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Corruption Identified as a Major Determinant of the Rule of Law in the Emerging Nigerian Democracy

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Abstract- Corruption is a universal crime that pervades every human society. The "inseparable" relationship between mankind and corruption is akin to that of a goat and a yam. The distasteful and unpleasant practice that entails the use of entrusted powers for private gain compromises justice; impedes the rule of law and act antithetically to good governance. Though, corruption is a universal social vice, it has of recent acquired an inglorious reputation in Nigeria since the commencement of our present democratic experiment[1]. Only recently, Transparency International, the global corruption watchdog released its 2011 report wherein it ranked Nigeria as the 35th most corrupt nation in the world. This unenviable record needs redemption because, corruption is not a way of life, or a passing phase that Nigerians should indulge in; rather, it should be recognized as a problem that demand an urgent attention and resolution because of its attendant negative consequences on the rule of law. This article seeks to briefly explain the term corruption with a view to showing how it determines the rule of law. At the end, the article provides useful solutions as to how corruption can be curbed or brought, to the barest minimum in Nigeria.

Keywords: corruption, transparency, watchdog, dependency-relation, gift-giving, automation, ethnic-loyalty, best practices, agency cooperation, bilateral/ multilateral cooperation and reporting regime.

I. Introduction

Corruption as a social disease, vice or crime is not difficult to recognized when observed faithfully. Accordingly, Okonkwo C.O. observed that,

…to corrupt in the present context is to deflect, or to sway someone from a proper performance of his duty…it can also encompass bribery, extortion and other forms of official malpractices[2].

In the words of Lateef Adegbite

The word "corruption" is susceptible to varying definitions. Depending on the sense which it is used, it could denote moral deterioration, depravity, perversion of integrity by bribery or favour. In widest sense… corruption connotes the perversion of anything from an original state of priority; a kind of infliction or inflicted condition[3].

Comprehensively, Oyeyipo T.A. viewed corruption broadly as

The abuse of office for private gain or misuse of office for unofficial ends. In this perspective, corrupt acts include bribery and extortion which necessarily involves at least two parties, influence peddling, nepotism and fraud, use of "speed money", embezzlement, misappropriation of public assets, illegal use of public assets for private gains, over or under valuing or falsification of any other trade-related documents, inflation of contracts, payment of salaries and wages to non-existent ("ghost") workers, abuse and misuse of the legal process, illegal custody of public records or documents and hoarding of valuable public information[4].

Section 2 of the Independent Corrupt Practices and other Related Offences Act simply states that, "Corruption includes bribery, fraud and other related offences"[5]. On the other hand, section 115(c)(i) of the Penal Code[6], provide that,

> Whoever being or expecting to be a public servant accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification whatever, whether pecuniary or otherwise other than lawful remuneration, as a motive or reward…shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.

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[1] The present democratic experiment in Nigeria started on 29th May, 1999

[2] C.O. Okonkwo, "Legal and Institutional Mechanisms Against Corruption in Nigeria", in I.A. Ayua and B. Owasanonye (eds.), Problems of Corruption in Nigeria, (Lagos: Nigeria Institute of Advanced Legal Studies) pp.274-275

[3] L. Adegbite, "Towards the Evolution of a Corrupt-Free Society: The Role and Duties of Citizenry" in B. Ajibola et al (eds.), Perspectives on Corruption and other Economic Crimes in Nigeria, (Lagos: Federal Ministry of Justice, 1991) p.152

[4] T.A. Oyeyipo, "Strides in Anti-Corruption Campaign – The Nigerian Experience" in T.A. Oyeyipo et al (eds.), Judicial Integrity, Independence and Reforms, Essays in Honour of M.I. Uwais (CJN) (Enugu: Snaap Press Ltd., 2006) pp.1-2 (Oyeyipo is a retired Chief Judge of Kwara State High Court).

[5] Cap C.31 Laws of the Federation of Nigeria, 2004

[6] Cap. 105 Laws of Northern Nigeria 1963. See, also section 419 of the Criminal Code Cap C38 Laws of the Federation of Nigeria 2004 applicable in Southern Nigeria

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Corruption is tantamount to robbing the public or many persons at once. This is a greater crime than robbing or defrauding a private person. This is because it affects the rights of many persons. In the imitable words of Hobbes T.,

> Robbery and depeculation of the public treasure or revenue is a greater crime than the robbing and defrauding of a private man: because to rob the public is to rob many at once. Also the counterfeit of public ministry, the counterfeiting of public seals or public coin is greater than counterfeiting of a private man's coin or seal: because the fraud thereof extended to the damage of many[7].

