

RE-INVENTING ANTICORRUPTION STRATEGIES FOR SUSTAINABLE DEMOCRACY IN NIGERIA: CHALLENGES AND POLICY OPTIONS

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ABSTRACT

This paper considers the usefulness of the concept of anti-corruption strategy—both as an analytical construct and a policy tool. It argues that a central issue in emerging democracies in the Third World is sustainability. This is attributable to institutional breakdown arising from corruption. This reoccurring frustration poses great threat to Nigeria's nascent democracy as it primarily accounts for failure of governance and poverty. It examines the prevailing anti-corruption strategies in Nigeria in a period of nascent democracy namely; Independent Corrupt Practices Commission (ICPC), Economic & Financial Crimes Commission (EFCC) and Nigeria's commitment to three international anti-corruption conventions- the United Nations Convention Against Corruption, the African Union Convention on Preventing and Combating Corruption; and the Economic Community of West African States Protocol on the fight against Corruption. It argues that the persistence of corruption, points to the failures of the strategies. Its effects have been a clog to sustainable democracy and development. It recognizes that corruption exists both in the public and private sectors with correlates such as high poverty rate, rich/poor gap, unemployment, low Gross Domestic Product (GDP) etc. It argues for institutionalization of a functional and effective alternative through a 'home grown' radical and strategic overhaul of the system by adopting anti-corruption risk assessors' (ACRAs) training for non-state actors which is a pro-poor participatory methodology as well as the incorporation of tools of analysis from successful reformers into Nigeria's policy framings such as China, Malaysia, Bangladesh, Indonesia and India, it rejects the prevailing practice which places the major anti-corruption commission under the executive arm which limits its independence.

Keywords: Anti -Corruption Strategy, Corruption, Sustainable Democracy, Development, Nigeria.

INTRODUCTION

The intellectual context of resurgent interest in corruption and sustainable democracy is linked to recent attempts to overcome the constraints posed by the long-standing binaries of corruption in a period of nascent democracy. Nigeria is party to some international conventions and protocols against corruption namely; the United Nations Convention Against Corruption, the African Union Convention on Preventing and Combating Corruption; and the Economic Community of West African States Protocol on the fight against Corruption. State parties to these conventions are bound to adopt measures to prevent corruption, criminalize corrupt practices, prosecute and punish all who indulge in acts of corruption. Despite these provisions corruption remains pervasive in Nigeria.

The rich literature discussing aspects of corruption in Nigeria is complex, its divergent focus reveals the inimical effects of corruption which has been deleterious to development, yet the scourge remains unabated and endemic.

In an era of two most recent anti-corruption bodies namely; Economic and Financial Crimes Commission (EFCC) and Independent Corrupt Practices Commission (ICPC). A recent global ranking by Transparency International (TI) placed Nigeria at 143 out of 182 on corruption list. This abysmal performance has necessitated a search for alternative as the prevailing strategies are fast breaking away.

The persistent electoral fraud, money laundering, embezzlement of public funds, failed contracts, lack of open governance, the “sacred cow syndrome” etc, all indicate that the old order and political attitudes must break away to usher in a new order rooted on “new nationalism” through a reinvigorated strategy.



Fig1. Map of Nigeria Source

METHODOLOGY

This paper seeks to examine corruption in Nigeria from the prism of international best practices through an historically contextualized discursive analysis based on the United Nations Convention Against Corruption (UNCAC) framework. Article 6(1) &(2) of UNCAC states that “State Parties are obliged to have an anti-corruption body or bodies in charge of preventive measures and policies, grant such body or bodies independence to ensure that it can do its unimpeded by undue influences, and provide it with adequate resources and training” similarly Article 5 (3) of the AUCPCC provides that state parties are obligated to ‘establish, maintain and strengthen independent national anti-corruption authorities or agencies’.(TUGAR 2011:3)

Article 5(b) ECOWAS protocol provides that each State Party shall take measures to establish and consolidate specialized anti-corruption agencies with the requisite independence and capacity that will ensure that their staff receive adequate training and financial resources for the accomplishment of their tasks. However Nigeria has several anti-corruption bodies: the Independent Corrupt Practices and Other Related Offences Commission (ICPC), the Economic

and Financial Crimes Commission (EFCC), the Code of Conduct Bureau (CCB), Code of Conduct Tribunal (CCT), and the Public Complaints Commission (PCC). Their legal regimes provide for a series of preventive mechanisms. In addition, Nigeria has such other bodies: Nigerian Extractive Industries Transparency Initiative (NEITI), Fiscal Responsibility Commission, Office Of the Auditor –General for the Federation and Bureau of Public procurement, all with mandates to prevent corruption. (TUGAR 2011:3) Evidence based participatory approach through secondary sources of data would be used in this paper. This is cognizant of the fact that corruption is a real life phenomenon.

