This is a legacy of the British government in Nigeria of which, most regretfully, we have not found it possible to divest ourselves…"(15)

T.A. Aguda wrote this in 1983 and a number of significant legal developments have taken place since then. They include the establishment of the ICPC and EFCC which we now consider.

(ii) the ICPC and EFCC: The ICPC was established in 2000 by the Corrupt Practices and Other Related Offences Act (hereinafter called, The Act). Its provisions, to a large extent, addressed the inadequacies of the Criminal Code and Penal Code. The offences prohibited by the Act include accepting gratification, giving or accepting gratification through an agent, concealing offences relating to corruption, fraudulent acquisition of property, fraudulent receipt of property deliberate frustration of investigation by the Commission, making false statement or return, bribery of public office, bribery for giving assistance in regard to contracts etc (16).

Private persons are covered by most of the offences because the provision generally begins with 'any person who…' Also there is provision for forfeiture of gratification received by a public officer and payment of fine of not less than five times the sum or value of the gratification received (17). The ICPC is empowered to receive, investigate and present any report of corruption against any person. It is also empowered (amongst others) to examine the practices, systems and procedures of public bodies and direct or supervise a review where it thinks that such practices, systems or procedure aid or facilitate corruption (18). Officers of the body also enjoy the immunities of police officers when investigating or prosecuting cases of corruption.

One of the criticisms of the Criminal Code in respect of the offence of official corruption is the requirement for the prosecution to prove that the public officer received, or demanded the property 'corruptly'. In order to avoid this difficulty, section 53 of the ICPC Act provides that" where in any proceedings against any person for an offence under sections 8-19, it is proved that any gratification has been accepted or agreed to be accepted, obtained or attempted to be obtained".

Notwithstanding the wide range of offences covered by the Act and the enormous powers of the ICPC, Nigerians are yet to see any significant progress in the fight against corruption by the body. The Act has been criticized for the following (19):

a. The Act is an ex-post measure, being a legal and institutional enforcement measure designed to detect and prosecute already committed corrupt acts;
b. There is lack of commitment on the part of government to extensively expand the operation of the anti-corruption commission;
c. There is failure on the part of government to seriously incorporate the civil society in the struggle against corruption; and,
d. Failure on the part of the civil society itself to articulate its position and mobilize against corruption.

In respect of the EFCC, it was established by the EFCC (Establishment) Act 2002 for the investigation and prosecution of all financial Crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit fraud, contract scam etc. The commission is also charged with the enforcement of the following legislations-the Money Laundering Act 1995, the Advance Fee Fraud Act 1995, the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 1994 (as amended) the Banks and Other Financial Institutions Act 1991 (as amended), the Miscellaneous Offences Act and other laws relating to economic and financial crimes (20).

The definition of economic and financial crimes is very wide. It is defined as the non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractice including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods etc (21). The EFCC has been very active in the investigation and prosecution of past public office holders especially State governors. Examples include the investigation and prosecution of Chief Executives and other officials of banks for money laundering and other frauds. Its fight against advance fee fraud popularly called 419 has also resulted in the recovery of millions of dollars from fraudsters (21). The Commission has been criticized for not following due process in its activities and for being selective and partial. It has also been accused of going beyond its jurisdiction. The ICPC was created to fight corruption while the EFCC was created to wage war against financial and economic crimes. But the EFCC has taken over the function and duties of the ICPC (22a). whatever the criticism may be, the Commission has achieved a lot in the fight against corruption in Nigeria and many Nigerians presently look up to it for better days to come in the fight against corruption.

The Code of Conduct Bureau and Tribunal Act

The code of conduct bureau and tribunal act (23) established a bureau charged with the functions of receiving assets declarations by public officers, examining the assets declarations to ensure compliance with the requirements of the Act, taking and retaining custody of such assets declarations, receiving complaints about non-compliance with or breach of the Act and if necessary refer such complaint to the code of conduct tribunal established by section 20 of the Act. (24) In addition, the Act contains a code of conduct for serving and retired public officers. Section 10 prohibits a public officer from asking for or accepting any property or benefit of any kind for himself or any other person on account of anything done or omitted to be done by him in the discharge of his duties. Section 7 prohibits some public officers from maintaining or operating a foreign bank account. The code of conduct tribunal is empowered to impose punishment which may include vacation of office whether elective or nominated office as the case may be; disqualification from holding any public office (whether elective or not) for a period not exceeding ten years; and seizure and forfeiture to the state of any property acquired in abuse or corruption of office. Although the code of conduct and tribunals act was enacted in

1989, the 1999 Constitution also established the code of conduct bureau as one of the federal executive bodies (25).