The rule of law on the other hand, in its most basic form, is the principle that no one is above the law. The primacy of the law is a fundamental principle of any democratic system seeking to foster and promote rights, whether civil and political or economic, social and cultural.

Perhaps, the most important application of the rule of law is the principle that governmental authority is legitimately exercised only in accordance with written, publicly disclosed laws, adopted, and enforced in accordance with established procedural steps that are referred to as due process. The principle is intended to be a safeguard against arbitrary governance, which corruption represents. Corruption therefore is antithetical to the rule of law because it undermines the flourishing of the rule of law.

Corruption as a broad term can be specifically identified as political corruption, bureaucratic corruption, economic corruption, and moral corruption. Whatever type it may be, the systematic and endemic nature of corruption and its upsurge in the emerging Nigerian democracy calls for utmost concern, especially when one takes into account the incontrovertible conclusion that corruption compromise justice; impedes the rule of law: and acts antithetically against good governance, by undermining investment. We must bear in mind that lack of investment in turn, slows down national economic growth. This in no time can deprive any government the much-needed resources to invest in critical sectors of national life such as education, health, housing, security, and sound environmental policy. All these have attendant negative consequence on a citizen's right to life[8], education[9], health[10], mobility[11], housing[12], safety[13] and good environment[14].

II. Instances of Corruption under this Democratic Dispensation in Nigeria

The kind of corruption Nigeria is presently engulf in (as a result of bad governance), in this democratic dispensation is not the traditional values of gift-giving and tribute to leaders, which often lead to what Brown Berger described as "polite corruption"[15a]. An example of the above act of corruption can be seen in Chinua Achebe's book, Things Fall Apart, where a stormy and determined young man called Okonkwo went to the "great man" of his Igbo village to ask for a favour.

In seeking the favour in form of a loan of yam seeds to plant on his farm, Okonkwo brought a cock, a keg of palm wine, a kola nut and an alligator pepper. Offering them to the recipient, he said,

> …I have brought to you this little kola, as our people say, a man who pays respect to the great, paves way for his greatness…I have come to pay you my respect and also ask for a favour[16].

Though Brown Berger consider the type of gift Okonkwo gave the "great man" of his village as constituting polite corruption, it should be noted however, that although gift-giving and tributes to leaders may lead to corruption, it is not every kind of gift-giving that constitutes corruption.

Sadly, since the beginning of this democratic dispensation, which began on 29th May 1999, Nigeria has witnessed series of monumental corruption. Indeed, since the commencement of this democratic dispensation, acts of corruption by the "high and mighty" have become the order of the day. Infact, no year has passed since 1999 that we have not been dumbfounded with one act of monumental corruption or the other.

Nigeria will easily remember one Nuhu Aliyu, a retired Deputy Inspector General of Police who in April 2005, declared on the floor of the Senate that there was a brood of crooks, robbers, murderers and fraudsters in the hallowed chambers of the National Assembly.

Senator Aliyu the then Chairman of the critical senate committee on national security and intelligence, was specific about a certain sitting Senator who, he said, he prosecuted for fraud and armed robbery, while he was serving in Edo/Delta axis of Nigeria as a police officer According to him, the distasteful individual is sitting with him in the upper chamber, the senate, as a Senator of the Federal Republic of Nigeria. Though, when challenged to name that particular individual, he

[7] Richard Tuck (ed.)Thomas Hobbes, Leviathan, (Cambridge University Press, 1994) pp.211-212
[8] See, *section 33(1) of the 1999 Constitution of Nigeria, amended in 2001*
[9] See, *section 18(1) Ibid*
[10] See, *section 17(1) Ibid*
[11] See, *section 15(2)(a)*
[12] See, *section 17(1)*
[13] See, *section 14(2)(b)*
[14] See, *section (20)(1)*

[15a] W.N. Brown Berger, "Development and Governmental Corruption – Materialism and Political Fragmentation in Nigeria", *Journal of Modern Africa Studies,* pp.215-233
[15b] *Ibid*

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could not name names. Nevertheless, his assertion attests to the deplorable corruption in Nigeria.

Other examples or instances of acts of corruption are the several indictments of individual for corruption by Economic and Financial Crimes Commission. Because of the prominence of these individuals in national politics, they are referred to as "politically exposed persons" PEP for short, or "high profile cases". Former governors in the person of individuals such as Chimaroke Nnamani (Enugu State), James Ibori (Delta State), Orji Uzor Kalu (Abia State), Boni Haruna (Adamawa State), Jolly Nyame (Taraba State), Lucky Igbinedion (Edo State), Michael Botmang (Plateau State) and Attahiru Bafarawa (Sokoto State) has been inducted by the Economic and Financial Crimes Commission.