CONCEPTUAL CLARIFICATIONS: CORRUPTION AND SUSTAINABLE DEMOCRACY

Typically, research has shown that corruption assumes behavioural dimension and involves the exchange of material things such as goods and money in the public and private sectors to avert stipulated guidelines. It involves alteration of laid down rules to actualize predetermined objectives. A description of corruption could be better pertinent as there is absence of definitional consensus.

At the conceptual level, several scholars are discussing corruption. (Bandfield, 1958, Nye, 1967, Okowa, 1994, Sen, 1999, Osoba, 1996, Lipset and Lenz, 2000, World Bank 1997, Transparency International 1998)

Amartya Sen argued that corruption or corrupt behaviour involves the violation of established rules for personal gain and profit. (Sen, 1999) Corruption is efforts to secure wealth or power through illegal means private gain at public expense; or a misuse of public power for private benefit. (Lipset and Lenz, 2000)

To Joseph Nye corruption is a behaviour which deviates from the formal duties of a public role, because of private (gains) - regarding (personal, close family, private clique, pecuniary or status gains). It is a behaviour which violates rules against the exercise of certain types of (duties) for private (gains) - regarding influence. (Nye, 1967) This definition includes such behaviour as bribery (use of a reward to pervert the judgment of a person in a position of trust); nepotism (bestowal of patronage by reason of ascribed relationship rather than merit); and misappropriation (illegal appropriation of public resources for private uses). (Bandfield, 1958)

Corruption is an anti-social behaviour conferring improper benefits contrary to legal and moral norms, and which undermines the authorities to improve the living conditions of the people. (Osoba 1996)

According to the World Bank, corruption is the abuse of public office for private gains. Public office is abused for private gain when an official accepts, solicits or extorts a bribe. It is also abused when private agents actively offer bribes to circumvent public policies and processes for competitive advantage and profit. Public office can also be abused for personal benefit even if no bribery occurs, through patronage and nepotism, the theft of state assets or the diversion of state revenue. (World Bank, 1997)

According to Section 2 of the Corrupt Practices and other Related Offences Act “corruption includes bribery, fraud and other related offences”. (ICPC Act, 2000)

Section 46 of EFCC Act defines Economic and Financial Crime as non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or in an organized manner thereby violating existing legislation governing the economic activities of government and its administration. (EFCC Act,

Sect.46,2004).While Section15.5 of the 1999 Constitution of the Federal Republic of Nigeria stipulates that the “State shall abolish all corrupt practices and abuse of power”.

Despite the rich literature, there is a dearth of institutionalization of strategies for ameliorating corruption both in the private and public sectors. This has not adequately addressed the enormous problems of corruption nor impacted on policy discourse.

One of the comprehensive attempts to evaluate the relationship between corruption and democracy in Nigeria is provided by Alex Gboyega in his book; *Corruption and Democratization in Nigeria*.

Other scholars argue on “elite conspiracy” and “leadership failure”. (Achebe 1983)

“Systemic” and “institutional corruption” has been examined. (Okowa 1994, Asobie 2012)

The effects of ethnic configuration on corruption and democracy have equally been examined, within the context of “oil minority politics”, “ethnic imbalance” and “revenue allocation”. (Obi 2001,Osaghe 1986)

Nigeria’s democratization process has not demonstrated sufficient commitment in ameliorating corruption which some scholars largely attribute to “ post- colonial influences” and “western intelligentsia”. “The Western intellectual tradition and process, the dynamo of European power, has failed in our societies to produce an intelligentsia with vibrancy, potency, creativity and innovative vision which can and should drive the ruling oligarchy, whatever its political colouring. In its place we make do with irrationality, the hollowness of received ideas and pseudo-religiosity. In the absence of an effective intelligentsia-oligarchy become unintelligent, anti-intellectual in the worst fascistic way possible. Criminality and banality take possession of society from the top down. Where there is no intelligentsia there can be no reverence for knowledge and ideas, no piety, no godliness, no upward aspiration, no clergy, no religion, no mandarin-no progress”.(Marsh in Fafowora, etal, eds.1995)

Prevailing debates centre on the effects of corruption on every sector of the economy. Corruption could be seen as every interaction, relationship or behaviour which alters laid down rules for the accomplishment of predetermined selfish goals. It is an illegal group or individual activities for informal benefits against institutional wellbeing.

