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ABOUT THE NIGERIAN JOURNAL OF ANTI-CORRUPTION STUDIES

The Nigerian Journal of Anti-Corruption Studies is a specialized publication of the Anti-Corruption Academy of Nigeria, the research and training arm of the Independent Corrupt Practices and Other Related Offences Commission, ICPC. The journal is dedicated to the publication of peer-reviewed, research-based papers that focus on all issues relating to good governance, accountability, transparency, integrity, ethics and all issues relating to corruption and corrupt practices. The Editor can be contacted by email: Editor.NJACS@icpcacademy.gov.ng or info@icpcacademy.gov.ng.

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The Editors welcome for consideration for publications articles, research notes and book reviews that deal with the issues noted above and those relating to public policy generally. Submissions should be original and not under consideration for publication elsewhere. Full length original and review articles should be between 5,000 and 6000 words, while research notes should not exceed 3,000 words. Book reviews should ideally be between 1,500 and 2,000 words. All submissions should follow the *Chicago Manual of Style*. Detailed Guidelines for footnotes and references included in the Journal. Submissions should be by email addressed to Editor.NJACS@icpcacademy.gov.ng with copy to info@icpcacademy.gov.ng and acan.icpc@outlook.com.

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All correspondence should be directed to:
The Editor
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Anti-Corruption Academy of Nigeria
ICPC Headquarters
Plot 802, Constitution Avenue, CBD
Abuja, FCT. Nigeria.

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EDITOR'S INTRODUCTION

Sola Akinrinade*

About the Nigerian Journal of Anti-Corruption Studies

In the past three decades plus, the corruption challenge has assumed critical position in the development discourse, as the problem of underdevelopment is associated with the manifestations of corruption in affected societies. However, several issues still demand further research and dialogue. Thus, researching corruption and its role in the underdevelopment of societies is an enterprise which has remained critical to researchers and consumers of policy-oriented research for sustainable development.

Researching and publishing on corruption and related themes are now in the domain of several disciplines from Law to the Social and Behavioural Sciences, as well as the humanities including Education. Despite the expansiveness of the corruption/anti-corruption research, there are still several unsettled issues including even fully agreeing to the definition of the phenomenon. The several issues engaging researchers and other scholars and practitioners deserve appropriate channels of dissemination.

When the Anti-Corruption Academy of Nigeria was established in its present form in October 2014, the leadership was clear minded about the need for the Academy to engage in policy oriented research to assist in defining the national environment for anti-corruption policy making and influencing discourses on corruption and how to tackle the phenomenon for the purpose of entrenching a transparent society not only in the country but beyond. While the Academy has to its credit some other publications including the book, *Anti-Corruption Research and Policy-making in Nigeria: Closing the Gap Between Theory and Practice*[1] and *ICPC and the War against Corruption in Nigeria: Reflections for a New Vision,*[2] it had always been the aim to establish a forum that will give scholars and practitioners a platform for

* Provost, Anti-Corruption Academy of Nigeria/Professor of History, Obafemi Awolowo University, Ile-Ife, Nigeria. E-mail: solakin@msn.com.

[1]Sola Akinrinade et. al. (eds.), *Anti-Corruption Research and Policy-making in Nigeria: Closing the Gap Between Theory and Practice* (Abuja: European Union, ICPC/ACAN, UNODC, 2017)

[2] Bolaji Owasanoye, Sola Akinrinade and Elijah O. Okebukola (eds.), *ICPC and the War against Corruption in Nigeria: Reflections for a New Vision* (Abuja: Anti-Corruption Academy of Nigeria, 2020).

sharing their thoughts and research outputs. This is particularly important given the critical need for knowledge-driven anti-corruption policy making in Nigeria and beyond. Too many times, policy initiatives are implemented in isolation of any knowledge base or basis, sometimes bordering on despise for knowledge. Having knowledge-driven policies should not be a one-off affair; rather, a process should be in place to ensure that research output find space for regular expression. Hence, the birth of this Journal. The *Journal* is to complement other publications in the stable of the Academy including its Anti-Corruption Policy Briefs, proceedings from its various academic and policy conferences and its Occasional/Guest Lecture Series. Together, these publications are expected to provide intellectual platforms on which workable anti-corruption policies can be erected in the country.

This is the maiden edition of the *Nigerian Journal of Anti-Corruption Studies* (NJACS). NJACS is being birthed as a peer reviewed, multi-disciplinary journal where issues relating to corruption, corrupt practices and anti-corruption will be analysed both from the empirical, epistemological and methodological perspectives. The Journal is to be published, initially on an annual basis but it is expected that the frequency will increase when it stabilises. Special editions will also be published in addition to the regular versions. The Journal aims to stimulate, and provide an outlet for sharing research, thoughts, solutions and views on issues, problems, challenges and policies relating to corruption, anti-corruption and related matters. Contributions are open to academics, policymakers and other government officials with appropriate knowledge levels and experience to share, anti-corruption practitioners, advanced students, and individuals who have relevant expertise. Given that corruption is a lived experience for virtually everybody, generating and disseminating knowledge on the phenomenon cannot be the exclusive preserve of any group.

The Anti-Corruption Academy of Nigeria has a hybrid nature of being the research and training arm of the Independent Corrupt Practices and other Related Offences Commission (ICPC). As an arm and knowledge think tank of the ICPC, it has the advantage of dealing with issues relating to corruption and its consequences at the practical level. At the same time, the Academy engages with scholar-practitioners from the academic world who have engaged with the issues at the research and knowledge levels and thus are able to offer theoretical underpinnings to lived experiences of anti-corruption practitioners. Thus, the hybrid nature of the Academy puts it in an excellent position to symbiotically interrelate research, training and policy advocacy projects. While the Academy has also published a number of Policy Briefs (which are the outcomes of significant research and

accompanying Anti-Corruption Policy Dialogues, the NJACS is expected to complement existing publishing outlets that deal directly or indirectly as part of a larger remit, with matters of corruption and anti-corruption both within and outside the country. NJACS takes seriously its mission of serving as a leading academic journal in Nigeria to focus on anti-corruption studies.

Need for NJACS

Corruption is a very emotive subject. As such many commentaries on corruption are not based on research or knowledge. This is particularly true when corruption is discussed in the context of politics, sanctions and governance. It is frequently the case that while commentaries on corruption have considerable anecdotal value, they do not create the kind of substance that can ground evidence-based recommendations. At best, the anecdotal value of such commentaries may provide insights to snippets of facts or circumstances. This does not take away the value of the daily lived experience with corruption and its consequences and its ability to impact on the knowledge dissemination process. However, policymaking, particularly in the critical area of corruption and anti-corruption and sustainable development should not be premised on emotive responses to issues. Moving away from purely anecdotal commentaries, NJACS will publish articles that will serve as a source of evidence and knowledge for legislative, regulatory, policy, preventive, and enforcement interventions. This is critical if Nigeria is to move forward with the development of policies with potential for long term impact on the process of diminishing corruption and its devastating implications for national development.

Articles in this Issue of the Journal

In line with the philosophy of the Journal, the articles in this edition are in three broad categories. In the first category are articles that provide theoretical and background contexts to the anti-corruption discourse. There are three articles in this category, although they have not been placed together in a group. Dr. Bala Muhammed, a senior officer and researcher/Special Assistant to the Hon. Chairman of the ICPC, in his piece on "Corruption: Interrogating Conceptual and Definitional Issues", gives a general overview of the some conceptual and definitional issues in corruption. The debates over conceptual definitions of the phenomenon do not seem set to abate for some time. Soji Apampa, a hard core practitioner with years of direct experience of anti-corruption programming, examines post-colonial approaches to anti-corruption, with an interrogation of the social norms approach and how this has impacted the various approaches to the fight against corruption adopted by different administrations. Olawale O. Akinrinde, a young and up-and-coming academic with Osun

State University discusses the links between corruption, social injustice and national security. The discourse on the nexus of these three critical issues underlie the interconnectivity of issues as scholars attempt to unravel the cause and costs of corruption.

The second category of articles present the analysis of research findings on trends, elements and manifestations of corruption. The trio of Olumide David Fagbamila, Sunkanmi Adams Folorunso and Akinwale Moses Akinola discuss the interaction of some economic factors and corruption by dissecting the experience of Kwara State in Nigeria**.** The manifestations of corruption at sub-national levels represent a gigantic component of the corruption challenge in the country and this has implications for policymaking in the area. Anti-Corruption interventions at sub-national levels need to respond to local specificities and not be subsumed in a larger systemic response. On their own part, Abiola Ruth Adimula and Ahmad Arabi Abdulfathi examine the commodification of welfare rations in some IDP camps in North East Nigeria. With a presentation of empirical data supplemented by quantitative study, the authors discussed the need for adopting a new approach to the provision and administration of aid in IDP camps in the country. The authors also drew parallels from the experience of a similar community in the Philippines, confirming the trend that poverty and corruption are not unique experiences to a particular part of the world. Finally, in this category, Adebusuyi Isaac Adeniran explores the manifestations and patterns of corruption in Nigeria.

The third category of articles deal with practical issues of enforcement. It is an acknowledged fact in anti-corruption circles that prevention is better than cure, in which sense, enforcement is considered costly in all ramifications. However, enforcement itself could be an element of prevention as corrupt individuals should not be allowed to enjoy the fruit of their heinous crimes. Two of the papers in this category by Professor Bolaji Owasanoye, ICPC Chairman, and Dr. Esa Onoja, a Senior Lecturer with the Nigerian Law School, currently serving as Chief of Staff to the ICPC Chairman, focus on the important subject of asset recovery from different perspectives. While Professor Owasanoye discusses the practice and procedure of interim forfeiture orders in the country, Dr. Onoja evaluated the national framework for Asset Recovery in the anti-corruption fight in the country. Dr. Onoja examined the provisions of several national and international legislations, highlighting the strengths and the impact on diminishing corruption which undiluted enforcement would foster. Dr. Elijah Okebukola discussed navigating the complexities of predicate offences in money laundering. In the discourse, money laundering could

simultaneously be the outcome of another crime or a precursor to one. Finally, the Secretary to the ICPC, Professor Musa Usman Abubakar, a Professor of Law at Bayero University, Kano, discusses the controversial issue of attorney-client privilege and the need for the Bar to take the initiative in reforming the existing provisions to prevent tainting the bar with the corruption stain. Interesting all the authors that wrote in this category have both academic and practice experience in anti-corruption. All are senior academics with years of experience in the academia but also find themselves in practitioner positions.

The issues engaged by authors in this maiden edition of the Nigerian Journal of Anti-Corruption Studies point to the richness and diversity of anti-corruption research and the wide range of scholars and practitioners involved in intellectualising the anti-corruption process in the country. Rejoinders are welcome to every article published in this issue and in the subsequent editions of the Journal. It would be our pleasure to publish alternative views and perspectives.

Conclusion

Certainly, NJACS will be useful to practitioners, academics, policy makers, legislators and students of anti-corruption. In due course, the journal will be available in online databases. The Academy is already taking steps to have this maiden edition uploaded onto online databases. Manuscripts are welcome from interested authors. may submit long articles (between 5,000 and 10,000 words), short notes and commentaries (between 3,500 and 5000 words) and book reviews (between 2,000 and 3,000 words). All submissions must be original, unpublished works, not under consideration elsewhere. While this maiden edition does not feature contributions in all these categories, it is expected that subsequent editions will feature them.

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POST-COLONIAL APPROACHES TO THE FIGHT AGAINST CORRUPTION IN NIGERIA: A SOCIAL NORM PERSPECTIVE

Soji Apampa*

Abstract

This paper discusses post-colonial approaches to the fight against corruption in Nigeria. It utilises the social norms perspective to measure the effectiveness of these approaches in Nigeria. It considers the possibility of learning different approaches useful in the fight against corruption and the effects of related approaches on ending corruption in Nigeria. It addresses social beliefs and expectations that are responsible for the lingering cases of corruption in Nigeria. As such, it has presented social normative analysis of approaches and attitudes towards the fight against corruption in Nigeria.

Introduction

Corruption is believed to have been a problem in Nigeria before, during and after Colonialism;[1] however, it is thought that the problem has gotten worse with each passing year with the situation being worse today than it was in the immediate post-independence period, the post-independence period itself being worse than the pre-colonial and colonial period. According to the most recent National Bureau of Statistics (NBS)-United Nations Office on Drug and Crimes (UNODC) study on corruption,[2] 52% of Nigerians had the feeling that things have gotten worse, even though the data did not support that view (that is, in 2019, 30% of respondents experienced corruption, which presented a decrease in prevalence over the 2016 survey, which was 32%). Could this be because they have listened to the "efforts" being made by government on one hand and weighed those against the near daily exposés of massive corruption? Could it be because they suspect there are important gaps in the approaches taken by successive governments since Independence and remain unable to articulate what it is? Or could it simply be because they see that despite all the "activity" nothing seems to be changing? Could it be all of the above?

* Co-Founder and CEO, Convention on Business Integrity (CBI), Nigeria, www.cbinigeria.com

[1] Ogbeidi, M.M. (2012), Political Leadership and Corruption in Nigeria Since 1960: A Socio-economic Analysis, *Journal of Nigeria Studies*, Vol. 1, No. 2, Fall 2012 https://nairametrics.com/wp-content/uploads/2013/03/Political_leadership.pdf

[2] https://www.unodc.org/documents/data-and-analysis/statistics/corruption/nigeria/Corruption_in_Nigeria_2019_standard_res_11MB.pdf

An effort to rid a country of corruption must result in desirable behavioural change. This Behavior change has to contend with the dilemma that many in corrupt societies find themselves in where they, 1. Assume that everyone expects them to bend the rules and 2., that everyone else is bending the rules. "Overestimations of problem behaviour in our peers will cause us to increase our own problem behaviours; underestimations of problem behaviour in our peers will discourage us from engaging in the problematic behaviour. Accordingly, the theory states that correcting misperceptions of perceived norms will most likely result in a decrease in the problem behaviour or an increase in the desired behaviour."[3] "Norm compliance results from the joint presence of a conditional preference for conformity and the belief that other people will conform as well as approve of conformity."[4] "Corruption, like any other practice, whether negative or positive, is primarily an aggregate of individual behaviours that are sustained by particular social beliefs and expectations.

To understand and tackle corruption, Nigeria's anti-corruption efforts must now be reinforced by a systematic understanding of why people engage in, or refrain from, corrupt activities"[5] or their attitudes towards corruption. So, unilaterally breaking out of the social norm of corruption where it has taken hold, is a very big task to place in front of anyone in society therefore anti-corruption programmes need to consider carefully what effort is needed to construct new, more helpful norms in place of corrupt ones. Any approach that does not take into account the dimensions of social norms would therefore be sub-optimal at best, futile in the worst case. "… if corruption in Nigeria manifests itself as a social practice, attempting to change the beliefs of a few individuals will not be enough to induce a change in collective behaviour. The scale of behavioural change required must be pursued using a persistent and systematic approach that is highly context-specific, and undertaken, owned and sustained by a critical mass of local actors seeking to forge a 'new normal'."[6] The Social Norms Theory posits that our behaviour is influenced by misperceptions of how our peers think and act.

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[3] https://sphweb.bumc.bu.edu/otlt/MPH-Modules/SB/BehavioralChangeTheories/BehavioralChangeTheories7.html#:~:text=The%20Social%20Norms%20Theory%20posits,our%20peers%20think%20and%20act.&text=Accordingly%2C%20the%20theory%20states%20that,increase%20in%20the%20desired%20behavior.

[4] https://plato.stanford.edu/entries/social-norms/

[5] https://www.chathamhouse.org/sites/default/files/publications/research/2017-05-17-corruption-nigeria-hoffmann-patel-final.pdf

[6] *ibid.*

How have successive Nigerian governments dealt with the norm of corruption? Have these approaches considered the attitudes in society and tailored the responses accordingly? This paper considers efforts to deal with corruption in Nigeria in the post-colonial period from 1960 to 2020.

Historical Background

It is believed that out of colonialism grew a new privileged class in Africa who were so only through their Western education such as teachers, civil servants, leaders of Parastatal and government trade unions[7] as opposed to the traditional leaders of the people. It was this group of persons who moved for independence of their States and the key strategy they employed was to encourage non-cooperation of the people with the Colonialists in order to sabotage their rule.[8] The ordinary people were encouraged to show up for work late, evade taxes, be insubordinate and resist their white employers, embark on strike action where possible[9] … misuse government property, leak official secrets and engage in unsanctioned activities.[10] Indeed "the story is told of the Nigerian trade union leader, Michael Imoudu, who became a hero in colonial Nigeria for encouraging strikes against the British, a practice that earned him strong resentment from his former collaborators, now in government, when he repeated it against his own independent nation, with the British gone."[11]

"At independence the mask was removed. The African masses confronted an indigenous ruling class, which was content to inherit the colonial economy and disinclined to transform it … besides … the only way to mobilize the economic resources which would allow the local political class to initiate any kind of development strategy and begin to challenge foreign capital for the control of the economy was through statism. They could not

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[7] Ake, C. (1987), "Notes for a Political Economy of Unemployment in Africa*," Journal of Political Economy*, http://digital.lib.msu.edu/projects/africanjournals/pdfs/Journal%20of%20Political%20Economy/ajpev1n2/ajpe001002006.pdf

[8] Ekeh, P., (1975), "Colonialism and the Two Publics in Africa: A Theoretical Statement", *Comparative Studies in Society and History*, Vol. 17, No. 1. (Jan., 1975), pp. 91-112, https://www.researchgate.net/publication/231992302_Colonialism_and_the_Two_Publics_in_Africa_A_Theoretical_Statement/link/549ce9b00cf2d6581ab48957/download

[9] *ibid.*

[10] Oladoyin, A. M., Asaolu, T. O. & Oladele, P. O. (2005), "An Appraisal of Public Morality, National Rebirth and the Development Question in Nigeria," *European Journal of Scientific Research*, Vol. 7, No. 3, 12-24.

[11] Ekeh, P., (1975) "Colonialism and the Two Publics in Africa: A Theoretical Statement," pp. 91-112.

consolidate their power without creating a material base for it for which they used their political leverage to appropriate wealth with state power".[12] The new privileged class, having displaced the Colonialists, related to the people in a manner reminiscent of but often worse than the Colonialists had done, and so the silent strategy of non-cooperation and sabotage continued until it became habit and part of the socially constructed reality of many citizens. In Nigeria today such behaviors are seen as part of the "culture"[13] or at least what informs how one generally relates to civic responsibilities.[14] Igbo Culture in South Eastern Nigeria has it that Government work is "*Oluoyibo*" meaning "the white man's work" and the Yoruba's in South Western Nigeria have a saying "*a ki s'ise ijoba la oogun*" meaning "one does not break sweat doing government work" which further demonstrate the disconnect between modern civic values and traditional values. The transition of Nigerian society from traditional to modern has presented some peculiar problems, one of which is corruption.[15] Thus successive governments have had or seized power and wielded authority in Nigeria since independence but only a scarce few have established legitimacy with the ordinary citizens since political corruption which is rife ultimately deprives a political system of legitimacy.[16]

Ordinary folk watching these happenings in the civic space must begin to understand the goals that African society seems to be setting for them. The highest social stratum of African society has been used as a tool of class formation and is seen by those from lower strata as a means of survival and social mobility.[17] In post-colonial Nigeria, amongst the messages that have come through loud and clear is that society expects you to get rich quick; and that wealth without hard work is a virtue. During colonial times the primary means cherished by society was education, but the goals were the same. As soon as you got out of an institution of higher learning, you would simply demand your right of access to this better life and it was granted.

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[12] Ake, C. (1987), "Notes for a Political Economy of Unemployment in Africa."

[13] Aluko, M. A. O. (2002), "The Institutionalization of Corruption and Its Impact on Political Culture and Behaviour in Nigeria," *Nordic Journal of African Studies*, Vol. 11, No. 3, 393-402.

[14] Akindele, S. T. (2005), "A Critical Analysis of Corruption and its Problems in Nigeria,' *Anthropologist*, Vol. 7, No. 1, 7-18.

[15] Okafor, E. E. (2009), "Combating High-Profile Corruption in Transitional Societies: Overview of Experiences from Some African Countries," *Anthropologist*, Vol. 11, No. 2, pp. 117-127.

[16] Oladoyin, A. M., Asaolu, T. O. & Oladele, P. O. (2005), "An Appraisal of Public Morality, National Rebirth and the Development Question in Nigeria," pp. 12-24.

[17] Okafor, E. E. (2009), "Combating High-Profile Corruption in Transitional Societies," pp. 117-127.

The neo-colonial economy has nurtured a value-system which glorifies wealth and encourages its accumulation at all costs and by all means but especially through political and/or public office or connections with same;[18] however, society at every point has failed to grant equal access to the means it has touted. The experiences of people in trying to live up to societal goals (noting those who succeed and what means they used, those who failed and what means they used) has created a system of myths, shared beliefs and norms that have successively shaped our collective value system. Where the goals themselves are suspect like the cherished "get rich quick" or "wealth without hard work", the value system deriving from their pursuit has been suspect too.

Corruption is believed to occur as a result of dissonance between our social reality and our expectations,[19] and where society does not adequately regulate the natural drives of individuals who are in pursuit of such expectations, corruption begins to spread unchecked. It is of course more rampant now because education is relatively commonplace compared to what it was like in colonial days and so that particular means is being replaced by access to political and public office – the new way that society prices for scarcity of access to resources (in the old days the "have"s and "have not"s were distinguished through the labels "educated" and "not educated". A decade to two-decades ago the dividing line was increasingly between "connected" and "not connected". Today it is simply between those who are "sharp" and those who are "not sharp". Those "not sharp" are seen to be waiting their turn). Access to political and public office is limited and in a Nigerian economy with a poor performing real sector the competition between the privileged classes is all the more heightened and with it the need for those in control shore up their position and to buy off strong competitors. Winner takes all and those who manage to get in and are "sharp" massively enrich themselves are unlikely to be detected and if detected they are unlikely to be punished and if there is an attempt to punish them they share generously, they eventually get away with it.

Unfortunately, the youth have emulated what their fathers have been doing and fraud is now synonymous with the Nigerian youth. A young man, nicknamed Hushpuppi was reported to have defrauded over a million people, using modern technologies whilst living large in the UAE – very high percentage of Nigeria's youth see him as "sharp" and worthy of emulation. "He had millions of fans across various social media platforms

[18] *Ibid.*

[19] A natural fallout of Merton's *Strains Theory*.

and his adorers did not care that the only explanation for his stupendous extravagance was, in his own words, as an influencer. Last month, Hushpuppi was among 12 alleged fraudsters arrested by the Dubai Police Force in the United Arab Emirates as part of a now-viral special operation. Six raids were conducted concurrently while the suspects were asleep. Among several items, Dubai police reportedly seized more than $40 million in cash and hard disks containing the addresses of nearly two million victims."[20]

Nigeria's Post-Colonial Anti-Corruption Efforts, 1960-2020

A study of Nigeria's Post-Colonial anti-corruption efforts shows that successive administrations have almost always recognised the presence of and need to deal with corruption but have typically been unable to clearly articulate a vision of the change they would like to see enough for Nigerians to buy-into what life could be like if corruption were under control. They have also not gained broad public support for their reforms, and not shared clear strategy and tactics that could be followed by all to achieve the changes sought. The approaches have typically not demonstrated an understanding that they are attempting to change social norms. The mandate for change has never really been negotiated with the Nigerian people and that is the first step in getting consensus around the need for change. The next would have been around building the capacities for change and taking the required actions which entails establishing the right capacities, resources, coordination, logistics and actions – instead the agencies complain of paucity of funds and inadequate manpower for the task at hand, including an inability to harness what citizens and businesses have to offer in any form of collective action. Finally, the efforts have not established the needed institutions (the way we do things free of corruption) and mechanisms (processes free of corruption through which things take place) that will construct a new reality or norm free of corruption, so we are unable to construct new social norms. What follows are snippets (and not meant to be exhaustive reviews) of approaches taken by successive administrations just to illustrate the sorts of actions they took and perhaps why corruption continues to grow despite their efforts.

Abubakar Tafawa-Balewa, 1960-1966: Even though corruption had clearly gained a foothold during this period, this administration did not establish a clear impetus for the fight against corruption. The need to tackle

[20] https://www.thisdaylive.com/index.php/2020/07/12/on-age-hushpuppi-and-the-leadership-question/

the problem of corruption was prominent in the list of reasons advanced by the coup makers in January 1966 for ending the administration.

J.T. Aguiyi-Ironsi, 1966-1966: The administration of General Aguiyi-Ironsi set about the very debatable campaign of instituting capital punishment for those who were classified as "fat cats" and were believed to have corruptly enriched themselves during the First Republic. However, not much was achieved till the administration was ousted in July 1966. Corruption was positioned as a thing a few politicians and government contractors got up to.

Yakubu Gowon, 1966-1975: It was stated in his reform agenda that corruption would be tackled, and he set up the Police X-Squad that carried out sting operations till the coup d'état of 1975. During this period, the impression still remained that corruption was an activity carried out by public officials.

Murtala Mohammed, 1975-1976: Part of the rationale for the coup was the need to deal with corruption, primarily in the civil service. He set up the Public Complaints Commission and the Corrupt Practices Investigation Bureau (CPIB), before he was assassinated in a failed *coup* attempt in February 1976. The CPIB was never really institutionalised.

Olusegun Obasanjo, 1976-1979: The tradition of viewing corruption as a preserve of the civil service continued. During the military administration of Olusegun Obasanjo, he set up the Code of Conduct Bureau and the Code of Conduct Tribunal which extended the scope to cover all public servants. There were a number of Tribunals set up to inquire into alleged corruption. The first peaceful transition of power from a military to a civilian administration took place with the exit of this administration in 1979.

Shehu Shagari, 1979-1983: The second civilian administration since independence instituted an "Ethical Revolution" and was the first to allude to corruption involving society as a whole. Sadly, the levels of corruption and lawlessness in this administration were quite remarkable and it was ousted in a coup d'état on 31 December 1983.

Muhammadu Buhari, 1983-1985: One of the grounds given for the ouster of the Shagari Administration by the military junta led by Buhari was excessive corruption that characterised that government. He instituted the War Against Indiscipline (WAI), which caught the imagination of Nigerians and before long there were orderly queues at bus stops and elsewhere. He

established a WAI Brigade that policed the new values being instilled (by sheer brutality) and there were numerous probe panels and tribunals that came to be described later as witch hunts. A good number of highly placed persons in society were thrown into jail for corruption often without following the due process of law.

Ibrahim Babangida, 1985-1993: Ousted the Buhari regime by *coup d'état* but continued the War Against Indiscipline (WAI) and added the National Orientation Agency (NOA) and Mass Mobilization for Self-Reliance, Social Justice, and Economic Recovery (MAMSER) programme as the destructive effects of reckless government spending and corruption, which had become stark during the Shagari administration, had begun to bite. However, this administration was also known to have tacitly encouraged the institutionalization of corruption as one government agency reportedly had to pay or "settle" fund holders to access their budgetary allocations. Many Nigerians therefore hold this to have been the most corrupt administration since independence. Nevertheless, this administration did recognise the need for society as a whole to be mobilized to deal with societal ills rather than this being left to government alone. In response to popular agitations, President Babangida instituted a transition to civil rule programme whose final outcome he eventually annulled following elections that most Nigerians still hold to be the freest and fairest ever held in the country. This action by Ibrahim Babangida set-off a chain of events that led to his eventual "Stepping Aside" from power.

Ernest Shonekan, 1993-1993: Military appointed civilian Head of State, who headed an interim government of national unity but was ousted in a palace coup by Sani Abacha, the Minister of Defence, in a matter of months.

Sani Abacha, 1993-1998: He alluded to unacceptably high levels of corruption in government and society during the previous administration. He transformed the War Against Indiscipline (WAI) into the War Against Indiscipline and Corruption (WAI-C) and when many banks were distressed and failing, introduced the Failed Banks Tribunal that was the first attempt to formally recognise corruption in the private sector as a major issue. This was perhaps the most effective corruption reform in Nigeria; however, the regime was autocratic and brutal and only came to an end with the passing of General Abacha in 1998. After Mr. Abacha's passing, it has since been revealed that he had engaged in massive looting of the treasure and stashed billions of dollars in various tax havens abroad.

Abdulsalami Abubakar, 1998-1999: Head of a transition government responsible for handing power back from military to civilian rule. Foreign reserves were some $6bn when he was appointed and by the end of 9 months when he handed over, this had dropped to $3bn. Although there are unconfirmed rumours of massive corruption during the brief tenure of General Abubakar, nothing has been documented and Mr. Abubakar continues to enjoy the place of a respected statesman in the country as far as former Heads of State go.

Olusegun Obasanjo, 1999-2007: This is the civilian administration of a former military Head of State. He established the Independent Corrupt Practices and Other Related Offences Commission (ICPC), the Economic & Financial Crimes Commission (EFCC) and the Nigeria Financial Intelligence Unit (NFIU), amongst others. He introduced "Due Process" in public procurement, carried out 'Code of Conduct' reforms, strengthened National Agency for Food and Drug Administration and Control (NAFDAC), Customs & Excise Reforms; passed legislations on Fiscal Responsibility, Freedom of Information and Anti-Money Laundering; oversaw Public Sector Reforms, Consolidation in the Financial Services industry, introduced Know-Your-Customer (KYC) rules, carried out Pensions Reforms, attempted a National Identity Card system and achieved foreign debt forgiveness. However, during his tenure the fight against corruption was perceived to have been heavily politicised and some suggested that it had become a political tool. The anti-corruption war was waged by the government most prominently through the EFCC and this was against highly placed economic, political and societal actors, some even quite close to the President but the public was reduced to spectators in the fight and many sadly concluded corruption was something that involved the elite failing to see their role in the menace. The EFCC Chairman arrested his boss, the Inspector-General of Police on corruption charges. Amidst all these anti-corruption efforts, there was a growing impunity by political actors and social tolerance for corruption. The repatriation of parts of the funds looted by Sani Abacha started during thid administration.

Umaru Yar'Adua, 2007-2010: The President was quite poorly for much of his time in office but was quite firm in his pursuit of the Rule of Law. He took on the approach of reversing enough of the policies of his predecessor to cause concern and tilt towards the appointment of northerners in key positions. He spearheaded an Amnesty Programme which eventually de-escalated the conflict in the Niger Delta. He died in 2010 before he could complete his term in office and his Vice-President, Dr. Goodluck Jonathan continued in his stead. The impunity by political actors and social tolerance

for corruption continued to grow. The EFCC Chairman was hounded out of office presumably for having stepped on too many big toes.

Goodluck Jonathan, 2010-2015: Started the Bank Verification Number (BVN) System, and the Treasury Single Account (TSA) but these were not fully implemented during his time in office. Activities to give Nigerians National Identity Numbers (NIN) were undertaken. The process of developing a National Strategy to Combat Corruption was begun through the setting up of an Inter-Agency Task Team (IATT) which comprised all government agencies with an anti-corruption mandate in their enabling statutes. In 2012, the *Occupy Movement* staged unprecedented mass protests over the corrupt misappropriation of petroleum subsidies. The impunity by political actors and social tolerance for corruption continued to grow and Nigeria was increasingly seen as an inferior legal jurisdiction in that some prominent people were cleared of corruption in Nigeria who were subsequently successfully prosecuted in the United Kingdom.

Muhammadu Buhari, 2015-Date: This is the civilian administration of a former military Head of State. He fully implemented the Bank Verification Number (BVN) System, and the Treasury Single Account (TSA) and more work has been done to provide National Identity Numbers to Nigerians. The administration launched a National Anti-Corruption Strategy (NACS), 2017-2021. Under the administration, Nigeria has seen the repatriation of further tranches of the Abacha loot and through its Whistle Blower Policy recovered huge sums of money. However, as at the time of writing, there are allegations of impropriety against the Acting EFCC Chairman over the handling of these recovered proceeds of corruption by the Attorney-General and the public is witnessing counter accusations against the Attorney-General himself. There are ongoing probes into the waste and graft at the Niger Delta Commission prompting the President to replace the board, and suggestions of large scale and unprecedented levels of corruption in the handling of funds for resolving the conflict in the Northeast and for the fight against the COVID-19 virus now ravaging Nigeria.

Factoring in the Attitudes

As we have seen so far, previous anti-corruption efforts have typically been viewed by the public or society as a monolith as far as attitudes to the fight against corruption are concerned. There has been no real effort to accommodate the array of responses to the *Goals* and *Means* set by society which seem to be producing a range of attitudes toward the fight against corruption. In turn, it appears that while a precious few are for change,

others in society are not necessarily for the change and anti-corruption approaches have not been sufficiently nuanced to mobilize against the malaise.

Different Attitudes Towards Fighting Corruption

To further illustrate how corruption can be curbed, eight (8) different attitudes towards fighting corruption have been identified as follows:

1. The Rebels: "Who says we have to live by your rules?" They have lost faith in government as a driver of change and would rather take up arms to restructure society along their beliefs of how a good society can evolve. Boko Haram is a case in point who believe Western Education is the cause of decay in societal values and have taken up arms against the State. They find sympathy amongst sections of Nigeria's youth.
2. The Escapists: "Just leave me out of it." These have also lost faith that things can change and, in their apathy and fear, have turned to drugs and alcoholism and have totally opted out of regular society. An increasing number of Nigerian youths fall in this category and increasingly, young northern women as well.
3. The Inured: "What's the use? Damned if we do, damned if we don't!" They have lost faith in the State ever dealing with the issue of corruption and are now so insensitive to the issue that all they can see are their parochial, ethnic, religious, age, gender etc. interests. So, when the law catches up with an alleged corrupt person with whom they share ethnicity, gender, age, religious belief etc., all they see is political persecution of one of their own.
4. The Pragmatists: "The ends justify the means!" They see corruption but all they are interested in is how to get by. So long as they can pay the price of corruption and it enables them to gain an advantage such as a fast-track process or avoid a sanction or reduce a cost, they are ready simply, to pay and go. Many business people fall in this group.
5. The Opportunists: "Where we work is where we chop!" They actively seek out opportunities to participate in the economy of corruption. Seeking jobs, roles, posts that can allow them take full advantage of other Nigerians and exploit the fact that consequence management is very weak, and they would probably never be held accountable for their actions. Many public officials fall in this group.
6. The Survivalists: They believe, "if you can't beat them, join them and if you won't join them, emigrate!" The bulk of Nigeria's professionals who ought to know better fall into his attitudinal group as they justify ignoring the ethics of their profession on the

argument that they have to survive and to survive they have to act the way society expects them to and act the way they believe everyone else is acting.

7. The Moralists: "We cannot go on like this, something has to give!" They see a great problem with corruption and are willing to analyse and complain about it, but this never results in action and when it is time to take action you cannot count on them. They believe it is futile and the fight will not amount to anything but are willing to lament and bemoan the situation.
8. The Principled: "We should leave the system functioning better than we met it!" The principled are willing to fight and act to curb the menace of corruption in the society. They are relatively few and tend to work alone.

To fight corruption successfully and galvanize society behind the action, as many as possible need to become principled and their activities better linked and coordinated.

Making Assumptions Regarding Causality

Our anti-corruption efforts have not properly addressed the reality of the causal links that lead to the institutionalisation of corruption.

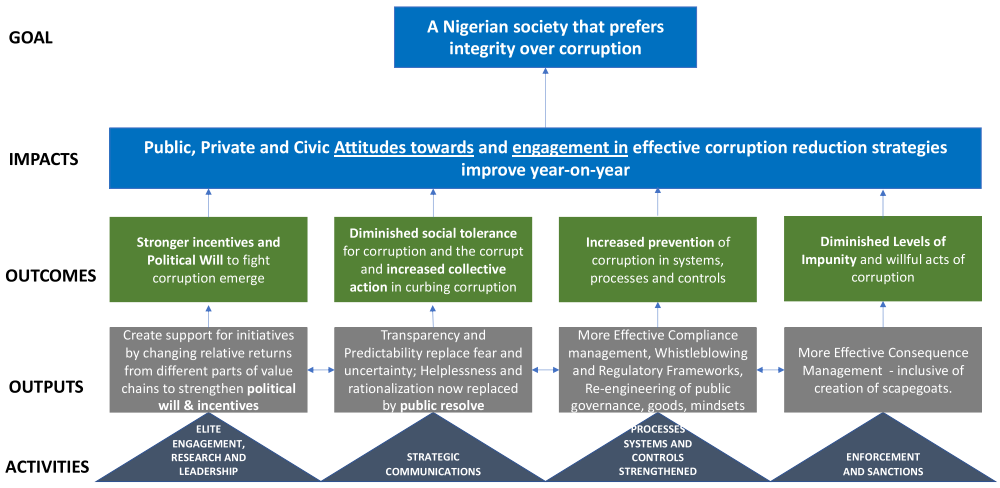
1. Very visible leaders, significant actors within our institutions act with impunity in sight of everyone and nothing happens – they appear to get away with it.
2. Others in society have growing fear and doubt that doing the right thing will get them anywhere – much as they see in traffic where everything was orderly until one person flouted the rules and created an illegal lane. Fear and doubt rise in the others and they fall out of line, copy the wrong being done and sometimes feel justified to take the wrongdoing one step further by providing their own innovation in addition.
3. As many more participate in flouting the rules, everyone starts to question their previously held beliefs and norms (collective value system) and in the process, individuals are willing to lower their expectations and thus erode their standards.
4. As more people are willing to question and lower their expectations and thus standards based on weight of collective behaviour of others in society, the resolve to uphold formal and social controls on behaviour of other is weakened.
5. As this resolve to uphold formal and social controls on behaviour (as even law enforcement officers often model the wrong

behaviours in traffic and may break the rules themselves) social tolerance for the corrupted process increases.

6. As the social tolerance for corruption increases and more people are able to justify the wrongdoing and not feel the urge to formally or socially sanction the unacceptable behaviours, the zeal to prevent corruption and impunity starts to dissolve.
7. Pragmatists and Opportunists who observe this take undue advantage of the situation since consequences are unlikely.
8. Many further lose faith in due process and get resigned to the "fact" that all progress must involve some level of corruption.
9. The threat of sanctions now becomes ineffective since "everybody is doing it" and you only really get the sanction if you are out of favour or on an opposing side to those in power or you refuse to follow the unwritten rule that, "those who chop alone, die alone".
10. Perverse incentives to be corrupt are now set up in the system and they flourish.
11. With flourishing perverse incentives comes the social construction of corruption as the new norm which then institutionalizes corruption.
12. To remove this level of corruption, we have to peel away at the steps one after the other in a sort of counter revolution.

Establishing a Theory of Change

Corruption in Nigeria is systemic therefore any approach to deal with it has also to factor this in whilst reflecting assumptions about attitudes to corruption and how corruption becomes a social norm in Nigeria.



Conclusion

The National Anti-Corruption Strategy, 2017-2021, features components such as the need for better aligned incentives, prevention of corruption, public engagement, campaign for ethical reorientation, enforcement and sanctions, recovery of the proceeds of corruption, the need to strengthen existing anti-corruption agencies, governance and service delivery as well as ability of sub-national levels to engage effectively in the strategy. However, the social norms lens appears to be missing in the narrative, prescriptions and scanty details of how the strategy should be implemented. It does not specifically address how the rationale for fighting corruption will be negotiated in society to address the dilemma posed at the start of this paper that many in corrupt societies find themselves in: (1) The assumption that everyone expects them to bend the rules and (2) that everyone else is bending the rules. Also, no theory of change was included with the strategy that shows precisely how the activities will lead to a behaviour change on the levels needed to reduce corruption in society.

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CORRUPTION: INTERROGATING CONCEPTUAL AND DEFINITIONAL ISSUES

Bala Muhammed[1]

Abstract

This study was informed by various challenges facing different countries by corruption as a result of non-consensus with regards to an authoritative and common conceptualisation worldwide about what corruption is and should entail. The so-called 'war against corruption' which is being waged all over the world with particular focus on developing countries seems destined to be one of the longest wars in the history of those countries. To wage this war effectively, it is pertinent that, we are able to identify, define and describe corruption within the socio-cultural contexts of these societies. This becomes the basis for analysis in this paper. A conclusion is drawn that corruption is probably not a concept to be defined or measured using the indices of western countries. Corruption is not a binary phenomenon but an amalgam of variables, perhaps. It was recommended that, there is the need for further research on the concept in line with the dynamics of socio-cultural complexities of developing countries not forgetting the heinous role of western nationals and organisations in collaborating and facilitating illicit financial flows from developing countries. Africa alone loses more than US $50 billion annually to illicit financial flows.

Introduction

Corruption is dangerous and inimical to the systemic existence of any polity. According to Akindele, it is a socio-political, economic and moral malaise that may permeate and cripple, as a result of its contagiousness and malignancy, the nerves of any polity.[2] Corruption often defies objective assessment. It is not only an expression of a problem of a life situation but also a strong factor that retards development of nations and a perception of individual countries and organisations in the complex web of international relations. For example, some countries may fail to admit that they are corrupt when objective analysis indicates that they are. More confounding is a situation where some countries hold tenaciously to the

[1] Bala Muhammed, PhD, (e-mail: balamuhammed02@gmail.com) is a staff in the Office of the Chairman, Independent Corrupt Practices and Other Related Offences Commission (ICPC), Abuja, Nigeria. Views expressed in this paper, however, do not represent the opinion of the Commission.

[2] Akindele, Sunday T., "Critical Analysis of Corruption and its problems in Nigeria," *Anthropology*, Vol. 7, No.1 (2005), p.7

belief that others are corrupt in spite of the classification to the contrary by the objective analysts.

It is clear from the forgoing that, any analytical exploration of the concept and definition of corruption is fraught from the onset with a number of difficulties, for the following reasons. First, it lacks both precision and universality and so it can only be defined meaningfully within a particular historical setting of time and place. Second, it is scarcely manifested in single and unambiguous expression, and can be more apparent than real. Third, given its multi-dimensional essence, attempting to define corruption is like opening a whole Pandora box of knowledge about man and society. Finally, it is often difficult to define corruption without simultaneously implying a discussion of its causes. Indeed, some definitions proceed negatively and qualitatively along the causal path of "poverty greed and (an) insatiable appetite of people to accumulate wealth"[3] ; and it is not always clear whether it is the situation being described or the causes being analysed.