It is unfortunate to note that out of the above named governors facing prosecution for sundry corruption, only Lucky Igbinedion former Governor of Edo State was convicted on plea bargain.

At this point in time, the cases involving other named governors are at the hearing stage three years after their indictments. The constant adjournment of the cases involving the indicted governors indicates the influence corruption is having on their trial.

Furthermore, the Siemens scandal, the Halliburton scandal, the National Identification Card scam, the petroleum subsidy removal scandal and Pension Fund fraud, the Capital Market saga, the Banking Sector saga, which led to the conviction of Mrs. Cecilia Ibru and Mr. Erastus Akingbola former Managing Director and Chief Executive Officers of Oceanic Bank and Intercontinental Banks respectively, illustrates unrestrained corruption in high places by public officials under this democratic regime in Nigeria.

Also within this era, Sentor Nuhu Aliyu again accused Senator Ibrahim Mantu, the then powerful Deputy Senate President from Plateau state of corrupt enrichment. According to the outspoken Senator, Alhaji Ibrahim Mantu is the conduit pipe through which hundreds of thousands of dollars were illegally passed on to the senators to promote and pushed the aborted third term bid of President Obasanjo[16]. It will be recalled that the same Alhaji Ibrahim Mantu was accused by Alhaji El-Rufai of demanding 54 million naira bribe before he could be screened as a minister of the Federal Republic of Nigeria shortly after 29th May, 1999.

Other acts of corruption by public officers during this democratic era are as follows: shortly after the commencement of the present democratic experiment on 29th May, 1999, Alhaji Salisu Buhari, the first speaker of the House of Representatives (under this democratic dispensation) was accused of presenting a false master degree allegedly issued to him by University of Toronto. It was discovered that the master degree he claimed to have obtained was false. Consequent on that, he resigned his speakership. This was swiftly followed by the case of Evans Ewerem, the pioneer senate president (under this dispensation) from Imo state. He was Impeached on 18th November, 1999 after the investigative panel found him guilty of name falsification. Evans Ewerem's short tenure was dogged by endless controversy as to whether his real name was Evans or Evan Ewerem.

Dr. Chuba Okadigbo from Anambra state succeeded him. He did not last long as the Senate President of Nigeria's upper chamber, the Senate. He and his deputy, Alhaji Haruna Abubakar were swept out of office and power as Senate President and Deputy Senate President respectively, on 8th August, 2000, after an investigation panel found them guilty of a furniture contract scam running into millions of naira. The duos were sacked as Senate President and Deputy Senate President respectively.

His successor as Senate President was Chief Wagbara from Abia State. Chief Wagbara also did not last long as Senate President. He was swept out of office for allegedly demanding and receiving about 54 million naira bribe on what was then called "the budget scandal saga"[17].

The case of Patricia Ette from Ogun State who became the first female speaker of the House of Representatives is worth mentioning here. She like others was also tinted with corruption scandal. So also was her successor, Dimeji Bankole.

No year passes, since the inception of this democratic dispensation without Nigerians been confronted with one monumental corruption case or the other. The ongoing "bribe for job" scandal currently rocking the Nigeria Civil Defence Corp leadership is a good example[18].

The general perception of Nigerians is that no institution of governance in Nigeria is spared of the crime of corruption. This assertion was strongly attested to by the former President Olusegun Obasanjo when he said,

[16] At the concluding phase of the second tenure of President Obasanjo's Presidency, he allegedly nurtured and sponsored public officers (with public fund) especially, members of both houses of the National Assembly to alter the Constitution of Nigeria so that he will be allowed to contest Presidential Election the third time contrary to the maximum second tenure limitation provided in the Constitution.

[17] He allegedly demanded bribe and received fifty four million naira so as to inflate budgetary allocation to the Ministry of Education headed by Prof. Fabian Osuji from Imo State.

[18] There is an ongoing allegation that top shots of the Nigerian Civil Defence Corp demanded bribes running into thousands of naira from prospective job seekers before they could be employed by the organization.

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Today, rogues and armed robbers are in State Houses of Assembly and in the National Assembly…the judiciary is also corrupt…the police is even worse[19].

Indeed, it is true to say that, it was because of the unending nature of corruption under this democratic regime that the Federal Government under President Obasanjo established the Economic and Financial Crimes Commission and Independent Corrupt Practices Commission. Sadly, inspite of the good intention of the former president with regard to their establishment, the work of Economic and Financial Crimes Commission under the leadership of Alhaji Nuhu Ribadu was so tinted that a lot of Nigerians began to question the Commission's fairness[20].