The Public Procurement Act

The Public Procurement Act No. 14 of 2007 (The Act) is another legislation aimed at guiding against corruption in Nigeria. The Act covers all aspects involved in public sector procurement including the procurement of goods and services. The Act established the National Council on Public Procurement (The Council) and the Bureau of Public Procurement (The Bureau) as the regulatory authorities responsible for the monitoring and oversight of public procurement, setting standards, harmonizing existing government policies and practices and developing legal framework and capacity for public procurement in Nigeria. There is no doubt that public procurement is one area through which billions of the public funds are looted in Nigeria. The Act thus ensures that procurement is organized and laid down methods and policies strictly followed. Section 53(1) of the Act empowers the Bureau to review and recommend for investigation any matter related to the conduct of procurement process by any Ministry or agency of government, if it considers such investigation desirable so as to detect or prevent the violation of any of the provisions of the Act.

The Role of the Legislature

The effective exercise of the oversight functions of the legislature over the activities of the executive can go a long way in exposing corrupt practices. Section 88 of the 1999 constitution empowers each House of the National Assembly to conduct an investigation into the conduct of affairs of any person, authority, ministry or government department; the disbursing or administering of moneys appropriated or to be appropriated by the National Assembly etc. One of the purposes of this investigative power is to "expose corruption, inefficiency or waste in the execution or administration of funds appropriated by the National Assembly" (26).

The Auditor-General

There is an auditor-general for the Federation as well as for each of the states of Nigeria (27). He audits the public accounts of the Federation or State (as the case may be). The Auditor-General is also empowered to conduct periodic checks of all government statutory corporations, commissions, authorities, agencies including all persons and bodies established by the National Assembly or the State House of Assembly (as the case may be). It has been suggested that the Constitution ought to be amended to provide for the auditor –general's report to be made public as in some other countries. Also, in view of failure of the auditor-general of the federation and the states to audit the accounts of the federation and the states, in some years, it has been suggested that the duty to audit be made compulsory and backed by penal sanctions (28).

Other Laws/Institutions

Much federal and state legislation have provisions aimed at checking corruption. A good example is the recently enacted Freedom of Information Act and the local government laws of the various states. In respect of institutions, the Nigeria Police is an institution whose principal duty is to detect crime, prevent crime, investigate crime and arrest offenders for purposes of prosecution. Ordinarily, it should be at the vanguard of the fight against corruption but it has failed woefully because of its internal contradictions. As one of the most corrupt institutions in the country, it lacks the moral standing as well as the confidence of the people which is a sine qua non for any effective crime control including the fight against corruption. Finally the role of

non-governmental organizations, media houses, the Civil Society groups like the Nigerian Bar Association and the Nigeria Labour Congress in the fight against corruption cannot be over-emphasized.

International Conventions and Treaties

In discussing the legal framework for the fight against corruption in Nigeria, it is important also to mention the role of international conventions and treaties. Nigeria presently has a legal cooperation Treaty with the United Kingdom and this has helped a lot in apprehending fleeing offenders. Recently, the then Nigerian President Umaru Yar' Adua also made a call for a similar treaty with Germany (29). This call may not be unconnected with the recent allegation of bribery involving a Germany Company Siemens' and some top Nigerian officials. There is the UN Convention against Corruption which came into force on December 14, 2005. Nigeria should hasten to ratify the Convention. Under the said Convention State parties are required to criminalize corrupt activities like money-laundering, corruption, obstruction of justice etc and to adopt legislations and administrative systems providing for extradition, mutual legal assistance, investigative cooperation, preventive and other measures (30).