However, it is not altogether a futile academic exercise for us to search for an objective means of identifying the concept of corruption. Suppose, we consider a policy objective of combating corruption through direct institutional mechanisms such as, the Code of Conduct Bureau and Tribunal, the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and Economic and Financial Commission (EFCC), Bureau of Public Procurement (BPP), Nigeria Extractive Industry Transparency Initiative (NEITI), Technical Unit on Governance and Anticorruption Reforms (TUGAR), Presidential Advisory Committee Against Corruption (PACAC), etc. in Nigeria, then it would suggest that not only can we locate the problem but also have a way of examining how well we are doing with our policy instruments.

This paper does not pretend to offer a new understanding of corruption but merely points to factors which seriously challenge the existing conventional wisdom. The paper therefore, attempts to define and explore the concept of corruption with a view to determining standards of its measurement using empirical indices.

[3] Oghenerhaboke A, "How to win the Anti-Graft War*", Newswatch*, March 6, 2006

An Exploration of Concept and Definition of Corruption

Generally, the conceptualisation of the term corruption has long been ideologically, morally, culturally, politically and intellectually elusive to the point of losing sight of its detrimental and parasitic symbiosis with many polities including Nigeria and their citizens all over the world. As a result of this, Akindele posits that, its definition has continued to be shrouded by value preferences and differences.[4] This has to some extent constituted the core of the conceptual difficulty regarding the analysis of the subject of corruption.

Corruption "is a deeply normative concern and can be a matter of considerable dispute".[5] Indeed, in many countries, contention over who gets to decide its meaning is a central fact of political life. There is no doubt the fact that, corruption has become "a universal phenomenon affecting all nations in varying degree and forms".[6] Although it is a worldwide problem, it has reached a pandemic stage in developing countries and has become the single most potent threat to development in these countries including Nigeria.[7] Despite its universal and endemic nature, there is no consensus amongst scholars, agencies and governments on its conceptual and operational definition. It is a focal matrix expressive of a number of pervasive misdeeds. Consequently, any attempt to precisely define it excludes some corrupt practices. Corruption, like many other forms of behaviour when placed under scrutiny of management and social sciences lens, proves to be an exclusive and complex phenomenon.

In fact, the more one examines it, the more difficult it becomes to separate corruption from other forms of social exchange. However it is defined, corruption according to some scholars simply refers to abuse and misuse of public office/position/power/role of trust or resources for private benefit.[8] Section 2(3) of the Corrupt Practices and Other Related Offences Act No. 5, 2000 simply states that corruption "includes bribery, fraud and other related offences."[9] This is a brief but telling description which

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[4] Akindele*, Critical Analysis of Corruption*, p.9.

[5] Johnston, Michael, *Syndromes of Corruption: Wealth, Power and Democracy* (Cambridge: University of Cambridge Press, 2005), p.10.

[6] Mato, Kabir and Ereke, Ernest, "Sustaining Collaborative Efforts of all Nigerians," *Journal of Political Studies,* Vol. 2, No.1 (2011), p.6.

[7] Mato, Kabir, James Jacob and Ereke Ernest, "The Dialectics of Corruption and National Development in Nigeria," *Journal of Anti-Corruption Studies*, *University of Abuja*, Vol. 1, No.1 (2013), p.59.

[8] Rose-Ackerman, Susan. *Corruption and Government: Causes, Consequences, and Reform* (Cambridge: Cambridge University Press, 1999), p.18.

[9] *Corrupt Practices and Other Related Offences Act 2000*, 6.

captures the essential character of corruption to wit: corruption involves some element of dishonesty, immorality, deceit and betrayal of trust to the perpetrator's advantage.[10]

Attempts at defining corruption as the abuse of public institutions for private gains by the operators of the institutions, it should be noted, narrows corruption to the public or government institutions and mainly centred on political corruption as against corruption in the private sphere. In an attempt to widen the definitional scope of corruption, Kobonnaery cited in Usman and Shaibu defines it as the abuse of formal rules of the game by actors for their private gains. He noted that, this definition is in exhaustive: it nevertheless captures all types of actions and organisations (public, private and non-governmental).[11] By this, any individual, either a public officer or private operator who deliberately refuses to follow the due process in the course of carrying out his or her assigned role for the purpose of personal gain is engaging in corrupt practices. "At the centre of corrupt behaviour is the motive for private gain, either as private citizen or public officer."[12]

Osoba cited in Bala on the other hand opined that, corruption is a form of anti-social behaviour by an individual or social group which confers unjust or fraudulent benefits on its perpetrators, and it is inconsistent with the established legal norms and prevailing moral ethos of the land.[13] It is for this reason that Mato, James and Ereke posit that, corruption is also likely to subvert or diminish the capacity of the legitimate authorities to provide fully for the material and spiritual well-being of all members of society in a just and equitable manner.[14]

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[10] Onoja, Esa O. *Economic Crimes in Nigeria: Issues and Punishments* (Abuja: Panaf Press, 2018), p.166.

[11] Usman, Abu Tom and Shaibu Umar Abdul, "The role of the Legislature in the Fight against Corruption in Nigeria's Fourth Republic," in Egwemi Victor (ed.), *Corruption in Nigeria: Issues, Challenges and Possibilities* (Abuja: Aboki Publishers, 2012), p.56.

[12] Mojeed, Olujinmi Alabi, and Fashagba Joseph Yinka. "The Legislature and Anti-Corruption Crusade Under the Fourth Republic of Nigeria: Constitutional Imperatives and Practical Realities," *International Journal of Politics and Good Governance, 1 and 2*, no. 2, (2010), p.5.

[13] Bala, Muhammed. "Performance assessment of the Independent Corrupt Practices and Other Related Offences Commission between 2006 and 2015," PhD thesis, Nasarawa State University, Keffi, Nigeria, 2015, p.8.

[14] Mato, Kabir, James Jacob and Ereke Ernest. "The Dialectics of Corruption and National Development in Nigeria," *Journal of Anti-Corruption Studies*, University of Abuja 1, no.1 (2013), p.62

Over the past two decades, according to Breit, Lennerfors, and Olaison, the will to fight corruption has increased in society at large. Consequently, the importance of effective anti-corruption measures has expanded into a global agenda with the Organisation for Economic Co-operation and Development (OECD), the World Bank and the United Nations (UN) in the forefront.[15]

Historically, corruption has been seen as an issue in the public sector, defined as the misuse of public office for private gain.[16] The scope has since been broadened to include other sectors, as illustrated in the widely used, post-Enron definition by Transparency International: the abuse of entrusted power for private gain.[17] Since 2003, when the OECD promoted a stricter definition of corruption, bribes, kickbacks and embezzlement are supplemented by practices such as illicit gifts, favours, nepotism, and informal promises.[18] As the OECD puts it: "although at a conceptual level, corruption is easy to define… however, it is a multi-layered phenomenon that may not always lend itself to neat definitions"[19]

The increased attention to corruption and anti-corruption has also led to a "corruption boom"[20] in which corruption has been approached and theorized in various ways. Corruption is discussed in fields as diverse as Economics, Political Science, Anthropology, Sociology, History, Organisation Studies, International Business, Business Ethics, Psychology, and Philosophy. While we will not attempt to summarize these discussions here. In Economic terms, for instance, Rose-Ackerman and Soreide (2011) argued that corruption is usually depicted as opportunistic behaviour based on rational choices and agency theory, and thus on the individual's motivations for engaging in corrupt behaviour.[21]

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[15] Breit, Eric, Lennerfors Thomas Taro, and Olaison Lena. "Critiquing Corruption: A Turn to Theory," March 31, 2015, p.317. http://www.ephemeraljournal.org.

[16] The World Bank Group, *Helping Countries Combat Corruption: The Role of World Bank* (Washington, DC: The World Bank, 2012), p.101. http://transparency.am/corruption.php.

[17] Transparency International, *The Anti-Corruption Plain Language Guide*, 2009, www.transparency.org, p.23.

[18] OECD (Organisation for Economic Cooperation and Development). *Annual Report on the OECD Guidelines for Multinational Enterprises, 2003: Enhancing the Role of Business in the Fight against Corruption* (Paris: OECD, 2003), p.8.

[19] Ibid.

[20] Torsello, David, "The Anthropology of Political Corruption: A Thematic Review". *Etnografa ericera qualitative 2*, (2013), p.31.

[21] Rose-Ackerman, Susan and Soreide Tina, *International Handbook on the Economics of Corruption,* 2nd ed. (Cheltenham, UK: Edward Elgar, 2011), p.45.

In political science, by comparison, corruption has often been regarded as a result of dysfunctional overlaps between the private and public sector; the task is to decipher the organizational and institutional structures that give rise to corrupt behaviour.[22]

In organisation studies, research has sought to describe and understand the organizational settings which corruption takes place – whether by one or several members within an organisation, by individuals on behalf organisations, or by entire organisations in cases where corruption operates as an institutionalised practice.[23] Organisational scholars have emphasised that corruption should not only be regarded as a state of misuse, but also as a process, that is, a gradual institutionalisation of misbehaviour which contributes to legitimizing behaviour and socialising others into it in such a way that it gradually becomes normalised, what may be called a 'culture of corruption'[24] Such a process perspective has been invoked to explain why persons not considered to be corrupt or criminal might decide to engage in corrupt activities or networks[25] and to understand the kinds of ethical reflections (or lack of these) that lie behind corrupt activities.[26]

The ironic conclusion of the relative approach to the problem should, of course be a negation of a universal concept of corruption and a logistical rejection of international comparability through the instrumentality of Corruption Perception Index (CPI) of Transparency International as the basis for looking at a country's landscape of corrupt practices. It means then by implication that each country must specify for any given period the set of behavioural configurations which it would consider to constitute corruption.

According to Usman and Shaibu (2012), the western scholars believe that corruption is embedded in the African culture. This position was based on the prevalence of gift giving in the pre-colonial African societies. A gift was

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[22] Heidenheimer, Arnold J, Johnston Michael, and Levine V. T. *Political Corruption: A Handbook* (New Jersey: Transaction Books, 1989), p.122.

[23] Pinto, Jonathan, Leana Carie, and Phil FK Parkinson, "Corruption Organisations or Organisation of Corrupt Individual? Two Types of Organisations-Level Corruption," *Academy of Management Review*, Vol. 33, No.3 (2008), p.685.

[24] Ashforth, B.E. and Anad, V., "The Normalization of Corruption in Organisations," *Research in Organizational Behaviour,* No. 25 (2003), p.32.

[25] Fleming, Peter and Zyglidopoulos Stelios, *Chartering Corporate Corruption: Agency Structure and Escalation* (London: Edward Elgar, 2009), p.78.

[26] Trevino, Linda Klebe, Weaver Gary R, and Reynolds S.J., "Behavioral Ethics in Organizations: A Review," *Journal of Management,* Vol. 32, No.6 (2006), p.951.

considered as society's respect towards partners and consensual leaders.[27] Both writers argued that corruption is neither embedded in African culture nor a monopoly of the developing countries. They emphasised that, the difference between corruption in the developed countries and Nigeria in particular is that, in the developed countries, corruption is largely endogenous in nature – that is, productive corruption, while Nigeria is grossly exogenous, that is, destructive corruption that gives room for capital flight.[28]

They buttressed their submission by citing an instance of a governor in U.S.A who received a bribe of $8million from a construction firm. When he was due for re-election, the graft blew open and it became a public scandal. The governor in an interview owned up but said he had invested the money within the state during the four years of his administration and it was already worth $24 million which had created jobs, yielded increased tax to the state treasury and the economic well-being of some citizens of the state. He further stated that, if the 'gift' had been rejected, the contractor would have taken the money out of the state. The governor won re-election with an increased majority.[29]

Contrary to the above submission, Babajide contended that, Western countries are extraordinary corrupt, given their penchant for receiving and accommodating looted funds as accomplice, and using slush funds to develop their economies at the expense of developing nations.[30] He quoted Global Financial Integrity (GFI), a Washington D.C-based research and advocacy organisation, that, Africa lost about $1.8 trillion in illicit financial outflows from 1970 through 2015. The GFI Director, Raymond Baker was quoted by Babajide to have said, "The amount of money that has been drained out of Africa – hundreds of billions decade after decade – is far in excess of the official development assistance going into African countries… Staunching this devastating outflow of much-needed capital is essential to achieving economic development and poverty alleviation goals in these [African] countries."[31]

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[27] Usman, Abu Tom and Shaibu Umar Abdul. "The Role of the Legislature in the Fight against Corruption in Nigeria's Fourth Republic," in Egwemi Victor (ed.), *Corruption in Nigeria: Issues, Challenges and Possibilities* (Abuja: Aboki Publishers, 2012) p.57.

[28] Ibid

[29] Aluko, Sunday A., "Corruption and National Development," Paper presented at the *Centre for Democratic Research and Training*, Zaria, at the Bala Usman Annual Memorial Lecture, May 31, 2008, p.7

[30] A. Babajide, "Britain: An Extraordinarily Corrupt Nation", *ThisDay,* May 16,2016.

[31] Ibid.

The foregoing analysis casts doubt on the approaches by which a corrupt practice is commonly determined. This is, however, no suggestion that corruption is not widespread or that efforts should not be made to identify it, to explain its causes and combat it. What I am is saying is that, we must first make clear what we mean by corruption before attempting to combat it. The crucial question then is: what makes an activity, corrupt?

The Corrupt Activities

Corruption involves the abuse of trust, generally one involving public power, for private benefit which often, but by no means always, comes in the form of money.[32] Implicit in that notion is the idea that, while wealth and power have accepted sources and uses, limits also apply. But in rapidly changing societies (developing countries), it is not always clear what those limits are, and the term 'corruption' may be applied broadly.[33] Even in more settled societies (developed countries), its meaning is open to dispute, manipulation and change.

Distinctions between 'public' and 'private' can be difficult to draw, particularly in the midst of economic liberalization and privatization.[34] Policy changes may redefine public roles as private or delegate power and resources to organizations that straddle state/society boundaries, in the process changing rules and accountability. Benefits and costs may be intangible, long-term, broadly dispersed, or difficult to distinguish from the routine operation of the political system. Particularly where the problem is severe, corrupt demands and expectations can be so ingrained into a system that may go unspoken.[35] Olaoye gave a vivid insight into this type of pervasive petty corruption when he said, "Even cleaning staff employed to take care of the toilets [in Nigeria] think that the airport is some kind of money-minting institution". He stressed further that, "They [cleaning staff] waylay you at the urinal with tissue paper, many times breaching your privacy. Tissue paper that is supposed to be stacked in a place where toilet users can help themselves is now turn into an item for supplicating for

[32] Johnston, *Syndromes of Corruption*, 11.
[33] Hao, Yufan, and Johnston, Michael, "Corruption and the Future of Economic Reform in China," in Heidenheimer, A.J. (ed.), *Political Corruption: Concepts and Contexts*, 3rd Edition (New Jesey: Transaction Publishers, 2002, p.589.
[34] Weldel, Janine R., "Corruption and Organized Crime in Post-communist: New Ways of Manifesting Old Patterns," *Trends in organized crime 7*, (2001), p.3.
[35] Thompson, Dennis F., "Mediated Corruption: The Case of Keating Five," *American Political Science Review,* Vol. 87 (1993), p.369.

'dash'. When you are handed the tissue with an unctuous, 'Happy weekend, Sir', you are expected to 'drop something for the boys'…"[36]

This informed Johnston's question: what standards do we identify 'abuse'?[37] One school of thought advocates definitions based on laws and other formal rules because of their relative precision, stability and broad application.[38] Critics reply that laws may have little legitimacy (or may even be written by officials to protect themselves), that definitions of corruption must address the question of its social 'significance' not just its normal meaning – and that cultural standards or public opinion, thus, offer more realistic definitions.

Relying upon cultural standards alone, however, may so relativize the concept, or impose so many distinctions and subcategories upon it, that, its core meaning and useful comparisons are obscured. Still, others contend that any definition based upon the classification of specific actions ignores broader issues of morality and justice, and neglects important political values such as leadership, citizenship, representation, deliberation and accountability.[39]

Johnston defines corruption as "the abuse of public roles or resources for private benefit",[40] but emphasised that, 'abuse', 'public', 'private', and even 'benefit', are matters of contention in many societies and of varying degrees of ambiguity in most. If our goal were to categorise specific actions as corrupt, those complications would be a serious difficulty; indeed, they are reasons for the inconclusive nature of the definitions debate.

But, at a systemic level, particularly, where the problem is severe, such contention or ambiguity can be useful indicators of difficulties or change at the level of participation and institutions. Disputed boundaries between the 'public' and the 'private', for example, can signal critical institutional weaknesses. Where government officials flout formal rules with impunity, that may indicate that countervailing forces in politics or the economy are weak or excluded. Such systemic issues can be critical to understanding

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[36] Wole Olaoye, 'Corruption in Low Places,' *Daily Trust*, August 19, 2019.
[37] Johnston, Syndromes of Corruption, 11.
[38] Nye, Joseph Samuel. "Corruption and Political Development: A Cost-Benefit Analysis". *American Political Science Review,* Vol. 61 (1967), p.417.
[39] Gibbons, K Michael, "Towards an Attitudinal Definition of Corruption," in Heidenheimer, M; Johnston, Michael: and Levine, V. (eds.), *Political Corruption: A Handbook* (New Jersey: Transaction Publishers, 1989) p.165.
[40] Johnston, *Syndromes of Corruption*, 12.

how contrasting syndromes of corruption might arise and why the contrasts among them matter.

From the foregoing, it is evident that some definitions are descriptive while others are 'ambulatory' preferring to list what corruption includes. Transparency International's (TI) descriptive definition states simply that, corruption is "the abuse of public office for private benefit."[41] This definition is similar to the World Bank's often quoted short form, to wit, the abuse of public office for private gain. Bala contended that, the above definitions suggest that corruption relates only to public office and went further to opine that, this creates a limitation as it is known that, across jurisdictions, private corporations are involved in or battling corruption within their systems.[42]

It is therefore, possible to submit that, the above view expressed to the effect that, concept of corruption is vulnerable to many explanations on account of its multidisciplinary nature, both ancient and modern scholars or researchers tend to and in most cases define corruption from their own perspectives; some of these views may not in the context of law be strictly acts of corruption punishable as offences. It was for this reason that, Bala and Tanimu adopted the open-ended definition in the ICPC Act 2000, which provides that 'corruption includes bribery, fraud and other related offences'. This definition according to them, leaves the concept of corruption open-ended to admit other probable corruption related offences.[43] Sulaiman had earlier argued that, the ICPC Act gives a vague definition of corruption. He later admitted and described the ICPC Act 'as a fine piece of penal legislation [that] has redefined corruption by identifying multifarious ways in which it can manifest'.[44] He elaborated further that, the ICPC Act does not just focus on the perpetrators of corruption but it also includes its beneficiaries. That ICPC does not just limit bribery or gratification to giver and taker, it also includes those who know of it and decide to keep mute are equally guilty of the offence.

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[41]Transparency International. *Global Corruption Report* (London: Plato Press, 2000), p.4.
[42] Bala, *Performance Assessment*, 9.
[43] Bala Muhammed and Tanimu, Muhammed. "Prevention as a Tool in the Fight against Corruption in Nigeria: The ICPC in Perspective," in Agada Akogwu (ed.), *Combating the Menace of Corruption in Nigeria: A Multi-Disciplinary Conversation*, (Awka: Black Tower Publishers, 2019), p.84.
[44] Sulaiman, Ikpechukwu Oji, "An Analysis of the Legal and Regulatory Framework for Combating Corruption and Financial Crimes in Nigeria," in Agada Akogwu (ed.), *Combating the Menace of Corruption in Nigeria: A Multi-Disciplinary Conversation,* p.72.

Concluding Remarks

The issue of corruption, its conceptual and definitional problems have been analytically examined in this paper. This notwithstanding, it has been established that, the attainment of a definitional unanimity on this concept remains elusive. In view of this, there is the need for further research on the concept in line with the ever-increasing complexity of various societies and their cultures in developing countries. In the final analysis, though a tragic and socially unacceptable human experience, corruption is probably not an easy concept to be defined or measured. To be appreciated, a country may have to experience it (cost of corruption) in terms of its debilitating effects on her political economy and the existential circumstances of her citizenry. To this end, Odekunle as cited in Bala warned that, no system can survive as an ongoing concern if there are no laid down rules of conduct and if there are no minimal standards beyond which deviation would not be tolerated.[45] To forestall its ubiquity, Osibanjo reminded leaders that, opacity in one section of the globe undermines openness in the other.[46] He thus, advocates concerted efforts by all countries to break down the wall together.

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Euben, J Peter, "On Political Corruption," *The Antioch Review* 36, (1978), pp.103-118

[45] Bala, Muhammed. "Buhari's Programme of War Against Indiscipline in Nigeria: what it achieved and why it died, 1983-1985". *Keffi Journal of Administration and Policy Review* Vol. 3, No. 1 (2014), 71.

[46] Osinbajo, Yemi, "Keynote Address," *Proceedings Report: Eight Annual General Meeting and Conference of Heads of Anti-Corruption Agencies in Commonwealth Africa,* Gaborone, Botswana, 14-18 May, 2018, p.2.

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EMERGING PATTERNS, EXPERIENCES AND MANIFESTATIONS OF CORRUPTION IN NIGERIA

Adebusuyi Isaac Adeniran*

Abstract

Although the fight against corruption has been a cardinal goal of the current government in Nigeria, intrinsic connivance of some filthy gladiators in the executive, legislative and judicial arms of government has ensured undue stalling of the prosecution and conviction of visibly corrupt political and non-political actors. In this regard, corruption has continued to fester as the most pivotal clog in the drive towards sustainable and people-centered development in the country. This paper employs relevant secondary sources in order to contextualize extant patterns, experiences and manifestations of the scourge of corruption in a transiting Nigerian society. Identified patterns of corruption, which broadly include small-scale (nugatory) corruption and large-scale (grand) corruption and other sub-variants, such as system-based (bureaucratic) corruption, political corruption, electoral corruption, academic corruption and religious corruption are explored. While there have been obvious points of commonality in individuals' experiences of corruption in Nigeria, related experiences have routinely reflected either a subtle or a forced process. Of all reflections of filthy tendency in Nigeria, however, emergent utilization of the religious space as a safe haven for stolen funds by the political class has particularly increased the intractability of corruption incidences in the country. Expectedly, the well-being of majority of the populace has been at the receiving end of this scourge.

Introduction

Despite the improvement in the ranking of Nigeria (with its movement from 148th position in 2017 to 144th position in 2018, but with its actual score of 27/100 remaining unchanged) on the corruption perception index (CPI) of Transparency International (TI), actual manifestations of corruption in Nigeria have continued to worsen.[1] The initial enthusiasm with which the current administration in Nigeria, under the leadership of President Muhammadu Buhari, had commenced its fight against

* Dr. Adebusuyi I. Adeniran, Senior Lecturer, Department of Sociology and Anthropology, Obafemi Awolowo University, Ile-Ife, Nigeria. Email: adebusuyi@oauife.edu.ng.

[1]Olowolagba, Fikayo, "Ezekwesili reveals cause of high level corruption in Nigeria", *Daily Post*, http://dailypost.ng/2018/04/16/ezekwesili-reveals-cause-high-level-corruption-nigeria/, accessed on 15/02/2019

corruption upon its inception in May, 2015, has been lost significantly since the outset of the first quarter of 2018, largely as a result of conflation of the fight with politicking.

More than any other determinants, in-house connivance of some corrupt (but highly influential) members of the executive arm of government with some other prominent actors in both the legislative and the judicial arms of government (who have been found to be corrupt by various probe panels, competent Courts of Law or who are currently undergoing prosecution for one corruption case or the other) has been responsible for the inactivity that is presently bedeviling the fight against corruption in Nigeria.[2] That corruption is antithetical to sustainable growth and development of the society is no longer debatable, but how it has remained ubiquitous to the functioning of the entire social institutions in Nigeria, such as applicable to the family, politics, economy, education and religion, has been quite enthralling.[3]

While various stimulators have been advanced for the prevalence of corruption in Nigeria; ranging from greed for money, power and luxury to low level of democratic culture and low political transparency, this review particularly interrogates the pivotal roles of feeble institutions and systemic loopholes in perpetuating corrupt practices in the country[4]. The review explores why it is increasingly becoming difficult to access both private and public services in Nigeria without paying bribes, and also, why macro-level corruption is persisting despite the anti-corruption postures of the current administration in the country.[5] The normative tendency, which has obviously presented corruption as a seemingly acceptable collective action is focused in this review. It should be noted that the

[2]Hoffman, Leena K. and Raj Navanit Pate, *Collective Action on Corruption in Nigeria: A Social Norms Approach to Connecting Society and Institutions* (London: Chatham House, 2017).
[3]Adeniran, Adebusuyi Isaac, "Travel Costs and Institutional Corruption Cripple Regional Trade in West Africa," https://www.atlasnetwork.org/news/article/travel-costs-and-institutional-corruption-cripple-regional-trade-in-west-af, February 12, 2015.
[4]Izevbekhai, Aliu Aizebeokhai, "Systemic Corruption in Nigeria: How Did We Get Here?", https://www.researchgate.net/publication/256022542_Systemic_Corruption_in_Nigeria_How_Did_We_Get_Here, *SSRN Electronic Journal*, June 2012.
[5]Nwogu, Jorji and Victor Ijirshar. "The Impact of Corruption on Economic Growth and Cultural Values in Nigeria: A Need for Value Re-orientation", in *International Journal of Economics and Management Science*, 6:388. doi: 10.4172/2162-6359.1000388, 2016

UNODC/NBS Survey reports that every adult Nigerian pays at least one bribe per year.[6]

Emerging Patterns of Corruption In Nigeria

Although different procedures for contextualizing corruption have been engaged in explaining the crisis in Nigeria, it has been so apparent that related attempts have routinely reflected either a micro-level or a macro-level elucidation. As noted by Page[7] in "*A New Taxonomy of Corruption for Nigeria,*" the problem appears to be pervasive and has assumed divergent forms: from massive contract fraud to petty bribery; from straight-up embezzlement to complicated money laundering schemes; from pocketing the salaries of non-existing workers to steering plum jobs to relatives and friends. Some officials enjoy perquisites so excessive that they are widely seen as a form of legalized corruption. Some types of corruption (for example, extortion or contract fraud) are more widespread in some sectors than in the others.[8] Likewise, some are more or less damaging—either directly or via negative multiplier effects—depending on where they occur.[9] It is generally opined that corruption in Nigeria is not always clear-cut or limited in focus, but rather it is interconnected, involving a range of behaviours that cleave across individual-level interaction and sector-based processes.[10]

Small-scale (nugatory) corruption

Nugatory corruption refers to everyday abuse of entrusted power by low and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies. The term "nugatory corruption" is used to describe the form of corruption which are conducted on small-scale or the type of corruption which is done on the

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[6]UNODC, *Corruption in Nigeria – Bribery: public experience and response* (Abuja, UNODC & NBS, 2017). Available at: https://www.unodc.org/documents/data-and-analysis/Crime-statistics/Nigeria/Corruption_Nigeria_2017_07_31_web.pdf.

[7]Page, Matthew, "A New Taxonomy for Corruption in Nigeria", Washington DC: Carnegie Endowment for International Peace, https://carnegieendowment.org/2018/07/17/new-taxonomy-for-corruption-in-nigeria-pub-76811, accessed on 16/02/2019

[8]Ajikobi, David, "Factsheet: Nigeria's Numerous Dollar Exchange Rates," *Africa Check*, https://africacheck.org/factsheets/factsheet-nigerias-numerous-dollar-exchange-rates/, March 13, 2017

[9]Ajimotokan, Olawale, "Abuja Millennium Tower: A Monument Abandoned to Its Fate," *This Day*, August 21, 2017, https://www.thisdaylive.com/index.php/2017/08/21/abuja-millennium-tower-a-monument-abandoned-to-its-fate/

[10]Page, Matthew, "A New Taxonomy for Corruption in Nigeria", *op. cit.*

low-level. The corruption amount seems to be miniature when it is juxtaposed with the overall business transactions. Nugatory corruption has been quite rampant in Nigeria mostly because of its relative affordability. The kind of bribe which is paid to the police or any other functionary to avoid penalties or fines applicable to an offence) and the bribes that are paid to the customs officials to clear goods or other thing which are considered to be banned perfectly fit in here.

Large-scale (grand) corruption

This is made up of acts committed at a high level of government that distort policies or the central functioning of the state; enabling leaders to benefit at the expense of the larger public good. The discretionary allocation of oil blocks in Nigeria has often been the springboard of large-scale corruption in the country.[11] It is also common with contract inflation among top-level government functionaries and also in the likeness of "constituency projects" fund allocation by the legislative arm of government in Nigeria.

System-based (bureaucratic) corruption

This occurs in the public administration or the implementation end of politics. It is the kind of corruption that the Nigerian citizens experience daily at places like the hospitals, schools, local licensing offices, police stations and in various government ministries and parastatals. Bureaucratic corruption occurs when one obtains a business from public sector through inappropriate procedure.[12]

Political corruption

This takes place at the highest levels of political authority. It occurs when the politicians and political decision-makers, who are entitled to formulate, establish, and implement the laws in the name of the people, are themselves corrupt. It also occurs when policy formulation and legislation is tailored to benefit politicians in either the executive arm or the legislative arm of government.[13]

Electoral corruption

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[11]Anaedozie, Florence."Is Grand Corruption the Cancer of Nigeria? A Critical Discussion in the Light of an Exchange of Presidential Letters", in *European Scientific Journal*, Vol. 12, No. 5, 2016

[12] Ajimotokan, Olawale, "Abuja Millennium Tower: A Monument Abandoned to Its Fate," *This Day*, August 21, 2017, https://www.thisdaylive.com/index.php/2017/08/21/abuja-millennium-tower-a-monument-abandoned-to-its-fate/, 2017

[13]Yagboyaju, Dhikru. "Religion, Culture and Political Corruption in Nigeria", in *Africa's Public Service Delivery and Performance Review* (APSDPR), Vol. 5, No.1, 2017

This includes buying of votes with money, coercion, intimidation and interference with smooth conduct of elections by politicians. Votes are bought, people are killed or maimed in the name of election, and losers end up as the winners in elections and vice versa. Votes turn up in area where votes were not cast.

Academic corruption

Academic corruption involves all forms of deviation from justice, honesty, fairness, probity, impartiality and discipline expected from institutions of learning. Academic corruption actually stems from moral impurity and it manifests in selfish acts that are detrimental to the goal of education and advancement of society.[14] The admissions process involves a lot of corruption because of the coveted nature of access to higher education in Nigeria, and low-level of fees' regime, especially among first generation universities. Subjective grading system, lack of research integrity including data forgery, plagiarism among students and lecturers, have been the most common academic frauds in Nigeria.[15]

Religious corruption

Instead of holding the political class responsible for extant socio-economic incongruence within the society, most religious outfits (especially, the latter-day Pentecostalists) usually affirm such as being personal irresponsibility of individuals, especially as it pertains to their "unhealthy" relationship with the supernatural. In this respect, individuals are expected to seek for "divine intervention" on issues that border wholly on poor governance through prayers, which are often with costs. Besides, various religious outfits have been serving as "safe havens" for corrupt political leaders in Nigeria. In seeking for political positions and in consolidating their self-serving hold on power, the political class in Nigeria typically seek for prayers and congregational supports from the religious class. In return, the religious leaders are allowed to expand their missions unhindered by means of the instrument of the state (significantly, through tax evasion and massive land acquisition).[16]

Experiences of Corruption in Nigeria

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[14]Adedimeji, Mafouz "What is academic corruption?" https://mahfouzadedimeji.com /2015/10/28/what-is-academic-corruption/, 2015

[15]Okebukola, Peter, "Academic corruption: 60 percent of Nigerian undergraduates' projects are plagiarized", https://www.legit.ng/1202930-academic-corruption-60-nigerian-undergraduates-projects-plagiarised-university-don-laments.html, 2018

[16]Olukayode Abiodun Faleye. "Religious Corruption: A Dilemma of the Nigerian State, in *Journal of Sustainable Development in Africa*, Vol.15, No.1, 2013

According to the 2017 UNODC Bribery Survey Report,[17] the average sum paid as a cash bribe in Nigeria is approximately NGN 5,300, which was equivalent to roughly $61- purchasing power parity (PPP). This means that every time a Nigerian paid a cash bribe, he or she spent an average of about 28.2 per cent of the then national minimum wage of approximately NGN 18,900.[18] Since, according to the same report, Nigerian bribe-payers paid an average of 5.8 bribes over the course of one year, 91.9 per cent of which are paid in cash, they spent an average of NGN 28,200 annually on cash bribes — equivalent to 12.5 per cent of the annual average salary.

Bribery in Action

The vast majority of bribery episodes in Nigeria are initiated either directly or indirectly by public officials (85.3 per cent). Almost 70 per cent of bribes are paid before a service is rendered and, with nine out of every ten bribes paid to public officials being paid in cash, the payment of money is by far the most dominant form of bribe payment in Nigeria. With such a large portion of public officials initiating bribery episodes, it seems that many public officials show little hesitation in asking for a kick-back to carry out their duty and that bribery is an established part of the administrative procedure in Nigeria. While money is by far the most important form of bribe giving in Nigeria, other forms of bribe payments exist, such as the provision of food and drink, handing over valuables or the exchange with another service or favour and sexual services as a form of bribe payment.[19]

Gender, Location and Bribery

In terms of the demographic profiles of the Nigerian citizens most vulnerable to bribery, a remarkable disparity in the prevalence of bribery exists between men and women: 37.1 per cent of men who had contact with at least one public official would be willing to pay bribe, whereas the proportion among women was 26.6 per cent.

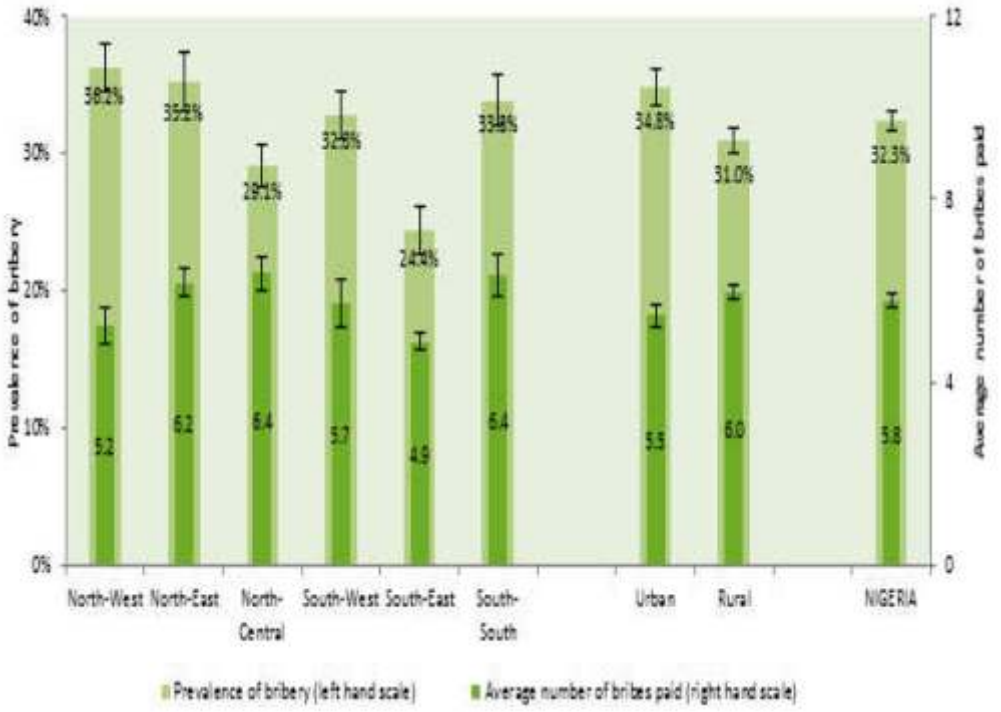
Young adults in Nigeria are more vulnerable to bribery than other age groups, especially those in the 25 to 34-year-old age group (36.4 per cent), after which the prevalence of bribery decreases, particularly after the age of 50. In fact, the highest age-specific prevalence rate of bribery – among 25-34 year old – is almost twice that of people aged 65 years and older. It is also noteworthy that citizens in urban areas in Nigeria are slightly more

[17] UNODC. *Corruption in Nigeria – Bribery: public experience and response*, 2017, *op. cit*.
[18] National Minimum Wage has since been increased to NGN 30,000.
[19] UNODC. "*Corruption in Nigeria – Bribery: public experience and response*, 2017, *op. cit*.

affected by bribery than those living in rural areas, and that the prevalence and frequency of bribery vary across the different zones of Nigeria.

Very few Nigerian bribe-payers report their experience of bribery to anyone. Of all those who paid bribes, just 3.7 per cent reported the incident to official authorities. Limited trust in a number of state institutions in Nigeria, not least in the law enforcement and criminal justice system, may explain why Nigerians have little confidence in the capacity of authorities to deal with corruption matters.[20]

Figure I: Prevalence and frequency of bribery at the national level, urban/rural level and by zone, Nigeria, 2017



Source: UNODC (2017)

Manifestations of Corruption in Nigeria

Basically, corruption is displayed in the absence of integrity in either private or public conducts of individual Nigerians. In recent past, corrupt practices have been largely manifested in Nigeria through demand or expectation of tips for goods or services for which the actors are

[20] UNODC. "*Corruption in Nigeria – Bribery: public experience and response*, 2017, *op. cit*.

remunerated, miscarriage of justice and deliberate delay of justice, embezzlement of public funds, abuse of public trust (for instance, through security vote allocation by political actors), appointment of friends and associates to positions of authority without proper recourse to requirements and laid-down rules, half-baked college and university graduates, manipulation of examination results, certificate forgery, age falsification through sworn affidavit, and wealth accumulation by various religious groups in the country (through obvious tax evasion and swindling of worshipers).[21] Meanwhile, as noted by Yagboyaju,[22] of all emerging expressions of corruption in the country as of now, the rise of religious corruption has been quite note-worthy. The case of sex-for-mark presently ravaging most of the universities in the country and the case of payment-for-judgment currently bedeviling the Nigerian judiciary have been undoubtedly disturbing.

On a broader note, prevalence of corruption and bribery in Nigeria has remained the most pivotal clog in the drive of the country towards sustainable socio-economic development.[23] At a more specific level, the centrality of filthy practices in both private and public engagements of majority of Nigerians (estimated at 95 percent by the National Bureau of Statistics),[24] has implied that individuals cannot access timely healthcare even with possession of valid health insurance, primordial considerations have been taking pre-eminence over meritocracy in the recruitment processes, excellent scores cannot guarantee admission into public Universities and also timely completion of courses of studies cannot be assured.[25]

Concluding Comments

Within the confines of social and public institutions in Nigeria, corruption within the confines of both academic and religious instituions appear to the most visible emerging trends of corruption in the country, particularly

[21]Onwukaobi, Jeremiah, "The Manifestations of Corruption in Nigeria", Text of Lecture delivered at The St. Ephraim Catholic Church, Jikwoyi, Abuja, Nigeria, November 8, 2017.
[22] Yagboyaju, Dhikru. "Religion, Culture and Political Corruption in Nigeria", in *Africa's Public Service Delivery and Performance Review* (APSDPR), Vol. 5, No.1, 2017.
[23]Urien, James. "The Impact of Corruption on the Socio-economic Development of Nigeria", in *Crown Research in Education*, Vol. 2 (3), pp. 143-152, April, 2012
[24] National Bureau of Statistics (NBS). *Report on Bribery in Nigeria*, Abuja: NBS, 2017
[25]Odo, Linus Ugwu. "The Impact and Consequences of Corruption on the Nigerian Society and Economy", in *International Journal of Arts and Humanities*, Vol. 4 (1), pp. 177-190, January, 2015

since the conduct of first nation-wide corruption survey in 2016/2017 by the NBS and the UNODC.

As observable in the contents of both first and second corruption surveys in Nigeria in 2016 and 2019, there seems slight improvement in the fight against corruption in the country, putting into cognizance prevalence and frequency of experiences and manifestations of corruption. "Out of all Nigerian citizens who had at least one contact with a public official in the twelve months prior to the 2019 Corruption Survey in Nigeria, 30 per cent payed a bribe to or were asked to pay a bribe by a public official. This indicates that, though still relatively high, the prevalence of bribery in Nigeria has undergone a moderate, yet statistically significant, decrease since 2016, when it stood at 32 per cent. A hugely disheartening outcome of the 2019 Corruption Survey in the country is that for most of the youths to secure employment in the public sector especially, they would have to pay as much as US$ 500, which in most cases is unaffordable. This has been useful for understanding the increasing trend of youth unemployment and, indeed, restiveness in the country in recent past.

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INTERIM FORFEITURE ORDERS IN NIGERIA: PRACTICE AND PROCEDURE[#]

Bolaji Owasanoye[*]

Abstract

One of the core pillars of fighting corruption and a key priority of the administration of President Mohammadu Buhari is to improve sanction, enforcement, and asset recovery.[1] The target of this priority includes increasing the use of non-conviction-based forfeiture mechanisms and increasing the contribution of asset recovery to total revenue of government. Nigeria is not alone in the asset recovery drive. Asset recovery is thus in line with global best practices. The incentive for many corrupt public officials is the calculation that they would live a life of luxury if they escape justice and retain the loot. Asset recovery is a disincentive for corrupt behaviour. Another benefit of asset recovery is that recovered assets can be channelled back to developmental projects such as health, education, provision of water, critical infrastructures, to mention a few. Asset recovery therefore can act as a deterrent while contributing to attainment of national objectives. Asset recovery is therefore also hinged on opportunity-cost of corruption.