SUSTAINABLE DEMOCRACY

It is proper to briefly illuminate the concept of democracy before examining sustainable democracy. Although democracy is one of the most contentious concepts in the study of politics. (Howlett and Ramesh,1992:17) For our purposes, it is sufficient to regard democracy as a plan of political organization, a political decision making system(Bealey,1988 :1).Whereas this paper cannot explore divergent debates on democracy, a few relevant arguments could be apt for instance, Goran Therborn defines democracy as; “(1)a representative government elected by (2)an electorate consisting of the entire adult population,(3)whose votes carry equal weight, and (4) who are allowed to vote for any opinion without intimidation by the state apparatus”. (Therborn, 1983:262)This position is very pertinent in examining Nigeria’s nascent democracy.

Conceptual analysis has given renewed evaluation of democracy in its liberal form. Proponents of liberal democracy argue that the basis of democracy is constitutionalism and freedom. It gives cognizance to the primacy of individual

rights and liberty.(Locke,1952,Mill, 1955,Dahl, 1971,1998 ,Macpherson,1966,1974, Lijphart, 1969, Finer, 1965, Joseph,1991).According to C. B Macpherson, Western Liberal –Democracies place a high value on the unique characteristics of liberal-democratic state. What is valued most highly is the civil liberties which it generally affords: freedom of speech, freedom of association, and freedom from arbitrary arrest and detention. Beyond that, we value the way our governments can be held somewhat responsible to the majority will through the competition of political parties, parties which can be freely formed and between which individuals are free to choose at the periodical general elections which authorizes governments (Macpherson, 1974:56-57).

On its part sustainable democracy has gained relevance following the rise of neo liberal discourse. There is a consensus among scholars that contemporary sustainable development paradigm which dominates development thinking gained prominence in the 1970s following the UN Conference on the Human Environment held in Stockholm, Sweden in 1972.Our Common Future (commonly referred to as the Brundtland Report),which represented the culmination of the efforts of United Nations Commission headed by Gro Harlem Brundtland, offers the simple definition : “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.(World Commission on Environment and Development, 1987:43)

In this paper, sustainable democracy means a democratic system that meets the needs of present Nigerians without compromising the ability of the future generations to meet their own democratic needs. It is replicable, people based, development oriented and continuous.

Sustainable democracy entails institutionalization of democratic structures in a polity. Government could come and go but sustainable democratic structures remains. The structures are, (a) People oriented government - active participation, popular will, effective representative government, majority rule, public opinion, freedom), (b). Constitutionalism - adhering strictly to the constitution, constitution review, rule of law, human rights, equality, equity, justice, fairness, (c). Periodic elections-sound electoral system, lack of electoral fraud and malpractices, stipulated tenure of office (d). Opposition-guarantee of contrary views, policy changes, ideology, freedom of information, (e). Corruption free governance- transparent , accessible, open, responsible and responsive governance), (f). Fundamental Human Rights - right to life, right to association, right to choice, right town property etc).

CORRUPTION AND DEMOCRACY IN NIGERIA: BRIEF HISTORICAL OVERVIEW

During his inaugural speech on May 29, 1999, President Olusegun Obasanjo said; "Corruption will be tackled head-on. No society can achieve its full potential if it allows corruption to become the full-blown cancer it has in Nigeria...there will be no sacred cows in this process to stamp out corruption in the society” (Presidential Innaugural Speech,1999).

Corruption has a long history in all human societies. In Nigeria, this could be summarized under three major epochs namely; the slave trade or early pre- colonial era, the colonial era and the post -colonial era.

FACING THE PRESENT SITUATION

According to Transparency International (TI) the 2011 Corruption Perception Index (CPI) of Nigeria was 2.4 Nigeria ranked 143 out of 182 countries (Transparency International, 2010). The 2004 report on corruption by Transparency International (TI) in a worldwide corrupt practices survey which covered 146 countries showed that Nigeria was rated the third most corrupt country, beating Haiti and Bangladesh to the second and last positions respectively. Nigeria’s

Corruption Perception Index (CPI) was 1.2 in the year 2000, contrasting those of Finland (10.0), Denmark (9.8) and New Zealand (9.4) (T. I, 2004). In 2007 Transparency International observed that;

Corruption remains endemic. We know that. It's virtually impossible to avoid, and it sucks in even the most unwilling. And for people to say that they don't participate, well frankly, I don't buy it. I just can't buy it. Nigeria is one of the most vibrant markets in Africa, with an entrepreneurial business culture and recent reforms in the banking sector that have won international plaudits. Foreign investment historically has been dominated by oil and gas, but has broadened substantially in recent years into finance, private equity, power, telecoms, consumer products and mining. However, despite Nigeria's size, and the energy and talents of its people, it has failed to achieve its full potential. The reasons include poor leadership, poor infrastructure and a history of high levels of corruption. The Nigerian market has long been notorious for graft, partly as a result of the country's reputation as the world leader in financial crime, but also because of the systematic abuse of its oil wealth over several decades by the political class. As a result, many leading investors that might otherwise have flocked to the country have stayed away. (Transparency International, 2008)