Issues/Controversies and Suggestions

The establishment of the Independent Corrupt Practices Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC) in 2000 and 2002 respectively has taken the fight against corruption in Nigeria to a higher level. The impact cannot be overemphasized as Nigeria has recorded a significant drop in the world's corruption index. Expectedly, the activities of these two bodies have been trailed by a number of issues and controversies. Let us now discuss some of these issues/controversies which we consider important and relevant to the legal framework for the fight against corruption in Nigeria.

The Power to Legislate on Corruption

As between the Federation and the State, who has the right to legislate on corruption? When the Corruption Practices and Other Related Officers Act 2000 was enacted and made to apply throughout Nigeria, many states opposed it. Consequently, the government of Ondo State instituted an action in the Supreme Court against the Attorney-General of the Federation and all the remaining thirty five states of Nigeria (31). Invoking the original jurisdiction of the Supreme Court, the Plaintiff prayed amongst others for a determination whether or not the Corrupt Practices and Other Related Offences Act 2000 is valid and as a law enacted by the National Assembly and in force in every state of Nigeria including Ondo State. The major contention against the Act is that since the States or local governments employ their staff, pay, promote, discipline and remove them from office, any crime arising from or incidental to their functions should be handled at the state level. To them the Anti-Corruption Act offends the principle of federation which according to Nwabueze is that:

> An arrangement whereby powers of a government within a country are shared between national country-wide government and a number of regionalized (i.e. territorially localized) governments in such a way that each exists as a government separately and independently from the others operating directly on persons and property within its territorial area (43).

In resolving the controversy, the Supreme Court held that based on section 4(2) and section 15(5) of the 1999 Constitution as well as items 60a, 67 and 68 in the Exclusive legislative

List of the said Constitution, the National Assembly is competent to legislate on corruption for the entire Federation. Section 4(2) of the constitution empowers the National Assembly to make laws for the peace, order and good government of the Federal or any part thereof with respect to matters stated in the exclusive legislative list. Section 15(5) of the Constitution contains one of the fundamental objectives and directive principles of state policy. The said section directs the State to abolish all corrupt practices and abuse of power. Then item 60a empowers the National Assembly to make laws for the realization of the fundamental objectives and directive principles of state policy. Thus the National Assembly can make laws for the abolition of all corrupt practices and abuse of power. On the meaning of state under section 15(5), the Supreme Court held that it includes State governments and consequently, they too have the competence to make laws on corruption. However, where there is any conflict between the law made by the Nation al Assembly and that made by a state, the former shall prevail by virtue of section 4(5) of the Constitution (33).

This decision by the Supreme Court has been endorsed by many commentators chiefly on the ground that the principle of federalism cannot be applied with pedantic rigour. There must be areas in which the two tiers of government must cooperate in order to achieve maximally the purpose of government. Although this decision has settled the constitutionality of the Corrupt Practices Act, a number of suits have been instituted against the Federal Government in respect of the activities of the EFCC on grounds similar to those canvassed in AG Ondo State VAG Federation and 35 others. They include AG Abia State vs. AG Federation and 35 Ors (34) which arose from the freezing of certain accounts of Abia State Government by the EFCC. Regrettably the Supreme Court did not pronounce on the merit of the suit as it was struck out for want of jurisdiction. The Supreme Court has also been criticized for the seeming volt face it made in AG Abia state Vs AG Federation and 2 Others wherein it declared unconstitutional the Act of the National Assembly which gave some Federal Agencies power to monitor the implementation and application of funds statutorily allocated to the Local government councils in the country on the ground that it contravened sections 7 and 162 of the 1999 Constitution. That Act would have gone a long way in checking financial malpractices and outright embezzlement presently going on in our local councils.

The former Chairman of the Independent Corrupt Practices and Other Related Offences Commission (ICPC), Justice Mustapha Akanbi, was unsparing when he posited that former President Goodluck Jonathan's administration did not demonstrate enough seriousness in the fight against corruption. Akanbi, who was a former President of the Court of Appeal, said corruption, kidnapping and other societal ills have been on the rise and that government institutions and the judiciary remain helpless in rising to their statutory responsibilities. The retired judge said:

> Honestly, I do not see what is being done about corruption now. I ask myself these questions: Does it mean that all the governors are corruption-free? Does it mean all the legislators are corruption-free? Does it mean the judiciary is corruption free? We know that it is happening but people are not being