Introduction

The powers of court to preserve the proceeds of an alleged crime or illegal activity has existed from the time of the common law. This power can be exercised both under the criminal[2] and civil jurisdiction of court.[3] In Re Saxton[4] the court set down the principle for exercise of the powers of court to preserve property that is the proceeds of crime, unlawful act, or that may be the subject of civil litigation. In civil cases, where the Court sees that as between the parties there is something which ought to be done for the security of the property, then the court can grant and interim order. In criminal cases, where property or money are identifiable as resulting from the defendant's alleged criminal activity is held by the defendant or another person, or have been paid into a particular bank account, the Court

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[#] Paper originally presented at National Judicial Institute Refresher Course for Judges and Kadis, March 2020

[*] Professor Bolaji Owasanoye is the Chairman Independent Corrupt Practices and other Related Offences Commission.

[1] See, Delivering on the Government's Priorities 2019-2023, p. 36

[2] See Chief Constable of Kent V. (1983) QB 34; (1982) 3 All ER 36

[3] See Re-Saxton Deceased (1962) 1 WLR 859; (1962) 3 All ER 92

[4] ibid

has power to make an order restraining the person in possession of the property, or the operator of the account from dealing with any money in his account which has accrued since a specified date. In this way the Court can preserve the proceeds of an alleged crime held in a bank account and thus preserve material evidence for use in the prosecution of the offender and also enable the proceeds to be restored to the rightful owner after the conviction of the alleged offender.

However, various anti-corruption legislations in Nigeria, confer power on anti-corruption agencies and the courts to preserve, seize or forfeit property pending the outcome of an investigation or trial. For example, and in line with global practices, section 45 (1) of the Corrupt Practices and Other Related Offences Act, 2000, empowers the Chairman of the ICPC to direct banks and financial institutions to "post no debit" or deal with any property held or in possession of the bank pending an investigation. This is unique to the ICPC Act and in line with international law and best practice. It is in this context that this paper discusses *Interim Forfeiture Orders: Practice and Procedure in Nigeria***.** It must be noted that interim forfeiture occurs within the larger framework of asset recovery. Consequently, a brief explanation of the scope and context of asset recovery is important to the topic of the paper.

Importance of Asset Recovery to the Fight Against Corruption

Asset recovery has received recognition world over as a veritable tool for combating organized crime, including corruption. Eric Holder, one-time Attorney-General of the United States, reiterated the need to deny public officials of the of proceeds of crime when he said:

> *We must work together to ensure that corrupt officials do not retain illicit proceeds of their corruption. There is no gentle way to say it: When kleptocrats loot their nation's treasuries, steal national resources and embezzle development aid, they condemn their nation's children to starvation and disease. In the face of this manifest injustice, asset recovery is a global initiative.*[5]

The United Nations Convention Against Corruption[6] (UNCAC) and the African Union Convention on Preventing and Combating Corruption[7] are

[5] *U. S. Asset Recovery Tools and Procedures: A Practical Guide for International Cooperation*, available at https://2009-2017.state.gov/documents/organization/190690.pdf last accessed 3/2/2020 1:16PM quoting a remark by Mr Holder at The Global Forum IV, Doha, November 2009.

[6] Chapter III and V

[7] Article 16

amongst international legal instruments that have endorsed asset recovery and urged State Parties to put in place measures to ensure asset recovery. Article 31 of UNCAC is directly on point and reflects established international consensus on asset recovery. Each State Party is obliged under Article 31 to do, inter alia, the following:

- Take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation (i.e., forfeiture within our present context) of:
    a) Proceeds of crime or property the value of which corresponds to that of such proceeds;
    b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with UNCAC.
- Take such measures as may be necessary to enable identification, tracing, freezing or seizure of any item for the purpose of eventual confiscation.
- Adopt such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property.
- If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures stated above instead of the proceeds.
- If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.
- Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.
- Each state Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act on the ground of bank secrecy.
- State Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of

> crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

The details of part of the provisions of Article 31 of UNCAC demonstrates that some of the powers which Nigerian courts wield in the area of interim and final forfeiture of the proceeds of crime or illegal conduct, including corruption, are not unique to Nigeria but obligations which Nigeria voluntarily assumed upon accession to UNCAC and other relevant international anti-corruption conventions and legal instruments. It is also significant that the Supreme Court of Nigeria endorsed UNCAC and its principles in Patience Jonathan v FRN.[8]

Significance of the Ratio of Patience Jonathan v FRN

The cerebral decision of the Supreme Court in this case has the potential to positively impact the war against corruption and asset recovery in Nigeria.

What did the Supreme Court do in this case? The Court:

a. traced the history of forfeiture;
b. established that forfeiture of proceeds of crime or unlawful conduct is a universal phenomenon;
c. established that forfeiture is a veritable device to deal with organized crime, corruption and other economic crimes;
d. held that civil forfeiture is an effective anti-corruption tool;
e. Reasoned that interim forfeiture orders are not unconstitutional but legitimate;
f. Held that civil forfeiture proceedings can be commenced in parallel with criminal proceedings;
g. Affirmed that Section 17 (1) of the Advance Fee Fraud Act and Section 19 (3) of the Money Laundering Act are vital components of the armoury for asset forfeiture in Nigeria;
h. Held that Nwaigwe v. FRN (2009) 16 NWLR (Pt. 1166) 169; Chidolue v. EFCC (2012) 5 NWLR (Pt. 1292) 160 and FRN v. Ikedinwa (2013) LPELR - 21120 (CA) wherein the court of Appeal held that interim forfeiture is unconstitutional does not represent the law.

It will be observed will note that the power to order interim or final forfeiture under international law extends to property into which tainted property is converted or intermingled. Justice Olubunmi Oyewole, JCA, at a

[8] (2019) LPELR-46944 (SC)

training for ICPC prosecutors used the metaphor of clean water in an overhead tank. If you mix that water with a spoon of sewage, the entire water in the overhead tank becomes contaminated. So too is clean money mixed with proceeds of corruption. Both are inseparable and judges may be urged to order forfeiture of the whole.

Legal Framework for Asset Forfeiture in Nigeria

Asset recovery can be achieved through various means including seizure, confiscation, and forfeiture proceedings. The forfeiture regime could be conviction-based, non-conviction based or civil forfeiture, or a combination of both, depending on the statute in issue in a particular case. A number of legislations in Nigeria regulate asset forfeiture. *Black's Law Dictionary* defines confiscation as "the seizure of private property by the government without compensation to the owner, often as a consequence of conviction for crime, or because possession or use of the property was contrary to law."[9] The same dictionary defines "forfeiture" as a "comprehensive term which means divestiture of specific property without compensation… loss of some right or property as a penalty for some illegal act."[10] Seizure, confiscation, and forfeiture may however mean different things under different contexts and in different jurisdictions.[11] Notwithstanding variations in meaning, the effect of final forfeiture is that it vests the property in the government.[12]

The statutory regime on forfeiture proceedings in Nigeria include the following legislations:

- Administration of Criminal Justice Act, 2015
- Advance Fee Fraud and Other Related Offences Act 2006,
- Code of Conduct Bureau and Tribunal Act, Cap C15, LFN 2004
- Corrupt Practices and Other Related Offences Act, 2000.
- Customs and Excise Management Act etc.
- Economic and Financial Crimes Commission (Establishment) Act, 2004
- Failed Banks Recovery of Debts and Financial Malpractices in Banks Act, and
- National Drug Law Enforcement Agency Act, Cap N30, LFN 2004

[9] Black's Law Dictionary, 6th ed., p. 299; see *A-G, Bendel State v Agbofodoh* (1999) 2 S.C 94; (1999) 2 NWLR (Pt. 592) 476; (1999) LPELR-616(SC)

[10] Ibid, p. 650.

[11] See Esa O. Onoja, *Economic Crimes in Nigeria: Issues and Punishment* (Abuja: Lawlords, 2018), p. 810

[12] See section 7 of the Interpretation Act LFN, 2004. see *A-G, Bendel State v Agbofodoh* , supra

Importance of Forfeiture to the Legal Process

Forfeiture orders serve four essential purposes to the criminal justice system, namely:

- Firstly, forfeiture removes the instrumentality of crime from the offender for purposes of crime prevention.
- Secondly, it removes items that may be dangerous to members of society.
- Thirdly, confiscation and forfeiture orders can also be made as part of the fiscal measures of government. For example, goods imported contrary to regulation, or smuggled to evade payment of customs duty under the Customs and Excise Act may be confiscated and forfeited.
- Fourthly, confiscation and forfeiture orders may also be made to deprive an offender, convict, or persons in possession of illicit wealth, of the proceeds or gains of crime or unlawful conduct.

Power of Law Enforcement Agencies to Seize Proceeds or Instrumentalities of crime

Various law enforcement agencies in Nigeria are empowered by enabling statutes to seize proceeds or instrumentalities of crime in the course or process of investigation. However, this power is not forfeiture powers in the true sense of the word. For example, under section 37 (1) of the ICPC Act: "If in the course of an investigation under the Act any officer of the Commission has reasonable grounds to suspect that any movable or immovable property is the subject matter of an offence of evidence relating to an offence, he shall seize such property." There is obvious typographical error in this provision. The word "of" between "offence" and "evidence" suggests that it is "or" and not "of". It is expected that when this provision falls for construction, the courts would adopt the beneficial approach. Having said that, section 37(1) of the ICPC Act empowers officers of the Commission to seize proceeds or instrumentalities of corruption.

Seizure is not forfeiture. Seizure and detention of proceeds or instrumentalities of crime matures to forfeiture where, by court order or operation of law, the property devolves or is transmitted to government. Seizure may or may not result to forfeiture, interim or final, as the case may be.

Types of Forfeiture

There are different ways of describing forfeiture. This may depend upon the stage of proceedings and/or the type of procedure used to initiate

forfeiture. Forfeiture procedure can be interim or final. A final forfeiture order vests the subject matter in government whereas interim order of forfeiture freezes the property pending a particular date or the occurrence of a particular event. The procedure used to initiate forfeiture can also be:

- Criminal or conviction-based forfeiture; or
- Civil or non-conviction-based forfeiture.

A crucial difference between criminal forfeiture and civil forfeiture is that the latter transfers property to the State without a prior conviction. Under section 48(1) of the ICPC Act, for instance, the National Assembly mandates courts, to "where in respect of any property seized under this Act, there is no prosecution or conviction for an offence under this Act, upon an application by the Chairman of ICPC, to make an order of forfeiture. I have underlined the critical words. An order of forfeiture can be made where there is no prosecution or conviction, provided that the stipulations of section 48 of the Act are met by the Commission.

Nature of Civil Forfeiture

Civil forfeiture proceedings are actions in rem. As explained in the South African case of Simon Prophet v The National Director of Public Prosecutions,[13] civil forfeiture "rests on the legal fiction that the property and not the owner has contravened the law. It does not require a conviction or even a criminal charge against the owner." Section 135 of the Evidence act is irrelevant because the standard of proof is on the balance of probabilities. Guilt of the person in possession of the res, the subject matter of proceedings is not the basis for the claim or eventual decision of the court. As seen from the provisions of the ICPC Act, non-conviction based proceedings can be commenced without the prosecution or conviction of the person in possession or custody of the res.

Non-conviction-based asset forfeiture is a universally accepted practice. In Gogitidze & Ors v Georgia,[14] the European Court of Human Rights (ECtHR) explained the scope of universal standards of forfeiture as follows:

> Having regard to international legal mechanisms such as UNCAC and the forty Financial Action Task Force Recommendations (in addition to two Council of Europe Conventions), universal standards can be said to exist where:
>
> *a)* The confiscation of property linked to serious offences such as corruption, money laundering, drug offences and other offences

[13] 2006 (1) SA 38 (SCA) (South Africa)
[14] ECtHR 158 (2015)

that generate proceeds of crime without the prior existence of criminal conviction, is encouraged.

b) Confiscation measures may be applied to the direct proceeds of crime and also to property, including any incomes and other indirect benefits, obtained by converting or transmitting the direct proceeds of crime or intermingling them with other possibly lawful assets.

c) Confiscation measures may be applied to persons directly suspected of criminal offences and also to any third parties which hold ownership rights without requisite bona fide with a view to disguising their wrongful role in amassing wealth in question.

On civil forfeiture, the ECtHR also stated that:

> The aim of the civil proceedings in rem was to prevent unjust enrichment though corruption as such, by sending a clear signal to public officials already involved in corruption or considering so doing that their wrongful acts, even if they passed unscaled by the criminal justice system, would nevertheless not procure pecuniary advantage either for them or their families.

This decision and the principles contained therein are germane to judicial consideration of applications for civil forfeiture. In Patience Jonathan v FRN,[15] the Supreme Court of Nigeria endorsed the universality of non-conviction based forfeiture and the principle that such proceedings are actions in rem and that the State can obtain relief upon proof on the balance of probabilities and without proof of guilt.

Non-conviction based forfeiture is a veritable weapon for the recovery of illicit wealth in England and Wales. In Serious Organised Crime Agency v. Gale & Anor[16] the Court of Appeal (England and Wales), held that under the procedure for civil forfeiture in Part 5 of SOCA, the criminal conduct from which the property was derived has to be proved on the balance of probabilities and not beyond reasonable doubt. The starting point is the possession by the defendant of property whose provenance he is unable to provide a legitimate explanation.[17] This principle is firmly part of Nigerian law. In Gabriel Daudu v FRN[18] the Supreme Court endorsed the constitutionality of reverse burden of proof to sustain forfeiture where a

[15] supra
[16] (2012) 2 All ER 1
[17] Ibid, p. 22
[18] (2018) 10 NWLR (Pt. 1626) 169; (2018) LPELR-436337 (SC)

person is found in possession of property above his known legitimate sources of income.

Mr Justice Sweeney noted in The Serious Organised Crime Agency v. Christopher Orumbge Agidi & Anor[19] that "individuals associated with criminal activities are as concerned about losing their assets as they are about losing their liberty, in some cases more so".[20] Mr Justice Sweeney further noted that:

> Thus I concluded that it was plain that, whilst recognising that the reduction of crime is in general best served by means of criminal investigations and proceedings,…the legislative purpose behind civil recovery provisions…is to enable SOCA (and other enforcement authorities), in the public interest and as far as possible, to deprive those whose conduct has been unlawful of the fruits of that conduct.[21]

One of the most notorious civil asset forfeiture cases in Nigeria is IN RE: MONETARY PROPERTY OF THE SUM OF $43,449,947.00 (FORTY THREE MILLION, FOUR HUNDRED AND FORTY NINE THOUSAND, NINE HUNDRED AND FORTY SEVEN UNITED STATES DOLLARS), £27,800.00 (TWENTY SEVEN THOUSAND, EIGHT HUNDRED POUNDS) AND N28,218,000.00 (TWENTY EIGHT MILLION, TWO HUNDRED AND EIGHTEN THOUSAND NAIRA) REASONABLY SUSPECTED TO BE PROCEEDS OF UNLAWFUL ACTIVITIES (ACTION IN REM)[22] which involved several companies linked to a former Director General of the National Intelligence Agency. The following sums were recovered from a flat in Ikoyi, Lagos, based upon execution of a search warrant: $43,449,947.00 (Forty-Three Million, Four Hundred and Forty-Nine Thousand, Nine Hundred and Forty-Seven United States Dollars); £27,800.00 British Pound (Twenty-Seven Thousand, Eight Hundred Pounds); and N23,218,000.00 (Twenty-Three Million, Two Hundred and Eighteen Thousand Naira). The Federal High Court Lagos granted an interim order of forfeiture of the sums of money on April 13, 2017. After hearing parties in the substantive application for final forfeiture, Hassan J. held that "the property sought to be attached are reasonably suspected to be proceeds of unlawful activities, that by every standard this huge sums of money are not expected to be kept without going through a designated

[19] [2011] EWHC 175 (QB); 2011 WL 291756
[20] ibid at 31
[21] ibid at p 32
[22] (Unreported) Suit No: FHC/L/CS/600/17 decided on April 13, 2017 by M. Hassan, J, Federal High Court, Lagos Division

financial institution more so nobody has shown cause why the said sum should not be forfeited to the Federal Government of Nigeria. The court ordered final forfeiture of the sums to the Federal Government of Nigeria.

Practice and Procedure for Forfeiture in Nigeria

Conviction-based asset forfeiture applies where the offender is convicted for an offence. Civil forfeiture, on the other hand, is not contingent upon conviction. In civil forfeiture proceedings an action is filed against the property and not against the person, whether as an offender, owner or person in possession of property; hence the description that civil forfeiture an action in rem proceeding.

Although Nigerian law owes a lot to the common law, and courts have residual and inherent powers to preserve the res of any litigation, the power of Nigerian courts to order forfeiture is not derived from the common law but is statutory, inherent and conferred by the Rules of Court. Every court has inherent powers to order confiscation or forfeiture after conviction. A statute may also specifically empower courts to order forfeiture. A court can also order forfeiture in addition to a sentence of imprisonment or fine.

The primary process for forfeiture of proceeds of crime or unlawful conduct in Nigeria is conviction-based asset forfeiture. That is, forfeiture is generally contingent upon the conviction of the offender and forfeiture orders are directed at the proceeds or instrumentality of crime. The veritable federal statute for this procedure is the Recovery of Public Property (Special Provisions) Act[23] The long title to the Act states that it is:

> An Act to make provisions for the Investigation of the Assets of any Public Officer who is alleged to have been engaged in corrupt practices, unjust enrichment of himself or any other person who has abused his office or has in any way breached the Code of Conduct for Public Officers contained in the Constitution of the Federal Republic of Nigeria.

This Act was the basis for establishing the SPIP which was disbanded for overreaching itself in a number of ways.

[23] Cap R4, LFN, 2004. This Act was originally enacted as the Recovery of Public Property (Special Military Tribunals) (Amendment) Decree 1990.

Interim Forfeiture Procedures in Nigeria

Variants exist of interim forfeiture orders and this is largely dependent on the circumstances of each case. For instance, the type of interim forfeiture order to be made in respect of perishable goods i.e. seizure and sale of goods, varies from that to be made in respect of a going concern.

Courts are empowered to make interim forfeiture orders in both criminal and civil cases and such orders though transient in nature, can be made final or vacated based on evidence presented before the court. In criminal cases, it is a largely a restraining order to stop the Defendant from dealing with the properties in issue pending the determination of the criminal case filed against him. The law recognizes that any suspect who is detected by law enforcement agencies, and who may potentially face a confiscation or forfeiture order, may attempt to dispose of the said properties before the determination of the criminal case pending against him. Court are empowered to make restraining orders such as interim order of attachment, or mareva injunction which have the effect of freezing the property thereby preventing the suspect or accused person as the case may be from dealing with the proceeds of crime or unlawful conduct held by him or the third parties on his behalf.

The procedure for initiation of interim forfeiture varies from legislation to legislation. In Dame Patience Jonathan v FRN[24] the Supreme Court held, inter alia, as follows:

> All interim forfeitures or freezing of accounts made pursuant to the Independent Corrupt Practices and Other Related Commission (ICPC). National Drug Law Enforcement Agency (NDLEA); Economic and Financial Crimes Commission (EFCC); Advance Fee Fraud and other Fraud Related Offences Act are not in conflict with Sections 36 and 44 of the 1999 Constitution.[25]

Interim forfeiture is similar to interim injunction. However, an application for interim forfeiture is brought pursuant to statutory provisions and not the rules of court. Rules of court regulates the procedure for interim injunction. Also, unlike interim injunctions, the applicant for interim forfeiture is not required to give any undertaking as to damages. In Dame Patience Jonathan v FRN[26] counsel to the applicant contended that the trial court erred in granting the interim forfeiture orders when the State make

[24] (2019) LPELR-46944 (SC)
[25] ibid
[26] ibid

no undertaking as to damages. The Supreme Court held that "the grant of the interim forfeiture which the trial Court made without the EFCC giving an undertaking did not render the interim forfeiture order a nullity as learned Senior Counsel seems to suggest."[27] The Court also affirmed the constitutionality of interim forfeiture orders.

Statutes that have codified interim forfeiture procedures includes the ICPC Act and the Advance Fee Fraud and Other Related Offences Act, 2006. But notwithstanding the variation in procedure, every interim order is preservative in nature. The Supreme Court of Nigeria and the Court of Appeal have endorsed interim preservation orders as critical in corruption cases. For instance, in Esai Dangabar v. FRN[28] the Court of Appeal commenting on the interim orders granted by the trial court held, inter alia as follows:

> Therefore, I do not see how the ex-parte order granted by the lower Court violated the Appellant's right to fair hearing because the order was in the nature of a preservatory order. The order is in my view in the interest of both parties. This is because it will prevent dealing with the properties in such a way that could render the final Judgment of the Court nugatory. The order therefore operates until the determination of the civil rights and obligations of the parties with regard to the properties under consideration.[29]

The court also held that the interim preservation order was consistent with section 44 (2) (k) of the 1999 Constitution upon the basis that "The lower Court made the order in issue in order to preserve the properties suspected of being proceeds of crime in view of the fact that the Appellant may take steps to defeat the purpose of the relevant provisions of the EFCC Act which deals with forfeiture.[30] The court observed that the "trend all over the world is to prevent the accused person from retaining the proceeds of his crime and to deprive him of whatever benefit he may have derived from his criminal conduct." The procedure is consistent with the provisions of sections 43 and 44 of the CFRN, 1999 (as amended).[31]

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[27] ibid

[28](2012) LPELR-19732(CA)

[29] Per Bada JCA

[30] See *R v. Metropolitan Police Commissioner Ex-Parte Blackburn* (1968) 1 All E. R. Page 760 at 763

[31] See also *Dr. B. O. Akingbola vs. The Chairman. Economic and Financial Commission* (Unreported) Appeal No: CA/L/388/10 delivered on 2/3/2012. See also *Nwude v. Chairman, EFCC* (Unreported) Appeal No: CA/A/ 183/2004 delivered on Thursday, 15th day of May, 2005 by the Court of Appeal, Abuja Division.

Practice and Procedure for Interim Forfeiture under the ICPC Act

While sections 37 and 38 of the Act deals with the powers of officers of the Commission to seize property during investigation, sections 45 to 48 of the Act provides for asset forfeiture. Under section 48 of the Act, the Chairman of the Commission may apply ex-parte to a Judge of the High Court of a State or Federal Capital Territory for forfeiture of property seized during investigation where any property seized under this Act there is no prosecution or conviction for an offence under the Act. The application shall be made before the expiration of 12 months of the seizure of the property. The Commission shall convince the court that "such property had been obtained as a result of or in connection with an offence under sections 3 to 19" of the ICPC Act. Because the procedure envisaged by section 48 and 49 of the ICPC Act is civil in nature, the burden on the prosecution is not proof beyond reasonable doubt but on the balance of probabilities.

The Judge may issue an order directing that a notice be published in the Federal Gazette and in at least two national newspapers requiring any person who claims to be interested in the property to appear and show cause why the property should not be forfeited to government. If after the expiration of the notice the Judge is satisfied that the property was acquired in contravention of sections 3 to 19 of the Act and that there is no bona fide purchaser for value interested in the property, the Judge may order forfeiture of the property.

The nature of advert to be placed came up once in court where the judge surprisingly ordered a certain type of expensive advert not bearing in mind cost implication of such to the anti-corruption agency.

But where no application for final forfeiture is made within 12 months of seizure, the property shall be released to the person from whom it was seized.[32] On the other hand, where any property has been seized under the Act, and so long as such seizure remains in force, any dealing effected by any person or between any persons in respect of such property, except any dealing effected under the Act or by virtue of the Act by an officer of a public body in his capacity as such officer, or otherwise by or on behalf of the Government of Nigeria, or the Government of a State, or a Local Government or other statutory authority, shall be null and void, and shall not be registered or otherwise given effect to by any person or authority.[33]

[32] See section 48(4) ICPC Act
[33] See section 49 ICPC Act

As can be deduced from section 48 of the ICPC Act, non-conviction based forfeiture under the Act is restricted and involves two phases. The first phase is the preservation stage where the court secures the property. The second stage is the hearing to determine whether the property should be forfeited, and if so, the forfeiture order.[34]

Practice and Procedure for Interim Forfeiture under Section 17 of the Advance Fee Fraud and other Related Offences Act, 2006

Section 16 of this Act provides for conviction-based forfeiture while section 17 of the Act prescribes the procedure for non-conviction based or civil asset forfeiture of proceeds of unlawful activity. Our focus is on interim forfeiture.

Section 17 AFFA, 2006 is a unique device to recover illicit money. Under section 17 (1) AFFA 2006, a High Court may order interim forfeiture of property if the Court is satisfied upon an ex parte application by the Commission that the property is unclaimed or reasonably suspected to be proceeds of unlawful activity. However, before the High Court can order final forfeiture of property that was the subject of an interim forfeiture order, the person in possession of the property or person interested shall be notified by service of the interim order and publication, as the court shall order, to appear before the court within 14 days to show cause why the court should not make a final order of forfeiture of the property in favour of the Federal Government of Nigeria. Requisite notice or publication is disjunctive.[35] At the expiration of 14 days of the notice or publication, parties shall be heard upon motion on notice filed on behalf of the Federal Government of Nigeria for final forfeiture. Section 17 (6) AFFA places it beyond doubt that forfeiture procedure under section 17 of the Act is civil in nature.

In Patience Jonathan's case,[36] the Supreme Court of Nigeria explained the rationale behind section 17 of the Advance Fee Fraud Act with reference to UNCAC and similar legislations in other countries as follows:

> All of them apply the standard of proof in civil law rather than proof beyond reasonable doubt required in criminal prosecution. Some only apply to proceeds of crime while others apply both to the proceeds of crime and the instruments used in the commission of crime. Nigeria is a member State and signatory to the United Nations

[34] This procedure is similar to the procedure in Chapter 6 of the Prevention of Organized Crime Act, 1998 of the Republic of South Africa.
[35] See section 17 (3) AFFA
[36] supra

Convention Against Corruption (UNCAC) which came into force in 2005. Article 54 enjoined each state party to consider taking such measure as may be necessary to allow confiscation of property suspected to be proceeds of unlawful act without a criminal conviction in cases in which the offender cannot be prosecuted. In 2006 the Advance Fee Fraud and Other Fraud Related Offences Act was enacted in line with the convention wherein non conviction-based forfeiture was legalized through Section 17 of the said Act. This provision is not limited only to Nigeria.[37]

Forfeiture Procedure under other Nigerian Legislations

Provisions on forfeiture abound in other Nigerian statutes such as:

a. Section 3 of the Failed Banks Recovery of Debts and Financial Malpractices in Banks Act;
b. Sections 337-339 Administration of Criminal Justice Act, 2015;
c. Sections 33, 34, and 36 National Drug Law Enforcement Agency Act;
d. Sections 168, 169, and 173 Customs and Excise Management Act;
e. Section 29 and 34, Economic and Financial Crimes Commission (Establishment) Act;[38]
f. Section 23(2) of the Code of Conduct Bureau and Tribunal Act;
g. Recovery of Public Property (Special Provisions) Act 2004; etc.

Under the provisions of the above statutes, a court may not order interim forfeiture if sufficient materials are not placed before it to justify the grant.[39] A court may set aside an interim order of forfeiture where the respondent shows sufficient cause why the order ought not to have been granted.[40] But under section 17 of the Advance Fee Fraud Act, if the respondent does not show sufficient cause by proving that the property or money is legitimate, the court may have no option than to make a final order of forfeiture. A final forfeiture order vests the money or property in government.

An application for interim forfeiture is made ex parte. Any person who claims to be interested cannot be joined.[41] The lifespan of an interim forfeiture order made in the course of a criminal matter is tied to the final

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[37] supra

[38] See Umezulike vs. Chairman, EFCC (2017) LPELR - (43454); Senator Nwaoboshi & Ors v FRN (2018) LPELR-45107 (CA) @ Pp 24-30, Paras. A-C;

[39] See Fimhab Nig. Ltd v FRN (2018) LPELR-43882(CA) P. 12, Paras. B-C

[40] See Felimon Enterprises Limited v The Chairman, EFCC & Anor (2016) LPELR-43829 (SC) @ Pp. 8-16, Paras. E-D

[41] See EFCC V Fayose &Anor (2018) LPELR-44131 (CA) Pp. 44-48, Paras. C-D

determination of the criminal charge against the Defendant.[42] This principle does not apply to civil forfeiture because such proceedings are sui generis. In the case of non-conviction-based forfeiture, the lifespan of the interim order is as ordered by the Court or as stipulated in the law under which such application is brought.

Final Forfeiture

The procedure for final forfeiture under the non-conviction mode is as determined by the enabling statute. However, in conviction-based forfeiture, a court may, during or at the end of the trial, order confiscation or forfeiture where it appears that property has been used in the commission of an offence, or in respect of which an offence has been committed. Under Section 330 of the Administration of Criminal Justice Act, 2015, for instance, where any property regarding which an offence appears to have been committed or which appears to have been used in the commission of an offence is produced before the court, the court may make an order for the custody or disposal of the property. The court may make a final order of disposal by confiscation, destruction or delivery to the person entitled after trial.[43] Where a court makes an order of disposal, it may also make an order of forfeiture or confiscation or sale.[44] "Property" in the case of property regarding which an offence appears to have been committed, includes both the property in its original state and any property into or for which it has been converted or exchanged and anything acquired by means of that property immediately or subsequently.[45] A court can order forfeiture notwithstanding that the original property may have been laundered, converted, or disguised in any form.

The prosecution must prove by direct or circumstantial evidence that a particular property is the proceeds of crime or was derived from crime or an instrumentality of crime before an order of forfeiture can legitimately be made by a court. The burden of proof is upon the prosecution to prove that the property is the proceeds or instrumentality of crime. However, unlike the burden of proving the element of the crime and the guilt of a defendant (which must be beyond reasonable doubt), the evidential burden of proving that property is the proceeds of crime may be discharged on the balance of probabilities.[46]

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[42] See EFCC V Zahara Shopping Mall (2016) LPELR-42210 (CA) Pp. 9-14, Paras. D-B
[43] See section 331 ACJA, 2015
[44] See section 332 ACJA, 2015. See also sections 333-346 ACJA.
[45] See section 329 ACJA
[46] See R. v. Ferguson (1970) 2 All E.R. 820.

Conclusion

It is now common place for legal practitioners to contest the most basic principle or point of law before our courts. However, the Supreme Court has brought clarity to the area of interim forfeiture and recovery of the proceeds of corruption in Gabriel Daudu's case and Patience Jonathan's case. Their Lordships took pains in Jonathan's case to explain the history and principles behind interim forfeiture orders. These decisions should be embraced by our Judges. However, I must stress that courts and anti-corruption agencies are partners in the fight against corruption. The fight against corruption will fail if Judges do not consciously work to uphold legal principles, the sanctity of the criminal justice system against corrupt persons who deliberately twist the law. The public expects nothing less. Demonstration of firmness and refusal to compromise the legal and judicial process is the best way to win public confidence in the justice system. Forfeiture of illicit gain is just one method to pass the message that crime does not pay. Interim forfeiture orders are a step in the journey of final forfeiture.

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ANTI-CORRUPTION AND ASSET RECOVERY IN NIGERIA: AN EVALUATIVE APPROACH

Esa O. Onoja*

Abstract

Nigeria's legal regime for fighting corruption includes statutes that criminalize corrupt conduct and establishment of anti-corruption agencies (ACAs) for prevention and enforcement of relevant laws. Nigeria deploys a combination of criminal and other dissuasive sanctions and asset recovery with the aspiration of changing corrupt behaviour. This article highlights the legal regime for dealing with corruption and asset recovery in Nigeria, and Nigeria's domestic and international experience in asset recovery. The article finds that while domestic asset recovery regime require legislation for asset management, anti-corruption agencies, investigators and prosecutors need to increasingly develop capacity to leverage on the stout legal framework for asset recovery in Nigeria which can deny wrongdoers illicit assets. The article concludes that the Common African Position on Asset recovery is a potential game-changer in the aspiration of Nigeria and other African countries for return of African assets from foreign jurisdictions.

Introduction

Nigeria and Nigerians recognize that corruption is a national and global problem. It is a malaise that afflicts both developed and developing countries.[1] The United Nations General Assembly in 64/237 titled: Preventing and combating corrupt practices and transfer of assets of illicit origin and returning such assets, in particular to the countries of origin, consistent with the United Nations Convention against Corruption,[2] adopted in March 2010 stated, inter alia, that: "fighting corruption at all levels is a priority and that corruption is a serious barrier to effective resource mobilization and allocation and diverts resources away from

* Dr. Esa Onoja is Chief of Staff to the Chairman, Independent Corrupt Practices and Other Related Offences Commission (ICPC), Nigeria. He is a Senior Lecturer at the Abuja Campus of the Nigerian Law School.

[1] Indira Carr, "Fighting Corruption Through Regional and International Conventions: A Satisfactory Solution?" European Journal of Crime, Criminal Law and Criminal Justice (2007) pp 121-153 at 122-123 where she stated that: "It must not be surmised from the close relationship between corruption and poverty that it is exclusively a developing country problem. It occurs in developed countries, the recent scandal in Britain surrounding the Labour Party peerage for loans being one possible such illustration."

[2] Written as found in the Resolution.

activities that are vital for poverty eradication, the fight against hunger, and economic and sustainable development." There is evidence that grand corruption in developing countries is oiled by complicity of nationals and powerful business and economic interests of developed countries. In *The Federal Republic of Nigeria v Process & Industrial Developments Ltd*[3] (the P&ID case) Sir Ross Cranston, sitting as a Judge of the High Court, Queens Bench Division, UK, agreed with the argument of Nigeria that the Gas Processing Contract (GPSA), upon which the arbitral award of 31 January 2017, which ordered Nigeria to pay P&ID damages of US$6.6 billion (the outstanding amount having increased to US$10 billion as at the date of the judgment of Sir Cranston), was procured by bribes. He stated:

> *In my view Nigeria has established a strong prima facie case that the GSPA was procured by bribes paid to insiders as part of a larger scheme to defraud Nigeria. There is also a strong prima facie case that P&ID's main witness in the arbitration, Mr Quinn, gave perjured evidence to the Tribunal and that, contrary to that evidence, P&ID was not in the position to perform the contract. As to the Jurisdiction and Liability stages of the arbitration, there is a prima facie case that they were tainted by the conduct of Nigeria's advocate, Mr Shasore.*[4]

Also, in 2009, Kellogg Brown & Root LLC pleaded guilty to charges for its participation in a decade-long scheme to bribe Nigerian government officials to obtain engineering, procurement and construction contracts to build liquefied natural gas facilities in Bonny Island, Nigeria, valued at $6 billion. The firm paid a criminal fine of $402 to the United States Government. Similarly, it was recently reported that $340 million in a London Law firm's bank account is suspected to be connected to Najib Razak, a former Prime Minister of Malaysia recently convicted of corruption. Goldman Sachs reached a settlement with the Malaysian government over the fraud that led to the prosecution of Razak.[5]

The above examples underscore the need for domestic, regional and global frameworks for corruption reduction. Nigeria's recognition of the challenge and corrosive effects of corruption is evident at the highest political level. President Muhammadu Buhari's Goodwill Message to the Conference of Catholic Bishops in Nigeria, delivered by Vice President Yemi

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[3] [2020] EWHC 2379 (Comm) delivered on 4th September, 2020

[4] Ibid, Para 226 of the Judgment of the court.

[5] See "340m in London law firm's account suspected of 1MDB connection" available at *https://www.riskscreen.com/kyc360/news/340m-in-london-law-firms-account-suspected-of-1mdb-connection/* last accessed 9/3/2020 5:06PM

Osinbajo, SAN, wherein he stated that "corruption in our country is so endemic that it constitutes a parallel system. It is the primary reason for poor policy choices, waste and of course bare-faced theft of public resources"[6] is an honest affirmation of the effects of corruption in Nigeria.

Nigeria's national effort to fight the pandemic of corruption can be seen in the criminalization of corruption, establishment of anti-corruption agencies (ACAs), the National Anti-Corruption Policy (NACS), public sector corruption prevention measures and public education and enlightenment strategies and policies. The principal anti-corruption agencies in Nigeria are the Independent Corrupt Practices and Other Related Offences Commission (ICPC)[7], the Economic and Financial Crimes Commission (EFCC)[8], and the Code of Conduct Bureau. ICPC and EFCC are empowered by their enabling statutes to enforce all anti-corruption legislations in Nigeria, including recovery of illicit assets.

Since the year 2000 when the ICPC was created as a dedicated anti-corruption agency, the Commission and other ACAs have deployed their enforcement powers in furtherance of their statutory mandate. However, save for the conviction and sentence of a few high-profile defendants, the principal ones being two former governors who were convicted and sentenced to substantial terms of imprisonment,[9] ACAs have not had much success in successful prosecution of high-profile defendants that were arraigned for grand corruption. High profile offenders are arguably responsible for grievous loss of State resources and persistent handicap of the State to ensure security[10] and conducive economic, social and political environment for the realization of the vast potentials of the country.

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[6] See, "Corruption is cause of poverty in Nigeria – Buhari," *https://www.premiumtimesng.com/news/top-news/189983-corruption-is-cause-of-poverty-in-nigeria-buhari.html* Last accessed 8/10/2020 4:09 PM

[7] ICPC was created by the Corrupt Practices and Other Related Offences Act, 2000

[8] Established by the Economic and Financial Crimes Commission (Establishment) Act, 2002.

[9] See *FRN v Joshua Dariye* (unreported) Charge No.: FCT/HC/CR/81/07 delivered on 12th June, 2018 by Hon. Justice A.A.I. Banjoko of the High Court of the Federal Capital Territory; see also *FRN v Jolly Nyame* (Unreported) Charge No.: FCT/HC/CR/82/07 by Hon. Justice A.A.I. Banjoko of the High Court of the Federal Capital Territory. The convictions in both cases were affirmed by the Supreme Court. But the maximum sentence of 14 years' imprisonment for some of the counts were reduced to 12 years' imprisonment without option of fine.

[10] See Adetayo Olaniyi Adeniran, "Assessment of federal government's effort on looted asset recovery in Nigeria as a means of fighting corruption and terrorism" *https://www.researchgate.net/publication/329453250_Assessment_of_federal_governmen*

A noticeable ray of light in Nigeria's anti-corruption effort, as exemplified by the case of *Patience Jonathan v FRN*,[11] is increasing reliance of ACAs on asset recovery as a proxy for criminal sanctions which can combine to negate the latent impunity of perpetrators of grand corruption.[12] There is no court record that before the above case that the writer is aware of where illicit assets had been recovered from the wife of a former President of Nigeria. Although ACAs may silently and grudgingly concede that the percentage of recoveries in the media space pales in comparison to the quantum of grand theft,[13] critics may equally concede that the baby-steps of asset recovery has potential to deny criminals of the dream of a life of affluence which they crave.[14] But critics seem correct in the assessment that "Nigeria's asset recovery effort is difficult to measure, due to a substantial lack of transparency in data around recovered assets". The current probe of the acting Chairman of EFCC, Ibrahim Magu over allegations of lack of transparency in, inter alia, handling of asset recovery by the EFCC tends to lend credence to such critics.

It has long been recognised that: "Asset recovery is a key deterrence to corruption. When the corruptly acquired assets and gains are sequestered from the criminal, over and above other penal measures and sanctions, the motive or desire to engage in corruption is greatly reduced."[15] An author remarked on the significance of asset recovery, or the taking of profits out of crime that:

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ts'_effort_on_looted_assets_recovery_in_Nigeria_as_a_means_of_fighting_corruption_and_terrorism Last accessed 8/10/2020 4:44 PM

[11] (2019) LPELR-46944 (SC)

[12] Mrs Jonathan was a public servant who income was known but still argued before the courts that the substantial amounts recovered from her were legitime. The Courts found that her claim was baseless.

[13] It is estimated that close to $400 billion was stolen through corruption and illicit financial flows from Nigeria between 1960 and 1999 alone. See "Nigeria's corruption busters" *https://www.unodc.org/unodc/en/frontpage/nigerias-corruption-busters.html* last accessed 9/3/2020 5:43 PM

[14] Gbenga Lawal, for instance ascribe the primary motive for corruption as quest for personal gain. See Gbenga Lawal, "Corruption and Development in Africa: Challenges for Political and Economic Change" Humanity and Social Science Journal, 2 (1): 01-07, 2007 at p. 4 available at *https://www.idosi.org/hssj/hssj2(1)07/1.pdf* last accessed 9/3/2020 6:25 PM. Lawal's claim is supported by numerous literature on the political economy of crime such as that of Gary S. Becker, footnote 17, infra

[15] See "Recovery of stolen public assets is a key deterrence to graft" *https://www.standardmedia.co.ke/commentary/article/2001271775/recovery-of-stolen-public-assets-is-a-key-deterrence-to-graft last accessed 9/3/2020 5:56* PM

Until the profits of crime are taken away from subversive and criminal factions, there is little chance of effectively discouraging criminal and abusive conduct that produces great wealth or, through its profits, allows power and prestige to be acquired. As soon as the state devises methods for the tracing and seizure of such funds, there is an obvious and compelling incentive for the criminal to hide the source of his ill-gotten gains - in other words, to engage in money laundering.[16]

Asset recovery proceedings in courts in Nigeria provides empirical proof of laundering of proceeds of corruption by Nigerian corrupt political, bureaucratic, and business elites. The foregoing, and asset recovery efforts of ACAs in Nigeria is supportive of its potential contribution to the denial of proceeds of corruption which can be further enhanced by creative deployment of provisions of extant law which has led to recovery of illicit assets or of the profits of corrupt conduct in recent times. As the cases of Mrs Patience Jonathan[17] and Mohammed Abacha[18] shows, this practice has found support in the hallowed chambers of the Supreme Court of Nigeria.