Writing under the caption "is EFCC only for Enemies?" a columnist wrote that,

With the recent spate of arrest and harassment of mainly political figures and their well known associates, ostensibly in the fight against economic and financial crimes, any doubt about the political agenda behind the establishment of Economic and Financial Crimes Commission (EFCC) must have been cleared. It is an open secret that political figures considered to be in opposition to the recently failed self-perpetuation ambition of the president are the targets of such harassment and arrest by the EFCC[21].

The degradation of a serious economic and financial crime watchdog such as the EFCC to a political instrument of intimidation and vendetta operating with scant disregard to the rule of law and enshrined basic rights is worrisome in a democratic regime. This is because such unwelcomed attitude is capable of undermining the rule of law.

III. Corruption and the Rule of Law

In order to understand how corruption determines or undermine the rule of law in the emerging Nigerian democracy, we intend not to consider corruption from its broad perspectives but its specificities, and they are:

Political Corruption. According to Encyclopedia Americana, political corruption is,

A general term for the misuse of a public position of trust for private gain. Its specific definitions and application vary with time, place and culture[22].

Political corruption therefore is corruption perpetuated by political office holders in a given society, not necessary for the good of the citizens, but the private interest of those involved or the interest of their political party. Political corruption could be in form of vote rigging, vote buying, ballot box snatching, political assassination, manipulation of national or state laws in order to gain political advantage or ascendancy. Tied to the above, all other manner of illegal and unethical political acts aimed at winning election and sustaining power constitute political corruption.

Political assassination determines individual right to life as encapsulated in section 33(1) of the 1999 Constitution of Nigeria as amended in 2011. Equally, ballot box stuffing and snatching and all form of election manipulations and violence violate individual's rights to suffrage or to vote and be voted for.

It is unfortunate to quote that in our present democratic regime there are abundance of acts of political corruption at the local, state, and federal levels of government. For example, on 8th April 2004, the then president, Chief Olusegun Obasanjo, in order to gain political advantage, wrote a letter to Minister of Finance stating in paragraph 3 of the letter that,

As the National Assembly is yet to make the law in respect of any of the newly created Local Government Areas in the country, conducting election into, or funding any of them from the Federation account would clearly be a violation of the constitution.

Consequently, no allocation from the federation account should henceforth be released to the local government councils of the above-mentioned stated (Lagos inclusive) and any other state that may fall into that category.

Reacting to the above directives, the Nigerian Tribune in its editorial captioned, "Arrogation of Power", it observed that,

Rather than the usual arrogation of power by different actors that is witnessed within the Nigerian context, the Nigerian Constitution and the normal practice of federalism provide that disagreement and conflicts among different ties and arms of government be resolved through the law court.

In this regard, there is nothing strange and disturbing about the facts that the Federal Government and some state governments have different position on the issue of creating new local governments. In fact, healthy practice is enhanced through the placement of such contentious position before the law court for a proper and binding judicial interpretation, which could then serve as precedent for future acts.

It would have been proper for the federal government to refer its dispute with some state governments on this issue to the court or encourage other aggrieved parties to seek a judicial interpretation of the issue under contention than peremptorily deciding to enhance its own interpretation as the binding one…

In any case, the truth is that the Federal Government does not possess powers it has arrogated

[19] "NASS v. Obasanjo", back page, Sunday Sun Newspapers, 27th May, 2012. Quoted by Garbadeen, a guest columnist.

[20] The commission under the leadership of Nuhu Ribadu was regarded by most politicians as a government agent set up to tackle corruption involving opponents of the President (Olusegun Obasanjo)

[21] J.N. Mafara This Day Wednesday, 20th July, 2006. P.16

[22] International Edition Vol.8 p.22

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to itself in this regard. This is because, the Federal Government simply because it has and keeps custody of the federation account does not have more powers over the account than other constituent governments. The federal government is under the constitutional imperative to distribute the money in the account according to specified guidelines and thereafter exercised absolute powers over its own allocation but not the Federation[23].

The Supreme Court of Nigeria agreed with the above editorial opinion when it held unequivocally in Attorney General of Lagos v Attorney General of the Federation[24] that,

The power of the President to protect and defend the Constitution cannot justify an act of illegality. Nowhere in the Constitution is the President empowered to withhold or suspend the payment of allocation from the Federation Account to local government councils, or to the state government on behalf of the local government councils as provided by section 162(3) and (J) of the Constitution[25].