In the 1980s a Nigerian scholar of international repute foreshadowed this when he observed;

"The trouble with Nigeria is simply and squarely a failure of leadership. There is nothing basically wrong with the Nigeria character. There is nothing wrong with the Nigerian land or climate or water or air or anything else. The Nigerian problem is the unwillingness or inability of its leaders to rise to the responsibility, to the challenge of personal example which are the hallmarks of true leadership". (Achebe, 1983:1).

Importantly, a number of factors have perpetuated contemporary corruption in Nigeria, one of the foundational factors could be summarized here;

"In Nigeria the presence of competitive regional and ethnic blocs of the population, a contest complicated by differences in language, religion and level of economic attainment, have rendered the issue of revenue allocation one of uncommon intensity. It is not a matter of chance that three of the most contentious issues in Nigeria in recent years have a common thread: the actual size of the population and its spatial distribution, the desirable number and size of the constituent states of the federation, and the most equitable revenue allocation system. Each of these three issues can be shown to be linked to the struggle for an ever-greater share in state-power by individuals and groups and for access to the important resources controlled by the state. Nigerians are compelled to pursue democracy for the very reason that they are unable to rely on any government-or agency of the government-in which their particular subgroup of the population is not directly and effectively represented". (Joseph, 1991:4)

THE NATURE OF CORRUPTION IN NIGERIA

In Nigeria, the incidence of corruption takes several contexts such as political , economic, social etc. Corruption defies accountability and violates laid down rules.

Transparency International in a cross country survey had identified the levels of corruption:

Grand Corruption - When the governance process, influential politicians (senators, ministers, etc) and/or government officials are paid huge, irresistible funds by major businesses to obtain favours, for example, oil block permits or to circumvent land/sea/port regulations.

Petty Corruption - Occurs in the course of public service delivery, where modest, regular payments (or grease money) are made to avoid delays, queues or checks (as in contraband or banned goods).

Embezzlement/ theft of public funds/assets and fraud.

Extortion - Coercing a person to pay in cash or kind in exchange for acting or failing to act. Insider- trading. Offering/ Receiving of an unlawful gratuity or illegal commission.

Favouritism, Nepotism, — assigning jobs, services or resources based on family ties, party affiliations, tribe, religion, and other preferences. Money laundering and Advance Fee Fraud.

In the Nigerian scenario corruption could be contextualized as encompassing;

Economic Corruption: This is synonymous to economic and financial crimes. It involves all illicit economic transactions. It takes place at both government and individual levels such as the award of contracts, diversion of public funds, over invoicing, over budgeting and relationships between receipts, transactions and documentation. **Political Corruption:** This involves the subversion of the political process and it is aimed primarily at capturing political power for determining the rules of economic and political engagement and allocation of values. Examples are electoral fraud and malpractices etc.

Bureaucratic Corruption: This occurs at the level of government bureaucracy and often involves perversion of laid – down rules of due process. It usually aims at private monetary gain through wrongful inducements and illicit payments for rendering public service. It can also be classified as Petty Corruption because of the usually small amount of money involved.

Judicial Corruption: This takes place when judicial officers fall short of the standard of Integrity and the course of justice is perverted for personal gains.

Legislative Corruption: This is a situation where legislators pervert anti -corruption legislation in their own interest. It equally entails a situation of low ethical standards by law makers. Nigeria is one of the countries in developing democracies with high level of legislative corruption. From the Salisu Buhari falsification scandal, to the impeachment of no fewer than three Senate Presidents in 1999 on charges of falsification and financial scandals,(Senators Evan Enwerem, Chuba Okadigbo and Adolphus Wagbara) also the impeachment of former Speaker of the House of Representatives Patricia Etteh and series of financial scandals levelled against the successive Speaker Dimeji Bankole. All interrogate the quality of Nigerian law makers as the trend remains unabated till date.

In the light of these, we will examine public and private sector corruption.

PRIVATE SECTOR CORRUPTION

Studies have largely focused on the public sector corruption with emphasis on key public institutions and public office holders. This is understandable as the large chunk of the national resource is in the custody of the public office holders. However this does not dismiss the prevalence of corruption in the private sector.