> arrested, no action is being taken and the end result is that people accept bribe with impunity now. At least, if they had taken few people to court, we would have known that something is being done. There is a general lull and the fight against corruption has gone down completely. Now, when you look at many people wanting to be governors, is it because they want to serve their people or that they want to go and chop? It is apparent that many of them want to enrich themselves because they know that when you go there you make money and become wealthy, ditto going to the legislature. Yet people are suffering; there is no development. Corruption, kidnapping and other ills of the society have gone on the ascendency. We know about Oduahgate and the billions of naira that Sanusi alleged was missing. The terrible thing is that the judiciary is not helping. The indices are that the moments are dark, the clouds have thickened, and corruption is escalating (Oganna, 2015:8).

Constitutional lawyer, Mallam Yusuf Ali, a Senior Advocate of Nigeria (SAN), also accused Jonathan's administration of not doing anything at all to stamp out corruption. He urged Nigerians to know that corruption makes all the citizens poorer in the short and long run. His words:

> I have said this long time ago, there is no drive against corruption by the current government and that is quite obvious because the President believes that there is no corruption in Nigeria. He believes that what is going on is petty stealing. So, if he doesn't believe there is corruption, you can't hold him for not driving any anti-corruption war. If somebody doesn't believe there is a problem then he would not be obliged to look for solution (Odufowokan, 2015:37).

In what looked like a confirmation of what his critics have been saying that the Federal Government has achieved little or nothing in the monumental fight against corruption, formerPresident Jonathan recently said though politicians are thieves, they are not corrupt. He said:

> What many Nigerians refer to as corruption is actually stealing. Stealing is not the same thing as corruption, the President had said, sending many Nigerians into fits of rage that lasted for weeks. Just few days back, Jonathan confirmed his unwillingness to confront the monster called corruption just yet when, during his campaign rally in Lagos, he announced that he is not eager to jail anybody for corruption. They said they will start fighting corruption after they have crossed the

> bridge. And only two days ago, somebody stood in Port Harcourt, Rivers State and said he would catch people that steal and throw them in Kirikiri (Prisons). I agree that we must stop corruption but I will not do so by catching people and putting them in crates and jailing or killing them. We can't stop corruption that way (Odufowokan, 2015:38).

Immunity of Certain Public Office Holders

Another issue that has generated a lot of controversy is the immunity from prosecution being enjoyed by certain public office holders Section 308 of the 1999 Constitution gives the President, Vice President, State Governors and their deputy's immunity from civil or criminal proceedings during their period of office. Under subsection 1(b) of the section they cannot be arrested or imprisoned during their period in office pursuant to the process of any court neither can any process of court be applied for or issued requiring or compelling their appearance. They can only be made nominal parties in any civil or criminal proceedings. Happily, the Supreme Court has held that this immunity does not shield the said public officers from being investigated. In Fawehimni Vs IGP (35), the Supreme Court held that section 308 does not grant to the officers mentioned in subsection (3) thereof immunity for policy investigation into allegations of crimes made against them. Investigation into a criminal complaint, according to the apex court, is not tantamount to instituting or bringing criminal proceedings.

It was based on this decision that the ICPC and EFCC were able to investigate serving State governors between 1999-2007 and many of them are presently being prosecuted. Yet, Nigerians seem to be still dissatisfied with the situation as many calls have been made for the removal of the immunity under section 308. Late President Umaru Yar'Adua even joined in this clarion call thereby underscoring the unpopularity of the immunity provision.

Akintola on the other hand argued that leaders have not been serious about fighting corruption. He argued that the fact that President Goodluck Jonathan has refused, despite calls from all quarters that he publicly declare his assets, is enough evidence that this administration is not interested in being transparent. What is he (President Jonathan) hiding? He went on to posit that:

> We know his background as a former deputy governor and vice president. I believe he is afraid that people could easily raise questions. Until we place the onus on public officers to justify their wealth, we will not get there. We should emulate the Asian countries where corruption attracts death penalty. The fight against corruption has to be taken seriously. It is the inability of our leaders to implement the law that is the problem. Those who are stealing us blind are not more than 5000. If Ghana could sacrifice 13 lives, we can afford to sacrifice them too for the rest of us to have peace. God even sacrificed his son to redeem the world (Olaleye et al, 2012:9).