Nigeria's asset recovery regime is broadly based on conviction-based forfeiture and civil forfeiture procedure. Nigeria has had modest successes in asset recovery in recent years. For instance, pursuant to the Forfeiture of Assets etc (Certain Persons) Decree No. 53 of 1999, the family of General Sani Abacha returned US$625,263,187.19, £75,306,886.93 pounds sterling and N100,000,000 while Atiku Bagudu, current Governor of Kebbi State, returned N250,000,000.00.[19] From 29 May 2015 to 25 May, 2016, the Federal Government reported that it made cash recoveries in the following amounts: N78,325,354,631.82; USD 185,119,584.61; GB Pounds 3,508, 355.46; and Euro 11,250.[20] In furtherance of the determination of the Federal Government of Nigeria, President Muhammadu Buhari also signed Executive Order No. 6 of 2018 for the preservation of suspicious assets that are liable to forfeiture from corrupt public officials.

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[16] See Dr. Barry A. K. Rider, "The Wages of Sin - Taking the Profit Out of Corruption - A British Perspective" Penn State International Law Review, Vol. 13 (1995) pp 391-341 at 391 See: *https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1359&context=psilr* last accessed 9/3/2020 6:15 PM

[17] Supra

[18] Infra, footnote 16

[19] See Mohammed Abacha v FRN LER (2014) SC.40/2006 available at *https://easylawonline.files.wordpress.com/2014/01/mohammed-abacha-v-federal-republic-of-nigeria1.pdf* last accessed 9/4/2020 4:36 PM

[20] See *http://saharareporters.com/sites/default/files/LOOT-RECOVERY.pdf* last visited 9/4/2020 5:08PM

Nigeria has combined domestic asset recovery efforts with championing anti-corruption at both regional and global levels where it advocated for deepening of African continental efforts to stem illicit financial flows (IFFs) from Africa. Nigeria proposed the Common African Position on Asset Recovery which was adopted by the Assembly of Heads of States and Government of the African Union (CAPAR) in February, 2020. CAPAR is a political instrument to advocate for domestic, regional and global voices and structures for the detection, identification, return and management of African assets. CAPAR also calls for broad cooperation to stem IFFs from Africa to capacitate the continent to meet its development agenda, particularly Post-2015 Agenda and Agenda 2063.

The main proposition of this paper is that asset recovery can be one of the principal tools to bring about change in the minds of the corrupt and persons minded to violate anti-corruption statutes, to communicate that the perceived opportunities and benefits of corruption are out-weighed by the chances of being caught and denied the loot.[21] Relying on Gary S. Becker's timeless findings,[22] that there is a correlation between the income derived from crime and the decision to offender, this article posits that recovery and denial of the profits of corruption is an important anti-corruption tool because it can frustrate the desire of offenders to accumulate wealth.[23] The article relies principally on legal source materials

[21] See, Gary S Becker, "Crime and Punishment: An Economic Approach" The Journal of Political Economy, Vol. 76, No. 2 (March, 1968) pp 169-217 at 176 where he said a common generalization by persons with judicial experience is that the probability of detection and sanctions has more deterrent effects than the severity of sanctions. See also, Esa O. Onoja, Economic Crimes in Nigeria: Issues and Punishment (Abuja: Lawlords, 2018) p. 39 where the author stated as follows: "Crime pays when a criminal gets away with crime, retains the proceeds of crimes, profits from wrongdoing, or in cases where the criminal does not get the punishment that he deserves proportionate to culpability, harm or level of wrongdoing."

[22] Ibid, at p. 177 where Becker stated that: ""that there is a function relating the number of offenses by any person to his probability of conviction, to his punishment if convicted and to other variables, such as the income available to him in legal and other illegal activities, the frequency of nuisance arrests, and his willingness to commit an illegal act".

[23] On the theories of change in anti-corruption work, see Jesper Johnson, *Theories of change in anti-corruption work: A tool for programme design and evaluation,* Chr. Michelsen Institute (CMI/U4 Anti-Corruption Resource Centre, October 2012 No 6 available at at p. 4 where the author stated that: "The principal-agent model, focused on incentives to modify individual behaviour, underpins many anti-corruption interventions… Often used by economists, the principal-agent model views change from an individual, micro perspective. In the anti-corruption field, the guidance that the principal-agent literature gives to implementation and programme ToCs is that the individual bureaucrat can be prevented from engaging in corrupt behaviour through sanctions, incentives, and controls."

and other materials reviewed on the desk from a legal perspective, and projects, what the writer conceives to be, the change potentials of a well-articulated and executed asset recovery agenda working in tandem with uncompromising deployment of penal sanctions to negate the latent claim of superiority intrinsic in retention of proceeds of wrongdoing by offenders. The article explores Nigeria's anti-corruption architecture and experience with asset recovery, and enthuse that the domestic and international dimensions of the learning curve of Nigeria offers lessons to countries at the threshold of designing and implementing anticorruption strategies for effective asset recovery. The article also highlights the CAPAR as an advocacy tool for recovery of African assets consigned to foreign jurisdictions towards promotion of peace, human rights and good governance in Africa. The article urges ACAs, investigators, and prosecutors to uncompromisingly trace, seize and seek forfeiture of proceeds of corruption inclusive of profits and income derived from such proceeds and assets intermingled with or into which proceeds have been transformed in any way, without leaving the offender to retain an iota of illicit assets.

Anti-Corruption and Asset Recovery Legislations in Nigeria

Nigeria's anti-corruption and asset recovery regime is regulated by several legislations which include:

1. The Criminal Code;
2. The Penal Code;
3. Code of Conduct Bureau and Tribunal Act;
4. ICPC Act 2000;
5. EFCC Act 2002;
6. Advance Fee Fraud and Other Related Offences Act, 2006;
7. Public Procurement Act, 2007
8. Money Laundering (Prohibition) Act, 2011, (as amended);
9. Nigeria Financial Intelligence Unit Act 2018; and
10. Mutual Legal Assistance Act, 2018.

Nigeria's anti-corruption and asset recovery framework substantially aligns with the United Nations Convention Against Corruption (UNCAC) and the African Union Convention on Preventing and Combating Corruption (AUCPCC). Section 6 of the ICPC Act specifies measures to prevent and combat corruption as mandated by Articles 1 and 5 of UNCAC. The Code of Conduct Bureau and Tribunal Act codifies a code of conduct for public officials in tandem with Article 8 of UNCAC. Also, the measures codified in the Money Laundering Act 2011(as amended) and various statutes that criminalise different forms of corruption and related offences

in Nigeria are in sync with Articles 14 and Chapter III of UNCAC. However, adjudication of corruption cases has revealed gaps and loopholes in extant legislations that the legislature is yet to amend to minimize opportunities for defendants to escape justice. The gaps in some legislations include technicality of some offences which permit defence counsel to twist and prolong cases by filing tenuous objections.

Anti-Corruption Institutions

The main anti-corruption institutions in Nigeria include:

1) Independent Corrupt Practices Commission (ICPC);
2) Economic and Financial Crimes Commission (EFCC);
3) Code of Conduct Bureau;
4) Nigeria Police Force (NPF)
5) Bureau of Public Procurement;
6) Nigeria Customs Service;
7) Nigeria Financial Intelligence Unit.

The plethora of anti-corruption institutions in Nigeria is in agreement with Article 36 of UNCAC and Article 5(3) of the AUCPCC both of which enjoin State Parties to establish, maintain and strengthen independent national anti-corruption authorities or agencies, or ensure the existence of a body or bodies of persons specialized in combating corruption through law enforcement. In line with Nigeria's international commitment, section 6 of the ICPC Act mandates the Commission to enforce provisions of the Act or any other law against corruption; adopt strategies and measures to prevent corruption; and engage in public education and enlightenment against corruption. In order to guarantee the operational independence of the Commission, section 3 (14) of the ICPC Act provides that: "The Commission shall in the discharge of its functions under this Act, not be subject to the direction or control of any other person or authority."

The ICPC Act and the EFCC Act have survived several constitutional challenges. For instance, some States of the Federation unsuccessfully challenged the constitutionality of the ICPC Act in *Attorney-General of Ondo State v. Attorney-General of the Federation.*[24] However, one of the major impediments to Nigeria's anti-corruption efforts are decisions of some trial court Judges that support groundless assaults on provisions of anti-corruption enactments that have been upheld by the Supreme court of Nigeria. A case in point is *FRN v Adeniyi Francis Ademola & Ors.*[25] In that

[24] (2002) 9 NWLR (Pt. 772) 222
[25] (Unreported) Suit No: FCT/HC/CR/21/2016

case, a serving Judge of the Federal High Court was arraigned for corruption. The trial Judge, Justice Jude Okeke, now deceased, held that sections 53 and 60 of the ICPC Act (which create presumption of corruption) violate section 36(6)(a) & (b) of the 1999 Constitution. This conclusion was gratuitous and made without affording the State an opportunity to argue the point.

The focus of this article is not the causes of inertia and tepid success in taming grand corruption or low success rate of conviction of high-profile offenders in Nigeria, but the role of asset recovery in the prevention and reduction of corruption. However, anti-corruption efforts are bound to fail where there is seeming compromise by actors within the criminal justice sector in cahoots with perpetrators. Nuhu Ribadu, the first Chairman of EFCC reasoned as follows:

> Why have they [corruption and other economic crimes] continued unabated in spite of the present Government's laudable steps to address them? It is because many are those who want the old dispensation to continue. There are those whose lives thrive on corruption. There are yet others who even though are paid to check the activities of these ones are ever willing to share in the proceeds with the event that they themselves become culprits. In those circumstances corruption is made to look like a difficult monster to fight when it is not.[26]

Asset Tracing and Recovery as an Anti-Corruption Tool

The primary objective of corrupt offenders is to make profit from their crimes or accumulate wealth. Penal sanctions can deter offenders, but penal sanctions would be ineffective from an economic perspective if an offender is allowed to keep a nest of illicit assets to enjoy after imprisonment or other forms of sanctions. Tracing and recovery of illicit assets deny offenders of the hope of a life of luxury. Article 31 of UNCAC enjoins State Parties to adopt measures to seize and confiscate the proceeds of corruption offences up to the maximum value of such proceeds. Article 31 (2) of UNCAC in effect obligates State Parties not to allow the corrupt to keep an iota of the proceeds of corruption. This obligation is

[26] Nuhu Ribadu, "Obstacles to Effective Prosecution of Corrupt Practices and Financial Crime Cases in Nigeria" *http://www.nigerianlawguru.com/articles/criminal%20law%20and%20procedure/OBSTACLES%20TO%20EFFECTIVE%20PROSECUTION%20OF%20CORRUPT%20%20PRACTICES%20&%20FINANCIAL%20CRIMES%20IN%20NIGERIA.pdf* Last accessed 8/11/2020 9:59 AM

particularly interesting because corrupt offenders in Nigeria are known to propose return of the proceeds of their crimes in exchange for plea bargain or non-prosecution agreements, knowing full well that most investigations fail to detect the lion share of their loot. This is a critical area where investigators and prosecutors must attune their moral compass and elevate their skills and practice in order to avoid suggestions of pervasive compromise in ready acceptance of proposals by defendants without interrogation of the value of assets earned from offending compared with assets defendants offer to relinquish to the State.

Investigation of Suspicious Assets

Article 31(2) of UNCAC creates on obligation for State Parties to adopt measures to "enable the identification, tracing, freezing or seizure of any proceeds of corruption or property, equipment or other instrumentalities used in, or destined for use in offences…" Also, under Article 31 (4) & (5) of UNCAC, the obligation to trace, seize and confiscate proceeds of corruption or property, equipment or instrumentality directly connected therewith, includes an obligation to trace, seize and confiscate such assets even where they "have been transformed or converted in part or full, into other property"[27] or "have been intermingled with property acquired from legitimate sources…"[28] or income or profits from same. The implication of the foregoing is that investigators are expected to trace and seize the following:

a) Direct proceeds of corruption or related offences;
b) Property, equipment or other instrumentalities used or destined for use in corruption or related offences;
c) Property or assets into which proceeds of corruption were transformed or converted, in part or full (such as real estate, bonds, shares, or other choses in action);
d) Assets intermingled with proceeds of corruption; and
e) Income or other benefits derived from the proceeds of crime, from property into which such proceeds have been transformed or converted, or from property into which such proceeds have been intermingled.[29]

Unfortunately, persons familiar with the matter attest that most asset investigations in Nigeria fail to discover all the assets of particular offenders and investigators often gloss over thorough investigation

[27] Article 31(4) UNCAC
[28] Article 31(5) UNCAC
[29] See Article 31(6) UNCAC

laundering of proceeds of corruption and are largely not equipped or feign inability to trace assets comingled with proceeds of corruption. The statutory framework for investigation in Nigeria is robust, investigator friendly, and is loamy sub-soil for practice of adept investigation skills when deployed with the necessary capacity and honesty of purpose.

The enabling enactments setting up anti-corruption institutions in Nigeria are pregnant with investigative powers. ACAs can investigate any person (natural or artificial) suspected of commission or complicity in the commission of corrupt practices or any related offence. Investigators can deploy any lawful means or technique to ferret or elicit facts.[30] Modern technology has enabled perpetration of diverse forms of crimes, including corrupt practices, with the aid or assistance of gadgets. Consequently, investigators must be on top of their game in skills, techniques, tools, disposition and attitudes to detect offending. While gadgets can aid criminals, gadgets (software and hardware), and special investigative techniques (such as electronic and digital surveillance),[31] can also aid law enforcers in the performance of their often risky and delicate duties.

Article 50 of the United Nations Convention Against Corruption not only allows special investigative techniques and also enjoins State Parties to "take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom." UNCAC, Nigerian case law and statutes are sufficient legal basis to ground panoramic investigation and recovery of illicit assets.

Scope of Investigation Powers

Other than the prohibition of coerced confessions, investigators in Nigeria are generally not constrained in how they obtain evidence.[32] This common law principle is now codified in sections 14 and 15 of the Evidence Act,

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[30] On techniques of investigation, see generally, Esa O. Onoja, "Legal Appraisal of Police Investigation Techniques," *Benue State University Journal of Private and Public Law* (August, 2008), pp.171-193.

[31] On the role of electronic surveillance in crime fighting, see generally, Esa O. Onoja and James A. Agaba, "An Appraisal of the Role of Covert Electronic Surveillance in the Fight against Terrorism in Nigeria," *University of Jos Law Journal,* Vol. 9 No.2 (September 2010) pp.245-261.

[32] The leading authorities on this principle is *Kuruma Son of Kanio v. R* (1955) 2 WLR 233, at pp.226-227 and *Musa Sadau v The State* (1968) NMLR 208.

2011. In *Igbinovia v The State*[33] the Supreme Court of Nigeria declared that: "Detection of crimes is a never ending task the police is called upon to perform and in the performance of this task, they ought to be able to beat the suspects in their game of hide and seek." Thus, law enforcement agencies, including ACAs, have wide discretion in the technique,[34] scope and lawful physicality of investigation. Lawful physicality in this sense means that where there is actual or real likelihood of resistance, ACAs can lawfully use force to seize evidence, or extract physical materials that have probative value from a suspect. The power of seizure extends to the power to seize illicit assets or proceeds of crime. Where obvious leads are not pursued, or where a relative of a suspect, through whose account money is laundered, or in whose name property reasonably suspected to be illicit wealth is hidden is not investigated, or where an investigator neglects to take the statement of collaborators at all, or take such statements under caution, or relevant accounts and entities are not profiled, obvious lapses can reasonably leave room for suspicion that the investigation is being compromised.

Seizure of Property during Investigation

Where special tools are available, it is possible to elicit evidence of offending, including property trails with the aid of such tools. The fruits of special tools must also be adroitly analyzed and cross-matched with data from open and not so open sources to elicit links and conspiracy chains. Where assets linked to potential suspects are found, it is useful to quickly seize, take photographs and prepare an inventory of the property to record the physical condition of the property as at the date of seizure, and minimize stripping and transfer of title to third-parties. Before actual seizure, investigators ought to design a pre-seizure and post-seizure plan for the management of the asset. Where the asset is liable to decay, it is more convenient to approach a court for an order of sale under the Administration of Criminal Justice Act or equivalent state law, than exercise power of sale outside the supervision of court (where such power is conferred by statute) because judicial supervision minimizes allegations of opacity of sale or other avoidable distractions by suspects.

Proceeds of crime or instrumentalities of crime physically held by a suspect should be seized and removed from his/her custody or control immediately it is discovered during investigation to preserve same as

[33] (1991) NSCC 63

[34] The Supreme Court held in *Ajayi v The State* (2013) 9 NWLR (Pt.1360) 589 that where a crime is reported, a law enforcement agency, in this case, the Police, can look in any direction to fish out the perpetrator.

evidence and prevent transfer or destruction. This can be done through the instrumentality of a search warrant. However, the ICPC Act grants the Commission and its officers' special powers of seizure of property that are unique in the annals of Nigerian law. The relevant provisions of the ICPC Act on seizure includes section 37, 38, and 45 of the Act. Under section 37(1) of the Act, an officer of the Commission "shall seize" *movable or immovable property* from a suspect if there are reasonable grounds to suspect that such property is the subject matter of an offence, or evidence relating to the offence. I have deliberately used "or" instead of the word "of" used in the Act because that, I submit, is the intention of the Act. Otherwise, the phrase "the subject matter of an offence of evidence relating to the offence" would be meaningless and in dissonance with practice. This interpretation finds support in section 45(4) of the Act where the same phrase is used and the word "or" was correctly used.

Under section 37 of the Act, a copy of *list movable or immovable property seized* and the places where they are found shall be prepared by the officer of the Commission effecting the seizure and served on the owner of such property or on the person from whom the property was seized as soon as possible. But under section 38 of the Act, seizure shall be conducted by removing the movable property from the custody or control of the person from whom it is seized and placing it under the custody of such person or authority and at such place as an officer of the Commission may determine. However, the Commission may temporarily release such property to the owner or person from whom it was seized, upon terms.

Section 45 of the Act grants special investigative powers to the Chairman of ICPC for the purpose of preservation of assets that are subject of investigation. Under section 45(1) of the Act, the Chairman of the Commission can direct a bank or financial institution not to part with or deal in, or otherwise dispose of such property until the order is revoked or varied. By virtue of section 45(4) of the Act, the subject-matter of an offence under this Act or evidence of the commission of such offence shall be liable to seizure and the seizure shall be executed by the issuance of a Notice of Seizure signed by the Chairman of the Commission.

Black's Law Dictionary defines "seizure" as the act of taking possession of property for violation of law or by virtue of an execution of judgment". Seizure is derived from the word "seize" which means "take". That is the sense in which section 37(1) of the Act used the word "seize" when it directed officers of the Commission to "seize such property." A communal reading of section 37 and 45 of the Act strongly suggests that the legislature

does not expect that seized property should remain in the custody or control of the owner or person from whom the property was seized, without exercise of the discretionary power of temporary release. Under section 37, the officer effecting the seizure is expected to take an inventory of property seized and sign same. This list would form the basis for the notice of seizure under section 45(4) of the act.

It is submitted that service of notice under section 45(4) of the Act without actual physical control or taking of possession of such property and taking of inventory is a strain on the intendment of sections 37 and 45 of the Act. It is further submitted that sections 37 and 45(4) deal with immovable property and should be read together. In practical terms, service of notice of seizure, without actual taking of possession and compliance with section 37(1)-(3) of the Act amounts to a mere caveat to the owner or person in possession of the property and the public. That can leave the owner or person in possession with the freedom to cause mischief, including commission of other offences which may go undetected. This can be potentially embarrassing to the Commission.

Where any property is seized from a suspect, an inventory and list of such property shall be prepared by investigators and signed by the lead investigator and the suspect, if the latter is willing to do so. A copy of the list/inventory shall be given to the suspect or his legal practitioner.[35] The draft ICPC Standard Operating Procedures for Investigators has addressed these requirements of section 10 of ACJA. The SOP provides that:

> Investigators shall record information about each suspect or arrested person and shall record inventory of all items or properties recovered from the suspect…An inventory recorded as stated above shall be duly signed by the investigator and the arrested suspect, provided that the failure of the arrested suspect to sign the inventory shall not invalidate it…The arrested suspect, his legal practitioner, or such other person as the arrested suspect may direct, shall be given a copy of the inventory.

Procedure for Recovery of Illicit Assets in Nigeria

Grand corruption or theft of public assets on an industrial scale by political elites may appear to be victimless crimes, but they have direct impact on the health, welfare, security, education and human rights of average Nigerians. Grand corruption also has other indirect, but insidious costs. According to StAR: "Theft of assets by corrupt officials, often at the highest

[35] See sections 10 and 15(1) of the Administration of Criminal Justice Act (ACJA), 2015

levels of government, weakens confidence in public institutions, damages the private investment climate, and divests needed funding available for core investment in such poverty alleviation measures as public health, education, and infrastructure."[36] StAR[37] recommends that:

> The cornerstone of any country's successful and lasting policy and practice on the recovery of stolen assets is the adoption of a clear, comprehensive, sustained, and concerted policy and strategy. Beyond publicly showing commitment by policy makers, such a strategy is necessary to define goals and targets, to identify all available tools (laws and regulations as well as processes), to mobilize the needed expertise and resources, and to make stakeholders accountable. Such a strategy should build on a proactive, responsive, spontaneous, and transparent policy and practice toward asset recovery—where, for example, a refusal for mutual legal assistance in asset recovery cases cannot rely on opaque arguments, such as economic interest.[38]

In the light of the above recommendations, and the legal and institutional mechanisms for anti-corruption discussed above, this part examines the procedure for asset recovery in Nigeria to determine possible gaps and make recommendations to fill those gaps. However, asset recovery must be situated within the enforcement and preventive powers of ACAs and other institutions which entails investigation, prosecution, and recovery of illicit assets.

There are two main procedures for asset recovery in Nigeria, namely:

a) Conviction-based or criminal asset forfeiture;
b) Civil or non-conviction-based forfeiture.

Procedure for Conviction or Criminal forfeiture

Criminal forfeiture of proceeds of crimes, or properties used in the commission of crime may be ordered upon conviction. The principal enabling laws for this procedure includes the Administration of Criminal Justice Act, 2015,[39] ICPC Act, EFCC Act, Advance Fee Fraud Act, 2006, etc.

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[36] Kevin M. Stephenson, et. al., Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action (Washington: The World Bank and UNODC, 2011) p. 1 *https://star.worldbank.org/sites/star/files/Barriers%20to%20Asset%20Recovery.pdf* Last accessed 8/11/2020 6:05 PM

[37] "StAR" is the acronym for stolen assets recovery, an initiative of the World Bank

[38] Op cit. p. 2

[39] And Administration of Criminal Justice Laws of states that have domesticated the ACJA, 2015. See, for example, the Administration of Criminal Justice Law, Kaduna State, 2017

The foundation for recovery of proceeds or instrumentality of corruption and related offences in conviction-based forfeiture are charge and arraignment of the offender for corruption, conviction, and property that have sufficient nexus to offending forfeited. Section 47 (1)(a) of the ICPC Act provides for conviction-based forfeiture under the Act by stating that: "In any prosecution for an offence under this Act, the court shall make an order for the forfeiture of any property which is proved to be the subject-matter of the offence or to have been used in the commission of the offence where- (a) the offence is proved against the accused…" The trigger for section 47(1)(a) ICPC Act are:

(a) charge, arraignment and prosecution;
(b) for an offence under the Act (or any other Act prohibiting corruption or related offence by virtue of section 6(a) of the Act;
(c) conviction;
(d) proof that any property is the subject-matter of the offence or to have been used in the commission of the offence.

Under the above provision, it is imperative for investigators to gather evidence to enable prosecutors marshal evidence to establish a link between the offence(s) charged and properties seized during investigation. It is equally incumbent upon prosecutors to lead evidence that can enable the court to conclude that a particular property is proceed or instrumentality of crime and not honestly acquired or subject to third-party rights. Where there is a plea agreement, prosecutors should attach a schedule of properties to be forfeited in any plea settlement or sentence hearing to enable the court do justice. The case of *FRN v. Tafa Balogun,*[40] in our view, demonstrates an aspect of the weakness of the practice of forfeiture in Nigeria. Following the conviction of the defendants, the court ordered "that all the assets and properties of the 2-9 convicts be forfeited to the Federal Government of Nigeria". The properties covered by the order of the court were not named or listed in the judgment, neither was there an inventory or schedule of the properties covered by the order.

Presumption of Corruption and Asset Recovery

The international gold standard for presumption of corruption and reverse burden of proof in proceedings for asset recovery includes Article 31(8) of the United Nations Convention Against Corruption (UNCAC) which provides that:

[40] Unreported Suit No. FHC/ABJ/CR/14/2005 delivered on 22/11/2005 by Hon. Justice B.F.M. Nyako

> State Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or to her property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

The fundamental principle of Nigerian domestic law, or *grundnorm* is the Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN). The proviso to section 36(5) CFRN, 1999 and section 137 of the Evidence Act 2011 allows or provides for a reverse burden of proof that compels a defendant to prove particular facts. The legislature probably leveraged on the foundation laid by the Constitution and anticipated the difficulties that prosecutors might face in establishing the link between properties and offenders by inserting provisions on presumption of corruption in sections 8(2), 9(2) and 53(1) of the ICPC Act, and reverse burden of proof in section 54(1) of the Act. Under these provisions, where a defendant or relative is found to hold, own, possess, control or in custody of property which he/she is unable to give satisfactory account of how he/she came to ownership, possession, custody or control, a court can infer or presume that the property is illicit.

Similarly, section 19(3) of the Money Laundering Act 2004 (repealed and replaced by section 20(2) of the Money Laundering (Prohibition) Act, 2011 (as amended) contains a reverse burden of proof. Section 20(2) of the Money Laundering Act, 2011 provides as follows:

> *In any trial for an offence under this Act, the fact that an accused person is in possession of pecuniary resources or property for which he cannot satisfactorily account and which is disproportionate to his known sources of income, or that he had at or about the time of the alleged offence obtained an accretion to his pecuniary resources of property for which he cannot satisfactorily account, may be proved and taken into consideration…as corroborating the testimony of any witness in such trial.*[41]

The provision of section 19(3) of the Money Laundering Act 2004 (which is similarly worded as section 20(2) of the 2011 Act) was challenged in *Daudu v. FRN*[42] on the ground that it is unconstitutional to require a

[41] Money Laundering Act, 2011, Section 20(2)
[42] (2018) 10 NWLR (Pt. 1626) 169

defendant to prove the source of property found to be above his/her known legitimate sources of income. The Supreme Court of Nigeria affirmed the potency of section 19(3) of the Money Laundering Act. This decision put to rest the misconception generated by the decision in *Chianugo v. The State*[43] to the effect that it is for the prosecution to prove guilt and not for a citizen to prove the provenance of money.

Presumptions of corruption and reverse burden of proof are beneficial, but a prosecutor's default position should always be assemblage and marshalling of facts and evidence that would make presumptions simple icing on the cake of their case rather than the foundation because any slight evidence offered by a defendant can tilt the scale of preponderance of evidence which is the golden rule when the burden of proof is reversed on the defendant.[44]

Procedure for Civil Forfeiture Procedure under the ICPC Act

Illicit wealth can be forfeited in Nigeria without the owner or person in possession being convicted. The principal legal provisions for this procedure are: Recovery of Public Property (Special Provisions) Act,[45] Sections 47 (1)(b) and 48, ICPC Act; Section 17 of the Advance Fee Fraud Act, 2006; etc. Unlike criminal forfeiture that is based upon prosecution and conviction of an offender, in civil forfeiture proceedings, action is filed or taken against the property, hence the saying that non-conviction-based asset forfeiture is typically an action *in rem* and not *in personam*. The veritable federal statute in Nigeria for this procedure is the Recovery of Public Property (Special Provisions) Act. The long title to the Act states that it is:

> *An Act to make provisions for the Investigation of the Assets of any Public Officer who is alleged to have been engaged in corrupt practices, unjust enrichment of himself or any other person who has abused his office or has in any way breached the Code of Conduct for Public Officers contained in the Constitution of the Federal Republic of Nigeria.*

Section 47(1)(b) and 48 of the ICPC Act also empowers courts to order civil forfeiture in corruption and related cases. Under section 47(1)(b) of the Act, in any prosecution for an offence under the Act, where it is established that any property is the subject-matter of the offence or to have been used

[43] (2002) 2 NWLR (Pt. 750) 225

[44] See section 137 of the Evidence Act 2011.

[45] Cap R4, LFN, 2004. This Act was originally enacted as the Recovery of Public Property (Special Military Tribunals) (Amendment) Decree 1990.

in the commission of the offence, a court can order civil forfeiture where: The offence is not proved against the accused but the court is satisfied:

i) That the accused is not the true owner and lawful owner of such property; and
ii) That no other person is entitled to the property as a purchaser in good faith for valuable consideration.

Section 48 of the ICPC Act empowers the Chairman of the Commission to initiate civil asset forfeiture proceedings. The time protocols prescribed by section 48 of the Act enables a Judge to order interim forfeiture which can, in appropriate cases, be made final, provided the Commission satisfies the court that the property in question is the subject-matter of, or used in the commission of an offence under the Act; and, there is no purchaser in good faith for valuable consideration of the property. However, where no application for final forfeiture is made within twelve months from the date of seizure of the property by the Commission, a Judge can order that the property be released to the person from whom it was seized. By virtue of that provision, the Commission is not allowed to seize and hold property ad infinitum without approaching a court for final forfeiture.

Procedure for Interim and Final Forfeiture under the Economic and Financial Crimes Commission Act

A court can make interim order of forfeiture to preserve suspect property and later make an order of final forfeiture under the EFCC Act if certain conditions are fulfilled. The provisions for seizure and forfeiture of property under the Act can be found in sections 24, 26, 28 and 29. There are two stages of forfeiture under the Act. The first stage is the preservation phase where the court may make an interim order in the nature of *mareva* injunction to preserve the property pending the outcome of trial. The second phase is the final order of forfeiture after conviction. Section 26 of the Act permits seizure of property liable to forfeiture upon process issued by the court pursuant to an *ex-parte* application made by the Commission.

The provisions of sections 28 and 29 of the Act were interpreted in *Esai Dangabar v. FRN.*[46] In Dangabar's case, the Court of Appeal stated, *inter alia*, as follows:

> *I have to point it out at this stage that the power conferred on the Court under Sections 28 and 29 of the EFCC Act is a special*

[46] (2012) LPELR-19732(CA. The Supreme Court held in *Patience Jonathan v FRN* (2019) LPELR-46944 (SC) that *Mrs Chinelo Nwaigwe & Ors v. FRN*[46](2009) 16 NWLR (Pt. 1166) 169, and *Chief Patrick Chidolue v. EFCC* (2012) 5 NWLR (Pt. 1292) 160 were wrongly decided and applied the ratio in Esai Dngabar's case.

> *jurisdiction. It is a statutory power which is superior to the Rules of the lower Court. The interim order of attachment made by the lower Court pursuant to Sections 28 and 29 of the EFCC Act was not meant to be indefinite but only to last till the final determination of Charge No: FCT/CR/64/2012 preferred against the Appellant which is pending at the High Court of Federal Capital Territory, Abuja. Therefore I do not see how the ex-parte order granted by the lower Court violated the Appellant's right to fair hearing because the order was in the nature of a preservatory order. The order is in my view in the interest of both parties. This is because it will prevent dealing with the properties in such a way that could render the final Judgment of the Court nugatory. The order therefore operates until the determination of the civil rights and obligations of the parties with regard to the properties under consideration.*[47]

The court also held that the "trend all over the world is to prevent the accused person from retaining the proceeds of his crime and to deprive him of whatever benefit he may have derived from his criminal conduct." The procedure is consistent with the provisions of sections 43 and 44 of the CFRN, 1999 (as amended).[48]

A defendant cannot successfully mount a constitutional challenge to an interim order of forfeiture upon the sole basis that he was not given fair hearing, or that his right to property had been violated by an interim preservation order. In *Dr Erastus Akingbola v. The Chairman, EFCC*[49] the appellant challenged, *inter alia*, the constitutionality of section 28 and 34 of the EFCC Act. The Court held, dismissing the appeal, that such orders are made to prevent dissipation of suspect property. The court further reasoned that since Akingbola was at large at the material time, the respondent's fear that the assets listed "in the schedule for the *ex-parte mareva* injunction could be frittered away, dissipated, disposed of or removed from the long arm of the law if the injunction was not granted" was well founded and that if the respondent waited for him to appear before taking the necessary precaution to safeguard the assets the

[47] Per Bada JCA

[48] See *Dr. E.O. Akingbola vs. The Chairman. Economic and Financial Commission* (Unreported) Appeal No: CA/L/388/10 delivered on 2/3/2012. See also *Nwude v. Chairman, EFCC* (Unreported) Appeal No: CA/A/ 183/2004 delivered on Thursday, 15th day of May, 2005 by the Court of Appeal, Abuja Division.

[49] (2012) 9 NWLR (Pt. 1306) 475

likelihood of the appellant interfering with the assets could not be ruled out."[50]

In Akingbola's case, the court also gave another hint on the importance of an interim preservation order under section 28 of the EFCC Act. The court observed that if the trial court had not made the order, the appellant would have disappeared into thin air. Thus, an interim application for order can be sought to deny an absconding defendant funds that he can use in hiding to pervert the cause of justice.

Procedure for Civil Forfeiture under the Advance Fee Fraud and Other Related Offences Act

The procedure for civil forfeiture in the Advance Fee Fraud Act (AFFA) are contained in section 17 of the Act. This section provides for both interim and final forfeiture procedure. The procedure is unique and has been found to be one of the most effective civil forfeiture tools in the repertoire of ACAs in Nigeria. It can be used where the property in issue is unclaimed, or is reasonably suspected to be proceeds of some unlawful activity under any law on corruption or related offences.

"Property" in the context of the provision includes movable and immovable property, money, choses in action, securities, or other instruments of title to property. Physical custody may not always be required to constitute control over property. Exercise of dominion or power over the property may suffice.

A court can order interim or final forfeiture where the following procedure is adopted.:

1) The property must be unclaimed or reasonably suspected to be proceeds of corruption or other economic crime;
2) *Ex parte* application supported by affidavit must be filed satisfying the court that the property falls within (1) above;
3) If the court is satisfied, it can grant an interim forfeiture;
4) There must be service of notice or publication as the High Court may direct, for any person, corporate or financial institution in whose possession the property is found or who may have interest in the property or claim ownership of the property to show cause why the property should not be forfeited to the Federal Government of Nigeria;

[50] ibid

5) At the expiration of 14 days or such other period as the High Court may reasonably stipulate from the date of the giving of the notice or making of the publication, an application shall be made by a motion on notice for the final forfeiture of the property concerned to the Federal Government of Nigeria.
6) Any person claiming to be interested in the property or asset must file a counter affidavit to disclose the licit origin of the property;
7) Where no counter affidavit is filed, or the counter affidavit fails to disclose the legitimate interest of any person who opposes forfeiture the court will order forfeiture.

Section 17(6) of the Act specifically provides that an order of forfeiture under the section is civil in nature and not criminal.

Section 17 AFFA has been used in recent times to facilitate forfeiture of assets from politically exposed persons who would otherwise have leveraged on their status and ill-gotten wealth to keep all the loot and escape justice. In *EFCC v. Sterling Bank PLC & Anor,*[51] the Federal High Court, Lagos Division made orders pursuant to an *ex parte* application. The following amounts were ordered to be forfeited to the Federal Government of Nigeria without opposition:

a. N23,446,300,000.00 (Twenty-Three Billion, Four Hundred and Forty-Six Million, Three Hundred Thousand Naira);
b. $5,000,000.00 (Five Million United States Dollars).

However, in respect of another sum of N9, 080,000,000.00 (Nine Billion, Eighty Million Naira) concerning which the court had made an order of interim forfeiture, the 2nd respondent to the application filed a counter affidavit where he contended that he was not aware that the sum was proceeds of crime and that he was coerced to refund the sum. The court found as a fact that the 2nd Respondent's statement was recorded under caution in the presence of his counsel and that counsel endorsed the statement as follows: "This statement was taken in my presence voluntarily." The Court therefore ordered final forfeiture of the sum to the Federal Government of Nigeria. The funds forfeited in this case were connected in a labyrinthine way to Mrs Deziani Alison-Maduekwe, a former Minister of Petroleum Resources.

[51] Unreported Suit No: FHC/L/CS/13/2017 decided on 16th February, 2017 by Hassan, J. of the Federal High Court, Lagos Division.

Section 17 of AFFA was challenged by Mrs Patience Jonathan in *Patience Jonathan v FRN.*[52] The Federal High Court ordered that $5,842,316.66 and NGN2,421,953,522.78 be forfeited to the Federal Government of Nigeria. She challenged the order at the Court of Appeal and failed and proceeded to the Supreme Court. The Supreme Court affirmed the decisions of the lower courts and held that the burden was on Mrs Jonathan, to prove that she legitimately earned $5,842,316.66 and NGN2,421,953,522.78 when the facts showed that she was a civil servant at the material time.

Management of Recovered Assets in Nigeria

This article has deliberately avoided the amount of assets said to have been recovered by the Office of Attorney General of the Federation and various ACAs and bodies in Nigeria in recent times. The plain fact is that no agency in Nigeria has an accurate figure, description, location and value of assets recovered by various government institutions that are empowered to take preventive or enforcement action against corruption that can ultimately result in recovery of illicit assets. Capacity, proper record or existence of an institution to manage all recovered assets can address the challenges of asset management in Nigeria.

A Proceeds of Crime Bill was passed by the National Assembly in 2018. Several controversial provisions which would have castrated ACAs generated opposition to the Bill and persuaded President Buhari to withhold assent to the Bill. The objectionable provisions of the Bill included the following:

a) The Bill eroded the powers of all law enforcement agencies in Nigeria and was not restricted to asset management;
b) Only the agency created by the Bill, and not ACAs, could appeal a decision relating to civil forfeiture of assets;
c) Clause 85(1) of the Bill amounted to an amendment of the highly effective section 17 of the AFFA;
d) The Bill provided that ACAs must seek the consent of the Agency created by the Bill before they can file action for recovery of assets.

In apparent response to withholding of assent to the Bill, the Attorney-General of the Federation and Minister of Justice issued the *Asset Tracing, Recovery and Management Regulations, 2019***.** According to the Regulation, it was issued pursuant to the enabling legislations creating Law Enforcement Agencies and ACAs, and Executive Order No. 6 of 2018 on the *Preservation of Suspicious Assets Connected with Corruption and Other*

[52] (2019) LPELR-46944 (SC)

Relevant Offences. This article is not focused on whether or not the statutes and Executive Order No. 6 of 2018 give the Attorney-General the powers to regulate the operations of ACAs.[53] However, Paragraph 1 of the Regulation contains the objectives and scope of the Regulation which includes coordination of:

(a) The investigation of illegally acquired assets and proceeds of crime;
(b) Tracing and attachment of assets and proceeds of crime;
(c) Seizure and disposal of assets and proceeds of crime; and
(d) Recovery of stolen assets within and outside Nigeria "in order to protect financial integrity of the country, address the distrust in the handling of recovered illicit assets and provide a transparent means for the disposal of such assets.

Paragraph 3 of the Regulation states that the duties and functions of the Attorney-General of the Federation include, inter alia-

a. Overall custody and management of Final Forfeited Assets;
b. Approval and appointment of asset managers;
c. Establishment of a disposal system for recovered assets.

While Paragraph 3 (a) & (b) of the Regulation in relation to recovery matters and tracing of the proceeds of crime, states that the duties and functions of the Attorney-General of the Federation include "coordination of inter-agency investigation and tracing, Paragraph 5 (1) provides that: "All Non-Conviction Based Forfeiture shall be conducted by the Office of the Attorney-General of the Federation." In other words, by Paragraph 5, ACAs are not allowed to conduct non-conviction-based forfeiture but shall transfer such matters to the Office of the Attorney-General of the Federation. The Office of the Attorney-General of the Federation "may take over the prosecution of case related to seized assets, confiscated assets and interim forfeited assets after more than 180 days from the date of issuance of the Interim Forfeiture Order." However, under section 17 of the Advance Fee Fraud Act, 2006 the entire proceedings from commencement to ruling is not designed to last up to 180 days which means intervention may not be possible under AFFA.

[53] While section 26(2) of the ICPC Act states that prosecutions under the Act shall be initiated by the Attorney-General, section 61(1) of the Act provides that every prosecution for an offence under the Act or any related law shall be deemed to be done with the consent of the Attorney-General, obviating the need for ACAs to seek the consent of the AG. Also, section 3(14) of the ICPC Act states that ICPC shall "not be subject to the direction or control of any other person or authority."

Also, by Regulation 10, management of all Final Forfeited Assets shall be conducted by a body called "Structure", composed of 14 agencies inclusive of Representative of "the Civil Society Organisation." However, "the" CSO is not named and the criteria for selection is not stated. The implication of enforcement of this Regulation on the operations of Law Enforcement Agencies and ACAs is likely to be as thought provoking as intervention in criminal and civil cases before charges are filed in court. The positive direction for Nigeria is enactment of a Proceeds of Crime legislation and creation of a dedicated asset management institution, properly resourced and equipped with a multi-disciplinary workforce to meet international standards.