Forms of Private sector corruption

Corruption is a transaction between private and public sector actors through which collective goods are illegitimately converted into private-regarding payoffs (Heidenheimer et al.1989: 6). This encompasses issues such as; tax evasion, embezzlement, bribery by companies, cybercrime, mode and processes of contract awards and execution, favouritism, ethnic chauvinism, the procurement laws/ the procurement entities, the management and top executives of private sectors, their activities and mode of operation in line with or against constitutional provisions.

However some writers associate corruption with the recurring misuse of public office for

private financial gain. (World Bank 2005, Transparency International 2006, Rose-Ackerman, 1978; Zakiuddin and Haque, 2002; Klitgaard, 2002; Olurode, 2005 cited in Otusanya et al, 2012), but this is not exclusively so because corruption also exist in both (small and large) private enterprises (Klitgaard, MacLean-Abaroa and Parris, 1996; Tanzi, 2002; AAPPG, 2006; Akindele, 2005 all cited in Otusanya et al, 2012). Their gains arise because of fraud, bribery, exploitation, embezzlement, and abuses and conflicts of interest (Sikka, 2008, Otusanya 2012). Corruption is frequently associated with the activities of politicians, presidents, dictators, bureaucrats, and public officials (Osoba, 1996; AAPPG, 2006; Lawal and Ariyo, 2006 cited in Otusanya et al 2012). Its outcomes are associated with loss of taxes, public revenues, economic devastation, lack of investment in public goods, the emergence of gangs and private armies, a loss of faith in law and institutions, a poor quality of life and even a decline in average life expectancy. (Christian Aid, 2005; Sikka and Hampton, 2005; AAPPG, 2006, Otusanya et al 2012)

In Nigeria, the Chairman, Economic and Financial Crimes Commission (EFCC), Mr. Ibrahim Lamorde, argues that private sector officials are the most corrupt, noting that nearly all corruption cases had private sector link. “The private sector continues to be the main harbinger of fraud and corruption in Nigeria. Virtually all the high profile corruption and fraud cases investigated by the commission have elements of strong private sector conspiracy and connivance. “You will recall the roles played by bank chief executives and their top management, which led to the crash of the stock market. They deliberately misstated their financial activities to lure unsuspecting members of the public to buy their shares at premium. Members of the public lost billions of naira and are yet to recover from that. Some of them even converted huge bank resources, including depositors’ funds to personal assets. Their conduct led to perhaps, the biggest bank fraud in our country today. Of course, some of them are still facing trial today.”(Punch Oct 23,2012)

Joel Bakan enriched this debate in his book, *The Corporation: The Pathological Pursuit of Profit and Power*, as he argues that, “Corporation is all about creating wealth, and it is a highly effective vehicle for doing so. No internal limits, whether moral, ethical, or legal, limit what or whom corporations can exploit to create wealth for themselves and their owners” .(Bakan, 2004) According to Sikka (2008), ‘such practices seems to be part of the ‘enterprise culture’ that persuades many to believe that ‘bending the rules’ for personal gain is a sign of business acumen’ (p. 270). Where gaining competitive advantages is considered to be an entrepreneurial skill, especially when competitive.

In Nigeria, in 2006 Brown, the former Divisional Manager of Willbros Nigeria Limited, pleaded guilty to aiding and abetting the violations of the Exchange Act 1934 and the Federal Corrupt Practice Act 1977 (FCPA 1977) (US District Court Southern District of Texas, 2006 cited in Otusanya et al, 2012). In 2007, after the indictment, Steph pleaded guilty to his involvement in violation of the FCPA 1977 for conspiring to bribe government officials with more than \$6 million (US Department of Justice, 5 November 2007; Business Day, 3 October 2007, also see Otusanya et al, 2012). As a consequence, the Willbros Group and its subsidiary, Willbros International Inc., accepted responsibility for its employees who had violated the FCPA 1977 and agreed to pay \$22 million by way of fines in connection with the corrupt payment to the Nigerian and Ecuadoran government officials (US SEC Litigation Release, 14 May 2008; US Department of Justice Release, 14 May 2008 all cited in Otusanya et al, 2012). This corroborates the fact that private corruption like public corruption is on the increase in Nigeria.

PUBLIC SECTOR CORRUPTION

It mainly focuses on the political office holders and includes such incidence as the bribery scandal of Federal Government and US company Harliburton, former Minister for Education Prof. Fabian Osuji, the corruption charges against Chief D.S.P Alamieseigha former Governor of Bayelsa State, Chief James Ibori former Governor of Delta State, PDP chieftain Chief Olabode George etc.