The truth is that, we will not be able to address the issue of corruption until, and unless the culprits that are caught are punished appropriately to serve as deterrent to others. Government catch people for corruption today and tomorrow you see them on the streets walking as free men and even being given higher responsibilities. What the Federal Government is doing is like window dressing he said. According to Agbaje:

> The report by TI did not show any improvement. In fact it confirmed our position that corruption in the country has worsened. He argued that the present government has become prodigal, spending money as if money is going out of vogue. There is nothing about human and institutional development to sustain such huge spending. The leaving standard of Nigerians today is even worse than what it was before this government came on board. In a society where the government is not concerned about the plight of the people, but of the only few in power, what do you expect? The Economic and Financial Crimes Commission (EFCC) is not doing enough and the government is not bothered about that. The level for profligacy is higher now the oil sector is enough for TI to damn us (The Sun Editorial, 2012:7).

Aturu adds:

> I think that there is a problem with the TI rating and the parameters adopted. We can see that there is high level of looting going on in the country and that corruption is on the increase. For the report to have rated Nigeria 35th in the global corruption index could be because the report was based on faulty parameters or that other countries of the world are doing better in corruption than us. Certainly, there is nothing on ground to show that we are doing anything to fight corruption (The Sun Editorial, 2012:7).

EFCC Power to Prosecute and the Role of the Attorney-General of the Federation

When the former attorney-general of the federation Mr. Aaondoakaa came into office, he reportedly issued an order directing the EFCC to hand over its files after investigation to the Attorney-General's office for prosecution. This order generated a lot of controversy as the Attorney-General was called different names and openly castigated. In fact, the well-known lawyer, late Gani Fawelhinmi issued a statement published in various dailies calling for the removal of the Attorney-General. Some questions need therefore to be answered namely.

(a) Does the EFCC have power to prosecute suspected offenders after investigation without reference to the Attorney-General as it had been doing?
(b) Have the Attorney-General supervisory powers over the EFCC?

The answer to the first question is in the affirmative. The EFCC has the power to prosecute offenders under the Act. Section 11 (1)(b) of the EFCC Act established a unit called the Legal and Prosecution Unit and section 12(2) states that one of the responsibilities of the Unit is the prosecution of offenders under the Act. There is nothing unusual with this power of prosecution by the EFCC as other bodies such as the Police, the Customs and even some Government departments also enjoy prosecutorial powers (36).

However, this power to prosecute is subject to the over-riding powers of the Attorney-General under Section 174 of the Constitution. That section not only gives the Attorney-General power to institute criminal proceedings against any person before any court in Nigeria other than a court martial but also to take over and continue any such criminal proceedings that may have been instituted by any other authority or person. It also empowers the Attorney-General to discontinue any such criminal proceedings that may have been instituted by any other authority or person. In State VS Ilori and Other (37) the Supreme Court held that the powers of the Attorney-General under this section are absolute and the Court cannot entertain a suit to determine whether he exercised same having regard to the public interest, the interest of justice and the need to prevent abuse of legal process (38). The above position shows clearly that the Attorney-General of the Federation can institute criminal proceedings after investigations by the EFCC. He can also take over and continue any criminal proceeding already instituted by the EFCC and may also discontinue such criminal proceedings. In discontinuing such criminal proceedings, the Attorney-General has no duty to give reason for the discontinuance as he is presumed to be acting on public interest. In State Vs Garba (39), the then Federal Court of Appeal expressed displeasure at the attitude of the High Court of Kaduna State which issued an order which had the effect of compelling the Attorney-General and the Solicitor-General respectively to appear in Court and continue with the prosecution of criminal cases even when they were not disposed.