International Dimensions Of Nigerian Asset Recovery

In *Dubai Property: An Oasis for Nigeria's Corrupt Political Elite,*[54] Matthew Page paints a vivid picture of properties owned by Nigeria's corrupt political elite. What the book does not include is evidence of theft of Nigerian state assets in the London property market and the machinery through which such grand theft of state resources that finance the purchase of such tainted properties occur. The author found that 800 Dubai properties linked to Nigerian politically exposed persons (PEPS) are valued at N146 billion or $400 million, and indicates that PEPS linked to such properties have unexplained wealth. However, Tom Burgis[55] paints a stark picture of the international network that facilitates looting as follows:

> *Yet the machinery that is looting Africa is more powerful than all of them. That looting machine has been modernized. Where once treaties signed at gunpoint dispossessed Africa's inhabitants of their land, gold, and diamonds, today phalanxes of lawyers representing oil and mineral companies with annual revenues in the hundreds of billions of dollars impose miserly terms on African governments and employ tax dodges to bleed profit from destitute nations. In the place of the old empires are hidden networks of multinationals, middlemen, and African potentates. These networks fuse state and corporate power. They are aligned to no nation and belong instead to the*

[54] Matthew Page, *Dubai Property: An Oasis for Nigeria's Corrupt Political Elite* (Washington DC: Carnegie Foundation, 2020), pp.1-2. Available at *https://carnegieendowment.org/2020/03/19/dubai-property-oasis-for-nigeria-s-corrupt-political-elites-pub-81306.* Last accessed 8/18/2020 1:59PM

[55] Tom Burgis. *The Looting Machine-Warlords, Oligarchs, Corporations, Smugglers, and the Theft of Africa's Wealth* (New York: Public Affairs TM, 2015), pp.27 available at https://sites.google.com/site/rtehbeswesbwesw/pdf-download-the-looting-machine-warlords-oligarchs-corporations-smugglers-and-the-theft-of-africa-s-wealth-by---tom-burgis-full-books Last accessed 8/19/2020 2:04 PM

> *transnational elites that have flourished in the era of globalization. Above all, they serve their own enrichment.*

The pressing imperative to recover assets stashed abroad crystalizes on the dawn of realization of industrial looting or grand corruption that takes place in some developing countries. The social, economic, political and other effects of corruption is a call for advocacy and action.

Chapter V of UNCAC is the foundational basis for international asset recovery. Article 51 declares that: "The return of assets… is a fundamental principle of this Convention and State Parties shall afford one another the widest measure of cooperation and assistance in this regard." However, source countries are understandably dissatisfied with the level of cooperation of destination countries of stolen assets. The tepid responses to request for assistance, conditionalities for cooperation in recovery of stolen assets, and bottlenecks to return of recovered assets are indicative of reluctance to return stolen African assets. Despite half-hearted responses of destination countries, Nigeria has experienced relative success in the return of some assets stolen from the country and hidden abroad. The Table below captures some of the assets that have been returned to Nigeria in recent times.[56]

Examples of Assets Returned to Nigeria

Amount	Origin	Year Returned
$160 million	Jersey	2003
$723 million	Switzerland	2005
$233 million	Lichtenstein	2013-2014
$322 million	Switzerland	2018
$300 million	United States and Jersey	2020 process ongoing[57]

The above table paints a misleading picture of the murky and opaque trajectory of Nigeria's asset recovery efforts. The foggy, and sometimes

[56] See https://www.justice.gov.ng/images/Abacha_Repatriation-Asset_Agreement_among_Nigeria_World_Bank_signed_in_2017_.pdf and https://www.justice.gov.ng/images/Assets_Recovery_documents/SIGNED_2020-02-03_Nigeria_-_Jersey_-_US__Asset_Sharing.pdf; https://www.justice.gov.ng/images/Assets_Recovery_documents/200203_Joint_Media_Release_on_Repatriation_Agreement_with_Nigeria_-_.pdf; https://www.justice.gov.ng/images/REQUEST_FOR_PROPOSALS_FOR_Monitoring_CSOs_for_Infrastructural_Projects_-_FINAL_04-03-2020.pdf

[57] ibid

dodgy aspect of Nigeria's experience is reflected by credible evidence of re-looting of recovered assets in the late 1990s and early 2000, and lack of transparency and secrecy of non-trial agreements that preceded some of the recoveries. A case that typifies the murkiness, and that has inconveniently refused to fade away, to the consternation PEPS (or perps?) in Nigeria, is the 2003 non-prosecution agreement or settlement between the Federal Government of Nigeria and Atiku Bagudu[58]. The agreement became public because of proceedings in courts in the United States, otherwise the existence and terms of this ordinarily appalling agreement would have remained a secret. Clause 3 of this agreement states as follows:

> *This Agreement finally resolves and releases all claims and liabilities of any kind which exist or might exist against AB in favour of or at the suit of the **FGN** (the **Resolved Matters**) save as expressly provided. The Resolved Matters include all civil claims, all administrative claims, all claims arising out of, deriving from or associated with criminal proceedings, the claims by the **FGN** in relation to security votes (London High Court, No HCO1 C03260), Ferrostaal, vaccines, the Imo River dredging contract and other government contracts. This Agreement also resolves and releases all civil claims which **AB** has against the **FGN**. In entering into this Agreement neither party has relied on any representation made by or on behalf of the other party or on disclosures made or duties to make disclosures by any party.*

The best description of this clause is a vault to protect Atiku Bagudu from any future civil claim or criminal prosecution by Nigeria. Since the agreement clearly states that none of the parties entered into the agreement upon representation by the other party, it in effect means that any property not found as at that date, or declared to be part of the agreement is immune from seizure by the Federal Government of Nigeria. Clause 4 of the Agreement also states that AB affiliates (meaning all persons and companies associated with AB) shall have full benefit of Clause 3, so businesses owned or used by AB are also protected by the agreement.

The United States Department of Justice (DOJ) on 18th November, 2013 commenced proceedings against Atiku Bagudu to recover assets held in the name of some corporate entities. Either to preserve his nest or stave off the DOJ proceedings, Atiku Bagudu filed an action in court in the United Kingdom against the FGN based on the 2003 Settlement Agreement. AB and FGN entered a variation agreement in 2018 which provided that upon execution of the agreement, FGN will hold relevant Trust Assets belonging

[58] Currently the Executive Governor of Kebbi State

to AB in the name of Blue Family Trust and "hold the same free from any claims existing or future, direct or indirect, contemplated or otherwise, made by the Blue Family Trust, AB or his affiliates, in whole or in part at their behest or on their behalf or for their benefit or purported benefit, while compensating the Blue Family Trusts and AB for the Settlement Agreement Claim." However, Clause 8 of the Procedure for Settlement in the 2018 variation agreement stated that: "Except as provided by this Agreement, the Original Settlement Agreement remains in full force and effect." This means that assets held by AB that are not related to Blue Family Trusts will not be forfeited and criminal proceedings cannot be commenced against AB, his family members or persons and companies connected with him by Nigeria.

A Deed of Variation was also entered between the FGN, AB and his affiliates on 6th September, 2019 to amend the Settlement Agreement. Clause 6 of the Deed of Variation states that: "This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by the law of England and Wales." This clause effectively removed the agreement from coverage of Nigerian law.

Predictably, and rightly so, the U.S. DOJ, which was not a party to the 2003 and 2018 agreements continued proceedings against AB and his affiliates for recovery of illicit assets. The verified complaint for forfeiture in rem against five corporations, seven bank accounts, and four investment portfolios linked to AB filed by the United States in 2013 is very interesting. Paragraph 1 of the Verified Complaint for Forfeiture In Rem, filed by the DOJ in the United States District Court, District of Colombia, in *United States of America v ALL ASSETS HELD IN ACCOUNT NUMBER 80020796, IN THE NAME OF DORAVILLE PROPERTIES CORPORATION, AT DEUTSCHE BANK INTERNATIONAL, LIMITED IN JERSEY, CHANNEL ISLANDS, AND ALL INTERESTS, BENEFITS, OR ASSETS TRACEABLE THERETO, et al*[59] states as follows:

> This is an action *in rem* to forfeit corporate entities and more than $500 million in other assets involved in an international conspiracy to launder proceeds of corruption in Nigeria during the military regime of General Sani Abacha, his son Mohammed Sani Abacha, their associate Abubakar Atiku Bagudu, and others embezzled, misappropriated, defrauded, and extorted hundreds of millions of dollars from the government of Nigeria and others, including

[59] Available at *https://www.justice.gov/iso/opa/resources/765201435135920471922.pdf.* Last accessed 8/18/2020 6:04 PM

> through the three criminal schemes described herein. They then transported and laundered the proceeds of those crimes through conduct in and affecting the United States. The defendants *in rem* are subject to forfeiture as property involved in money laundering offenses in violation of U.S. law.

The interesting part of the above paragraph are the names of persons, living or dead, the sum of $500 million, and the fact that this amount and the companies named in the proceedings were not discovered or disclosed by AB during the negotiation and signing of the Original Settlement Agreement in 2003. That leaves the question of how much assets still remains undetected and the conscientiousness of Nigerian public officials in the entire settlement affair.

On August 6, 2014, Judge Bates of the U.S. District Court granted the application for entry of default judgment in the suit.[60]

In *Doraville Properties Corporation v Her Majesty's Attorney General,*[61] Doraville applied for the discharge of property restraint order which a court in the UK made against its properties on 25th February, 2014 which was granted at the instance of the United States DOJ pursuant to Article 6(3) of the Civil Asset Recovery (International Co-operation) (Jersey) Law 2007. The court dismissed the application.

The proceedings in the United States District Court and in the United Kingdom has reinforced the need for transparency by Nigerian public officials in investigation of proceeds of corruption, and also raised questions of the propriety of use of non-prosecution agreement in dealing with individuals rather than corporate entities as is the norm in foreign jurisdictions. It also calls for return of recovered assets consistent with the sovereignty of source countries.

Mutual Legal Assistance Act, 2018

President Muhammadu Buhari signed the Mutual Legal Assistance Bill into law in 2018. The Act is intended to assist in international cooperation in criminal matters which includes international asset recovery. It can help in the identification, freezing, seizure, or confiscation of assets. The scope of this paper does not permit extensive discussion of mutual legal assistance

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[60] See h*ttps://star.worldbank.org/corruption-cases/sites/corruption-cases/files/Abacha_US_DDC_Order_Default_Aug_6_2014_0.pdf*. Last accessed 8/18/2020.

[61] [2016] JRC 128

save to state that it is an important element of international investigations and asset recovery.

The Common African Position on Asset Recovery

Global concern for illicit financial flows,[62] particularly deprivation of resources meant for development fueled by kleptocrats and their collaborators has led to activities at different fora to sensitize the international community on the need to stem the flow of stolen assets, and return such assets to source countries to empower them to meet the goal of domestic resource mobilization and Agenda 2063 Sustainable Development Goals.[63] The African Union has on a number of occasions called on international partners to cooperate and accelerate the return of stolen African assets. For example, The African Union Declaration on the African Anti-Corruption Year[64] called upon "international partners and allies to agree on a transparent and efficient timetable for the recovery and return of stolen assets to Africa with due respect for the sovereignty of States and their national interests.

An international milestone was reached at the United Nations General Assembly in March 2010 when the General Assembly adopted Resolution 64/237 titled: "Preventing and combating corrupt practices and transfer of assets of illicit origin and returning such assets, in particular to the countries of origin, consistent with the United Nations Convention against Corruption."[65] Since this Resolution was adopted, advocacy for firm international framework for prevention of illicit financial flow and return of assets of illicit origin to countries of origin or source countries has gained traction, but has not resulted in any international instrument to that effect. Corporations and facilitators of illicit financial flows continue to have a field day. Also, considering various estimates of the quantum of African assets in destination countries, the value of illicit assets returned to Africa

[62] For instance, Conference of State Parties (COSP) to UNCAC, in **Resolution 5/3** at its fifth session, held in Panama City, Panama, from 25 to 29 November 2013, called all "States parties and, in particular, requested and requesting States, to cooperate to recover the proceeds of corruption and demonstrate strong commitment to ensure the return or disposal of the same in accordance with article 57 of the Convention."

[63] Ibid, where COSP underlined "the need to redouble efforts to assist in the recovery of those assets in order to preserve stability and sustainable development."

[64] Assembly/AU/Decl.1 (XXXI)

[65] As written on the body of the Resolution.

is marginal. It is against this background that CAPAR was adopted in February 2020. CAPAR was sponsored by Nigeria and adopted by the AU Executive Council at its 36th Ordinary Session 06-07 February, 2020 and also adopted by The Assembly of the Heads of State and Government of the African Union at the 33rd Assembly on 9th February, 2020.[66] CAPAR is the culmination of years of patient work, negotiation and advocacy.
CAPAR is a policy instrument aimed at assisting in identification, repatriation and effective management of Africans assets for the common good of citizens in accordance with Africa's development agenda, domestic laws and other legitimate government purposes in a manner that respects the sovereignty of Member States. CAPAR is also a political instrument and advocacy tool of recommended best practices for asset recovery, management and engagement at the global or multilateral levels, for cooperation in curbing illicit financial flows as well as identification, recovery, return and effective management of African assets located in foreign jurisdictions.

CAPAR is based on the need for resource mobilization to finance Africa's development and aspirations expressed in the Post-2015 Agenda and Agenda 2063. CAPAR acknowledges that efforts and strategies geared at recovery and return of African assets must be situated and contextualized in the broader historical, political, economic and social narrative of Africa. It calls upon the international community to support and cooperate with the efforts of the AU and Member States to recover African assets. The CAPAR priorities for asset recovery in Africa are grouped into four (4) pillars, namely: Detection and Identification of Assets; Recovery and Return of Assets; Management of Recovered Assets; and Cooperation and Partnerships. In addition to the four pillars, Para 5 of CAPAR deals with "Cross Cutting Issues" while Para 6 are "Policy Recommendations for Action."

Amongst the policy recommendations are strengthening domestic and regional systems for detection and identification; enhancing existing bodies and institutions; prioritising the recovery of African assets at a domestic, regional and global level; strengthening legal and financial institutions to aid the process of asset recovery; and enhancing or creating institutional, legal or policy frameworks for management of recovered assets at the domestic level.

Conclusion and Recommendations

[66] EX.CL/1213/(XXXVI) Add.1 Rev.1

Grand corruption in developing countries is oiled by complicity of nationals and powerful business and economic interests of developed countries. This underscores the need for domestic, regional and global frameworks and cooperation to combat corruption and reduce IFFs. Creation of anti-corruption institutions, criminalization of corrupt conduct and sanctions are tools for reduction of corruption; but these tools must be tailored to deny perpetrators of the profits of crime. Asset recovery reinforces the punitive and deterrent goals of criminal sanctions.

Nigeria's asset recovery framework is robust and has been legitimized by thoughtful recent decisions of the Supreme Court of Nigeria which have affirmed the constitutionality of reverse burden of proof and presumption of corruption where a public officer is found to be in possession of assets above his/her known, legitimate sources of income. Anti-Corruption Agencies, investigators and prosecutors must increasingly strive to develop capacity to leverage on the stout legal framework for asset recovery in Nigeria. However, a major lacuna that the legislature needs to address, with honesty of purpose, is establishment of a unique legal and institutional regime for management of recovered illicit assets.

At the global level, Nigeria has recorded some successes in the repatriation of the country's stolen assets hidden abroad. More mileage can be gained where there is reasonable perception that patriotism dwarf self interest in the pursuit of stolen assets stashed in foreign countries. The opportunities being created for international cooperation in emerging global asset recovery architecture requires domestic, sub-regional and regional capacity for Nigeria and other African countries to reach the target of significant recovery of African assets from foreign jurisdictions. The Common African Position on Asset Recovery promises to be a powerful political and advocacy tool to promote the establishment of domestic, regional and global asset recovery and management architecture.

Asset recovery and denial of the profits of corruption can frustrate the desire of offenders to accumulate wealth. Combined with criminal and other dissuasive sanctions, asset recovery can minimize corrupt tendencies, and has great potentials to galvanize positive change. A well-articulated and executed asset recovery regime can contribute to negation of the latent claim of superiority intrinsic in retention of proceeds of wrongdoing by offenders. Where offenders are allowed to retain their loot, law-abiding citizens are made to look like fools and this can dissuade compliance with law.

ACAs, investigators and prosecutors should maximise the expansive powers for non-conviction-based asset forfeiture to recover illicit assets and thereby contribute to national development by reducing corruption and enhancing government revenue. ACAs should intensify efforts to trace, seize and seek forfeiture of proceeds of corruption, inclusive of profits and income derived from such proceeds and assets intermingled with or into which proceeds have been transformed in any way without leaving the offender to retain an iota of illicit assets consistent with Article 31 of UNCAC. The National Assembly is called upon to enact a Proceeds of Crime Bill without delay to set up an asset management agency but avoid provisions that will shackle ACAs and disrupt the agenda of the National Anti-Corruption Strategy (NACS).

The government and people of African countries should embrace and implement CAPAR at domestic and regional levels to enhance capacity for asset recovery and strengthen the voice of the continent at the global stage. The international community and partners of Africa should implement Chapter V of UNCAC by removing barriers to asset recovery and return and take steps to prevent and sanction their corporations and collaborators to stem illicit financial flows.

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NAVIGATING THE COMPLEXITIES OF PREDICATE OFFENCES IN MONEY LAUNDERING

Elijah Oluwatoyin Okebukola*

Introduction

As criminal enterprises and criminal organisations grow in complexity, the law and its implementing authorities also develop special capabilities for crime interdiction and prosecution. In relation to the criminal enterprise of money laundering, Given the growing sophistication of perpetrators of corrupt practices, it became necessary to have specialised anti-corruption laws, treaties and agencies. One of the earliest responses of the international community to the growing complexity of money laundering was the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (Vienna Convention).[1] The Vienna Convention has been followed up with several other international anti-money laundering standards including those of the Financial Action Task Force (FATF),[2] and United Nations Convention against Transnational Organised Crime, 2000 (Palermo Convention).[3]

In adapting to international standards on money laundering, States are required to modify their domestic criminal laws and enforcement procedures.[4] In keeping with its obligations Nigeria has been modifying its laws and establishing specialised anti-corruption institutions. The specialised anti-corruption institutions include the Code of Conduct Bureau and Tribunal (CCB & CCT), the Independent Corrupt Practices and Other Related Offences Commission (ICPC), and the Economic and Financial Crimes Commission (EFCC). Among others, the specialised institutions enforce specialised anti-corruption laws. The specialised anti-corruption laws include provisions designed to combat money laundering.

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* Dr. Elijah Oluwatoyin Okebukola is an Associate Professor of Law, Nasarawa State University, Keffi, and Senior Research Fellow, Anti-Corruption Academy of Nigeria. Email: elijah.okebukola@gmail.com.

[1] https://treaties.un.org last visited 08/11/2020

[2] The FATF is an inter-governmental body aiming to set standards and promote implementation of measures to combat money laundering and terrorist financing. See http://www.fatf-gafi.org/about/ last visited 07/11/2020.

[3] https://treaties.un.org last visited 08/11/2020; also available at https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html#GA last visited 08/11/2020.

[4] Kathrin Betz, "Driven out of Paradise: Illicit Financial Flows and Offshore Leaks," *Journal of Anti-Corruption Law*, (2018), 71-89.

The provisions of law that criminalise and prohibit money laundering are contained in laws that expressly mention money laundering and those that do not directly mention money laundering but directly attack one of the three main stages of money laundering. The Nigerian anti-money laundering laws have been evolving in line with international standards and therefore relate to the concept of predicate offence as contemplated by international treaty obligations and FATF Recommendations. This article examines the complexities generated by the concept of 'predicate offences' in combatting money laundering in Nigeria.

Although in corruption and anti-corruption studies the expression 'predicate offence' is most frequently used in the context of money laundering, the expression has different meanings and applications in other areas of legal studies.[5] For example, under the sentencing regime that deals with 'career criminal',[6] in the USA,[7] a 'predicate offence' is a violent felony that makes a repeat offender liable to an increased sentence. In this article, a predicate offence relates to money laundering and has the same meaning as stipulated in the Palermo Convention which defines a predicate offence as "any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention."[8]

This introductory part establishes the context and content of the article. The second part defines and highlights the predicate offences to money laundering. It describes the three main stages of money laundering and how they are covered by Nigerian law. The third part evaluates predicate offences and shows that not all predicate offences to money laundering are within the remit of anti-corruption agencies. It also, briefly, traces the evolution of the evidential link between predicate offences and money laundering. The fourth part concludes with a few recommendations for anti-corruption agencies that deal with money laundering. Given the global dimensions of the topic of discussion, relevant treaties and practices from other jurisdictions are underscored in the article.

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[5] See, for example, Shelby Burns, 'The Johnson & Johnson Problem: The Supreme Court Limited the Armed Career Criminal Act's Violent Felony Provision - And Our Children Are Paying,' *Pepperdine Law Review*, 45 (2018) 785-835.

[6] Ibid.

[7] See generally *Armed Career Criminal Act*, 18 U.S.C. § 924 (2006) and *Federal Sentencing Guidelines U.S. Sentencing Guidelines Manua*l § 4B1.1(a) (U.S. Sentencing Commission 2016).

[8] Article 2(h), Palermo Convention.

Predicate Offences in Money Laundering

Money laundering typically involves three stages[9] and Nigeria's anti-money laundering laws criminalise the three stages of money laundering. In the first stage of money laundering, the criminally obtained proceeds are removed from the tainted source and placed in some legal activity. The *placement* is mostly done using businesses or transactions that allow cash payments. At this stage, the proceeds of crime, to be laundered are introduced into the formal financial system.

In stage two, the launderers try to conceal the origin of the proceeds of crime by transferring the proceeds from the account into which it was initially placed in stage one to other account(s) or transactions. These transfers are done in layers. The *layering* further helps to obscure the origin of the funds. Finally, in the third stage, the laundered money is integrated into the financial system as clean money. This *integration* can be done by purchasing property, payment into bank accounts for ostensibly or actually legitimate transactions etc. The launderers do not mind paying taxes and other governmental rates to further legitimise their dirty money.

In criminalising all these stages of money laundering, the Money Laundering Prohibition Act 2011 (as amended in 2012) is the principal anti-money laundering legislation in Nigeria. The MLPA, was preceded by the Money Laundering Act 1995,[10] Money Laundering Prohibition Act 2003 and Money Laundering Prohibition Act 2004.[11] In covering all main parts of money laundering, the MLPA 2011 criminalises the following:

- Cash payments exceeding 5 million Naira for individuals and 10 million Naira for corporate bodies,[12]
- Failure to report or declare the transfer or transportation of funds, securities, cash, negotiable instruments in excess of 10 thousand US Dollars,[13]

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[9] Nikola Paunovic, 'Terrorist Financing as the Associated Predicate Offence of Money Laundering in the Context of the New EU Criminal Law Framework for the Protetcion of the Financial System,' EU and Comparative Law Issues and Challenges Series, 3 (2019), 659-683.

[10] Chibuike Ugochukwu Uche, "The Adoption of a Money-Laundering Law in Nigeria," *Journal of Money Laundering Control*, 1 (1998), 220-228.

[11] Felix Emeakpore Eboibi and Inetimi Mac-Barango, "Global Eradication of Money Laundering and Immunity for Legal Practitioners under the Nigerian Money Laundering Regulation Lessons from the United Kingdom," *Beijing Law Review*, 10 (2019), 769-794.

[12] Section 1, Money Laundering Prohibition Act (MLPA), 2011.

[13] Section 2, MLPA 2011.

- Directly or indirectly concealing or disguising any fund or property, knowingly or reasonably ought to have known that such fund or property is, or forms part of the proceeds of an unlawful act,[14]
- Directly or indirectly converting or transferring any fund or property, knowingly or reasonably ought to have known that such fund or property is, or forms part of the proceeds of an unlawful act,[15]
- Directly or indirectly removing from the jurisdiction any fund or property, knowingly or reasonably ought to have known that such fund or property is, or forms part of the proceeds of an unlawful act,[16]
- Directly or indirectly acquiring, using, retaining or taking possession or control of any fund or property, knowingly or reasonably ought to have known that such fund or property is, or forms part of the proceeds of an unlawful act.[17]

The MLPA 2011 thus covers the money laundering offences identified in the Palermo Convention. From Article 6 of the Palermo Convention, we can extrapolate the following money laundering offences, all of which are within the contemplation of the MLPA 2011:

- The conversion or transfer of property, knowing that such property is the proceeds of crime;[18]
- The conversion or transfer of property, for the purpose of concealing or disguising the illicit origin of the property;[19]
- The conversion or transfer of property, for the purpose of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;[20]
- The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;[21]
- The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

[14] Section 15 (2) (a) MLPA 2011.
[15] Section 15 (2) (b) MLPA 2011.
[16] Section 15 (2) (c) MLPA 2011.
[17] Section 15 (2) (d) MLPA 2011.
[18] Article 6 (1) (a) (i) United Nations Convention against Transnational Organised Crime, 2000 (Palermo Convention).
[19] Ibid.
[20] Ibid.
[21] Article 6 (1) (b) (ii), Palermo Convention.

- "Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any" money laundering offence.[22]

In the generic sense, a predicate offence is one that underlies a subsequent offence. It may provide the resources or basis for the subsequent offence. In the case of *FRN v Nasiru Yahaya*,[23] the Court of Appeal defined a predicate offence as one that provides the underlying resources for another criminal act.[24] The notion of predicate offences is most commonly applied to money laundering. For R.E. Bell, "A predicate offence is the underlying criminal offence that gave rise to the criminal proceeds which are the subject of a money laundering charge."[25]

In the case of *Gabriel Daudu v FRN*,[26] the Supreme Court defined money laundering as "the washing of illegitimate money in a bid to make it appear clean or legitimate. It involves the process of transforming the proceeds of crime into ostensibly legitimate money or other asset."[27] The Court of Appeal in the case of *Francis Atuche v. FRN*,[28] defined money laundering as "the act of transferring illegally obtained money through legitimate people or accounts so that its original source cannot be traced."[29] The definition of money laundering presupposes that the another crime was committed before the money to be laundered was obtained. The crime that generated the money to be laundered is the predicate offence.

Money laundering is criminalized globally,[30] but the list of the specific offences that form the predicate offences to money laundering vary from country to country and from time to time.[31] Similarly, the frequency of

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[22] Article 6 (1) (b) (ii), Palermo Convention.
[23] *FRN v Yahaya* (2016) 2 NWLR (Pt 1496) P 252; (2015) LPELR 24269 (CA).
[24] Although the charge in the case of *FRN v Yahaya,* was brought under the Money laundering Prohibition Act, 2004 which has been repealed by the Money laundering Prohibition Act, 2011 (as amended in 2012), the definition of predicate offence is not affected.
[25] R. E. Bell, "Abolishing the Concept of Predicate Offence,'' *Journal of Money Laundering Control*, 6 (2003), 137-140.
[26] *Gabriel Daudu v FRN, NWLR*, 10 (Pt 1626), (2018), p.169.
[27] Ibid P. 182, para. H.
[28] *Francis Atuche v FRN*, *NWLR*, 4 (Pt 1449) (2015), p.306.
[29] *Ibid* at pp. 332-333*, Paras. G-C*. Note that the charge was under the 2004 Money laundering Prohibition Act.
[30] Adebayo E. Iyanda, 'The Role of Misinvoicing in the Money Laundering Cycle,' *Journal of Anti-Corruption Law*, 3 (2019) 144-168.
[31] For example, for the evolution of political corruption as a predicate offence in Germany, see Martin Wassmer, 'The Latest Criminal Law Reforms in the General and Special Part of

occurrence of various predicate offences will differ across jurisdictions.[32] It suffices however to note that the broad types of predicate offences are similar. Although not applicable in Nigeria, the Sixth Anti Money Laundering Directive (6AMLD) of the European Union (EU) can serve as guide to the broad types of predicate offences to money laundering. As contained in Figure 1 below, 6AMLD identifies 22 predicate offences to money laundering.

Figure 1: 6AMLD Predicate Offences[33]

The FATF sets a standard that "countries should apply the crime of money laundering to all serious offences, with a view to including the widest range

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the German Criminal CodeLaw,' *Journal of the Higher School of Economics*, 3 (2019) 203-219.

[32] For example, frequency of occurrence of predicate offences in Russia is discussed in G. Rusanov and Y. Pudovochkin, 'Money laundering and predicate offenses: models of criminological and legal relationships' *Journal of Money Laundering Control*, 21 (2018), 22-32.

[33] Image copied from https://complyadvantage.com/knowledgebase/adverse-media/6amld-22-predicate-offenses-money-laundering/ last visited 08/11/2020

of predicate offences."[34] In this regard, three approaches to designating specific crimes as predicate offences are recommended by the FATF as follows:

i. Predicate offences may be described by reference to all offences, or
ii. Predicate offences may be described by reference to a threshold linked either to a category of serious offences or to the penalty of imprisonment applicable to the predicate offence,
iii. Predicate offences may be described by reference to a list of predicate offences, or a combination of these approaches.

Prior to 2012, Nigeria adopted the third approach in section 15(1)(a) of Nigeria's Money Laundering Prohibition Act (MLPA) 2011, which included the predicate offences in Figure 1 as well as other serious offences that are peculiar to Nigeria.[35] However, following the amendment in 2012, Nigeria adopted the first approach and predicated money laundering upon any unlawful act which the defendant knew or reasonably ought to have known to have generated the the proceeds being laundered.

Link Between the Predicate Offence and the Mandate of Anti-Corruption Agencies

Certainly, not all the predicate offences to money laundering are linked to the direct mandate of anti-corruption agencies. Predicate offences that do not appertain to the core mandate of anti-corruption agencies include, robbery (armed and unarmed), human trafficking, trafficking in narcotics and psychotropic substances, arms trafficking, environmental crime, smuggling, kidnaping etc.

Bearing in mind that the predicate offence and the subsequent offence are separate, the anti-corruption agency may prosecute the defendant for the corruption offence of money laundering without straying into the non-corruption predicate offence. The need for anti-corruption agencies to refrain from foraying into non-corruption offences is encapsulated in the Independent Corrupt Practices and Other Related Offences Act (ICPC Act) 2000.[36] The ICPC Act empowers the Commission to investigate and prosecute cases of corruption,[37] but debars the Commission from prosecuting non-corruption cases. In this regard, the Act provides that:

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[34] https://www.fatf-gafi.org last visited 08/11/2020.
[35] These include illegal bunkering and illegal mining.
[36] Available at https://icpc.gov.ng/ last visited 01/11/2020.
[37] Section 5(1) Independent Corrupt Practices and other Related Offences Act (ICPC Act) 2000.

> "*If, in the course of any investigations or proceedings in court in respect of the Commission of an offence under this Act by any person there is disclosed an offence under any other written law, not being an offence under this Act, irrespective of whether the offence was committed by the same person or any other person, the officer of the Commission responsible for the investigation or proceedings, as the case may be, shall notify the Director of Public Prosecutions or any other officer charged with responsibility for the prosecution of criminal cases, who may issue such direction as shall meet the justice of the case"*[38]

In clearly specified exceptions, the legislature may expressly give an anti-corruption agency the mandate to deal with non-corruption cases. For example, while giving the Economic and Financial Crimes Commission (EFCC) the power to investigate and prosecute the financial crime of terrorism financing,[39] the EFCC Establishment Act also empowers the EFCC to prosecute terrorism.[40] A joint reading of Sections 6, 7 and 15 of the EFCC Act will indicate that any terrorism prosecution undertaken by the EFCC should be connected to its core mandate on economic and financial crimes.

While it is common to discuss predicate offences in the context of money laundering, there are other corruption offences that may be predicated by earlier offences. For instance, the ICPC Act empowers the Commission to prosecute offenders who conceal the proceeds of corruption. The Act stipulates that:

> *"Any person who, whether within or outside Nigeria, whether directly or indirectly, whether on behalf of himself or on behalf of any other person, enters into, or causes to be entered into, any dealing in relation to any property, or otherwise uses or causes to be used, or holds, receives, or conceals any property or any part thereof which was the subject-matter of an offence under sections 10, 11, 13, 14, 15, 16) 17, 18, 19, and 20 shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding five (5) years."* [41]

Therefore, the concealment of the subject matter of the earlier act of corruption is a crime on its own while the corrupt practice that generated the subject matter of concealment is the predicate offence. In this situation,

[38] Section 5(2), ICPC Act.
[39] Section 15 (1) Economic and Financial Crimes Commission (EFCC) Establishment Act.
[40] Section 15 (2) EFCC Establishment Act.
[41] Section 24, ICPC Act.

both the predicate and subsequent offences are within the core mandate of the anticorruption agency.

Evidential Link Between Predicate Offence and Money Laundering

Following the positive identification of predicate offences, the prosecutor needs to ascertain if the predicate offence must be proved in order to sustain a conviction for the subsequent offence. In jurisdictions such as the United States of America (USA), before convicting the defendant for the subsequent offence, the prosecution must prove the predicate offence. The prosecution has to establish that "the property involved was proceeds of "specified unlawful activity."[42] As highlighted below, while discussing the situation in the United Kingdom, "proving that funds are derived from one amongst a specific list of offences is clearly more difficult than simply proving that funds had a criminal origin."[43]

The situation in the UK was somewhat similar to that of the USA until the UK's Proceeds of Crime Act (POCA) 2002 came into force. Previously in the UK, prosecutors needed to observe a distinction between laundering the proceeds of drug trafficking and laundering the proceeds of other crimes. Money laundering was first criminalised in the UK under the Drug Trafficking Offences Act 1986 (DTOA 1986), which linked money laundering to the proceeds of drug trafficking. The DTOA 1986 was later replaced with the Drug Trafficking Act 1994 (DTA 1994) which maintained the link between money laundering and "the proceeds of drug trafficking."[44] Other "proceeds of criminal conduct"[45] were linked to money laundering by the UK's Criminal Justice Act 1988 (CJA 1988).

The POCA removed the distinction between laundering the proceeds of drug trafficking and laundering the proceeds of other crimes.[46] Money laundering under the POCA is linked to "criminal property". This covers all benefits from criminal conduct. The benefits may be in whole or in part. They may also be direct or indirect. The prosecution needs to, first, establish that the property in issue was derived from criminal conduct. Next, it must be further established that the defendant either knew or suspected that the property was from criminal conduct. Criminal conduct is such that constitutes an offence in any part of the UK or would be an

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[42] R. E. Bell, "Abolishing the Concept of Predicate Offence,'' *Journal of Money Laundering Control*, 6 (2002), 137-140.
[43] Bell, "Abolishing the Concept of Predicate Offence''.
[44] Sections 29, 50 and 51, Drug Traffic Act 1994.
[45] Sections 93A, 93B and 93C, Criminal Justice Act 1988.
[46] Bell, "Abolishing the Concept of Predicate Offence".

offence if it occurred in the UK. There is no requirement to establish the specific offence from which the property in issue was obtained as long as it is established to proceed from criminal conduct.[47]

In the USA, the predicate offence, a specific unlawful activity, needs to be established to sustain a money laundering conviction. In the legal regime that existed under the UK's DTA 1994 and CJA 1988, the expression predicate offence is not used but it was necessary to link the money laundering charge to a drug trafficking offence or other criminal conduct (which would not be a drug trafficking offence). Under the POCA, use of the expression predicate offence does not have the same meaning as it does in the USA where specific offences must be proved. The prosecution under the POCA, is not required to prove a specific offence or drug trafficking offence or other criminal conduct. All that is required is proof beyond reasonable doubt that the property was derived from criminal conduct and the defendant knew or suspected this to be so even if the defendant did not know the specific type of criminal conduct from which the proceeds were derived.

Many jurisdictions now take the approach of not requiring the establishment of a specific predicate offence as long as it is shown that the money being laundered emanates from a criminal activity.[48] In Nigeria, prior to the repeal of the MLPA 2004, the Courts required the prosecution to establish the predicate offence in sustaining a conviction for money laundering.[49]

Now, a conviction can be secured for money laundering under the MLPA 2011, without proving the predicate offence. One of the forms of money laundering prohibited by the MLPA 2011, is receiving some stipulated amounts of money as payment for transactions without going through a financial institution. The MLPA 2011 provides that:

> *"No person or body corporate shall, except in a transaction through a financial institution, make or accept cash payment of a sum exceeding – (a) N5,000,000.00 or its equivalent, in the case of an individual; or (b) N10,000,000.00 or its equivalent in the case of a body corporate."*

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[47] Ibid.

[48] Nikola Paunovic, "New EU Approach in Combating Criminal Offences Affecting Financial Interests Topic 3: EU Criminal Law and Procedure: Review Article," *EU and Comparative Law Issues and Challenges Series*, 4 (2020), 621-649.

[49] FRN v Nasiru Yahaya note 23 above.

A conviction can be sustained without proving the illegal source of the funds. As held in *Ikuforiji v. FRN*,[50] all that is required is for the prosecution to establish that the defendant made or accepted payment in excess of the amount stipulated by law, without transacting through a financial institution.

Similarly, under section 15 of the MLPA 2011, a conviction can be secured against a person who directly or indirectly engages in the placement, layering or integration/extraction of the proceeds of crime. It is not required to link the conduct of the defendant to any predicate offence. All that is required is to establish that the defendant knew or reasonably ought to have known that the subject matter of the charge was unlawfully derived.

Conclusion

The money laundering prohibition laws of Nigeria have been evolving and will keep evolving to meet the growing complexities posed by the increasing sophistication of money launderers. While it is true that money laundering is necessarily preceded by an earlier predicate offense, it is not always easy to prove the offence from which the proceeds to be laundered are obtained. It is therefore prudent to retain the present approach in the amended MLPA 2011 which does not require proof of any specific offence as long as it is shown that the proceeds in issue flow from an unlawful activity.

In prosecuting money laundering, anti-corruption agencies must be focused on elements or matters that are within their remit. This professional discipline is particularly important where there are predicate offences that do not relate to the mandate of anti-corruption agencies. This further underscores the important point that as specialised agencies, anti-corruption bodies need to collaborate with other institutions in sharing information and transferring cases.

[50] Ikuforiji v. FRN, (2018) 6 NWLR (Pt 1614) 142

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LAWYER'S OFFICE AS THE SECRET REFUGE OF WHITE-COLLAR DEFENDANTS: THE USE AND ABUSE OF LEGAL PROFESSIONAL PRIVILEGE IN NIGERIA

Musa Usman Abubakar*

Background

The resolve to charge the then incumbent President of the Nigerian Bar Association, Mr Paul Usoro (SAN), by the Economic and Financial Crimes Commission (EFCC), for allegedly laundering the sum of ₦1.4billion belonging to the Akwa Ibom Government contrary to the Money Laundering (Prohibition) Act, 2011, ignited the debate on the extent of legal professional privilege in Nigeria. This is more so as the President of the Nigerian Bar Association escalated the issue to the National Executive Committee of the Nigerian Bar Association (NEC) at its meeting of 5th and 6th December 2018. After an emotion-laden speech, Mr Usoro, SAN, won the sympathy of the NEC as a result of which the NBA issued a communique condemning the action of EFCC for daring to question the legitimacy of the alleged 'legal fees' paid to Mr Usoro by Akwa Ibom State Government.

For the benefit of those who might not have been aware of the case, this brief information will suffice. The EFCC, while questioning Mr Usoro, requested to see the contract document containing the agreed fees for the services rendered as well as letters of engagement, but he told the EFCC operatives that there was neither signed agreement nor letter of engagement. He further claimed that in many other services his firm rendered to the Federal Government, including the MTN fine case, no fee was agreed before starting the work. At the NEC meeting, Mr Usoro alerted lawyers on the far-reaching implication of investigating legal fees for them 'as lawyers and as an association of lawyers', viz:

(a) Client-Lawyer Privilege. It has judicially and historically been acknowledged that issues of fees, as between a lawyer and his client, is a matter of privilege. The decision of the Court of Appeal that was delivered on 14 June 2017 in Appeal Number ***CA/A/202/2015: Central Bank of Nigeria v Registered Trustees of the Nigerian Bar Association & Attorney General of the Federation*** affirmed this position. By questioning lawyers

* LL.B. (UDUS), LL.M. (NIALS), LL.M. (Warwick), PhD (Warwick), BL., Professor of Law, Bayero University, Kano, Nigeria is the Secretary to the Independent Corrupt Practices and Other Related Offences Commission. E-mail: muabubakar69@gmail.com.

on the legitimate fees that they have earned from clients, the EFCC is breaching the lawyer-client privilege and showing complete disregard for the judgments of the Courts in this regard.

(b) EFCC's lack of *locus standi* in Client-Lawyer Contractual Relationship. The fees that are paid by a client to his lawyer is not only a matter of privilege but is also contractual. As we all know, non-parties to a contract are complete strangers thereto and lack the locus standi to question and/or determine the propriety of such contract(s).[1]

At the end of the meeting a communique issued under a subtitle: Criminalization of Lawyers' Fees, stated thus:

> ''*NEC frowns at the attempted criminalization of lawyers' fees by the EFCC and notes that the fees that are paid by a Client to* ***his lawyer is not only a matter of privilege but is also contractual in nature.*** *NEC points out that non-parties to a contract, including the contract on lawyers' fees, are complete strangers thereto and lack the locus standi to question such fees. NEC further maintains that the EFCC is not an auditor or regulator of legal fees and the legal profession is an independent one*.''[2]

Although some senior lawyers were quick to assert that the NBA President was on his own and that the association itself was not on trial, others pitched their tent with Mr Usoro, as over 700 lawyers vowed to appear in his defence, in solidarity.[3]

Mr Mike A. Ozekhome SAN had similarly been accused by EFCC of collecting N75 million from Governor Ayodele Fayose and froze his bank account. He claimed the money was his professional fees for the work done for the Governor.[4]

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[1]Paul Usoro's Speech at NBA NEC Meeting, Responds to EFCC Allegations *https://www.nairaland.com/4888824/paul-usoros-speech-nba-nec#73613892.* Last visited 4 May 2019

[2] NBA (2018) Communique From NBA NEC Meeting of 6th December, 2018 *https://www.nigerianbar.org.ng/index.php/news1/903-communique-from-nba-nec-meeting-of-6th-december-2018.* Last visited 4 May 2019.