Forms of Public Sector Corruption

Neptism and tribalism in recruitment exercises, favouritism and cronyism in promotion exercises, Nomination of friends for assignments considered lucrative, Transfer to certain locations to favour friends or punish Perceived enemies, Claiming lunch allowance while on duty tour and collecting allowances for duty tours not undertaken, Favouritism in the disposal of obsolete items/boarded vehicles, Nomination of less-deserving and “over-trained” friends and relations for more training/courses while other more deserving persons are neglected, Preferential allocation of estate flats to favoured persons to the detriment of more deserving persons, Selective repairs/refurbishment of staff quarters tilted in favour of friends/ executives., Violation of due process in awarding contracts, truancy etc.

CAUSES OF CORRUPTION

Various causes of corruption have been identified and they include: Unemployment, underemployment, Inadequate motivation-job role, remuneration, work environment, High cost of living-housing, feeding, transportation, education, etc, Lack of social safety net, Poor up-bringing, Wrong values, Chauvinism-tribal, gender, Self-serving tendencies, Taste not commensurate with status in life, Saving-for-the-rainy-day syndrome, Large/extended family, Get-rich-quick syndrome. Other socio-economic factors that can be defined as the motivators of corrupt practices include: greed, extremely poor welfare and working conditions which render incomes far below escalating costs of decent living; shortcut to affluence, glorification of ill-gotten wealth, desire for flamboyant affluence, western styled unsustainable consumption and expensive lifestyle, which could lead to dubious means of affluence such as ritual killings, crimes. Others are lack of ethical standards among public office holders, poor reward system and value for service, “the shortcut/fast-forward mentality”, social pressure on office holders, high societal tolerance for corruption; “sacred cow syndrome”, weak anti - corruption enforcement mechanisms, defective and feeble leadership, poor moral standards, excessive materialism, lust for power etc.

CONTEMPORARY ANTI -CORRUPTION MEASURES

In addition to the existing criminal and penal codes that have existed since the colonial era, the military rule in Nigeria made impressive body of laws against corruption and financial crimes. The laws and decrees include the following:

- Investigation of Assets (Public Officers and Other Persons) Decree of 1968
- The Corrupt Practices Decree 1975
- Public Officers (Special Provisions) Decree 1976
- Recovery of Public Property Decree 1984
- National Drug Law Enforcement Agency (NDLEA) Act, 1990.
- The promulgation of the Mutual Assistance in Criminal Matters within the Commonwealth (Enactment and Enforcement) Act No. 13 of 1988, designed to bring Nigeria's municipal law in line with the Harare Scheme. The scheme contains provisions on how to deal with the proceeds of crime and laundering of such money
- The Public Complaints Commission Act Cap 377, Laws of the Federation 1990
- The Code of Conduct Bureau and Tribunal Act Cap, Laws of the Federation 1990
- The Criminal Code Act Cap 77, Laws of the Federation 1990
- The Penal Code, Northern States Federal Provisions Act —Cap 345, Laws of the Federation 1990
- Banks and Other Financial Institutions Act 1990
- Recovery of Public Property (Special Military Tribunal) Act Cap 389, Laws of the Federation 1990
- The Failed Banks (Recovery of Debts) and Financial Malpractices Act No. 18 of 1994
- Failed Banks Act No. 16 of 1996
- Advance Fee Fraud and other Related Offences Act No. 13 of 1995, intended to deal with the menace of the so-called “Nigerian fraud letters” or “419”
- The Foreign Exchange (Miscellaneous Provisions) Act No. 17 of 1995
- The Money Laundering Act No. 3 of 1995

The creation of the Offices of the Auditor General for the Federation and for the States; the Public Accounts; Committees (PAC) of the House of Representatives and the States of Assembly; and Anti-Corruptions and Ethics Committees of the two arms of the National Assembly; the Public Complaints Commission(PCC); the Code of Conduct Bureau(CCB) and Code of Conduct Tribunal(CCT); the Independent Corrupt Practices and other offences related Commission(ICPC);the Economic and Financial Crimes Commission (EFCC);the Bureau for Public Procurement(BPP); the Fiscal Responsibility Commission (FRC); the Technical Unit on Governance and Anti-Corruption Reforms(TUGAR);and The Nigeria Extractive Industries Transparency Initiative(NEITI).

ICPC AS AN INTERVENTIONIST AGENCY AGAINST CORRUPTION

This body is among the greatest innovation in historic analysis on the fight against corruption in Nigeria. A simple analysis on pre ICPC corruption situation in Nigeria has attested to this fact.

In several decades corruption has been treated with levity. At the inauguration of the Independent Corrupt Practices and Other Related Offences Commission (ICPC) on 29th September, 2000 President Obasanjo stated that;

“I have for many years held the view that corruption, in all its ramifications, is the greatest single impediment to our national aspiration to enter the new millennium with confidence; corruption checkmates all vision for a morally strong and economically prosperous society. Indeed corruption is the antithesis of development and progress” ... (see ICPC, Presidential Inauguration Speech, 2000).