The case against former Governor of Rivers State, Chief Dr. Peter Odili is hereby recast from a well-written petition filed before the National Judicial Commission (NJC) at the time by a UK-based Nigerian citizen, Osita Mba. In January 2007, the Economic and Financial Crimes Commission in the exercise of its statutory powers issued a report of its investigation into the finances of the Rivers State government under the then outgoing Governor Peter Odili. The "Interim Report of the EFCC on Governor Peter Odili" disclosed that "over 100 billion Naira of Rivers State funds were diverted by the Governor, and contained serious allegations of fraud, conspiracy, conversion of public funds, foreign exchange malpractice, money laundering, stealing and abuse of oath of office. Subsequently, the Rivers State Government through its Attorney-General filed an action challenging the powers of the EFCC to probe the affairs of the State and claiming that the activities of the EFCC were prejudicial to the smooth running of the Government of Rivers State. The case was given expeditious hearing and on March 23 2007, the trial judge, Honourable Justice Ibrahim Nyaure Buba, granted all the declaratory and injunctive reliefs sought by the Plaintiff. These include a declaration that the EFCC investigations are invalid, unlawful, unconstitutional, null and void; an injunction restraining the EFCC and the other defendants from publicising the report of the investigation; and an injunction restraining the EFCC from any further action in relation to the alleged economic and financial crimes

committed by Dr Odili. In a subsequent action Dr. Odili filed against the EFCC and including the Federal Attorney General in suit no. FHC/PHC/CSI78/2007, seeking to enforce the original judgment by way of an ex parte order barring the EFCC from investigating or arresting or prosecuting him, Justice Buba held that,

> The subsisting judgment of March 2007 by this court is binding on all parties. Therefore there is a perpetual injunction restraining the EFCC from arresting, detaining and arraigning Odili on the basis of his tenure as governor based on the purported investigation (Eme, 2010).

Digital revolution has dissolved physical boundaries of countries around the world, making those with inadequate cyber crimes or internet related offences laws like Nigeria to be vulnerable for the commission of such crimes. Thus, legal experts always disagree on matters relating to the territorial jurisdiction for the trial of the aforesaid offences, a situation that makes the investigation and prosecution of cyber crime offences extremely difficult. We are aware that a cyber crime Bill is presently receiving attention of the Attorney General of the Federation. When eventually passed into law by the National Assembly, the situation will be hopefully addressed.

Underfunding of Anti-corruption Agencies

When in December 17, 2013 the secretary of the Economic and Financial Crimes Commission, (EFCC) Mr. Emmanuel Adegboyega raised the alarm in Abuja, while briefing the Senate Committee on Drugs, Narcotics, Financial Crimes and Anti-Corruption, at a public hearing on the bill for an Act to establish the Nigeria Financial Intelligence Agency, that the agency was broke, so many got a public confirmation of what had been suspected. Investigation by *LEADERSHIP* Sunday shows that the fight against corruption by the administration of former Pdresident Goodluck Jonahtan either by act of commission or omission is being scuttled through in adequate funding, non remittance or delayed release of appropriated fund to the EFCC, Independent Corrupt Practices and other related offences Commission (ICPC) and others.

Earlier, stories had surfaced in the media saying that the EFCC is broke and that it can't meet some of its key financial obligation including paying the various lawyers prosecuting it cases in different courtrooms across the country. Federal allocations to the anti corruption agencies according to LEADERSHIP Sunday shows that allocations to some have dwindled in the last four years, highlighting Goodluck Jonahtan Administrations alleged insincerity in the fight against corruption. The agencies analysed are the Economic and financial crimes commission (EFCC), Independent Corrupt Practices another related offences Commission (ICPC), the Code of Conduct Bureau (CCB), and the Code of Conduct Tribunal (CCT). While the EFCC, for instance, had about N13.8billion allocated to it in the 2011 fiscal year for its operations, funding declined sharply to N10.6billion in 2012 with a further decrease to N9.8billion in 2013. It enjoyed a marginal rise to N10.2billion in 2014 ().

For the ICPC, funding hovered between N3.6billion in 2013 and N4.6billion in 2014.The CCB was allocated about N1.4billion in 2011 and N2.9billion in 2013 after which it was further

reduced to N2.8billion in the current year. In the case of the CCT, funding has also wobbled constantly in the past three years. While N359.6million was appropriated for it in 2011, it increased mildly to N461.2million was appropriated for it in 2011, it increased, mildly to N461.2million in 2012, N517.1million in 2013 and N512.6million in the current year. A peep into the Ribadu years reveals that in 2009, EFCC's budget was N26billion. Five years later EFFC's budget has reduced by more than a half ().