The apex court concluded its judgment by lashing the President's action in the following words

"The executive powers of the federation vested on the President which extend to the execution and maintenance of the constitution does not "extend to the president committing illegibility[26]".

Political arrogance as a form of political corruption avoids placing contentious positions before the court of law for a proper and binding judicial interpretation of dispute. This clearly impedes the rule of law by virtue of section 6(6)(b) of the extant Constitution of Nigeria.

Another instance of political corruption exhibited in form of executive disobedience is the case of Governor of Ebonyi State v Isuama[27]. In that case, the respondent was a former Chief Judge of the High Court of Ebonyi State. When steps were commenced by the Ebonyi State House of Assembly to remove him from office, he complained to the National Judicial Council which in turn wrote a letter to the Governor of Ebonyi State urging the Governor to stop action on steps being taken to remove the respondent from office pending the report of the National Judicial Council on the investigation into the allegation against the respondent. The Governor of Ebonyi State did not stop action on the process of removal of the respondent from office and the respondent was removed from office.

The respondent was aggrieved and filed an application to the Federal High Court for an order of certiorari to quash the proceedings and decision of the Governor of Ebonyi State and the Ebonyi State House of Assembly relating to his removal from office. He also sought an order of prohibition to prevent the recommendation and swearing-in of another judge of the High Court as the Chief Judge of the High Court of Ebonyi State.

The main thrust of the respondent's case is that his removal from the office of the Chief Judge of Ebonyi State is contrary to the Constitution of Nigeria thereby undermining the rule of law.

The case later went on appeal to the Court of Appeal. The Court of Appeal unanimously dismissed the appeal. However, on the need and rationale for obedience of law by the citizens and government officials, the court per justice Pats Acholonu (JCA) as he then was held that,

Obedience to the rule of law by all citizens but more particularly by those who publicly took oath of office to protect and preserve the Constitution is a necessity for good government and respect for law because, in a democratic society, where the rule of law is regarded as the norm, it is incongruous for the government to ignore the provisions of the law and the necessary rules made to regulate certain matters[28].

In this case, the failure of the Governor of Ebonyi State to await the report of the National Judicial Council on the allegations against the respondent before taking further action to remove him from office is tantamount to political corruption exhibited in form of executive lawlessness or disobedience. Sadly, this has violated the respondent's right to fair hearing as enshrined in section 36(1) of the 1999 Constitution of Nigeria.

Bureaucratic Corruption. According to the authors of Concise Oxford English Dictionary[29], bureaucracy means "a system of government in which most decisions are taken by state officials rather than by elected representatives". This is also referred to as government by unelected officials[30].

[23] See, the Editorial page of the Nigerian Tribune of Monday 3 May, 2004

[24] Suit No. SC 70/2004 (unreported)

[25] *Ibid*

[26] *Ibid*

[27] (2004) 6 N.W.L.R. (pt.370)511

[28] *Ibid* p. 534 *paras. G-H*

[29] L.T. Lorimer and D.E. Lechner, International Edition, *The New Webster's Dictionary of English Language*, (New York: Lexicon Publications Inc, 1997) p.129

[30] See, *section 42(1)(a) and (b) of the 1999 Constitution of Nigeria as amended in 2011*

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Civil servants, see to the day-to-day running of government ministries, departments, or agencies, be it, judicial, legislative, or executive. Therefore, bureaucracy is synonymous with the public service of a local government, state or federal as the case may be.

Bureaucratic corruption occurs when unelected public officials (civil servants) use their positions to obtain unmerited favours either from members of the public or from public funds under their control. The on-going pension scam, and police pension fraud, where civil servants connived to defraud the pension board and the police pension fund of enormous amount of money running into millions of naira are good examples of bureaucratic corruption. Again, the indictment of the Director General of Nigerian Communication Commission for deliberately withholding issuance of operating license to Nigeria Communication Satelite Limited (NIGCOMSAT) even when the President had given the necessary approvals is indicative of bureaucratic corruption.

Bureaucratic corruption could also be in form of kickback for all manner of services. It could be in form of collusion, procurement fraud, nepotism and favouritism on the part of civil servant. This act lower standard of public service and undermine the right of the citizen at the receiving end of such service. For example, if one is compel by a civil servant to pay for service that is free, such a compulsion amounts to extortion, discrimination and a violation of the right to be treated equally[31].

Tied to the above, all unethical practice, where money or favour are extracted undermine individual right to dignity of human person as envisaged by section 34(1) of the 1999 Constitution of Nigeria.