Essentially, the Independent Corrupt Practices and Other Related Offences Commission (ICPC) was inaugurated on the 29th of September 2000 on the legal platform of the Corrupt Practices and Other Related Offences Act 2000 which is the legislation that prohibits and prescribes punishment for corrupt practices. The Act came into operation on the 13th day of June 2000. Prior to its enactment, certain laws had been and are still in existence as legal instruments meant to combat corruption in the country. These laws include: the Criminal Code; the Penal Code; the Recovery of Public Property (Special Military Tribunal Act Cap. 389, Laws of the Federation of Nigeria 1990(as amended in 1999); the Failed Bank (Recovery of Debts and Financial Malpractices in Banks) Decree 1994(as amended in 1999); the Code of Conduct Bureau and Tribunal Act (Cap 56 Laws of the Federation of Nigeria 1990); the Criminal Justice (Miscellaneous Provisions) Decree, 1966 and the Corrupt Practices Decree 1975. In some of these laws, the offences of corruption were not comprehensively defined and classified. Their interpretations and applicability to certain situations were also rather complex. These facts, along with the ingenuity of corrupt elements in fashioning out novel methods of perpetrating their nefarious acts, rendered the provisions of these laws inadequate in the fight against corruption. This inadequacy informed the enactment of the Corrupt Practices and Other Related Offences Act 2000. There are certain features of the ICPC Act 2000 which makes it unique and well-positioned as an effective weapon in fighting corruption in Nigeria.

Some of these features are: Statutory independence of the Commission - Section. 3 (14) the holistic, three-pronged approach to fighting corruption (enforcement, prevention and education) - Section. 6 (a) - (f) provision for an independent counsel to investigate allegations of corruption against officers with constitutional immunity - Section. 52; Non-admission of custom or tradition as a plea - Section. 60 designations of Judges to hear corruption cases - Section. 61 (3) protection of information and informer - Section. 64

Duties of the Commission:

The duties of the Commission as stated in Section 6 (a) - (f) of the Act are, in summary, as follows:

To receive and investigate reports of the attempts to commit or the actual commission of offences as created by the Act and, in appropriate cases; prosecute the offender (s) (Enforcement).

To examine, review and enforce the correction of corruption-prone systems and procedures of public bodies with a view to eliminating and/or minimizing corruption in public life (Prevention).

To educate and enlighten the public on and against corruption and related offences with a view to enlisting and fostering public support for the fight against corruption (Education). (ICPC ACT, 2000)

Offences and Punishments Created Under the Act

The Act creates a wide range of offences and punishments which include:

Section Offence/ Punishment

8. Acceptance of gratification by an official either directly or through an agent. 7 Years
9. Corrupt offers to Public Officers. 7 Years
10. Corrupt demand by persons. 7 Years
12. Fraudulent acquisition of property. 7 Years
13. & 14. Fraudulent receipt of property; Where the fraudulent receipt is related to postal matter, chattel, money or valuable security. 3 Years; 7 Years
15. Deliberate frustration of investigation by the Commission. 7 Years
16. Making false statements or returns. 7 Years
17. Gratification by and through agents. 5 Years
18. Offer and acceptance of gratification to and by a public officer as an inducement or reward.

5 Years with Hard labour

19. Offence of using office or position to gratify or confer unfair advantage on oneself, relation or associate. 5 Years
20. Bribery in relation to auction transactions. 3 Years and fine of the current price of property
- 21 (1&2) Bribery for giving assistance, etc, in regard to contracts. 7 Years or N1.0 million fine
- 22 (3) Inflating the price of goods or service above the prevailing market price or professional standards. 7 Years and N1.0 million fine
- 23 (5) The transfer or the spending of money for a particular project or service on another project.

1 Year or N50,000.00 fine

24. Failure to report bribery transactions 2 Years and/or N100,000 fine max.
25. Dealing with, using, holding, receiving or concealing gratification. 5 Years max.
- 26 Making of statements, which are false or intended to mislead. 2 Years and/or N100,000 fine max. 64 (3) Making false petitions 10 Years and N100,000 fine max. (ICPC Act, 2004)

RESULTS AND DISCUSSIONS

Despite the plethora of anti-corruption legislations, corruption and corrupt practices remains pervasive. This was perhaps why the international community described Nigerian laws as grossly inadequate in dealing with these crimes. All these have remained a challenge since Nigeria's nascent democracy in 1999. The situation has not made any remarkable improvement. President Jonathan is faced with similar challenges or worst, following the present security situation in the country arising from corruption.