[3] The Nigerian Lawyer, ''Over 700 Lawyers Vow to Defend NBA President, Paul Usoro, SAN as EFCC Drags Him to Court,'' *https://thenigerialawyer.com/over-700-lawyers-vow-to-defend-nba-president-paul-usoro-san-as-efcc-drags-him-to-court/* last visited 4/5/2019

[4] Majekodunmi, A, 'Nigerian Lawyers as Endangered Species', Vanguard Newspaper, 25 April 2019, *https://www.vanguardngr.com/2019/04/nigerian-lawyers-as-an-endangered-species/*

In both cases the amount involved was colossal and perhaps not charged in accordance with the Rules of Professional Conduct for Legal Practitioners (RPC) which frowns at charging excessive fees. Rule 48 (2) of the RPC reads: "*A lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee*." Rule 48(3) defined what is excessive to be fees not charged in accordance with these rules, and particularly, Rule 52 of the RPC which mandates lawyer to charge reasonable fees commensurate to the service rendered. This was perhaps what attracted the attention of the EFCC. This write-up is not intended to hold brief for the EFCC or any anti-graft agency, just as it does not intend to pre-empt the decision of the court, but to contribute to the debate on the extent and limit of legal professional privilege and the global concern over the use of lawyers in facilitating money laundering.[5] It is also to make a clarion call on the General Council of the Bar to, as a matter of urgency, make a regulation on anti-money laundering for lawyers to save the profession from public bashing.

How NBA Fought and Won Exemption from Money Laundering Regime

From the outset, it is important to stress that what was before Justice Kolawole of the Federal High Court[6] was not whether an anti-graft agency can question a lawyer about the source of money found in his account. In an originating summons dated March 15, 2013, the Registered Trustees of the Nigerian Bar Association prayed the court to declare that the provisions of Section 5 Money Laundering (Prohibition) Act, 2011 insofar as they purport to apply to legal practitioners, are invalid, null and void. The provision requires that lawyers are also to make disclosures to some government bodies of what transpired between them and their clients.

The NBA further asked for an order of the court deleting legal practitioners from the definition of Designated Non-Financial Institutions (DNFIs). The court held that (a) insofar as Sections 5 and 25 of the MLA seek to impose sanctions on the legal practitioner, they run contrary to the provisions of the Legal Practitioners Act (LPA), the Rules of Professional Conduct for Legal Practitioners, and Section 192 of the Evidence Act; (b) Special Control Unit against Money Laundering (SCUML) is not a juristic person, being the creation of the Ministry of Trade and Commerce.

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[5] For the meaning of money laundering see Esa O. Onoja, *Economic Crimes in Nigeria: Issues and Punishment* (Abuja, Nigeria, Lawlords Publications, 2018), pp.182 – 196.

[6] *Registered Trustees of Nigerian Bar Association V. AGF & CBN (Suit No: FHC/ABJ/CS/173/2013).*

It is noteworthy that the Money Laundering (Prohibition) Act, 2011 imposed on legal practitioners, among other professionals, a duty to conduct due diligence on their customers by keeping records of their identification documents, and of reporting any transaction exceeding $1000 or its equivalent to SCUML under the Federal Ministry of Trade and Commerce.[7] The contention was that the said section was in conflict with section 192 of the Evidence Act, 2011 which protects communications between lawyer and his client as privileged.

It was this obligation imposed on lawyers that the NBA challenged and the court acceded to its request by ordering that legal practitioners should be deleted from the list. There is nowhere the court ordered that lawyers should not be questioned on their bank account where there is suspicion of crime or fraud.

Abuse of LPP: A Global Concern

I was privileged to participate in the "Expert Group Meeting on Concealing Beneficial Ownership: How to Prevent Abuse of Legal Professional Privilege," in Vienna, Austria from 15 – 16 November 2018 organised by the United Nations Office on Drugs and Crimes (UNODC) and World Bank Stolen Assets Recovery (StAR) Initiative. The meeting was predicated on the growing global concern that professionals, especially lawyers, play significant roles in aiding and abetting public officials to launder money.

Specifically the meeting, which was triggered by the findings of the World Bank in 2011 in its report, ''*The Puppet Masters*'', was intended to find a common position on curtailing the legal professional privilege, as it is being abused to benefit public officials who launder money through various arrangements facilitated by lawyers.[8] According to the 2011 report, there is also a near global consensus among investigators that this legal professional privilege constitutes a major obstacle to accessing information on beneficial ownership. Lawyers capitalise on this principle to deny access to relevant information and they openly advertise it to attract clients. Lawyers have made it an absolute privilege since its scope is not determined; and would prefer to err on the side of their clients and refuse to allow access, than to divulge information on their client which may turn out to be privileged.[9] Unfortunately, there is no agreement globally as to the scope of the privilege. In view of this, the report

[7] Section 3 and 5 Money Laundering Act, 2011.
[8] The World Bank, *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It* (Washington DC: The World Bank, 2011), p.106.
[9] Ibid.

recommended, among other things, that countries must determine the extent of the privilege. The report recommended that each country should limit the scope only to the traditional duties of lawyers, i.e., advocacy in adversarial processes or litigation.[10]

Legal Practitioners as Most Vulnerable Gatekeepers

In July 2018, a joint report of the Financial Action Task Force and the Egmont Group examined how professionals facilitate money laundering and its implication on the international community in terms of the risks they faced, if unchecked.[11] The major findings of the report as it relates to the legal practitioners are:

1. Legal professionals were more involved in the establishment of legal persons, legal arrangements, and bank accounts when compared with accountants, but less so when compared to trust and company service providers (TCSPs). The same was also true for the provision of nominee and directorship services.
2. Lawyers were the most likely of the three professionals,(i.e., Accountants and trust and company service providers) to be involved in the acquisition of real estate as a means of laundering the proceeds of crime and obscuring beneficial ownership.
3. Legal trust accounts and client accounts were also more frequently used as a means of disguising beneficial ownership, although the accounting profession also exhibited a similar proportion of this concealment technique. Legal professional privilege was also identified as a barrier to the successful recovery of beneficial ownership information.
4. Where legal professionals were involved, there were a number of cases where legal professionals appeared to be unwitting or negligent in their involvement. This suggests that, despite their reasonably high level of involvement in the establishment of legal persons and arrangements, *legal professionals are not sufficiently aware of their inherent money laundering and terrorism financing vulnerabilities.*[12]

The above suggests that of all professionals, lawyers are more vulnerable to be used in facilitating money laundering. They are equally more likely to be involved in making arrangements aimed at hiding illegal money, given

[10] Ibid.

[11] FATF-EGMONT Group (2018) Concealment of Beneficial Ownership' available at *https://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Egmont-Concealment-beneficial-ownership.pdf.* Last visited 25 May 2019

[12]Ibid, p.7

their readiness to invoke attorney-client privilege, thus, qualifying them as 'the secret refuge of white-collar defendants' to use the phraseology of Liam Brennan of the Washington Post.[13]

Ebiobi and Mac-Barango[14] graphically demonstrate how lawyers can be involved in the three processes of money laundering, i.e. placement; layering; and integration, thus:

> *Considering the nature of legal services independent legal professionals render to their clients, there is the possibility of them being used to further money laundering purposes. Since legal professionals deal with clients' money, they can be used to introduce the earnings from crime into the financial system, especially when banks and financial institutions have developed anti-money laundering processes to avoid being detected (placement). Once this is successfully done, an independent legal professional may be used to prevent or conceal the detection of the source of the earnings of crime by plowing same into complex transactions like trusts and companies in several jurisdictions (layering). Thereafter, the earnings would seem legal and be subsequently used by the legal professional for investment purposes such as the purchase of properties and settlement of litigation expenses, amongst others (integration)*.

Significantly, professionals in countries with no reporting obligation under Anti-Money Laundering and Combatting Financing Terrorism are more vulnerable.[15] Legal practitioners are not under any reporting obligation under the Money Laundering Act, the EFCC Act and other subsidiary legislation since the decision of the Federal High Court in *Registered Trustees of Nigerian Bar Association V. AGF & CBN (Suit No: FHC/ABJ/CS/173/2013),* and its subsequent validation by the Court of Appeal in *Central Bank of Nigeria v Registered Trustees of the Nigerian Bar Association & Attorney General of the Federation CA/A/202/2015*. In order to settle the 'dust of suspicion' on their disposition to issues of money laundering and corruption, Nigerian lawyers opted rather for self-regulation, and in February 2016, the NBA National Executive Committee resolved to issue guidelines to be known as 'The NBA Anti Money

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[13] Harrison, Liam, Commentary: "What Trump Doesn't Understand About Attorney-Client Privilege," *Chicago Tribune*, 23 December 2018.

[14] F. E. Eboibi, I. Mac-Barango (2019) "Global Eradication of Money Laundering and Immunity for Legal Practitioners under the Nigerian Money Laundering Regulation: Lessons from the United Kingdom," *Beijing Law Review*, 10, 2019, 769-794. https://doi.org/10.4236/blr.2019.104042

[15] FATF-EGMONT Group (2018), op. cit., p.8.

Laundering and Anti-Terrorism Financing Guidelines'.[16] It is now over four years and no such guidelines have been issued.

In my view, the Usoro case and the ensuing debate including the solidarity appearance of his colleagues in court demonstrate clear manifestation of lawyers' lack of knowledge of money laundering and the limit of their relationship with their clients. It further validates the findings of the Financial Action Task Force and the Egmont Group that perhaps lawyers are either complicit or unaware of their vulnerabilities to being used in facilitating money laundering.

The implication of removing lawyers from the regime of anti-money laundering is enormous. It means a certain individual may corruptly misappropriate government money and pay it into his lawyer's trust account or client's account and the lawyer covers it up without doing any due diligence and reporting to appropriate authority. The lawyer may ultimately buy real estate for his client and probably resell it to give the money a semblance of legitimacy. Unfortunately, the Legal Practitioners Act only make regulations for safeguarding the client's money kept in the lawyer's trust account.[17] Indeed, one risks being reprimanded for tampering with client's money.

It is worthy of note that the much cited Malaysian 1MDB scandal benefited immensely from such lacuna owing to the absence of regulatory regime on money laundering in the US. During the scandal, one of the Malaysian public servants transferred US$368 million he embezzled directly from the account of an anonymous overseas shell company into the Interest on Lawyer Trust Account (IOLA) account held by a U.S. law firm.[18] According to the Global Witness:

> *Lawyers (in US) are not required to do due diligence on their clients in the same way that banks do, and they are not required to investigate client conduct unless they believe their client is engaging in illegal activity. This is a huge and extraordinary loophole in the global anti-money-laundering system that has been left unaddressed for far too long. The use of law firms' client accounts for the transfer*

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[16] NBA (2016) Communique from NBA NEC Meeting of February 2016, *https://www.nigerianbar.org.ng/index.php/president-sspeeches/send/5-president-s-speeches/15-communique-issued-at-the-end-of-the-meeting-ofthe-national-executive-committee.* Last visited 13 May 2019.

[17] Section 20 Legal Practitioners Act, L11, Laws of the Federation of Nigeria, 2004

[18] UNODC (2018) Discussion paper: Concealing Beneficial Ownership: How to Prevent Abuse of Legal Professional Privilege

> *of suspect funds into the United States poses one of the most worrying risks. Law firms use these accounts to temporarily hold funds on behalf of their clients, for example during the sale or purchase of real estate. The law firm doesn't have to do any checks on its clients, while the banks that hold these accounts, in turn, only have to do checks on the law firm, not its clients. So, neither the bank nor the law firm are required to do checks on the people actually using these accounts. The result is that client accounts can be used as a way of getting money into the United States, while completely evading existing anti-money laundering safeguards.*[19]

What Does Legal Professional Privilege Mean?

It is important to note that there are many forms of privileges enjoyed by individuals depending on their relationship, although not all of them are legally recognised.[20] These forms of privileges include attorney-client or legal professional privilege, doctor-patient privilege, editorial/journalist's privilege, executive/national security privilege, clergy-penitent privilege, marital privilege, accountant-client privilege, etc.

For the purpose of this article, legal professional privilege is our focus. By invoking this privilege, lawyers are simply saying that all communications between a lawyer and his client are secret and confidential between them. Thus professional secrecy is imposed on the lawyer not to disclose or divulge any such communication to a third party, except where his client consents. It is a common law principle which preserves the confidentiality of communications between a lawyer and his client. The lawyer is duty bound not to divulge his clients' secrets. Rule 19 of the Rules of Professional Conduct for Legal Practitioners of Nigeria (2007) provides as follows: 'all oral or written communications made by a client to his lawyer in the normal course of professional employment are privileged.' By necessary implication, the lawyer is barred from disclosing any communication if done in the course of employment by the client. The Evidence Act (2011) as amended, only allows disclosure with the express consent of the client.[21] In fact, not only what his client told him and a document given to him by his client; the advice he gave to his client is equally protected. Of course,

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[19] Global Witness: 'What Role Did US Lawyers Play in Malaysia's 1MDB' *https://www.globalwitness.org/en/blog/what-role-did-us-lawyers-play-malaysias-1mdb-scandal/* Blog, 13/4/2018; last visited 25 May 2019

[20] Accountant-client privilege is not widely recognized.

[21] Evidence Act, 2011, as amended, Cap. E14, Laws of the Federation of Nigeria, 2004, Section 192

communication in furtherance of any illegal purpose and those showing that crime or fraud has been committed, enjoy no protection.[22]

Keane and McKeown[23] argue that legal professional privilege is two-legged:

i. Legal advice privilege covers advice about the client's legal rights and liabilities. It is noteworthy that document prepared for the purposes of seeking legal advice is privileged, but a pre-existing document forwarded along with the write-up may not. See ***R v Justice of the Peace for Peterborough, ex p Hicks***[24]
ii. Litigation privilege covers communications between a client, or his lawyer, and third parties—for example, statements from potential witnesses and experts—the dominant purpose of which was preparation for contemplated or pending litigation.

Obviously, the judiciary in the United Kingdom have taken measures to curtail the privilege through judicial pronouncement as can be seen above. In fact, when in ***R v Crown Court at Manchester, ex p Rogers***[25] the solicitor to the applicant in the case claimed that certain records in his custody, such as the record of the time at which his client arrived his office were privileged, the court disagreed. Lord Bingham CJ held: 'The record of time on an attendance note, on a time sheet or fee record is not in my judgment in any sense a communication. It records nothing which passes between the solicitor and the client and it has nothing to do with obtaining legal advice. It is the same sort of record as might arise if a call were made on a dentist or a bank manager…'

Interestingly, the contract document containing how legal fees have been negotiated is what the NEC of the Nigerian Bar Association is extending the legal professional privilege. Though a persuasive judgement, Lord Bingham's decision clearly shows that what the EFCC was requesting is not of the nature of communication contemplated by the principle of legal professional privilege. Obviously, the contract document will not contain anything that passes in the nature of legal advice between the President of the Nigerian Bar Association and the Akwa Ibom State Government. Fee record would also not be covered by the privilege.

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[22] Ibid.
[23] Keane, A and P McKeown (2012) the Modern Law of Evidence, Oxford University Press, 9th Edition, p. 617.
[24] [1977] 1 WLR 1371, DC ... 617
[25] [1999] 1 WLR 832, DC

Rationale Behind the Legal Professional Privilege

It is interesting to note that the legal professional privilege has a long history. Lord Justice Taylor of Gosford CJ. traced the doctrine to the 1833 English case of ***Bolton v Liverpool Corporation***[26] wherein the defendant prayed the court to permit him to inspect the document containing the instruction of the plaintiff to his counsel but not what the counsel advised. In refusing the request the court observed as follows: "It seems plain, that the course of justice must stop if such a right exists. No man will dare to consult a professional adviser with a view to his defence or to the enforcement of his rights."

Subsequent authorities such as ***Holmes v Baddeley***[27]***, Anderson v Bank of British Columbia***[28]***, Southwark and Vauxhall Water Co v Quick***[29]***, Pearce v Foster***[30], etc. went to further concretise this common law principle**.** Lord Justice Taylor of Gosford CJ., summarised the principle in ***R v. Derby Magistrates Court, Ex parte B., Same v. Same, Ex parte Same***[31] thus:

> *'The principle which runs through all these cases, and the many other cases which were cited, is that a man must be able to consult his lawyer in confidence, since otherwise he might hold back half the truth. The client must be sure that what he tells his lawyer in confidence will never be revealed without his consent. Legal professional privilege is thus much more than an ordinary rule of evidence, limited in its application to the facts of a particular case. It is a fundamental condition on which the administration of justice as a whole rests; ... it is not for the sake of the applicant alone that the privilege must be upheld. It is in the wider interests of all those hereafter who might otherwise be deterred from telling the whole truth to their solicitors."*

From the avalanche of cases, what is clearly apparent is that the principle protects communication made in confidence between a client and his counsel. It also shows that a client is not compellable to disclose the advice given by counsel, hence it is privileged. The communications must be connected to legal advice or litigation for the protection to apply.

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[26] (1833) 1 M & K 88
[27] (1844) 1 Ph 476, 480-48
[28] (1876) 2 Ch D 644, 649
[29] (1878) 3 QBD 315, 317-318,
[30] (1885) 15 QBD 114, 119-120
[31] (1996) A.C. 487

Exceptions to the Rule against Disclosure

Section 192 (1) (a) and (b) of the Evidence Act excludes communications made for contemplated crimes. It is otherwise referred to as crime-fraud exceptions. Thus, a client who seeks legal assistance for the purpose of committing a crime or fraud will not be shielded by the privilege. It is exempted from non-disclosure so as to prevent death or serious injury or even financial injury due to a crime or fraud. Therefore, if a person is employed as an attorney in any unlawful or wicked act, his duty to the public obliges him to disclose, as no private obligations can dispense with that universal one, which lies on every member of the society, to discover every design which may be formed, contrary to the laws of the society, to destroy the public welfare.

A legal practitioner is equally bound to disclose any fact observed by him in the course of his employment as such showing that any crime or fraud has been committed since the commencement of his employment.
It is most unfortunate that despite these provisions lawyers appear to find comfort in concealing their client's misdeeds thereby abdicating their duty to the public particularly in cases involving public funds.

In my opinion, it may even be a professional misconduct for a lawyer to conceal such communication if Rule 19 (3) of the Rules of Professional Conduct for Legal Practitioners is reckoned with. It reads:

A lawyer may reveal:

(a) confidences or secrets with the consent of the client or clients affected, but only after a full disclosure to them.

(b) confidences or secrets when permitted under these rules or required law or a Court order;

(c) the intention of his client to commit a crime and the information necessary to prevent the crime;

(d) confidences or secrets necessary to establish or collect his fee or to defend himself or his employees or associates against an accusation of wrongful conduct.

Are all Services Rendered by Lawyers Covered by the Privilege?

Our discussion above centred mainly on legal representation and legal advisory, being the traditional services known to be rendered only by lawyers. As such, the cover of privilege has always been associated with legal advice and litigation advisory. In modern days, however, lawyers have gone beyond the four walls of court and precincts of their offices to render professional services. It is now commonplace for lawyers to be rendering services which for all intents and purposes are extra-legal. Lawyers are

now involved in real estate management, incorporation of companies, which may include shelf companies formed in anticipation of future needs, opening bank accounts in the name of shelf companies, directorship of companies, etc. Other services include representation in arbitration and mediations, estate planning, tax planning, conducting corporate investigations, among others.[32] Whether these 'professional services' enjoy the professional secrecy remains an unanswered question in many jurisdictions, including Nigeria. It is submitted that a clear line needs to be created between occasions where a lawyer acted as an advocate and where he acted otherwise, such that any service rendered by him which can be rendered by a non-lawyer will not enjoy the privilege. By this proposition, a lawyer who offers services of buying or selling real estate for a client cannot be heard to claim that the communications between him and his client in this respect are protected. The same is applicable to a lawyer who helps a client in planning his taxes by avoiding payment.

It is worthy of note that after the Forty Recommendations of the Financial Action Task Force, the European Council adopted its First Anti-Money Laundering Directive on 10 June 1991,[33] wherein a reporting obligation was placed on professionals.[34] This was further strengthened by the Third Directive of 2005,[35] of course amidst resistance from many bar associations.[36] This Directive lifted verbatim Recommendations 12 (d) and 16 of the Financial Action Task Force specifically requiring that lawyers, notaries, other independent legal professionals and accountants to conduct due diligence, keep record and report suspicious transactions in relation to:

i. buying and selling of real estate;[37]
ii. managing of client money, securities or other assets;

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[32] UNODC (2018) Discussion paper: Concealing Beneficial Ownership: How to Prevent Abuse of Legal Professional Privilege.

[33] Council Directive 91/308/EEC of 10 June 1991, official Journal L 166 of 28 June 1991, p.77. *https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31991L0308&from=EN*

[34] See article 4 of the First EU's Directive.

[35] Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005

[36] Tyre, C., "Anti-Money Laundering Legislation: Implementation of the FATF Forty Recommendations in the European Union," *Journal of the Professional Lawyers*, pp. 69-82. *https://www.anti-moneylaundering.org/Document/Default.aspx?DocumentUid=84B3BF0D-FB35-4778-86B7-4639DB38478B* last visited 27/05/2019

[37] In Nigeria, it is also a violation of the Rule 7 of the RPC for a lawyer to engage in the business of buying and selling commodities or the business of a commission agent. See, *Chief Godwin Ukah and Ors V Chief Christopher A. Onyia and Ors (2016) LPELR-40025 (CA)*

iii. management of bank, savings or securities accounts;
iv. organisation of contributions for the creation, operation or management of companies;
v. creation, operation or management of legal persons or arrangements, and buying and selling of business entities.

The FATF recommendation excludes the traditional duties of lawyers from the reporting obligation. That legal professionals, including accountants if they acted as legal practitioners, "are not required to report their suspicions if the relevant information was obtained in circumstances where they are subject to professional secrecy or legal professional privilege."[38] Similarly, the Third Directive of the EU excluded the traditional areas where professional privilege was known to be applicable.

At least, lawyers in Belgium and France felt strongly about the reporting obligation placed on them that it contravened Article 6 (2) of the European Convention on Human Rights (ECHR). When it was brought before the Belgium Constitutional Court, it referred the matter to the European Court of Justice. The issue for determination was:

> *Is it consistent with Community law and with the fundamental principles which it guarantees to impose on lawyers, as is provided for by Directive 2001/97 of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering (OJ 2001 L 344, p. 76), the obligation to inform the competent authorities of any fact of which they are aware which might be an indication of money laundering?*

The position of the Advocate General is to effect that Articles 2a (5) and 6 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering, as amended by Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001, did not offend the principle of professional secrecy. That exemption may only apply to 'information obtained before, during or after judicial proceedings or in the course of providing legal advice.'[39] The

[38] Financial Action Task Force (2003) FATF 40 Recommendations *https://www.fatf-gafi.org/media/fatf/documents/FATF%20Standards%20-%2040%20Recommendations%20rc.pdf.* Last visited 29 May 2019

[39] See Opinion of Advocate General Poiares Maduro delivered on 14 December 2006 *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62005CC0305* Last visited 29 May 2019

Advocate General made very remarkable comments which deserve the attention of the Nigerian Bar Association, as it places public interest over and above individual interest:

> "It must be acknowledged that a distinction between lawyers' activities of a legal nature and their 'extra-legal' activities may be difficult to draw in practice. However, it does not seem to me impossible to design a clear criterion for separating cases in which a lawyer, acting 'as a lawyer', enjoys the protection of professional secrecy from cases in which that protection does not need to be applied. Moreover, it is only on that condition, in my opinion, that the balance between the requirement of protection of the trust existing between a lawyer and his client and the requirement of protection of the general interests of society can be safeguarded with due observance of the rights guaranteed by the Community legal order. *In my view it is also difficult to justify an extension of lawyers' professional secrecy on the sole basis of a difficulty of a practical nature and regardless of the fact that the legal profession nowadays takes on activities which go well beyond its specific tasks of representation and advice."*

It was not much a surprise the European Court of Justice adopted the Advocate General's position that Articles 6 and 8 of European Convention on Human Rights presupposed a link with judicial proceedings, that the Directive was compliant with the Convention. At the moment, many EU member states have transposed the Anti-Money Directives into domestic laws and imposed on lawyers reporting obligation of suspicious transactions.[40]

It is therefore pertinent for the General Council of the Bar in Nigeria, to consider public interest over any other interest and invoke its power of general management of affairs of the Nigerian Bar Association to make regulations on anti-money laundering and terrorist financing for legal practitioners of Nigeria. That will go a long way in delimiting the extent of lawyers' relationship to their clients.

[40] See for instance the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, No. 692 of 2017 United Kingdom *http://www.legislation.gov.uk/uksi/2017/692/pdfs/uksi_20170692_en.pdf.* Last visited 28 May 2019

Conclusion

In the foregone, this article examined the principle of legal professional privilege and the global concern that the principle is one of the major obstacles in investigating cases of money laundering and terrorist financing. This is because of the legal professionals' readiness to invoke it to cover both legal and extra-legal services. It observed that the principle remains limited to the traditional duties of lawyers of legal advisory and litigation, and pregnant with a number of exceptions. It noticed that in many jurisdictions, particularly the EU states, reporting obligation has been placed on lawyers in areas identified in the Forty Recommendations of the Financial Action Task Force which are obviously non-legal services. In view of these findings, this article calls for the integration of Nigerian lawyers into the anti-money laundering regime through the instrumentality of the General Council of the Bar, being the body saddled with the management of the affairs of the Nigeria Bar. It is the conviction of this writer that doing so will save the legal profession from public criticism, particularly as the Nigerian Bar Association has promised to come up with guidelines on anti-money laundering for lawyers since 2016. At least, we have seen how US lawyers relied on the absence of such guidelines to facilitate monumental fraud in the Malaysian 1MDB scandal.

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CORRUPTION, SOCIAL INJUSTICE AND NIGERIA'S NATIONAL SECURITY: A THEORETICAL DISCOURSE

Olawale O. Akinrinde[1]

Abstract

While across known histories of societies, human societies had always developed within the confines of their limits of social justice, the security or otherwise of societies had always been directly proportional to their level of social justice. Invariably, this implies the higher the acceptance and recognition of the need for social justice by a society, the higher the society's chances for national security. Social justice has thus proven to be a critical sine qua non for an egalitarian and a just society where equity, selflessness and equitable distribution of resources reign. However, the lack of, and deliberate emasculation of social justice within the society by the state and/or its machineries, has over time, consequentially informed a pathological situation; where, due to the absence or deliberate neglect of the need for social justice in the accumulation of wealth, distribution of wealth and resources as well as social, economic and political relations amongst the people, the rich are becoming richer whilst the less privileged are becoming more disadvantaged. The social implication and effect of this social pathology is the impulse by the rich or the privileged to weaponise and use corruption to accumulate more wealth whilst the poor and the less privileged tend to resort to, and use corruption as a leveller and means to accumulating their own share of the societal wealth, resources and power. The corrupt environment created by social injustice, as much as the socially unjust environment created by corruption, remains antithetical to any country's quest for national security. This paper therefore argues that social justice backed by egalitarian and equitable distribution of wealth, resources and social services by the government would bring about a corrupt-free society where insecurity would be minimized and reduced to the barest minimum.

Introduction

Confronted by the triangular web of the Boko Haram Insurgency, Farmers-Herdsmen crisis and the resurgent art of banditry, the Nigerian state continues to search for a workable solution to redress her national security

[1] Lecturer, Department of Political Science, Osun State University, Nigeria. He can be contacted at olawale.akinrinde@uniosun.edu.ng. the author acknowledges the invaluable roles, guidance and academic mentoring of Professors Kunle Awotokun (Obafemi Awolowo University, Ife), Bolaji Omitola (Osun State University, Osogbo), Usman Tar (My PhD Supervisor) (NDA, Kaduna), and Dr. John Agbonifo (Osun State University, Osogbo).

challenges. The spontaneity of the manifestations of this triangle of terrors has tested the resolve of, and the preparedness of the Nigerian state to stem the tide of this triangle of terrors and insecurities. With thousands of innocent Nigerians killed and internally displaced owing to the continued manifestation of this triangle of insecurities, several attempts had been made to understand the dynamics of this triangle, its causes and why it has remained almost unshakable and indestructible with no end in sight despite the amount of efforts, resources and policies and strategies that had been committed to its eradication by successive Nigerian governments. Whilst various paradigmatic and tested hypothetical rationalizations have been advanced to explain the wave of Boko Haram insurgency, banditry and the farmers-herdsmen crisis that are embedded in the triangular web of national insecurity in contemporary Nigeria, little or no attention has been given to the deep-rooted causes of the triangulated web of terrors and insecurities in Nigeria and why this unwholesome triangle of insecurities has remained almost supreme, unsolvable and indestructible till date.

Without downplaying the capacity of other security threats breeding insecurities in Nigeria, the security posed by the Boko Haram menace, banditry and farmers-herdsmen persistent crises remain daunting and a major challenge to Nigeria's national security. Notwithstanding the abundance of insightful explanations offered by the Isolation thesis and the Relative Deprivation, Nieftagodien's Endemic Poverty Explanation[2] and John Dollard and Neal Miller's Frustration-Aggression theory,[3] John Burton's Human Needs theory,[4] and the relatively new Human Security Approach[5] to the understanding of the causes of insecurity across the globe, this essay locates the persistent manifestation of security threats and insecurities in Nigeria within the sphere of "social injustice".

While across known histories of societies, the human societies had always developed within the confines of their limits of social justice, the security or otherwise of societies had always been directly proportional to their level of social justice. Invariably, this implies the higher the acceptance and

[2]Noor Nieftagodien, "Xenophobia in Alexandra," in T. Kupe, B.P. Verryn and E. Worby (Eds.), *Go home or die here: Violence, xenophobia and the Reinvention of difference in South Africa* (Johannesburg: Wits Press, 2008), 65.
[3]John Dollard and Neal Miller, "Frustration and Aggression," (New Haven: Yale University Press, New Haven, 1939).
[4]John Burton, "*Deviance, Terrorism and War: The Process of Solving Unsolved Social and Political Problems,"* (New York: St. Martin's Press, 1979).
[5]United Nations Development Programme, *Human Development Report*, 1994.

recognition of the need for social justice by a society, the higher the society's chances for national security. Social justice has thus proven to be a critical sine qua non for an egalitarian and a just society where equity, selflessness and equitable distribution of resources reign. However, the lack of, and deliberate emasculation of social justice within the society by the state and/or its machineries, has over time, consequentially informed a pathological situation; a situation where, due to the absence or deliberate neglect of the need for social justice in the accumulation of wealth, distribution of wealth and resources as well as social, economic and political relations amongst the people, the rich are becoming richer whilst the less privileged are becoming more disadvantaged.

The social implication and effect of this social pathology is the impulse by the rich or the privileged to see and use corruption to accumulate more wealth, resources and power in unjust social, economic and political exchanges in their bid to maintaining the unjust socio-economic and political systems, whilst the poor and the less privileged have tended to see and use corruption as a leveller and means to accumulating their own share of the societal wealth, resources and power. The corrupt environment created by social injustice is therefore antithetical to any country's quest for national security. This is chiefly because national security objectives and corruption are two parallel lines that cannot and, had never met. This study therefore argues that social justice backed by egalitarian and equitable distribution of wealth, resources and social services by the government would bring about a corrupt-free society where insecurity would be minimized and reduced to the barest minimum.

Making Meaning out of the Concepts: Social Injustice, Corruption, and National Security Social Injustice

Walker and Avant's method of concept analysis guides the conceptual analysis here.[6] Aligning with Walker and Avant's method, the antecedents, defining attributes (both in content and context), consequences, empirical referents and model case-studies of the concepts under scrutiny in this article provide the premise for the analysis of these concepts.[7]

On social injustice, one of the ironies of the early twenty-first century is that ideological struggles between and within nations have intensified a decade after the end of the Cold-War. Today, proponents of diametrically

[6]Lorraine Walker and Coalson Avant, *Strategies for Theory Construction in Nursing,* Upper Saddle River, NJ: Pearson Prentice Hall, 1982).
[7]*Ibid*.

opposed visions of society, secular and religious, march under the banner of social justice. As desirable social and political goals are depicted in starkly different forms, labels like "good" and "evil" become interchangeable and the meaning of social justice becomes obscured. As it has been for millennia, the concept of social justice is now used as a rationale for maintaining the status quo, promoting far-reaching social reforms, and justifying revolutionary action. If liberals and conservatives, religious fundamentalists, and radical secularists all regard their causes as socially just, how can we develop a common meaning of the term? Notwithstanding the conceptual and interpretational relativity, we can take Social Injustice, in this study, to mean a situation when some unfair practices are being carried in the society. Whatever unjust is happening is usually against the law and it might not be something that is considered a moral practice. Areas in which government policy often gives rise to social inequality and injustice therefore include: Voting Laws (i.e. redistricting and voter ID), Education Laws (i.e. public-school segregation and integration) Labour Laws (i.e. worker's rights, occupational health and safety), Tax law, wealth and resource distributions etc. In the Republic, Plato[8] expanded the meaning of justice by equating it with human well-being. He linked the concept of individual and social justice by asserting that justice was derived from the harmony between reason, spirit, and appetite present in all persons. Within this formulation, if a society lacked such harmony, justice could not be achieved.

Aristotle further developed this concept of justice in *The Nicomachean Ethics*,[9] where he introduced a view of justice that anticipates modern debates about issues of resource allocation. Aristotle regarded justice, as fulfilled through law, as the principle that ensures social order through the regulation of the allocation and distribution of benefits. In Book V, Aristotle states, "equality for the people involved will be the same as for the things involved, since in a just society the relation between the people will be the same as the relation between the things involved. For if the people involved are not equal, they will not (justly) receive equal shares; indeed, whenever equals receive unequal shares, or unequal equal shares, that is the source of quarrels and accusations."[10] Yet, like Plato and many other philosophers and political leaders over the past 2,000 years, Aristotle did not regard people as fundamentally equal. His view of equality and justice applied only

[8]Plato, *The Republic*, Trans., New Standard Greek, C.D.C Reeve, (Hackett Publishing Company, Inc, 2004).
[9]Aristotle, *The Nichomachean Ethics*. Translated by Robert C. Bertlett & Susan D. Collins, (Chicago and London: University of Chicago Press, 2011).
[10]*Ibid*.

to those individuals who occupied the same stratum of a hierarchical social order.

Corruption

Corruption has been severally defined. Whilst the Oxford Dictionary of Current English defines corruption as an act of dishonesty especially using bribery or an immoral or wicked act, the Oxford Advanced Learner's Dictionary sees it as a dishonest or illegal behaviour especially of people in authority. This definition looks at both the moral and legal aspects. But for Joseph Nye, corruption is basically a deviation from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary exercise of certain types of private regarding influence.[11] This includes such behaviour as bribery (use of reward to pervert the judgment of a person in position of trust); nepotism (appointment by reason of inscriptive relationship or sentimental affiliation rather than merit); and misappropriation (illegal appropriation of public resources for private regarding uses).

Joseph Nye sees corruption as a deviant behaviour.[12] This implies that normal behaviour is the antithesis of corruption. This conception may run into conflict with broader conceptions in terms of operationalisation especially in instances where corruption is widespread and regarded as the norm by majority of the people. Similarly, Samuel P. Huntington (1968 cited in Kimmel, 1990) conjectured and likened corruption to behaviour of public officials, which deviates from accepted norms in order to serve private end.[13] The International Monetary Fund (IMF) and World Bank defined corruption as "the abuse of public office." The World Bank describes corruption as abuse of public office through the instrumentality of private agents, who actively offer bribes to circumvent public policies and processes for competitive advantage and profit.[14] Public office can also be abused for personal benefit through patronage and nepotism, for example the theft of state assets or the diversion of state revenues. This is a very wide ranging definition, which delineates some of the acts of corruption. This aligns with Otite's interpretation of corruption as the perversion of state of affairs through bribery, favour or moral depravity.[15]

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[11]Robert Klitgaard, *Controlling Corruption* (Berkeley: University of California Press, 1988).
[12]I*bid*.
[13]Michael Kimmel, Revolution, *A Sociological Interpretation* (Philadelphia: Temple University Press, 1990).
[14] Quoted in *Ibid*.
[15]Funso Oluyitan, *Combating Corruption at the Grassroots level in Nigeria* (Switzerland: Springer Nature, 2017).

Further to the above, The Transparency International equally defines corruption as behaviour on the part of officials in the public sector, whether politicians or civil servants, in which they improperly and unlawfully enrich themselves, or those close to them, by the misuse of public power entrusted to them[16]. Although the definition of the Transparency International is very descriptive, it focuses only on the public sector. But there is corruption in private sector with negative consequences for the whole of society. Similarly, Robert Rotberg viewed corruption as covering a wide range of social misconducts, including fraud, extortion, embezzlement, bribery, nepotism, influence peddling, bestowing of favour to friends, rigging of elections, abuse of public property, the leaking of a government secret, and sale of expired and defective goods, such as drugs, food, and electronic and spare parts to the public, etc.[17]

From the foregoing however, it can be opined that in as much as we strive to understand and conceive what corruption is all about, it will continue to elude a universally accepted conceptualization due to its constructivist posture. Suffice to mean, that corruption can fully be grasped when located within our unique and local cultural understanding and context. This goes to say that our meanings and interpretation of corruption is locally and culturally constructed. In light of this, this study adopts Joseph Nye's conceptually nuanced understanding of corruption as it mirrors the local practice of corrupt behaviours in Nigeria.

Nigeria's National Security Objectives

Basically what readily constitutes the national security objectives of sovereign states could differ on so many pretexts. This is to inform that national security objectives of sovereign states may be circumstances-bound, environmentally bound, politically, culturally and economically bound. Whilst recognizing the fluidic nature of Nigeria's national security objectives over the years, this study construes Nigeria's national security objectives in terms of its responsibility to quash fears and uncertainty occasioned by the Boko Haram insurgency; and ensure the safeguarding of its territorial integrity and protection in an environment where the people are economically, politically, socially, environmentally secured. The realities of the years which have revealed the systematic decline in the

[16]Robert Rotberg, *Corruption, Global Security and World Order* (Washington D.C: Brookings Institution Press, 2009).

[17] Rotberg, *Corruption, Global Security and World Order*, *Ibid.*

actualization of these security objectives have further reinforced the sad reality that Nigeria's security objectives only exist now in the realms of dreams and fantasies given the tsunami-like security challenges ravaging the national landscape of the country.

The Intersecting Causality between Social Injustice, Corruption and the Fleeting Nigeria's National Security Objectives: A Theoretical Discourse

The recurring manifestation of this triangle of terrors has tested the resolve of, and the preparedness of the Nigerian state to stem the tide of this triangle of terrors and insecurities. With thousands of innocent Nigerians killed and internally displaced owing to the continued manifestation of this triangle of insecurity, several attempts had been made to understand the dynamics of this triangle, its causes and why it has remained almost unshakable and indestructible with no end in sight despite the amount of efforts, resources and policies and strategies that had been committed to its eradication by the government. Whilst various paradigmatic and tested hypothetical rationalizations have been advanced to explain the wave of Boko Haram Insurgency, Banditry and the Fulani Herdsmen terror embedded in the triangular web of national insecurity in Nigeria independent of the others, little or no attention has been given to the theorization of the relationship between these three triangulated web of terrors and insecurity in Nigeria's national security and why this unwholesome triangle has remained almost supreme, unsolvable and indestructible.

Notwithstanding the abundance of insightful explanations offered by the Isolation thesis and the Relative Deprivation theory,[18] Nieftagodien's Endemic Poverty Explanation,[19] and John Dollard and Neal Miller's Frustration-Aggression theory[20], this study finds John Burton's Human Needs theory and the Human Security Approach,[21] as the most relevant and appropriate theoretical framings to understanding the inherent causality in the triangular intersections of the Boko Haram Insurgency, Banditry and the Fulani Herdsmen terror as well as why this triangle of terrors has

[18]May, J., Woolard, I. & Klasen, S., "The nature and measurement of poverty and inequality," in J. May (ed.), *Poverty and inequality in South Africa: Meeting the challenge* (Cape Town: David Philip, 2000).

[19]Noor Nieftagodien, "Xenophobia in Alexandra," in T. Kupe, B.P. Verryn and E. Worby (eds.), *Go home or die here,* 65.

[20]John Dollard and Neal Miller, *Frustration and Aggression* (New Haven: Yale University Press, New Haven, 1939).

[21]United Nations Development Programme, *Human Development Report*, 1994.

remained persistent and constant in the security complexion of the Nigerian State.

The thrust of Burton's Human Needs theorization lies in its assumption that persons or groups, or groups of persons patronize insecurity and rely on same as means to finding fulfilment of their needs. In Nigeria and more specifically in the Northern region, most of the human needs have become practically non-existent. Contextualized to mean food, clothing, shelter, and identity as the case may be, security, inclusiveness, liberty, religious tolerance and respect, as well as fundamental human rights, the availability and ease of accessing these human needs in Nigeria have been conspicuously low. The Nigerian state now boasts of being the capital of world's poverty.[22] This is in addition to World Bank report on human needs that is already going up. Burton further explains that the reason why insecurity persists is not entirely due to weak institutions or structures but rather, as a result of the inability of the institutions of state, and the government to provide for the basic human needs of its citizenries.

Since attainment of independence in 1960, the Nigerian state has consistently struggled to meet the human needs of its citizenries. Not only that Nigeria is now regarded as the poverty capital of the world having taken over from India, the country now harbours the highest number of out of school and malnourished children. The World Poverty Clock has revealed Nigeria as the poverty capital of the world with 86.9 million out of her 180 million population living in extreme poverty.[23] The failure of successive Nigerian governments to comprehensively address the roots of poverty in Nigeria has been particularly consequential for two reasons: the rising profile of poverty level and the role the high poverty level has been playing in the making of insecurity. The poorly catered and trained citizens that are mostly teenagers and youths have thus become ready-made tools for the breeding of terrorism, banditry and herdsmen terror. The current leader of the Boko Haram terrorist sect since the demise of its founding father, Mohammed Yusuf, was formerly an *Almajiri* who wandered the streets of Yobe state in Nigeria before he came in contact with the late Mohammed Yusuf, the supreme founder of the Boko Haram sect.[24] Ibrahim Shekau like most members of the deadly Boko Haram terrorist sect, bandit

[22]World Poverty Clock Report, *World Poverty Report*, 2020.
[23]*World Poverty Report*," 2020.
[24] Toromade, Samson, "BokoHaram Leader's Mother Says He was an Almijiri Boy Before Joining Terrorist Group", Pulse Ng News, June 15, 2018, https://www.pulse.ng/news/local/abubakar-shekau-boko-haram-leaders-mother-says-he-was-an-almajiri-boy-before-joining/l3zgcwx.

clusters and the killer herdsmen, was the consequence of the prevailing human security challenges.[25] Shockingly, eighty percent of nearly half of the population living below the poverty line are domiciled in the Northern region.[26] This explains why the Northern region of the Nigerian state, especially, the Northeast region (the least developed region), continues to account for the highest rate of insecurity in the country at the moment. Whilst the other parts of the country are not exempted in the precipitation of the triangular network of Boko Haram, banditry and the killer herdsmen, the Northern part remains the major contributor for the breeding of this triangle of insecurity.