Economic Corruption. This basically involves all unethical and unlawful acts of persons or institutions which adversely affect the production and consumption of services, money supply, and the rights of individuals. Those who benefit from economic corruptions are possibly the few individuals who are involved in the act while the country in general and the ordinary citizens in particular are made to be at the receiving end.

Take for example, in Kogi State, a six month old baby's name was found in the payroll of Ibaji Local Government Education Authority[32]. The inclusion of such a name amounts to economic or bureaucratic corruption. In the sense that, it provides a conduit pipe for money to siphoned from government treasury. Also, this indirectly affect individual's right to adequate opportunities to secure suitable employment[33]. This is because, the existence of an unsuitable candidate block the chance of a suitable candidate.

Economic corruption can also be in form of vandalism of public facilities, unlawful oil bunkering, bribery by companies, frauds in financial institutions, import and export fraud, stock exchange manipulations, questionable privatization of companies, advance fee fraud, and any other form of financial crimes[34].

Corruption be it economic corruption or other forms of corruption deprives the government of resources to invest in critical sectors such as education, social safety nets and sound environmental management. Where government lacks resources to fund for example, security needs, the right to life and private property guaranteed by the Constitution in sections 33 and 43 of the Constitution will be an illusion: so also the rule of law that places the security and welfare of the people as the utmost aim of government[35].

Judicial Corruption. This form of corruption is usually perpetuated by Judges, Magistrates and their support staff such as clerks, bailiffs, and registrars. They perpetuated this kind of corruption by demanding and receiving bribe to do their lawful duties or grant unmerited favours such as frivolous exparte injunction, false affidavit of service and all other forms of unethical services associated with justice delivery.

This has led to the suspension of some judges from the bench i.e. Honourable Justices David A. Adeniji, Okechukwu Opene and K.D. Akaah of the Court of Appeal Enugu division were allegedly dismissed from service by the National Judicial Council for their corrupt role in the senatorial seat case of Anambra State between Hon. Nicholas Ukachukwu v. Dr. Ugochukwu Uba[36].

It is sad to note that even now, our judiciary, largely as a result of corruption is still bugged down with frivolous ex parte orders, jurisdiction chess game, whimsical and capricious applications entered into in order to delay court proceedings. This act of judicial lethargy propelled by corruption is against the rule of law as enunciated in section 36(1) of the current Constitution of Nigeria.

Instead of a spark of judicial performance which will give hope to Nigerians and guarantee the rule of law, our judicial arm in this era is still saddled with the old habit of allowing our courts to be used by crooks to escape or delay justice.

Most Nigerians would ask: How come our court cannot convict James Ibori, ex-governor of Delta State

[31] Daily Sun, Friday 16th February, 2007 p.10

[32] See, *section 17(3)(a) of the 1999 Constitution of Nigeria as amended in 2011*

[33] See, *section 14(2)(b) of the 1999 Constitution of Nigeria as amended in 2004*

[34] i.e. the defrauding of a Brazilian Bank of about 242 million dollars by Anajemba and her company, Finbaz Nig, Ltd. See also, *Federal Republic Nigeria v. Nwude* (EFC HR 149)

[35] See, *section 17(1) of the 1999 Constitution of Nigeria as amended in 2011*

[36] See, This Day, Monday 6th February, 2006 p.4

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for corruption and a British court did? Is it because of lack of independence or corruption by our judges? Ex-president Olusegun Obasanjo did not mince words when he said of recent that,

The judiciary is also corrupt…they did not see anything wrong with the former governor (James Ibori) but the same sets of evidence was used to sentence him in the United Kingdom[37].

According to General (Rtd) Ishola Williams, Chairman, Transparency International, Nigeria Chapter,

All the judges are just using the election tribunals to make money. All those who had gone through election tribunals are millionaires today. I challenge anyone of them to say no[38].

In similar vein, Justice Kayode Esho, a retired justice of the Supreme Court reportedly said,

It is sad from what the president had said in his keynote address about what is happening in election petitions. He is saying just in a twinkle of the eye that some judges are becoming millionaires. In fact, those of us who have passed through the yoke of being judges, what we hear outside shatters us, because they are not just millionaires as we were told but billionaires[39].

According to a human right lawyer, Morakinyo Ogele in a petition to the National Judicial Council, he alleged that,

Sahara investigations have uncovered how three judges of the Ekiti State Election tribunal received three billion naira bribe to deliver a majority judgment that upheld the legitimacy of the re-run election[40].

When corruption becomes the determining factor in judicial decision, the hope of a poor man will ultimately be dashed because justice which is the public face of the rule of law has been undermined. This is dangerous for the protection of basic rights and the rule of law.