Corroborating the fact that the EFCC had difficulties paying it lawyers, Lamorde in November 23, 2012, while defending its budget for 2013 before the Senate noted that funds were not provided in the 2012 Appropriation for legal services and had to struggle to get a few lawyers to help in working for them during the period. Lamorde has also added that though N200million was proposed by the commission for legal services for 2013, the Budget Office reduced it to N100million. This probably made them to start developing the capacity of its in house lawyers. Conclusively, the fight against corruption in Nigeria according to Asobie, (2012b) has not been very effective so far for five main reasons:

> First, contrary to Section 15.5 of the 1999 Constitution of the Federal Republic of Nigeria, the fight against corruption in Nigeria is, largely, a federal (Anti-Corruption Agencies) affair and not a national endeavour. Second, the fight lacks political leadership: it is not led from the top of the Nigerian political mainstream. Third, it is not energized, at all levels, by the force of personal example, which is the hallmark of transformational leadership. Fourth, the constitutional provisions for the fight against corruption are not faithfully enforced; in fact, many of them are breached, often brazenly. Fifth, the approach adopted in the fight is not holistic, reflecting the integral perspective: not surprisingly, there is no approved national strategic plan to combat corruption in Nigeria.

Nigeria today is at a critical stage since independence. The country faces a severe crisis in its economic, social and political development that is not unconnected to the problem of pandemic corruption. The manifestations of the crises are clear, the remedies much less so. Therefore, for a country awakening to democracy after long years of military authoritarianism, endemic corruption and stupendous wastage pose greater challenges. Since 1999 when the country returned to civil rule, there is no doubt that corruption has been the bane of democratic stability and survival. News about corruption is no longer stunning. This vindicates consistent rating of Nigeria by Transparency International (TI), the global watchdog on corruption, as one of the most corrupt nations in the world. All anticorruption strategies by the various successive governments have had trifling impacts. The pathological effects of corruption-democratic instability, low level of governmental legitimacy, voracious poverty, infrastructural decay, electoral crisis, contract killing, political assassination, insecurity and generally, develop- mental problems- have been very devastating. Regrettably, those who claim to be the right physicians,

as the previous and current revelations have shown, have come out as patients. The question is how to address the problems and challenges posed by corruption. The next section of the paper discusses the recommendations.

Recommendations

Based on the analysis and evaluation of the study, it is our suggestion that the Constitution should be amended to clearly state the position as to the competence to legislate on corruption as between and among the tiers of government. There is need for reform in the Nigeria criminal justice legal system to pave way for judiciary independent.

Specialized court system should be establishes for corruption cases and with specific time frame of six mouths. Nigerian government should make public expenditures more transparent, with clearer rules on procurement and budgeting. Nigeria should abolish the clause on immunity from prosecution of executive, legislative, and judiciary figures from the constitution.

Anti-corruption agencies in Nigeria should be strengthened and linked with other international anti- corruption bodies like Transparency International (TI) to build capacities and monitor international collaborators towards corruption free society. Central Bank of Nigeria (CBN) should testify effort in cubing money laundry and other financial crime in the sector, especially the political office holders. Code of Conduct Bureau should verify asses and identify wealth and resources owned by political office holders before and after their tenures, these will complement the effort of other relevant agencies in minimizing corruption in the polity.

Conclusion

This analysis calls for a reform of the anti-corruption agencies to increase accountability in government agencies as a way of curbing corruption. It is hopeful that if the reform measures suggested in this paper are implemented, there will be some reductions in the level of corruption in the polity. This will make the public sector to be more efficient and effective in the execution of its job duties and become more responsive to the needs of its populace. Given the central role played by the public service in Nigeria, it is essential that public goods and services should be evenly distributed to all citizens. A corrupt bureaucracy will lead to a decrease in the quality of goods and services being provided by the government, which will increase public cynicism.

Generally, it is important to implement accountability measures as a central concept for good governance. Accountability requires that elected and unelected officials in government account for their performance to the public or to their duly elected representatives. Once these accountability measures are implemented, public officials will be under the scrutiny of the populace and will be less likely to engage in corruptible acts.

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