The inability of nearly half of the entire population of the country to have their economic needs met as evidenced by the poverty line coupled with the rising frustrations of the people, specifically, the youths to be free from fear and wants have further exacerbated. This underscores the relevance of the Human security approach in understanding why the triangle of insecurity in Nigeria, Africa and indeed, the world.

The Human Security approach, following the end of the Cold War and the end of certainty that came with it, became the bedrock of security discourses; strategy and even a security paradigm that seeks to extol the primacy of human basic need as security measures itself, to forestalling insecurities.[27] The failure of governments to, through the usual traditional security paradigm, address the emerging human insecurities that threatened the existence of humanity led to the emergence of an alternative approach, that is, the Human Security paradigm to approaching and understanding the rising profile of human-related insecurity issues.

More recently, analysts, following the United Nations Development Programmes (UNDP) 1994 Human Development Report and their notion of security as "freedom from fear and want", have settled on the phrase “human security” to emphasize the people-centred aspect of security efforts, strategies and paradigms. Thus, human security takes the individual as primary referent, and also concentrates on how best to protect them. Emphasis is therefore on the quest to actualizing the well-being of individuals, and responding to the people's needs in dealing with sources of threats. Furthermore, the Human Security paradigm aims to finding means to protect the nation from external aggression, and also, to

[25] *Ibid*.
[26] *Ibid*.
[27] Peter Hough, *Understanding Global Security* (New York: Routledge, 2004).

safeguard it from a range of menaces, such as environmental pollution, infectious diseases and economic deprivation. Environmental destruction, poverty, famines and diseases are huge threats to the lives of millions of people all around the world and indeed, in Nigeria.

For instance, some of the threat caused by environmental degradation seems less clear-cut and direct than most other dangers to human life. Thus, the potential threat of global warming and ozone depletion appears far-off, when compared to more imminent threats, such as natural disasters and military attacks.[28] However, the negative modifications in environmental conditions have heightened peoples' vulnerability to other threats, such as disease, and are thus largely an indirect threat to human security. Hence, some studies have revealed that close to a third of deaths related to diseases worldwide have some environmental causes, such as air or water pollution which are indirectly aiding the rise of terroristic activities, most especially, from those that have been badly affected by the harsh effects of the emerging environmental challenges.[29] Furthermore, human induced environmental degradation, and the resulting scarcity of resources also, has been one of the motivators of insecurity and insurrections in Nigeria, and most parts of the globe.[30]

Similarly, one of the major threats is air pollution, caused by vehicles, factories and power plants, which can seriously damage people's health. Developing countries, on the other hand, mostly face the threat of scarce water resources, as well as water pollution. Thus, for example, a recent study has revealed that close to 2 million children each year die from diarrhoea, largely because of the contamination of their drinking water and the lack of sanitation in developing countries.[31] Water scarcity is also increasingly becoming a factor in ethnic conflicts and political friction. Nigeria is not shielded from the harsh realities of human insecurities. In fact, these human insecurities have thus placed individuals at the mercy of desperate and survivalist actions and activities that could in most instances; precipitate the youths and teenagers into taking up arms against the state through terrorism or banditry and the killers-herdsman. Environmental issues coupled with poverty and underdevelopments, which are both serious threats to the individual's security as well, have become ready-made motivators of insecurities in Nigeria.

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[28]Peter Hough, *Understanding Global Security* (New York: Routledge, 2004).
[29] Hough, *Understanding Global Security*, *Ibid*.
[30]Terry Terriff, *Security Studies Today*, (Polity Press, 1999)
[31]*The Economist Reports*, November 11, 2006

Further to the above, poverty is often regarded as most significant threat to life and human security. Through famine and hunger, poverty has heightened the vulnerability to other threats by creating unfavourable structural economic conditions. Therefore, poverty can kill directly in huge numbers when people are unable to secure sufficient food, as well as precipitate and motivate the poor into taking up terrorism, banditry and monstrous herdsmen killings as a means to surviving economically. Poverty therefore, as it were, does not simply mean a lack of material possessions, but, more generally, the deprivation of the three basic economic needs: Food, Water and Shelter.[32] Historically, the immediate economic threat to food security, over time, has always been famine. Famines chiefly occur due to the combination of both natural and economic factors. Since, it is manmade phenomenon, they are sometimes economically motivated.

An inadequate political response of governments to challenge of food insecurity has also been a critical issue. It seems though that the overall accessibility of food is not the problem, but rather poor distribution and the lack of the economic means or access to affordable food. The implications of food insecurity or famine are many. The desperate attempt by victims of food insecurity to resort to profitable criminal activities with a view to meeting their food needs. This explains why the Nigerian state has a very high number of *Almajiris*.[33] The key to solving the problem is to tackle the issues relating to access to resources, employment and secure revenue. Furthermore, a malnourished population is generally more susceptible to diseases, making concerns about health care closely related to the issue of poverty, especially in third world countries. Against the backdrop of the aforementioned human security threats and variables that readily precipitate the triangle of insecurity in Nigeria, some proponents of human security also include various other issues, such as natural disasters, bad leadership, and electoral violence.

The Human Security approach,[34] like every other paradigm, has had its fair share in criticisms and queries. Its critics have however argued that, if all the components of well-being are included, the term will become

[32] Olawale Akinrinde, "The Use of Advertorial Curses in Soft Crime Prevention," Annals *of Social Sciences* 3, No. 2 (2018), 100; Olawale Akinrinde, "The Politics of Non-Refoulement and the Syrian Refugee Crisis," T*he Journal of International Relations, Peace Studies, and Development* 4, Vol. 1 (2018), 1.

[33] *Almajiris* - A group of northern children and teens whom have been abandoned by their parents and consequently, resorted to street-begging.

[34]United Nations Development Programme, *Human Development Report*, 1994.

essentially meaningless, as it permits the inclusion of practically everything that affects any larger group of individuals adversely. Human Security has also been criticized for being little more than a way for activists to promote certain causes, and that the term is impractical, as it does not advance the frontiers of the understanding of the meaning of security.[35] Furthermore, human security could be regarded as mere polemic that seeks to provoke greater discussions, on both political and public levels, without necessarily seeking to incubate more policy initiatives.

Again, the One of the major reasons for including non-traditional challenges into security considerations is the hunt by analysts for new issues and threats to fill the void left by the end of the Cold War.[36] Equally, contributions to global campaigns against AIDS, Malaria and Tuberculosis are being criticized for having as only aim the political stabilization of certain strategically important African countries, while the enhancement of human security is only a welcomed side-effect. Thus, securitization of infectious diseases, as well as that of environmental and economic issues, can be seen as merely considering the implications of these problems for state security rather than the general security of individuals, which implies that some human security studies ultimately follow the logic of traditional security studies.

Conclusion: Towards a New Theorization on the Intersects of Social Injustice, Corruption and Nigeria's National Security Objectives

It has been established here that human security paradigm now represents and offers empirically robust theoretical frame and lens in which the rationale and immediate motivations for the rise and the prevalence of insecurities remain constant in recent times. Immediate motivations such as environmental degradation, poverty, poor health care system, leadership deficit, electoral violence and social injustice ("lack of freedom from fear and want") are as much threat to the lives of many people, as any other catalyst and motivating factor like the manifestation of the pervasiveness of corruption to Nigeria's national security. Thus, the inextricable intersects between poverty, inequalities, social deprivations, environmental degradation, social injustice, food insecurity and famine as well as leadership deficits, electoral violence, corruption and the larger triangle of Boko Haram insurgency, banditry and the killer herdsmen

[35]Terry Terriff, *Security Studies Today,* (Polity Press, 1999).
[36]Terry Terriff, *Ibid*.

terror are best captured in the mainstream of the human security paradigm. This has, thus, further reinforced the argumentum of this paper that the intersection between social injustice and corruption has been, and continues to be, mutually inclusive in the sense that we cannot have one without having the other. Suffice here to say that a socially unjust society can never be free from corruption, and in particular, insecurity. This empirically explains why societies or states with socially unjust systems have been largely corrupt and insecure.

Of course, the antithesis of this thesis is that no society or state is devoid of social injustice and corruption. However, some societies and states are more secure than others. This is, apparently no consequence of the effectiveness of their security apparatuses or military preponderance but most empirically, as a result of the fact that they have striven to be as socially just as possible in governance, resource appropriation and distribution which to a large extent discourages corruption. This is unfortunately the fate of many developing states where the growing social inequalities between the elite and masses classes continue to widen. As a consequence, corruption therefore becomes a weapon and a means to either maintaining the elite status or breaking out from the masses class. The situation therefore provides a conducive environment for insecurities to thrive. In comparison with the developed states, social injustices and corruption exist and manifest but to a relatively lesser degree if compared with what is obtainable in developing countries like Nigeria. Many democratic institutions in the developed states have institutionally grown to become corruption-resistant where everybody is constitutionally deemed to be within the whims and caprices of the law. The impeachment of arguably the most powerful president and number one citizen of the United States, President Donald Trump, for abuse of office and breach of trust which in itself constitutes a corrupt act further gave credence to the institutional efficacy of most developed states to decisively deal with any corrupt case.

Whilst there are potentials and undergrowth of insecurity in every society and state, the two most triggering factors and conditions for general insecurity which are social injustice and corruption have become recurring decimal in most developing states, they have considerably been checkmated in most developed states such as Norway, Denmark, Sweden, especially the Scandinavian states, Japan, Canada and others. The level of corruption is empirically a precursor to the level of social injustice in the land, and vice versa, whereas, the implication of both conditions are inescapably what has emplaced most developing states like Nigeria on the

precipice of state-wrecking insecurity and specifically in Nigeria, the triangle of terrors of Boko Haram insurgency, Banditry and the Farmers-Herdsmen Crisis. However, like all social conditions and creations, the unholy triangle of corruption, social injustice and insecurity in Nigeria as in most developing are socially curable when the right policy antidotes are administered.

Policy Recommendations

Preceding analyses have demonstrated that corruption is the root of all evils, especially social injustice and vice versa in Nigeria and other climes, including both the developing and the developed, though with varying degrees of manifestation. Without corruption that has endemically created a socially unjust state, most of the problems confronting the Nigerian state would not have surfaced ontologically. It is in light of this finding; this paper recommends a multi-pronged approach that will involve all stakeholders in the fight against endemic corruption. Social injustice breeds corruption; it must therefore be addressed head-on, firstly, through policies that will bring about the redistribution of wealth and opportunities in favour of the socially disadvantaged. And, secondly, facilitating the creation of laws that guide against social inequalities whilst promoting the laws that protect all and give equal opportunities to all when social equilibrium and an egalitarian society is achieved. This is possible because inequalities are creations of humans. Inequalities and social stratifications are not predetermined but arose due to the greed of human nature which can comprehensively be curbed through the right laws and strong institutions of governance. One of them, the institutions of anti-corruption crusades must therefore be domesticated at all levels of governance; that is, the federal, state, and local levels.

Since it has been established that corruption takes place everywhere, including the family, religious institutions, amongst peers, schools, community level, traditional institutions and the rural areas, it is recommended here that customary or magistrate courts, that will be specifically designated for the purpose of entertaining corruption cases only, be established at the local government or community level. This customary anti-corruption courts or tribunals should advisably be headed by the traditional rulers who are seen as the custodians of the culture and traditions of their people. Doing these would undoubtedly scale up the gains already made in the government's quest to address the problem of corruption, that is, the basis of all societal problems in the land.

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SOCIOLOGICAL ANALYSIS OF ECONOMIC FACTORS STIMULATING CORRUPTION IN KWARA STATE, NIGERIA

Olumide David Fagbamila, Sunkanmi Adams Folorunso and Akinwale Moses Akinola[1]

Abstract

Corruption is a serious problem in Nigeria and the economic factors contributing to the incidence cannot be ignored. According to the National Bureau of Statistics, more than 82 million Nigerians live on less than $1 a day. The perpetual incidence of corruption will continue to create breeding grounds for poverty. And where there is high level of poverty, people will continue to engage in corrupt practices in order to meet up their expenses. Income inequality is another economic factor contributing to corrupt practices. Monthly salaries of many Nigerians especially those working in public institutions are very low which may force them to engage in corrupt practices. Unemployment rate in Nigeria is alarming and according to 2018 NBS report, 27.1% of Nigerians are unemployed. 1,175 questionnaires were administered in Kwara Central, Kwara North, and Kwara South Senatorial Districts for this study. The analysis of data and test of hypotheses was carried out using descriptive method as well as inferential statistics of regression analysis. The Statistical Package for Social Sciences (SPSS) was employed in the different analyses that were conducted. It was discovered that there are correlations between the selected variables and corruption in Kwara State. Hence, it can be concluded that there is a significant relationship between poverty and corruption, income inequalities and corruption, occupational status and corruption, inflation, and corruption. Further, it is recommended that more employment opportunities should be created, social soft loans and unemployment funds should be made available, poverty alleviation programmes should be taken seriously and anti-corruption agencies should be strengthened.

Introduction

Corruption is not exactly a novel phenomenon and is not the prerogative of any particular country or society. It is universal and exists in virtually all societies. It has many characteristics among which are greediness, exploitation, bribery, dishonesty, misuse, and misappropriation of public

[1] University of Ilorin, Ilorin, Kwara State, Nigeria. E-mail: olufagba@gmail.com.

funds with pint-sized regards for others.[2] The continuous storm and troubles caused by corruption especially in developing countries, have indeed resulted in many socio-economic tribulations ranging from abject poverty, under-development, international reputational damage, denigration of fundamental human rights, partiality, and ethnic bigotry among others. The perpetual incidence of corruption in Nigeria continues to denigrate the picture of the nation in the international community. It should be expressed that corruption is an illegal behaviour disseminated by public officers channelled towards private benefits usually at the expense of the common people.

There is a continual worry if Nigeria can escape the shackles of corruption, considering its spread across all social institutions in the country. Corruption is a plague that all Nigerian Presidents, since the inception of the Fourth Republic, have battled to bring to an end, yet, the pervasiveness of the phenomenon in national life remains unabated. For instance, President Olusegun Obasanjo, from his assumption of office in 1999, till the end of his term, consistently complained of the pervasive nature of corruption in the Nigerian society.[3]

From the first military coup of January 1966 to several years of flawed electricity supply, bad roads, deprived educational facilities, poverty, child labour, astronomical mortality rates, poor health care facilities, corruption continues to linger. Several reports especially those from the news outlets and sightings of Economic and Financial Crimes Commission (EFCC), have revealed over the years that many appointed or elected politicians, officials, agents, bureaucrats, and representatives have reportedly used their noble positions for corrupt practices.[4] It is also fair to say that the incidence of vote-buying, *godfatherism*, election results' manipulation, political campaigning along ethnic and religious lines, and unequal distribution of revenues and other political factors have also

2 Aluko, Yetunde A. (2009). "Corruption in Nigeria: Concept and Demission in Anti-Corruption Reforms in Nigeria since 1999: Issues, Challenges and the Way Forward," *IFRA Special Resources Issue,* Vol. 3.

3 Obasanjo, O. (2000) "Address on the occasion of the formal signing of the Bill of a law to prohibit and punish Bribery and corruption of or by public officer and other persons", Aso Rock Villa (State House), Abuja.

4 Obuah, E. (2010). Combating corruption in a "failed" state: The Nigerian Economic and Financial Crimes Commission (EFCC). *Journal of Sustainable Development in Africa*, 12, 27-53

fuelled corruption in the country.[5] Exact and precise figures concerning corruption level in the country may be difficult to obtain since most corrupt practices are perpetrated secretly or behind closed doors but much empirical pieces of evidence are always available and obtainable.[6]

It should be noted that despite enormous natural and human resources heavily available in the country and which, if properly harnessed, constitute great assets that can boost her local, national, and international reputations, Nigeria remains relatively under-developed. For instance, Nigeria is almost all the time, ranked low in very important socio-political and economic indices such as health care, free and fair elections, poverty reduction, human power development, capacity building, educational standard, employment opportunities, water supply, and sanitation. Some of the leading reasons behind these innuendos include ethnic politics, greedy and corrupt politicians which invariably affect every opportunity to achieve a great country. Moreover, corruption has become a very strong tool to which Nigerians cling strongly, to achieve their set goals. For instance, in the area of employment, selection, or recruitment of applicants is majorly based on connection and special preferences. Many organizations especially public ones sell slots and use corrupt techniques to recruit their candidates, in the process jeopardizing chances of recruiting applicants based on merit and effectiveness. The issue of corruption in Nigeria has metamorphosed into many notable crises especially those related to political and ethnicity crises.

The national crisis negatively affects public organizations in terms of how ethnic groups compete for the location and management of public facilities and resources. The aggressive and unhealthy competitions between diverse groups in Nigeria for the control of the public space and resources are also triggered partly by corruption. Corruption also extends its tentacles to religious institutions. It is common practice in Nigeria for politicians to use religion or religious leaders during their campaigns to convince people to vote for them.[7] Also, religion is being used during job

5 Ladapo, O. A. (2013). Effective Investigations, A Pivot to Efficient Criminal Justice Administration: Challenges in Nigeria. *African Journal of Criminology and Justice Studies*, 5 (2) 79-94.
6 Smith, D. J. (2001), "Kinship and Corruption in Contemporary Nigeria," *Ethnos*, 66 (3), pp. 320-343.
7 Okeshola, F (2008), *Patterns and Trend of crime in Nigeria* (Lagos: National Open University of Nigeria).

allocation, where quotas are allocated or reserved depending on which part of the country the vacancies are being filled or the job is located.

For clarity sake, it is important to define the concept of corruption. Corruption is a global phenomenon; there is no generally acceptable definition of the phenomenon. This is because all attempts to define the concept have been based on different perspectives and criteria like legal, sociological, moral or descriptions of the conduct involved. Amartya K. Sen defines corruption as the violation of established rules for personal gain and profit.[8] Corruption is an anti-social behaviour conferring improper benefits contrary to legal and moral norms, and which undermines the capacity of authorities to improve the living conditions of the people. Corruption is said to be the abuse of public office for private gains. Public office is abused for private gain when an official accepts, solicits, or extorts a bribe.[9] It is also abused when private agents actively offer bribes to circumvent public policies and processes for competitive advantages or profit. Public office can also be abused for personal benefit even if no bribery occurs, through patronage and nepotism, theft of state assets, or diversion of state resources.

A report published by Amundsen in 2010 gives useful explanations of the kinds of corruption in Nigeria, which can be used to identify the different kinds of corruption and how they affect different levels of society. The report affirms that corruption in Nigeria serves two key functions: (i) to obtain rents from the state, which comprises rent-seeking attitude in the form of appropriation of wealth (embezzlement), misuse of power, nepotism, bribery and cronyism, among others; and (ii) to reserve influence and power, that is, to certify that an individual maintains his/her position of power or gains adequate access to such a position via actions such as electoral corruption, legal corruption or the circulation of public jobs.[10]

The sociological issue that arises from the above is that, even when the consequences of corruption are becoming more and more obvious for all

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8 Sen, A.K., (1997), 'On Corruption and Organized Crime', in United Nations Drug Control Programme (UNDCP), *World Drug Report* (Oxford: Oxford University Press), pp. 150-3.
9 World Bank (2005), *Helping Countries Combat Corruption* (Washington D.C: World Bank).
10 Amundsen, (2010) *Good Governance in Nigeria: A Study in Political Economy and Donor Support.* Available at:
http://www.norad.no/en/toolsandpublications/publications/publication?key=203616

Nigerians to see, the social malady still continues to thrive, taking different and more dangerous dimensions. The sociological question that may follow this is why is corruption, which hinders growth and development, still thriving in Nigeria? The understanding of, and answer to this question will provide a better insight into how to mitigate, and if possible curb, corruption in societies of the world, particularly in Nigeria. In an attempt to answer this question, there are a number of factors that are established in the literature as possible causes of corruption in societies of the world. These factors include the social, economic, religious, and political amongst others.[11]

Amongst other factors highlighted, the socio-economic factors, which include poverty, inflation, income inequality, occupational status and even unemployment, pose serious concerns as they largely stimulate the perpetration of corruption. The Human Development Index Report (HDI) 2018 placed Nigeria as one of the poorest countries in the world with over 78 million people living in extreme poverty. The implication of this is that such economic status quo raises the dependency rate in the country, which in turn may stimulate corruption perpetration especially amongst the civil servants in the state. For instance, Action Aid Report (2015) showed that employees in private sector are guilty of corruption in terms of kickbacks, non-performance or under-declaration of internal operation including profit, with emphasis on employees of insurance companies, teachers and doctors etc.

Moreover, the rate of economic inequalities in Nigeria as a result of recent economic recession, has reached extreme heights and this can be justified in the daily struggles of many Nigerians. According to Oxfam's calculations, the amount of wealth that the richest Nigerian can earn on daily basis is enough to raise about 2 million Nigerians out of poverty for more than one year. Income inequality as calculated by the Gini Index, developed from 40% in 2003 to 43% in 2009. This situation is very terrible among salary earners especially those in civil service. Most salary earners in Nigeria are not receiving enough money to satisfy their expenses which may force them to engage in corrupt practices.[12] As survival of most public officials depends on their monthly salary, and

11 Okeshola, F (2008), *Patterns and Trend of crime in Nigeria* (Lagos: National Open University of Nigeria).

12 Mohammed, U. (2013), "Corruption in Nigeria: A Challenge to Sustainable Development in the Fourth Republic," *European Scientific Journal,* February, 2013 Vol. 9, No. 4.

most of them need to take care of their household expenses, relying solely on their salaries may not be enough, hence the intention to engage in corrupt deeds. Many public employees will prefer to participate in other sources of incomes especially because the economy is not favourable.
Inflation, which can be defined, according to Meriam Webster dictionary, as "a continuing rise in the general price level usually attributed to an increase in the volume of money and credit relative to available goods and services," has also been identified as capable of influencing corruption in Nigeria. It can be noted that corruption could be implicitly influenced by inflation because surge in inflation may go a long way in decreasing investment and economic growth. The inflation rate was adjudged to be 12.82% as at August 2020 with strong effect on price of food commodities. The SB Morgen 2018 report found that only 37% of Nigerians had any discretionary income after expenditure on food. The implication of this therefore will be strong pressure on the workers to engage in various corrupt activities in their various work places that will enable them have access to higher income that will in turn enhance their standard of living.

Consequently, upon the discussion above, there is the need to understand the effects of the various socioeconomic factors that cause the occurrence of corrupt practices in Nigeria. This will help in understanding the serious adverse impacts it has on development and the possible solutions that can be adopted. It is in the light that this study aimed at explaining the prevalence of corruption by interrogating the socioeconomic factors that provoke it in Kwara State, Nigeria.

Theoretical Framework

Anomie theory perceives corruption (deviant behaviour) as originating from the social structure of the society, which exerts a definite pressure upon certain individuals in the society to engage in non-conforming or conforming conduct. Merton (1957) has succinctly put this in another way when he asserts that a society in which there is an exceptionally strong emphasis upon specific goals without a corresponding institutional means or procedures, will inevitably lead to what Durkheim called "anomie" or normlessness or deviation. It should be noted that each culture establishes goals and interests which are encouraged and expected to pursue and prescribes the method to be followed in seeking these approved objectives.[13] It is when these means fail to match the goal of the individual in question that the individual becomes socially

13 Mohammed, U. (2013), "Corruption in Nigeria," *op. cit.*

disorganized. The Nigerian society tends to over-emphasize individual goal attainment at the expense of the legitimate means of achieving these set goals. In the country, material acquisition has virtually become the ultimate goal and the society does not appear to be concerned about the origins of sudden wealth or what is described as "making it". All that is important is that one has "arrived." The marked discrepancy between the goals and means in our society invariably leads to various forms of corruption such as embezzlement of public funds, offering, and acceptance of a bribe, electoral rigging, examination malpractice, etc.

Methodology

The study area for this project are adult residents of Kwara State excluding those below the age of 18 years. The exclusion of less than18 years from the population stems from the fact that Nigerian Law puts the age of maturity at 18 years old. According to the 2006 census, the total population of Kwara State was 2,371,089 (National Population Commission, 2009). Since it would be difficult to study the entire population, a portion of the population was selected in such a way that attributes exhibited by the smaller portion will be accepted as representative of the total population. Given this, a sample size of 1,200 was used for the study. This number was derived through Slovin's sample size formula. The multi-stage sampling that involves successive random sampling was employed in selecting senatorial zones, constituencies, wards, and individual respondents in the study.

The multi-stage design is very relevant because the study population is very large and made up of several clusters like towns, villages, and households. The researchers clustered Kwara State into the State's three senatorial zones, viz., Kwara North, Kwara South, and Kwara Central. The senatorial zones were first categorized into constituencies which are Baruten/Kaima; Ekiti/Isin/Irepodun/Oke-Ero; Asa/Ilorin West; Ilorin East/Ilorin South; Offa/Oyun/Ifelodun and Edu/Moro/Patigi constituencies. From each category, three (3) constituencies were purposively selected. Given this, Ekiti/Isin/Irepodun/Ple-Ero, Baruten/Kaima, and Asa/Ilorin West constituencies were purposively selected. The choice of choosing these constituencies was as a result of the fact that the research study entails selected ethnic groups. As a result, each constituency is a representative of major ethnic groups in Kwara State which are Baruba, Nupe, Yoruba, and Fulani.

At the end of the exercise, 1,175 respondents participated in this study and formed the respondents for the study. The response rate is thus 98

percent. The 25 respondents who did not return their questionnaire constitute four (4) percent of the selected sample. In the analysis of the respondents' socio-demographic characteristics, the simple percentage was employed, while regression analysis was used in analysing the hypotheses. The Statistical Package for Social Sciences (SPSS) was employed in the different analyses that were conducted.

DATA PRESENTATION

Table 1: Socio-Demographic characteristics of the respondents

Demographics Features	Frequencies	Percentage (%)
Gender		
Male	679	57.8
Female	496	42.2
Total	**1,175**	**100.0**
Age		
Below 25 years	125	10.6
25-35 years	409	34.8
36-45 years	357	30.4
45 years and above	284	24.2
Total	**1,175**	**100.0**
Marital Status		
Single	205	17.4
Married	731	62.2
Separated	55	4.7
Divorced	101	8.6
Widowed	83	7.1
Total	**1,175**	**100.0**
Academic Qualification	57	4.9
Primary	183	15.6
Secondary	275	23.3
Diploma/NCE	593	50.5
First Degree	67	5.7
Higher Degree	**1,175**	**100.0**
Total		
Monthly Income		
Below N30,000	321	321
N30,000-N60,000	437	437
N61,000-N91,000	211	211
N91,000-N120,000	131	131
N120,000 & above	75	75
Total	**1,175**	**100.0**
Nature of Employment		

Private sector	307	26.1
Public sector	639	54.4
Self employed	131	11.1
Charity Dependant	98	8.3
Total	**1,175**	**100.0**
Religion		
Christianity	319	27.1
Islam	794	67.6
Indigenous Religion	62	5.3
Total	**1,175**	**100.0**

Source: Field Survey, 2019

Hypotheses Testing

Hypothesis 1: There is no significant influence between income inequalities and attitude towards corruption.

Table 2: Summary of Linear Regression Showing Significant Influence between Income Inequalities and Attitude Towards Corruption

Variable	R	R^2	F	Sig.	Beta	t	Sig.
Income Inequality	.460	.2123	.266	.000	-.583	7.298	.000

*p < .05

Dependent variable: attitude towards corruption

Hypothesis 2: There is no significant influence between effect of inflation and attitude towards bribe taking.

Table 3: Summary of Linear Regression Showing Significant Influence of Effect of Inflation on Attitude towards Bribe Taking

Variable	R	R^2	F	Sig.	Beta	t	Sig.
Inflation	.466	.213	5.878	.000	-.720	7.408	.000

*p < .05

Dependent variable: Attitude towards corruption.

Hypothesis 3: There is no significant relationship between poverty and attitude towards corruption

Table 4: Summary of Linear Regression Showing Significant Influence of Poverty on Attitude Towards Corruption

Variable	R	R^2	F	Sig.	Beta	t	Sig.
Poverty	.808	.653	7.758	.000	-1.194	19.307	.000

*p < .05
Dependent variable: Attitude towards corruption

DISCUSSION

Respondents' Socio-demographic Characteristics

Table 1 reveals the Socio-demographic characteristics of the respondents. The respondents were examined on the basis of their gender. The percentage frequency distribution of the respondents concerning gender as presented in the table shows that 679 (57.8%) respondents were male, while 496 (42.2%) respondents were female. The gender distribution reveals that male respondents were numerically greater than the female respondents. An examination of the distributional percentage frequencies of the respondents by age shows that 125 (10.6%) of the respondents were below 25 years; 409 (34.8%) respondents reported that they were between 25 and 35 years old; 357 (30.4%) respondents said that they were between 36 and 45 years; and 284 (24.2%) respondents were 45 years old and above. It should be noted that the majority (89.4%) of the respondents are within the age bracket of 25-45 years old. The reason for this is that, mostly, people in such an age-bracket are those who are active and agile. As such, they engage in one form of work activity or the other and may be able to give their opinion on the current research discourse.

The respondents were also examined relative to their marital status. The data gathered from the respondents on this variable reveal that 205 (17.4%) respondents were single; 731 (62.2%) respondents were married; 55 (4.7%) claimed that they have long separated from their spouses; 101 (8.6%) respondents indicated that they were divorced; while 83 (7.1%) respondents said they were widows. The education distribution revealed that 57 (4.9%) respondents reported that they have primary education; 183 (15.6%) respondents claimed to have secondary education; 593 (50.5%) respondents said that they hold first degrees; while 67 (5.7%) reported that they have higher degree qualifications in different academic disciplines. The education distribution revealed that the respondents used in this study were literate and should be able to discuss the main substances of the research topic, which is about corruption. Although corruption is a problem that does not exclude anybody in society, in a general sense, it is more of an elitist problem. This explains why all the respondents used in this study have attained some levels of education.

Furthermore, the respondents were also examined relative to their monthly income. The above table revealed that 231 (27.3%) respondents earned below N30,000 monthly; 437 (37.2%) respondents earned between N30,000 - N60,000; 211 (18.0%) respondents earned between N61,000 - N90,000; 131 (11.1%) respondents earned between N91,000 - 120,000, while 75 (6.4%) respondents earned N120,000 and above monthly.

When questioned on their employment status, 307 (26.1%) of respondents reported that they work in the private sector; 639 (54.4%) respondents reported that they work in the public sector; 131 (11.1%) respondents reported that they are self-employed; while 98 (8.3%) respondents claimed they were unemployed. This shows that those who work in the public sector were numerically greater than employees in the private sector. This, therefore, justifies the categorisation of Kwara State as a civil service state, as it is often described.

Finally, with regard to religious affiliation, 319 (27.1%) respondents reported that they practised Christianity, 794 (67.6%) respondents described themselves as Muslims, while 62 (5.3%) respondents practice indigenous religions. Hence, those who practise Islam were numerically greater than the adherents of Christianity. The frequency distribution of the religious affiliation of the respondents is a testimony to the fact that Muslims form the majority of the inhabitants in Kwara State.

Test of Hypotheses

Hypothesis 1: For hypothesis 1, two variables (income inequality and bribe) are cross-tabulated while the regression analysis result is presented in Table 2. A critical study of the regression analysis conducted in Table 2 reveals that income inequalities influence people's willingness to engage in bribe-taking ($R=.460$; $R^2=.212$; $F(1,266)$, $t= 7.298$, $p<.05$]. Judging from these results, the null hypothesis which states that there is no significant relationship between income inequality and attitude towards corruption is rejected in favour of the alternative hypothesis. In other words, the results showed that there is a significant relationship between income inequality and attitude towards corruption ($r=0.460$; $p<.05$).

Moreover, the disparity in income among civil servants is a significant correlate of their attitude towards corruption. Further analysis showed that the level of income accessible by civil servants significantly predicts

their attitude towards corruption [R=.460; R^2=.212; F (1,266), t= 7.298, p<.05]. This result further supports the assumption that bad incentives system, rather than bad ethics induce people to act corruptly.[14] It can be further corroborated that low wages and salaries in the public sector relative to wages in the private sector are sources of corruption. It also validates the primitive accumulation of wealth theory because in a situation where wages and salaries are low, employees may be tempted to engage in various forms of corrupt practices as a form of social security towards retirement.

Hypothesis 2: Two variables (inflation and bribe) are cross-tabulated while the regression analysis result is presented in Table 3. A critical study of the regression analysis conducted in Table 3 reveals the effect of inflation on living standard influences people's willingness to engage in bribe-taking (R=.466; R^2=.213; F (1,878), t= 7.408, p<.05). Judging from these results, the null hypothesis which states that there is no significant relationship between the effect of inflation and people's attitude to bribe-taking is rejected in favour of the alternative hypothesis. Hence, results obtained showed that there is a significant relationship between the effect of inflation on living standards and people's attitude to engage in bribe-taking. (r=0.466; p<.05). In other words, inflation is a significant correlate of people's attitudes towards corruption. Further analysis revealed that inflation significantly influences people's attitude towards corruption [R=.466; R^2=.213; F (1,878), t= 7.408, p<.05]. What this translates to is that people who are experiencing tough times due to inflation in terms of economic survival and standard of living do not see anything wrong in collecting bribe. This has gone a long way in Nigeria to enhance corrupt practices because the prices of virtually all commodities including daily food consumption have doubled without a corresponding increase in salaries and income of workers.

Hypothesis 3: To test the above hypothesis, the two variables (poverty and bribe) are cross-tabulated while the regression analysis result is presented in Table 4 above. A critical study of the regression analysis conducted in Table 4 reveals that the incidence of poverty influences people's attitudes towards taking bribe. (R=.808; R^2=.653; F (1,758), t= 19.307, p<.05). Judging from these results, the null hypothesis which states that there is no significant relationship between the incidence of poverty and attitude towards taking bribe is rejected in favour of the

14 Ostrom, E. (2000), "Collective Action and the Evolution of social Norms," *The Journal of Economic Perspectives,* Vol. 14 (3), pp.137-158.

alternative hypothesis. For the third hypothesis of the study which stated that there is no significant relationship between poverty and attitude towards corruption, results obtained showed that there is a significant relationship between poverty and attitude towards corruption (r=0.808; p<.05). In other words, the high level of poverty in the country is a significant correlate of people's attitude towards corruption. Further analysis revealed that the level of poverty is a significant predictor of people's attitude towards corruption [R=.808; R^2=.653; F (1,758), t= 19.307, p<.05]. What this implies is that the prevalence and gravity of poverty in the country make people see nothing wrong in collecting bribe. This has equally gone a long way to enhance corrupt practices.

Discussion of Findings/Results

In this part of this essay, we discuss the results of findings presented above in the light of existing empirical works and the theoretical models adopted as explanatory tools in this study. On the whole, the followings form the major findings. The result from the findings indicated that corruption phenomenon is very high in the country. This confirms the various studies such as Joda's 2010 work,[15] who points out that, corruption is widespread in Nigeria and it manifests itself in virtually all aspects of national life, from the millions of scam e-mail messages sent each year by people claiming to be Nigerian officials seeking help with transferring large sums of money out of the country to the police officers who routinely set up roadblocks, sometimes every few hundred yards, to extract bribes of twenty naira from commercial road users. This finding agrees with many other results reviewed in the literature. For example, the menace of corruption has certainly emerged as one of the main impediments to national development in contemporary Nigeria.[16] It has afflicted a variety of social groups and the nation has suffered severe losses economically and socially.

The results of the tests of hypotheses in this study indicate that there is a significant relationship between people's level of income and the willingness to engage in bribe-taking and giving. This is statistically illustrated in the hypothesis 1. Many attempts have been made to explain the relationship between income and engagement in corruption.

15 Joda, H.T. (2010), *Anti-Corruption Handbook for Nigerian Youths: A Fundamental Paradigm for Rebranding Education, Business, Politics and Public Administration in Nigeria* (Kaduna: Joyce Graphic Printers Publishers).

16 Osumah Oarhe, (2013), "Tonic or Toxin? The State, Neopatrimonialism, and Anticorruption Efforts in Nigeria," *Korean Journal of Policy Studies*, Vol. 28 (1), 2013, pp. 111-134. http://s-space.snu.ac.kr/bitstream/10371/82819/1/6%201t700483.pdf.

Explaining the relationship in general terms, it can be pointed out that public sector salary in Nigeria is among the poorest in the world. This is particularly more embarrassing when viewed against the backdrop of the fact that Nigeria is an oil-producing country. Most civil servants in the country will readily agree that "their take home salaries do not take them even to the nearest bus stop from their offices," much less take them home. They then have to look for other means of getting extra income which results in corruption driven by need. Hypothesis 2 shows that significant relationship exists between inflation and corruption. Inflation can lead to tough times for most people; surviving economically is difficult and this scenario may affect standard of living. Corruption will be very visible when standard of living is very poor Furthermore, it can be deduced from hypothesis 3 that there is a significant relationship between the incidence of poverty and attitude towards taking bribe. It is well established that poverty is ravaging the country; people will always seek for ways to satisfy their exigencies of living, hence the justification for engaging in bribery and other corrupt practices.

Conclusion

The perpetual incidence of corruption contributes significantly to the problems plaguing the Nigerian society today. Corruption is a social phenomenon that can hold back any meaningful socio-economic or political development a society can experience. Corruption has achieved a special place in social discussions due to its dangerous and destructive potentials. Hence, finding lasting measures targeted at reducing corruption and mitigating its impact becomes necessary especially as total eradication of the phenomenon in any society is unattainable. Though there are many contributing factors to the incidence of corruption, this study only focused on economic factors. It should be stated that respondents have varying interpretations, orientations and standpoints on the observed variables but it can be evidently stated that the majority of them submit to the assumption that economic factors can directly influence the incidence of corruption.

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CORRUPTION IN IDP CAMPS IN NORTHEAST NIGERIA: AN EXPLORATION OF COMMODIFICATION OF WELFARE RATIONS

Ruth Abiola Adimula & Ahmad Arabi Abdulfathi *

Abstract

This study sets out to investigate corrupt practices in the management of welfare interventions for the internally displaced persons (IDPs) in Northeast Nigeria. It adopted Key Informant Interview Guide (KII) and structured interview of 50 IDPs, 17 camp officials and 5 NGOs purposively selected across 10 IDP camps in Borno state, the epicentre of Boko Haram insurgency that hosts most of the IDPs, using non-probability sampling technique which limited findings to the 10 selected IDP camps in Borno State. Findings of similar studies, reports and internet resources were adopted to source secondary data for other states in the Northeast. Fraud Triangle Theory developed by Donald Cressey (1951) and Capability Approach articulated by Amartya Sen in the 1980s provided a theoretical framework for the study. The study found that the Nigerian government, individuals, organisations and international agencies have invested hugely in supplies of intervention materials to cater for the IDPs but officials of the National Emergency Agency (NEMA) have been accused of corrupt practices in the management of such interventions. On their part, some IDPs sell their welfare rations and do alms begging thereafter. Commodification of welfare items by camp residents has increased malnutrition in camps while female children have been exposed to sexual exploitation. It is recommended that government should put in place a functional structure of probity, accountability and transparency in the management of interventions.

Introduction

Displacement of persons and destruction of properties have plagued Northeast Nigeria since the activities of Boko Haram insurgency started in 2009. Crisis Group[1] noted that the violent rise and resilience of the jihadist group Boko Haram in the Lake Chad basin since 2009, poses enormous security, humanitarian and governance challenges. The Boko Haram conflict in the Northeast Nigeria has led to mass displacement, particularly since 2014. In July 2009, when the group became more violent, 4,000 people were temporarily displaced from Maiduguri in Borno State. The frequency of violent attacks increased and led to large scale displacement.

* Ruth Abiola Adimula, PhD, Senior Lecturer, Centre for Peace and Strategic Studies, University of Ilorin, Nigeria; Ahmad Arabi Abdulfathi, Centre for Peace and Strategic Studies, University of Ilorin; Correspondence: adimula.ra@unilorin.edu.ng;

[1]Crisis Group, (2020). *The Boko Haram Insurgency.* Published in CrisisWatch. Retrieved from *https://www.crisisgroup.org/boko-haram-insurgency.*

According to the Nigerian National Emergency Agency (NEMA), nearly 300,000 people were forced to flee violence in Borno, Adamawa and Yobe States. The escalation of violence among all parties in north-eastern Nigeria since 2014 has resulted in mass displacement and deprivation in the states of Adamawa, Bauchi, Borno, Gombe, Taraba and Yobe (IOM, 2020). Many IDPs have found shelter in informal camps, while others have taken refuge with friends and relatives within Nigeria and across the border in neighbouring Niger, Chad and Cameroun.[2]

Apart from the militant Islamist group Boko Haram that has triggered significant displacement in the marginalised northeast Nigeria, competition between pastoralists and farmers has caused tensions in the central region, long-standing ethnic conflict between Fulani pastoralists and Hausa farmers in north-western Katsina, Sokoto and Zamfara states also triggers displacement, while flooding displaces thousands of people every year (IDMC, 2019). According to the recent data of displacement in the Round 32 (June 1, 2020) of its IDP matrix, 2,088,124 IDPs are in Nigeria.[3]

The 1998 United Nations Guiding Principles on Internal Displacement has put the management of internally displaced persons in the care of the national government. Thus, in Nigeria, National Emergency Management Agency (NEMA) is the main body saddled with the responsibilities of managing IDP camps and monitoring welfare items in camps. Apart from the national government, individuals, NGOs, international bodies also give intervention to ameliorate the sufferings of IDPs. Olugbode[4] reported that NEMA has distributed food items to 38,000 households in internally displaced persons (IDPs) camps in Borno State alone. He noted the spokesman of the North-east zonal office of NEMA, AbdulKadir Ibrahim statement that:

> … *in continuation of efforts to provide succour on welfare of Internally Displaced Persons, National Emergency Management Agency (NEMA)*

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[2]ReliefWeb, (2016). *Nigeria: When aid goes missing*. Government agencies accused of diverting supplies meant for the six northeastern states. Published in ReliefWeb, 5 September 2016. Retrieved from *https://reliefweb.int/report/nigeria/nigeria-when-aid-goes-missing*.