As Akanbi rightly reasoned,

Money they say is the root of all evil. The bench is definitely not in place for making money. A corrupt judge is the greatest cause to afflict any nation. The passing away of a great advocate does not place such public danger as the appearance of a corrupt and/or weak judge on the bench. For in the later instance, the public interest is bound to suffer and…is thus depreciated, mocked and debased.

It is far better to have an intellectually averaged but honest judge than a legal genius who is a rogue. Nothing is as hateful as venal justice. Justice that is auctioned, justice that goes to the highest bidder[41].

Moral Corruption. Whereas, morality is a society's notion of what is right or wrong, law on the other hand is a set of prescribed rule that regulates conducts in a human society. Though morality and law are not the same, it is not always all the time that they are tangential to one another. At times, they are at tandem. That is so, when morality is promulgated as a law. Though moral corruption is pure morality, at times, action that are not legally wrong (but morally wrong) can affect the rights of an individual. For example, sexual immorality, lying, drunkenness, indiscipline and lack of adherence to religious and moral instructions[42].

Moral corruption occurs when protocol officers in government make arrangements for young and vulnerable girls to be "imported from schools" for "entertainment" at state functions. It also occurs when public officers and Chief Executives of public and private institutions go with their "conference bags" (girls/ladies) to conferences and business trips. This form of corruption may graduate to prostitution and allied offences which violates the rule of law and are punishable under our laws.

Secondly, manufacturing and dealing or trafficking in fake and adulterated drugs is another example of moral corruption. This is because it confers unmerited financial gains to those involved in the trade. Sadly, that is detrimental to the health of the consumers of those products. For example, selling and using hard drugs, such as, Indian hemp and cocaine etc.[43] constitute criminal offence in Nigeria. Thus, engaging in them undermine the rule of law.

Moral corruption can also be seen in child trafficking and overall trafficking in humans. It is immoral as well as criminal to traffic in human beings either nationally and internationally. Specifically, sections 11, 21, 23 and 24 of the Trafficking of Persons Prohibition Law Enforcement and Administration (amendment) Act[44], criminalise trafficking in human person for the purpose of making monetary gains.

Tied to the above, the killing of human beings by others for the purpose of trading body parts for financial gain is a form of moral corruption that undermine the rule of law. Only recently, a grand Pa, Alhaji Olasukanmi was caught at Ijegun area of Lagos

[37] He said so while giving a speech at the Annual National Conference of the Academy of Entrepreneurial Studies in Lagos See, Sunday Sun 27th May, 2012.p.71

[38] A. Ayeni, "Billionaire's Election Tribunal Judges", Sunday Sun 28th June, 2010 p.5

[39] *Ibid*

[40] *Ibid*

[41] Justice Akanbi, "The Many Obstacles to Justice According to Law", In *Nigeria Judges Conference Papers* 1995 p.40

[42] P.I.C. Onwochei, "Towards a Corrupt-Free Public Service in Nigeria: A Christian Ethicist's Perceptive, being a paper presented at the National Conference on Restoring Ethical Values in Nigeria, held at Abuja between 24th – 25th January, 2003. Pp.3-4

[43] See, *sections 225, 225A and 225B of the Criminal Code, Cap.38 Laws of the Federation of Nigeria, 2004*. See also, This Day Friday, 24th February, 2006 p.47. See also, Daily Sun, Friday 10th March, 2006 p.38 and Daily Sun, Monday, 6th August, 2007 pp.2-6

[44] See, *Cap.123 Laws of the Federation of Nigeria, 2004.*

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where he confessed to selling human parts for money making[45]. Such a person could be prosecuted under section 242 of the Criminal Code[46] for indignity to human body or remains, as well as section 319 of the Criminal Code[47], if he is responsible for the death of the particular victim.

Examination malpractice in all ramifications is another example of moral corruption. This can occur when a parent spend money to buy question papers for their children before the dates, or on the date fixed for the same examination. Some parents even register their ward in "magic centre" in order to pass at high grades. This is tantamount to moral corruption and it is criminal in nature.

Only recently chairman of the Governing Board of National Examination Council of Nigeria (NECO), Alhaji Maleka Mohammed was reported to have lamented the irreplaceable harm, examination malpractice is causing the education system in Nigeria. This act of corruption that makes the beneficiaries make money and grades not commensurate with their legitimate performance and efforts is detrimental to the efforts of other law-abiding students, thereby undermining the rule of law as contained in section 2 of Examination Malpractices Act[48]. The said law prescribes a fine of N100,000 (one hundred thousand naira) or imprisonment not exceeding 3 years or both for cheating in examination.