[3]IOM, (2020). *Displacement IOM DTM Round 32; Jun 01 2020.* Nigeria West and Central Africa. Retrieved from *https://dtm.iom.int/nigeria*.

[4]Olugbode, M. (2020). *NEMA distributes food items to 38,000 households in Borno.* Published in *ThisDay* Newspaper, Saturday, August 15, 2020. Retrieved from *https://www.thisdaylive.com/index.php/2020/05/14/nema-distributes-food-items-to-38000-households-in-borno/*

> *has distributed food items to 38,000 households of internally displaced persons in Borno State following an approval granted by the Director General, NEMA, AVM Muhammed Alhaji Muhammed (rtd).*

Ibrahim listed the items distributed to include rice, beans, maize, tomato paste, seasoning, salt and cooking oil distributed through NEMA to address the needs of internally displaced persons, and that NEMA is providing food assistance to over 234,000 displaced persons monthly who are residing in IDP camps, host communities and liberated communities in Borno State.[5]

Enwereji[6] observed that in conflict situation IDPs are exposed to different forms of vulnerability and needs. Men are particularly exposed to ranges of vulnerabilities, such as joblessness and lack of capacity to meet the basic human expectations of their families. The most critical for men is when they lose their status as bread winners as well as their self-identity. Usually, there are situations of hunger, poverty, malnutrition, and high rate of diseases in IDP camps. In Northeast Nigeria, IDPs continue to suffer appalling poverty, despite the enormous resources invested in relief efforts by the Nigerian government and international development partners.[7] Responses to these situations have attracted provisions and supplies of welfare intervention materials including food items, household supplies, shelter, health care services, moral and psychological support to IDPs in Northeast Nigeria, from the government, individuals, NGOs and United Nations Agencies including the International Committee of the Red Cross (ICRC), Action Against Hunger (ACF) and a number of United Nations (UN) agencies.[8]

Unfortunately, some of these items were reported to have been mismanaged by some camp officials while some IDPs were selling off their welfare rations or intervention materials. Closely related to this is the diversification of welfare interventions meant to provide succour for IDPs by individuals, groups and sometimes the IDPs themselves. The objectives of this study therefore were to: identify issues of corrupt practices in the management of IDP camps in Northeast Nigeria; investigate the role of IDPs in marketing the welfare ration in Borno State, Northeast Nigeria; and

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[5] Ibid.

[6] Enwereji, E., "Assessing interventions available to internally displaced persons in Abia State, Nigeria", *Libyan Journal of Medicine*, 4(1) (2009): 17-22.

[7] Alqali, A., *Nigeria: When aid goes missing*. Government agencies accused of diverting supplies meant for the six northeastern states. Published in ReliefWeb of 5 Sep 2016. Retrieved from *https://reliefweb.int/report/nigeria/nigeria-when-aid-goes-missing.*

[8] Ibid.

examine the consequences of corruption and marketing of welfare rations by IDPs in the camps in Northeast Nigeria.

Conceptual Clarifications

Welfare: Merriam-Webster[9] defined welfare as an aid in the form of money or necessities for those in need; or an agency or program through which such aid is distributed. Cambridge dictionary[10] describes welfare as help given, especially by the state or an organization, to people who need it, especially because they do not have enough money. In United States, welfare is money that the government pays to people who are poor, ill, or unemployed. In this study, necessities in form of food, healthcare, clothing, etc. to IDPs are welfare items.

Ration: Ration is the total amount of food that is given to someone to be eaten during a particular activity and in a particular period of time.[11] CollinsDictionary.com[12] explained that when there is not enough of something, your ration of it is the amount that you are allowed to have. Thus, ration is a fixed amount of something that people are allowed to have when there is not enough.[13] In IDP camps, welfare items are usually not enough, however, IDPs are given ration from the available items. Welfare ration therefore is the total amount (of necessities) given to IDPs (in need) including social services provided by government, NGOs, individuals, international agencies and even religious institutions to vulnerable group or persons especially IDPs in Northeast to better their lives. This can be in form of food, money, health care services, education, etc.

Corruption: Corruption is the misuse of *entrusted* power (by heritage, education, marriage, election, appointment or whatever else) for private gain.[14] Professor (Emeritus) Petrus van Duyne described corruption as an improbity or decay in the decision-making process in which a decision-

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[9] Merriam-Webster, (2020). *The meaning of welfare*. Retrieved from *https://www.merriam-webster.com/dictionary/welfare.*

[10] Cambridge Dictionary, (2020). *Meaning of welfare in English.* Retrieved from *https://dictionary.cambridge.org/dictionary/english/welfare.*

[11]Cambridge Dictionary, (2020). *Ration.* Cambridge University Press 2020 *https://dictionary.cambridge.org/dictionary/english/ration.*

[12]Collins Dictionary, (2020). Ration. Retrieved from *https://www.collinsdictionary.com/dictionary/english/ration.*

[13]Longman Dictionary, (2020). Ration. Retrieved from *https://www.ldoceonline.com/dictionary/enough.*

[14]Corruptie.org, (2020). *What is corruption?* Rtrieved from *http://www.corruptie.org/en/corruption/what-is-corruption/*

maker consents to deviate or demands deviation from the criterion which should rule his or her decision-making, in exchange for a reward or for the promise or expectation of a reward, while these motives influencing his or her decision-making cannot be part of the justification of the decision. He explained that major corruption comes close whenever major events involving large sums of money, multiple 'players', or huge quantities of products (think of food and pharmaceuticals) often in disaster situations, are at stake.[15] Corruption erodes trust, weakens democracy, hampers economic development and further exacerbates inequality, poverty, social division and the environmental crisis.[16]

Internally Displace Persons (IDPs): Internally displaced persons (IDPs) are "Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border."[17] The key elements of IDPs are the involuntary character of the movement, and the fact that such movement takes place within national borders. IDPs include, but are not limited to families caught between warring parties and having to flee their homes under relentless bombardments or the threat of armed attacks, whose own governments may be responsible for displacing them.[18]

Statement of the Problem

The activities of the Boko Haram insurgents in Northeast Nigeria since 2009 have been the major cause of displacement of huge populations leading to emergence of IDP camps and camp-like situations in states of Adamawa, Bauchi, Borno, Gombe, Taraba and Yobe,[19] although Borno,

[15]Duyne, P. C., "Corruption in Acts and Attitudes," *Forum on Crime and Society*, Vol. 1, No. 2 (2001), 73-98.

[16]Transparency International, (2020). *What is corruption?* Retrieved from *https://www.transparency.org/en/what-is-corruption#*

[17]IDMC, (2019). *Guiding principle on internal displacement.* Retrieved from *https://www.internal-displacement.org/internal-displacement/guiding-principles-on-internal-displacement*

[18]IDMC, (2019). *Who are internally displaced persons?* Internal Displacement. Retrieved from *https://www.internal-displacement.org/internal-displacement.*

[19]IOM, (2020). *Displacement IOM DTM Round 32; Jun 01 2020.* Nigeria West and Central Africa. Retrieved from *https://dtm.iom.int/nigeria.*

Adamawa and Yobe (BAY states) are more affected. ReliefWeb[20] noted that there were over 150 sites hosting IDPs and only about 10% of the displaced population are staying in camp or camp-like settings, the rest are under severe strain in the host communities. According to the United Nations Office of the Humanitarian Affairs, over 1.8 million people are still internally displaced and in need of urgent assistance in BAY states.[21] The majority of the people in need are in Borno State, the epicentre of the crisis. One in four of the affected population is under 5 years of age. Women and children constitute 81% of the overall crisis population.[22] According to Ogundamisi,[23] malnutrition in both adults and children is at an alarming rate with other health conditions both mental and physical. Furthermore, health problems exacerbated by the ill-equipped and unhygienic camps are malaria, typhoid, cholera, malaria and high blood pressure, undiagnosed and undocumented depression, post-traumatic stress disorder is clearly visible in a number of IDPs.[24]

Mirth[25] noted that need is a necessary condition that has to be satisfied before the need object can be functional as human beings. He classified certain needs as security need - identity to avoid alienation, welfare needs - for sufficiency and the freedom need - to avoid repression. He drew attention relating to improving the general welfare and welfare of all IDPs, which is the human need, as many households have been affected by conflict in the North-eastern states and they have experienced much difficulty in maintaining livelihoods. In response, government at all levels, individuals, Nongovernmental organizations (NGOs), international bodies and UN Agencies have assisted with various interventions and welfare supplies to give succour to the IDPs, especially those in camps. Instead, the extensive presence of NGOs and supplies of welfare items to IDPs has led

[20]ReliefWeb, *2015 Humanitarian Needs Overview: Nigeria, 2014*. Retrieved from *https://reliefweb.int/report/nigeria/2015-humanitarian-needs-overview-nigeria-december-2014*

[21]OCHA, (2019). Humanitarian Needs Overview Nigeria issued in December 2019 by Office for the Coordination of Humanitarian Affairs. Retrieved from *https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ocha_nga_2020hno_30032020.pdf*

[22] Ibid

[23]Ogundamisi, K. (2015). *Open memo on Nigeria's internally displaced persons scandal.* Sahara Reporters, July 07, 2015. Retrieved from http://saharareporters.com/2015/07/07/open-memo-nigerias-internally-displaced-persons-scandal

[24] Ibid

[25]Mirth, A. O., *Experience of internally displaced persons: A case study of Bama and Gwoza Durumi Abuja, Nigeria*. International Institute of Social Studies , (2014), 6-36.

to complaints from some members of the host communities that NGOs that engaged in various activities and humanitarian services have side-lined community people in terms of employment and job opportunities as many of their employees are not from the affected states, generating issues and causing enmity among IDPs and the host communities. Coupled with that is the allegation of corrupt practices among some stakeholders in the management of IDPs and welfare resources, especially NEMA officials.

Also, hardship in IDP camps has led to camp residents deploying different survival strategies including selling their welfare rations as it happened in conflict-stricken Mindanao in the Philippines.[26] Punch Newspaper also reported allegation of IDPs selling their food rations in Borno State, Nigeria.[27] To establish the veracity of these allegations bordering on practices, this study conducted research and collected data in selected IDP camps in Borno State to answer the question as to whether there are issues of corrupt practices in the management of IDP camps in Northeast Nigeria.

Theoretical framework

The study adopted the Fraud Triangle Theory that was developed by the American sociologist, Donald R. Cressey, in 1951 and the Capability Approach which was first articulated by the Indian economist and philosopher, Amartya Sen, in the 1980s. According to HRZone,[28] Fraud triangle theory is a framework designed to explain the reasoning behind a worker's decision to commit workplace fraud. The three sides to the 'triangle' are pressure (such as debt including workplace debt problems including revenue shortfall); opportunity (abuse of position to solve the perceived non-shareable financial problem secretly in a way that is unlikely to be discovered); and rationalisation (a cognitive stage that requires the fraudster to be able to justify the crime in a way that is acceptable to his or her internal moral compass, such as a need to take care of a family, or a dishonest employer which is seen to minimise or mitigate the harm done by the crime). Thus, it postulates that trusted persons become trust violators when they conceive of themselves as having a financial problem which is non-shareable, are aware this problem can be

[26]GlobalSecurity, (2009). *Philippines: IDPs sell rice rations to survive.* Retrieved from https://www.globalsecurity.org/military///library/news/2009/06/mil-090605-irin04.htm.

[27]Punch Newspaper, "Borno IDPs appeal to government on poor feeding", March 20, 2017. *https://punchng.com/borno-idps-appeal-to-government-on-poor-feeding/*

[28]HRZone, (2020). *What is fraud triangle?* Retrieved from *https://www.hrzone.com/newsletter/hrzone-all-hands-on-tech-podcast*

secretly resolved by violation of the position of financial trust, and are able to apply to their own conduct in that situation, verbalizations which enable them to adjust their conceptions of themselves as trusted persons with their conceptions of themselves as users of the entrusted funds or property.[29]

The Capability Approach is the phenomenon of 'adaptive preferences' which is the moral significance of individuals' capability of achieving the kind of lives they have reason to value.[30] It focuses directly on the quality of life that individuals are actually able to achieve analysed in terms of the core concepts of '*functionings*' and 'capability'. *Functionings* are states of 'being and doing' such as being well-nourished, having shelter, while capability is the real opportunity that we have to accomplish what we value. The 'good life' is partly a life of genuine choice, and not one in which the person is forced into a particular life, however rich it might be in other respects. It is what a person is free to do and achieve in pursuit of whatever goals or values he or she regards as important.[31] Amartya Sen illustrates his point with the example of a standard bicycle. This has the characteristics of 'transportation' but whether it will actually provide transportation will depend on the characteristics of those who try to use it. It might be considered a generally useful tool for most people to extend their mobility, but it obviously will not do that for a person without legs.

Therefore, illustrating corruption in the management of IDPs establishes that trusted persons in terms of NEMA officials and others in management of IDP resources, become trust violators when they conceive of themselves as having a financial problem which is non-shareable and secret by violation of the position of (financial or material) trust, and are able to apply to their own conduct users of the entrusted funds or property. Mirth[32] quoted Johan Galtung in his *Basic Needs Approach* and stated that there should be a clear distinction of want, a wish, a desire and a demand of the human expectations. Thus, IDPs that sell their welfare rations and thereafter go begging do not cherish being well-nourished as a 'good life'; instead, genuine choice they value is poverty, alms begging and lack and

[29]Association of Certified Fraud Examiners, (2020). *The fraud triangle*. Retrieved from *https://www.acfe.com/fraud-triangle.aspx.*
[30]Internet Encyclopedia of Philosophy, (2020). *Sen's capability approach.* Retrieved from *https://iep.utm.edu/sen-cap/.*
[31]Alkire, S. (2020). *The capability approach and Human development.* Oxford Poverty and Human Development Initiative. Retrieved from *https://www.ophi.org.uk/wp-content/uploads/OPHI-HDCA-SS11-Intro-to-the-Capability-Approach-SA.pdf.*
[32] Ibid.

that is what they are free to do and achieve in pursuit of what is important to them.

Management of IDPs in Camp in Nigeria

The *United Nations Guiding Principles on Internal Displacement* was a milestone in the process of establishing a normative framework for the protection of IDPs. The *Guiding Principles* are consistent with and reflect international human rights and humanitarian law. Although not a binding legal instrument, the principles have gained considerable authority since their adoption in 1998. The UN General Assembly has recognised them as an important international framework for IDP protection and encouraged all relevant actors to use them when confronted with situations of internal displacement.[33] The principles reaffirm that national authorities have the primary responsibility to ensure that IDPs' basic rights to food, water, shelter, dignity and safety are met in addition to facilitating their access to all other rights. They should accept the assistance of the international community where they do not have the capacity to provide assistance and protection to IDPs. In Nigeria, NEMA is the body responsible for the management of IDP camps under the supervision of the recently established Ministry of Humanitarian Affairs, Disaster Management and Social Development.

Officials of NEMA as camp managers are in charge of receiving IDPs, allocating accommodation and manage welfare distribution to IDPs in camps. Eweka and Olusegun[34] found that IDPs, upon safe arrival at their new but temporary location, have basic needs such as reasonable shelter, food, potable water, healthcare. They explained that camp management provides education, security, clothing, information, etc. which must be met in order to stay alive and inhibit socio-cultural and security consequences both on IDPs and host communities. Lomo[35] adds that provision of intervention include issues of physical security, threats of forcible return to region of origin where conditions are not ripe for return, the right to freedom of movement, IDP status determination, and absence of strong, domestic institutional mechanisms for implementing the (inter)national

[33]IDMC, (2019). *What is internal displacement.* Internal Displacement Monitoring Centre. Retrieved from https://www.internal-displacement.org/countries/nigeria.

[34]Eweka, O., "Management of Internally Displaced Persons in Africa: Comparing Nigeria and Cameroon," *African Research Review,* 10(1), February 2016:193; DOI: 10.4314/afrrev.v10i1.15

[35]Lomo, Z, "The struggle for protection of the rights of refugees and internally displaced persons in Africa: Making the existing international legal regime work," *Berkeley Journal of International Law*, 18 (2), (2000), Article 8.

protection regime. As the displaced persons have lost their source of livelihood, resources and savings to disaster, and suffer great hardship.[36]

The issues of needs assessment and transparency have been identified as huge challenges in the management of IDP camps. Aliyu Rambo, UNICEF's child protection specialist in Yobe said: "Needs assessment [is] the bedrock of all humanitarian interventions… It affords humanitarian organisations the opportunity to determine what IDPs need at different periods of time, maybe food items first, then non-food items and finally economic recovery programmes."[37] Unlike the international organisations working in Yobe State, NEMA and State Emergency Management Agency (SEMA) rarely carry out any kind of needs assessment ahead of relief interventions. Buba Zabu of the Nigerian Red Cross in Yobe State distinguishes that situation from the practice of the Red Cross. As he puts it,

> *The Red Cross always carries out need assessment prior to interventions by sending volunteers to go to the communities where IDPs live and mingle with them freely, by so doing they will be able to know what are the challenges those IDPs are facing and based on which we prepare our interventions.*[38]

On the issue of transparency, *ReliefWeb*[39] noted that assessing the actual volume of relief under the remit of the Yobe SEMA and how it is distributed to IDPs is extremely difficult due to lack of transparency of the aid delivery system.

In a study of management of IDPs in Nigeria and Cameroun conducted by Eweka and Olusegun, it was found that corruption is a major challenge impeding effective management of IDPs in Nigeria. Respondents maintained that corrupt office holders in government, and in IDPs management agencies alike, have on several occasions been found diverting funds and relief materials meant for IDPs for their personal purposes, a situation that reduces the efficiency of the agencies concerned in managing IDPs. They cited Olagunju[40] who claimed that government

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[36]Crisp, J. "Forced displacement in Africa: Dimensions, difficulties and policy directions," *Refugee Survey Quarterly* (2012). Available from: *www.oxfordjournals.org.*

[37]Rambo, A., quoted in, Zabu, B., "Nigeria: When aid goes missing. Government agencies accused of diverting supplies meant for the six northeastern states," *ReliefWeb,* 5 Sep 2016. Retrieved from *https://reliefweb.int/report/nigeria/nigeria-when-aid-goes-missing*

[38]Zabu, B., *Nigeria: When aid goes missing*, Ibid.

[39] *ReliefWeb* (2016)

[40]Olagunju, O., *Management of Internal Displacement in Nigeria*. Unpublished thesis. Brandeis University. (2006).

aid (money/relief) gets diverted and never gets to the IDPs themselves. The authors equally traced corrupt practices to camp officials and leaders of IDPs who may also convert and sell relief materials. According to Alqali,[41] government agencies have been accused of diverting aid meant for IDPs in the six states of Nigeria's North-eastern region, as NEMA, the federal government's aid distribution agency and its counterparts at state level, the State Emergency Management Agencies (SEMAs), have all come under fire for graft and inefficiency. Civil society groups complained that poor coordination and a lack of oversight means that traditional leaders, local politicians and officials from the relief agencies themselves have been allowed to divert aid.[42]

Unfortunately, the sincerity of NEMA has been eroded. Ogundamisi[43] noted that there is no attention to detail or sincerity in providing the much needed necessities for the health and well-being of those entrusted into the care of humanitarian groups such as NEMA. The numbers of the IDPs were exaggerated, funds redirected and the self-gratification suffice, food allocated to the IDPs is reduced in numbers by officials in most cases, the items meant for the victims are carted away by officials after inspection by the government officials, materials provided are not handed over and self-enrichment of officials through their relatives disguising as IDPs to collect materials distributed.

The level of exploitation of IDPs has reached staggering heights. In response to the humanitarian crisis, UNICEF reported receiving only 15 percent of the US $26.5 million for humanitarian support in Nigeria.[44] The Victim Support Fund raised 58.79 billion Naira in 2014. But there are no images of solace being provided for its beneficiaries.[45] *Global Sentinel*[46] reported that the National Assembly has accused NEMA of fraud and therefore, called for the dismissal and prosecution of the director general of NEMA over fraud, corruption and embezzlement of N33 billion Emergency Intervention Fund, as well as all the government officials

[41] Quoted in Ibid.
[42] Ibid
[43] Ogundamisi, *Open memo on Nigeria's internally displaced persons' scandal* (2015), op. cit.
[44] Ibid
[45] Ibid
[46]Global Sentinel, *Mismanagement of N33bn emergency, IDP fund: NASS Full Report*. globalsentinelnews1, November 9, 2018. Retrieved from *https://globalsentinelng.com/2018/11/09/mismanagement-of-n33bn-emergency-idp-fund-nass-full-report/*

involved in the approval, processing, release and diversion of the fund. The Committee's investigation into Breach of Trust in NEMA covered the following aspects: Release of N5,865,671,389 and N3,153,000,000 emergency food intervention of food security in the Northeast in 2017; 6,779 metric tonnes of rice donated by the Chinese government to IDPs in the North East; Payment of about N800 million demurrage on the donated rice; over 10 billion Naira, being 20 percent statutory ecological funds released between January 2017 to February 2018 to NEMA; Federal Government's N1,600,000,000 to 16 states in July 2017 for Flood intervention; Over N1.6 billion released to NEMA for evacuation of Nigerians stranded in Libya in 2017 and other ancillary issues. Thirty-three billion Naira (N33 billion) was lost by the federal government, due to mismanagement in the handling of the relief materials for IDPs and outright embezzlement of funds by NEMA.

In Yobe state, Sani Babagana, a United Nations High Commission for Refugees (UNHCR) IDP Protection Monitor in Geidam, recounted what happened after a shipment of relief materials including rice, milk and soap arrived at Geidam town in June 2016. He said:

> *Surprisingly, after the materials were delivered and received by the authorities of the local council, only very few of the IDPs benefitted from the materials… the NEMA officials bribed the local council officials by giving them a portion of the items while they carted away the bulk of the relief… that same month, a team of aid workers from Yobe SEMA came to Geidam to deliver another batch of relief materials that included rice, cooking oil, sugar, millet, spaghetti, soap, second-hand clothes and mosquito nets, a corrupt local official stole much of this delivery… later, many of the items were seen being sold openly at the local market in Geidam.*[47]

Also in Yobe state, three traditional rulers in Buni Yadi were suspended for diverting relief materials including rice and cooking oil meant for their communities, while aid distributed to widows on behalf of the Media Trust Limited, publishers of the Daily Trust newspaper, were forcibly collected by local vigilantes.[48]

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[47]Bagana, S. (2016). *Nigeria: When aid goes missing*. Government agencies accused of diverting supplies meant for the six northeastern states. Published in ReliefWeb of 5 Sep 2016. Retrieved from *https://reliefweb.int/report/nigeria/nigeria-when-aid-goes-missing*

[48] Alqali (2016), *Nigeria: When aid goes missing*, op. cit.

Musa, Akubo, Ande and Oyewole[49] reported that in Borno State, the integration of 893 repentant Boko Haram terrorists into communities has been condemned by IDPs because of mistrust between them and the repentant insurgents. The IDPs believed that federal government values their killers more than them and that donor agencies are offering more assistance to ex-terrorists. Mr. Buba Musa Shehu, Bauchi State Chairman of IDPs, sees granting pardon and rehabilitating repentant Boko Haram members as a misplaced priority, lamenting that those who were terrorised are yet to fully recover from the pain, only for the government to spend huge amount of money on former terrorists. In his words:

> *Some of our people are dying silently; hunger is killing us. We have no one to cater for us. Insurgents have long destroyed our means of livelihood and some of our family members have died in the hands of Boko Haram members… I left my town (Gwoza, Borno State) on August 14, 2014; my family was scattered. I climbed the roof to escape, then moved to hide on a nearby mountain. I came to Bauchi with only sleeping dress on, as we were attacked around 8 am… it took me over six months to discover that my children were in Cameroun…* [50]

In Adamawa State, a cross section of IDPs in Fufore and Malkohi camps also condemned the government on the decision to free their attackers/killers when they are dying of hunger in camps. A 65-year-old IDP in Malkohi camp said: "Sometimes, we eat only once, sometimes twice, but when a top government official is visiting the camp, they will bring plenty food to convince the official that we are well fed." Akinpelu[51] has noted that the 2019 report of the Food and Agriculture Organisation of the United Nations, titled "Monitoring food security in countries with conflict situations," states that "In north-eastern Nigeria, 3 million people needed urgent support, with Borno and Yobe States seeing an increase in food insecurity since 2018, following an upsurge in armed attacks." According to him, some relief items for the IDPs were "being distributed to all NEMA staff across the country" as a NEMA staff called staff who were yet to come for their ration to do so or forfeit it to others who were present. Thus, issues

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[49]Musa, N., Akubo, J., Ande, E., Oyewole, R. (2020). *IDPs: We will never forgive our oppressors*. Retrieved from *https://guardian.ng/news/idps-we-will-never-forgive-our-oppressors/*

[50]Sheu, B. M. (2020). *IDPs: We will never forgive our oppressors*. Retrieved from *https://guardian.ng/news/idps-we-will-never-forgive-our-oppressors/*

[51]Akinpelu, Y. (2019). *While IDPs starve, NEMA shares food items to staff.* Premium Times, December 24, 2019. Retrieved from *https://www.premiumtimesng.com/news/headlines/369644-while-idps-starve-nema-shares-food-items-to-staff.html*

of government support for repentant terrorists above IDPs, food insecurity of IDPs and distribution of relief items to NEMA staff instead of IDPs have been condemned as corrupt practices.

Commodification of Food Ration in IDP Camp

IDPs in Northeast Nigeria have been reported to be facing serious difficulties in accessing food and other basic needs. According to Abdulrasaq,[52]

> *People are hungry, many have been rendered homeless, their homes having been destroyed… you come across people who were once healthy and living a decent life now emaciated and dressed in rag-tag clothes. They have lost everything they had and could not even afford food or decent clothing. People are surviving on tafasa (local vegetable) – people eat whatever they can lay their hands on just to survive.*[53]

Musa Umar, a resident of Buni Yadi community of Yobe state, said desperation had led to IDPs stealing aid from other people. In his words:

> *IDPs are snatching relief materials from fellow IDPs… Just yesterday an IDP was on his way home having collected relief materials when a group of young men stopped him and forcefully took the aid materials from him. People are desperately hungry and so will not mind doing anything to get food just to survive.*[54]

Oketunde[55] reported that IDPs in Adamawa have endorsed the food rationing for deserving households adopted by NEMA. The Emergency Food Intervention of the North East, which was launched by the Federal Government in June 2017 agreed that the rations would be 50kg of food stuffs while condiments would be added, unfortunately, this was not adhered to strictly.

It would appear that the experience of North-eastern Nigeria is not peculiar with regard to the commodification of relief materials by the beneficiaries.

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[52]Abdulrasaq, Y. (2016). *Nigeria: When aid goes missing*. Government agencies accused of diverting supplies meant for the six northeastern states, *ReliefWeb,* 5 Sep 2016. Retrieved from *https://reliefweb.int/report/nigeria/nigeria-when-aid-goes-missing*

[53] Ibid.

[54]Umar, M. (2016). *Nigeria: When aid goes missing*. Government agencies accused of diverting supplies meant for the six northeastern states, *ReliefWeb*, 5 Sep 2016. Retrieved from *https://reliefweb.int/report/nigeria/nigeria-when-aid-goes-missing.*

[55]Oketunde, R. (2020). *Adamawa IDPs endorse NEMA's food ration*. Sundiata Post. Retrieved from *https://sundiatapost.com/adamawa-idps-endorse-nemas-food-ration/*

According to *Global Security*,[56] IDPs in conflict-stricken Mindanao in Philippines, were facing challenge in their longstanding humanitarian crisis. They were selling their rice rations to survive. The rice was part of the food the UN agency had distributed earlier to an overcrowded IDP camp in the area. The rice traders took advantage of the IDPs who needed cash to buy other necessities or household goods. In Northern Kenya, 38,000 refugees in Kalobeyei settlement opened in 2016 have been supported by World Food Programme (WFP)with their general food portions in the form of cash transfers dubbed *Bamba Chakula* through a local bank since June 2019. WFP delivered cash through mobile telephones and refugees would buy food from contracted shops. This has been reported successful. Bartholomew Kavamahanga Rugina, a refugee from Burundi said: "Before we would travel to Kakuma markets and see food for sale at good prices but we would have no cash… now with this money we can buy food at good prices — you can buy whatever you want for the home.[57]

All refugees speaking to WFP say they are spending all of the money on food or on priority needs such as medication for their families. Rose Ifuko, a refugee from South Sudan said that she cannot spend the cash on luxury items: "I spent all the money on food. I bought maize flour, wheat flour, oil, beans, *omena*, [small dried fish], split peas, salt, sugar, and onions." Daniel Dyssel, WFP Kenya's Head of Relief and Refugees Unit, says that this form of assistance gives refugees more options and has the potential of unlocking challenges of financial inclusion for the refugees as "*they can buy anything they want based on priorities, needs and preferences*."[58]

In Yobe State Nigeria, Alqali[59] reported that the ICRC operates a cash support scheme, whereby bank accounts are opened in the name of the IDPs who are then issued with automated teller machine (ATM) cards so they can access funds. Each month, the ICRC pays the sum of N40,000 to each of the IDPs. However, logistical problems prevented many IDPs from accessing these funds. Makinta Shettima, an elderly IDP living in the Malam Matari community of Damaturu, said: "even though an account had been

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[56]Global Security, (2009). *Philippines: IDPs sell rice rations to survive.* Retrieved from *https://www.globalsecurity.org/military///library/news/2009/06/mil-090605-irin04.htm*.

[57]World Food Programme Insight, (2019). *Is giving cash a good way to help refugees?* Retrieved from https://insight.wfp.org/is-giving-cash-a-good-way-to-help-refugees-d686d447ef32?gi=8000af90fa12

[58] Ibid.

[59] Ibid

opened for me with the United Bank for Africa (UBA), I have never received an ATM card… though I have received notifications of cash withdrawals from my account, indicating that someone else had my card and was using it to withdraw money." *Punch* Newspaper,[60] reported that in Borno state, the State Emergency Management Agency (SEMA) Chairman, Mallam Ahmad Satomi denied the allegation of diversion of food items meant for IDPs and noted: "The IDPs will always complain no matter what you give them, most of them sell their food ration as soon as they are given and continue to complain of hunger." Considering the deplorable condition of IDPs in the camps, Ali Gambo, an IDPs protection officer for the National Human Rights Commission (NHRC), said he doesn't blame the IDPs for selling off the relief items, arguing that the relief agencies decide for the IDPs what are their needs.[61]

Methodology

In order to gain a better insight into the welfare supplies in IDP camps and its management by camp managers and IDPs themselves, qualitative research method was adopted. On sampling procedure, 10 IDP camps in Borno State, Nigeria, were purposively selected because the state is the epicentre of the Boko Haram insurgency. From the IDP camps, 5 IDPs were selected from each IDP camps. Thus, a total of 50 IDPs were selected using purposive sampling technique. Also, to get in-depth data, 17 camp officials and 5 NGOs were purposively selected in the state. It should be noted that since non-probability sampling technique was used in this study, findings of this study are limited to the 10 selected IDP camps in Borno State. In other words, the findings of this study cannot be generalized or extended to other IDP camps in the state or outside the state.

Also, both primary and secondary data were collected and utilized. For primary data, semi-structured interview and Key Informant Interview (KII) were employed as the instruments for gathering the data in Borno State, which is the most affected by the Boko Haram insurgency for over a decade now. Borno is also recognised as the epicentre of the insurgency. The researchers visited the state in the course of carrying out this research. KII was selected to elicit information from individuals who are knowledgeable on the issues of welfare supplies and its management in the

[60] 2017, Punch Newspaper, "Borno IDPs appeal to government on poor feeding", March 20, 2017. *https://punchng.com/borno-idps-appeal-to-government-on-poor-feeding/*

[61]Gambo, A. (2016). *Nigeria: When aid goes missing*. Government agencies accused of diverting supplies meant for the six northeastern states. Published in ReliefWeb of 5 Sep 2016. Retrieved from *https://reliefweb.int/report/nigeria/nigeria-when-aid-goes-missing*

camps. This instrument was deemed most appropriate to generate qualitative data because it provided the researchers the opportunity to have face-to-face interactions with a wide range of key informants. For deeper responses, participants were purposively chosen from amongst the internally displaced persons (IDPs), officials of NEMA and officials of International NGOs having their presence in the camps. The study was conducted with 5 NGOs, viz.: Medecins Sans Frontieres (MSF) Action Against Hunger, World Food Program, Red Cross and UNICEF; 17 camp officials of NEMA and 50 camp residents consisting of 25 males and 25 females across 10 IDP camps in Borno State Northeast Nigeria (that is, Dalori 1 and 2, Bakassi, Teachers Village, NYSC, El-miskin, Muna Garage, Muna Maforo, Gubio, Goni Kachallari, Madinatu Old). The surveys were used to select participants who were active in giving, receiving or managing welfare intervention in the camps (including food items, household items, healthcare, moral and psychological support). Interviews were conducted by researchers and two research assistants personally in each of the selected IDP camps. Secondary data were obtained from previous studies on corruption, IDPs and camp management especially in Northeast Nigeria, sourced from published data, reports, books, Newspapers and online resources.

Results and Discussion of Findings

It is important to start with socio-demographic characteristics of the participants before presenting the main results of this study.

Table 1: Socio-demographic Information of the Respondents

S/N	Variables	Frequency	Percentage
1	Gender:		
	Male	39	54.17
	Female	33	45.83
	Total	72	100
2	Educational Qualification:		
	First Degree	10	13.89
	Diploma	5	6.94
	Secondary School Certificate	7	9.72
	Primary Education	29	40.28
	No formal education	21	29.17
	Total	72	100

3	Marital Status:		
	Married	55	76.39
	Single	1	1.39
	Widow	11	15.28
	Separated	1	1.39
	Divorced	4	5.55
	Total	72	100
4	Occupations:		
	Camp Officials	17	23.61
	NGO	5	6.94
	Traders	29	40.28
	Farmers	12	16.67
	Others	9	12.5
	Total	72	100

Source: Researchers field work 2020

From the above table, 54.17% of the participants were male; while 45.83% were female. The difference between male and female participants was not significant as their percentages were not significantly differed. On educational qualification of the participants, 13.89% of the participants had first degrees; 6.94% were diploma certificate holders; 9.72% had secondary school certificate; 40.28% only completed primary school education; while 29.17% had no formal education. It should be noted that participants that had first degree and diploma certificates were camp officials and officials of the NGOs. On the other hand, majority of the IDPs had either completed primary education or had no formal education. On marital status, 76.39% of the participants were married; 15.28% were widows; while 5.55% were divorcees. This implies that overwhelming majority of the participants were married including the selected camp officials and officials from NGOs. Also, most of them had children, but they did not disclose the number of their children. On occupation of the participants, 23.61% of the participants were camp officials; 6.94% were officials of the NGOs; 40.28% were traders; 16.67% were farmers; while 12.5% were engaging in other occupations. This indicates that most of the participants in this study were traders and farmers.

Major Findings

The study found that diversification of welfare rations and interventions meant for IDPs and distribution of welfare items to NEMA staff have established corrupt practices in the management of IDPs in camps. Also

that most IDPs in the study area were involved in selling out their welfare packages, and still go out to beg; some men sell the ration meant for the family to get cash to take care of other needs; some individuals and government officials come to camps to buy IDPs welfare rations and some IDP women go for street begging after selling their rations; and that the selling of welfare ration increased hunger in the camps which led to different sicknesses and diseases such as malnutrition, fever, malaria, etc., and the death of many malnourished children under the age of five (5) years; while sending of girl children to the street after selling welfare ration exposed the girls to sexual abuse and domestic house work.

Results and Discussion of Findings

Identification of issues of corrupt practices in the management of IDP camps in Northeast Nigeria

Studies in the literature review on the mismanagement of 33 Billion Naira Emergency Intervention Fund by NEMA;[62] diversification of welfare rations and interventions meant for IDPs; and distribution of welfare items to NEMA staff have established corrupt practices in the management of IDPs. It was also found that NGOs and agencies that engaged in various activities and humanitarian services do not usually employ people from the host communities as staff on employment basis, or job opportunities which they considered lucrative. Some respondents expressed bitterness that some "big wigs' give job opportunities to only those that have connections, instead of engaging people from Borno State. This was seen as corruption.

Investigation of the reason behind IDPs' marketing the welfare ration in Borno State, Northeast Nigeria

The study found that livelihoods for the majority of the households in Adamawa, Borno and Yobe States are traditionally based on agriculture (crops, livestock - especially pastoral and fisheries from rivers). This economic power was lost through Boko Haram insurgency and displacement. Also, majority of IDPs are living in host communities and dependent on host families for feeding, while IDPs in camps as poor household continue to face difficulty meeting their basic needs, including feeding. Most IDPs in the study area were involved in selling out their welfare packages, and still go out to beg. Further, some men sell the ration meant for the family to get cash to take care of other needs.

It was also found that prior to the interview conducted, IDPs usually take the goods or welfare rations to market to sell, but now buyers of the food

[62] *Global Sentinel* (2018), op. cit.

ration make it easier for IDPs by coming to the camp to buy from them immediately after receiving it from the distributors. In addition, the study found that some buyers were government officials, NGOs or business people who take the ration back to the market to sell to make gains. It was also found that some women market their welfare rations and thereafter went to the street to beg for money, while some send their children for begging on the street.

Responding to reasons while IDPs sell their welfare ration, a woman respondent said: *"We received lots of food items, but some ingredients are not available to cook with, such as meat, fish, among others."* Some of the IDPs responses also revealed that they just needed money that is why they sell out their welfare goods.

Consequences of corruption and marketing of welfare rations by IDPs in the camps in Northeast Nigeria.

The study found that even with the selling of their welfare rations in exchange for money, IDPs condition continues to deteriorate. It was also established that government, NGOs, international development partners and well-meaning individuals have tried a lot to help IDPs by donating huge welfare items but the negative attitude of selling welfare rations has hindered achievement of positive result. Also, as noted earlier, the study found that selling of welfare ration increased hunger in the camps which led to different sicknesses and diseases and the death of many especially malnourished children under the age of five (5) years.

Moreover, sending of girl children to the street after selling welfare ration exposed the girls to sexual abuse and domestic house work. This resulted in many young girls engaging in prostitution, hard labours and street hawking. Some women respondents revealed that though they receive food items and other needed support from NGOs, government etc., they still chose to beg, because if they did not beg, they may end up being relocated back to their homes, since peace has been restored back to their communities. To prevent reintegration, they beg to show signs of poverty.

Conclusion

The activities of Boko Haram insurgents, Farmers/Herders crisis, political and religious banditry among other conflict situations have led to displacement of huge population in Northeast Nigeria. To give succour to the IDPs, the federal government has put the management of IDP camps in the hands of NEMA, while some individuals, government, NGOs and international Agencies have assisted with supplies of various interventions

in camps. Ironically, the IDPs that are being helped and the officials in charge of management have displayed unethical conduct that calls the entire IDP camps projects into question being so riddled with corruption.

Recommendations

Considering the issues of corruption raised in this study, it is recommended that the government put in place a functional structure for the management of welfare items received in camps, the distribution channels and receiving procedure that will monitor and ensure that the end users (IDPs) utilise the materials received in accordance with the intention of the donors. Also, there should be put in place process that assures probity, accountability and transparency in the activities of NEMA officials in IDP camps. Accountability entails financial controls: budget, book keeping, and reporting, while transparency is all about knowing who, why, what, how and how much. It means shedding light on formal and informal rules, plans, processes and actions. This will help the public to hold all erring officials to account for the common good of IDPs and the nation. In addition, there should be comprehensive and coordinated data of IDPs in each camp to aid management. Free access to IDPs information and data should also be encouraged to monitor activities in camps.

To curb sale of welfare ration, the government should put in place task force in IDP camps to monitor that welfare rations are not sold, arrest and punish IDPs found selling their food ration and also buyers of such food rations. This will serve as deterrent to others and ensure that children (especially) are fed with the ration to reduce child mortality in the camps. In order to promote financial inclusion for IDPs, government can introduce well programmed digitalized cash transfer that will capture details of IDPs and ensure appropriate receiving of ATM cards by individual IDPs. This will allow them to buy items of priorities. This can reduce alms begging and sale of welfare rations. Furthermore, judicial system could be strengthened to hear, determine and punish violators of procedures in camps by establishing court rooms in IDP camps and convicts can thereafter be charged before a court of competent jurisdiction.

Moreover, NGOs and international agencies supporting intervention programmes targeted at IDPs in North-eastern Nigeria should be encouraged to employ majority of their local staff from host communities to promote a sense of stake holding among the locals and to improve the economic status of such employees. This can reduce the tension and hostility from host communities against these organisations and IDPs themselves. Above all, government should monitor the budgetary

allocations to IDP camps to ensure that funds are not diverted and required items are bought and distributed to IDPs appropriately. Especially, more food items should be supplied to IDP camps to ensure good feeding for all. Particular attention should be paid to feeding of children, pregnant women and breastfeeding mothers to reduce infant mortality and women morbidity in the camps.

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Contributions are to be written in English. Authors must avoid all forms of plagiarism. All ideas and works must be properly referenced. The author must properly reference his or her own works which have been used or published elsewhere. Authors are to avoid disputable sources. Manuscripts should use footnotes in the Chicago style as shown below.

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