Similarly, false claims by spiritualists and traditional doctors of their abilities to heal all manner of illnesses or spiritual attacks, even when they know too well that, that is not true, amounts to moral corruption. Their acts violate or undermine, or determine the rule of law because the unsuspecting victims are made to part with valuables for no job. This type of moral corruption can be conveniently prosecuted under section 419 of the Criminal Code[49]. This is because such acts can constitute offence of obtaining money by false pretence.

IV. The Way Out

The former President of Nigeria, Chief Olusegun Obasanjo said it all. When he said,

Corruption is a cankerworm that has eaten deep into the fabric of the society at all levels. It has caused decay and dereliction of the infrastructure of government and society in physical, social and human terms. With corruption, there can be no sustainable development nor political stability[50].

Indeed, corruption as economic and financial crime in Nigeria is deep rooted, widespread and systematic. It constitutes the greatest obstacles to socio-economic cum political development of Nigeria. This is because corruption has all the potentials to thwart current Nigeria recovery efforts. Therefore, there is an urgent need to genuinely fight corruption in Nigeria.

First, government should adopt people-oriented economic policies to eradicate or reduce poverty. Secondly, there is a need to adopt best practices and conventional public service policies. For instance, when it come to public procurement policy and administration, stringent guidelines for the award of public contracts should conform to international standards for competitive bidding, with emphasis on openness, competition, value for money and best practices. This is to ensure good use of financial resources and enhance competition.

Thirdly, there is the urgent need to strengthen anti-corruption and law enforcement agencies. This can be achieved through capacity building in the areas of investigation and prosecution, infrastructures, funding etc.

Fourthly, the government should engage international organization and foster cooperative efforts to fight corruption. Strengthening of domestic and international cooperation is important for agency cooperation, bilateral and multilateral cooperation. This can enhance facilitation of information exchange, investigation, and prosecution of corruption cases.

Fifthly, there is a continuous need to strengthen institutional frame work of relevant regulators and law enforcement agencies such as the Independent Corrupt Practice Commission, Economic and Financial Crimes Commission, National Fraud Investigation Unit, the Central Bank, the Securities and Exchange Commission etc.

Initiatives such as customer, identification as exhibited in the Central Bank, "Know Your Customer Manual Guidelines" is a step in the right direction. Similarly, reporting regime, records, preservation, awareness, and constant training of employees; periodic inspection and examination etc are equally important in the fight against corruption.

Sixthly, E-payment initiative is a good government policy. This ensures that payments made through the financial system are monitored and traceable. This enable audit trace of expenditure, especially corrupt ones.

[45] See, Daily Sun, Friday 3rd March, 2006 p.2
[46] See, *Cap.38 Laws of the Federation of Nigeria, 2004*
[47] *Ibid*
[48] See, *Cap.E15 Laws of the Federation of Nigeria, 2004*
[49] . See, *Cap.C38 Ibid*

[50] Extract from the speech of Mr. President during the sign-in ceremony of the Independent and Corrupt Practices Commission Bill on 3rd June, 2000

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E-payment, apart from enhancing audit trace, help in the checking of unethical practices, such as, the existence of "ghost workers" or fictitious workers. It also promote accountability and transparency in the management of government resources.

Again, there is a great need to strengthen budget and fiscal transparency. In this regard, the monthly publication of the statutory allocations to the three tiers of government is a good initiative. This is because it can ensure transparency and accountability in resource management.

In addition, there should be a reform in the public service that will ensure a viable management of information system and public sector accounting capacity i.e. through the introduction of automation, computerization of payroll, monetization of benefits and contributory pension scheme. This can engineer a sense of economic and social security capable of reducing the risk of corruption.

Lastly, faith based organization should be co opted to work with orientation agencies of states and the federal government so as to effect the much needed attitudinal change. This should not be limited to spiritual centres, offices, pages of newspaper and television advertisement. Recreational centres, schools, and tertiary institutions should also be involved. In fact, no facet of Nigeria society should be spare of this enlightenment and indoctrination.

v. Co nclusion

Although, it has been argued that poverty, political instability and other social forces put pressure on public officers and non-public officers to be corrupt, the high level of corruption being witnessed under this democratic regime is attributable to bad governance by political office holders, attitudinal tendencies of greed, crave for ostentations coupled with ethics of dependency-relations and ethnic loyalties.

Corruption is not a way of life, neither is it a passing phase that Nigerians should indulge in. It is evident from the above discussion that the consequences of corruption are horrendous. Thus, there is every need to curb corruption, and this requires that all hands should be on deck, if Nigeria must survive the onslaught of corruption.

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