The fight against corruption in Nigeria is not working because of the following factors:

Overlapping and duplication of functions: In the midst of several anti-corruption bodies some of them have similar or overlapping functions and work independent of one another, with separate laws establishing them. There is absence of formal over-arching coordination and common strategic framework that enables them to cooperate and work in harmony with one another. For instance EFCC and ICPC among others. There are significant gaps in terms of the coverage of the laws and the adequacy of penal and forfeiture provisions and enforcement procedures.

Pre bargaining and Negotiation as highly placed officials caught of corrupt practices are made to part with some of their looted funds and are thereafter set free, Low deterrent- the punitive measures for corrupt practices need to be strengthened, Lack of virile political and social movements to tackle corruption, poor mobilization mass of the people in the fight against corruption, Lack of access to public information and secrecy still pervades with restrictions to Government documents, Insecurity of Informants, Low public participation in Governance, Corrupt Electoral system, Nepotism, Systemic disorder, Weak Government Institutions (Transparency International,2004)Others are Insincerity of Government and Elite Conspiracy.

EFFECTS OF CORRUPTION

Poverty,hunger,inequality,oppression,insecurity,unemployment,victimization,deaths,crisis,violence,Lack of social and economic development, high crime rate, violent ethnic and religious hostilities, moral decadence, brazen injustices, wrong international image, poor international relationship, Corruption leads to failed state. Nigeria is inevitably posed with the threat of becoming a failed state if serious war is not waged against corruption. The level of insecurity in the country points to this. Negative psyche, poor attitude to work, laziness kills incentive and eventfulness, commitment, ethics, insecurity and loss of lives.

In economic and moral terms, corruption is very costly. It undermines confidence in the government, whose moral authority is diminished. Misallocation of resources, restrictions, lack of open governance, press freedom, freedom of education, poor quality of education, health care delivery system, poor tax system, infrastructural decay etc.

POLICY OPTIONS

Although there is no clear distinction on strategies in eradicating public or private corruption, neither is there any universally acceptable strategy. Adopting strategies from countries with effective practices have been a functional panacea. However Nigeria's existential realities and peculiarities seem to counter these postulations. For instance the Malaysia and Bangladesh experiences could be borrowed and applied in Nigeria. A report provided by Odd-Helge Fjeldstad etal (2001)provided typology of strategies .According to the report anti-corruption strategies can be categorized in several different ways: By the type of policy instruments suggested, for example whether it is focused on monitoring and control or focused on the motivation of the corrupt agents, By the motivation of the campaign, for example whether its major aim is to improve the efficiency of government, or rectify injustices, or to get rid of political opponents, By the position of the agents targeted, for example whether they are clustered in a few sectors or are in high or lower level positions and so on, By the likely effect of the policy, By the type of organisation initiating the anti-corruption strategy. (Odd-Helge Fjeldstad etal 2001)

Two key approaches in combating corruption is risk identification and implementation. This involves identifying corruption risk (those things that are prone to corruption) and devising strategies (implementation) to check them.

CHECKING CORRUPTION/ALTERNATIVE STRATEGIES

Integrating anti-corruption agenda in the corporate business plan

Lamorde had pointed out that corporate boards and top managements were increasingly becoming conscious of the need to integrate anti-corruption agenda in their corporate business plan. He said, “The AU issued a report that corruption drains \$140bn or about 25 per cent of the country’s Gross Domestic Product. This is very significant and that is part of the reasons we have failures in governments, insurgences and conflicts in Africa. There is a correlation between poverty and corruption in Africa. The African Development Bank said recently that approximately 50 per cent of the tax revenue for Africa is taken away through fraud and corruption. That is equally very disturbing.”(see Punch October,2012)Integrating anti- corruption agenda in the corporate business plans would constitute an integral corporate vision, mission and goals of the private sector practitioners.

Building Private Sector Anti -Corruption Network and Alliances

Citizenship engagement in the fight against private sector corruption could be an effective tool in checking private sector corruption. In most developed countries integrity groups are fostered to check corruption and uphold private sector status against scandals and corruption. This could be extended to the private sector in Nigeria, through networks and alliances.

Enabling Legal Framework on Anti -Corruption in the Private Sector

Here Government has a major role to play. According to Olisa Agbokaba, “Criminalizing corruption is not enough. The law must ensure transparency. Declaration of asset publicly should be the norm and not the exception. The system must be programmed in a way that it is difficult for public officers to hide anything regarding their finances.(Agbakoba undated) Family members of public and private officers should also be made to undergo public scrutiny. The law should ensure seamless collaboration amongst agencies and not contradictory roles. The law has to be clear on who does what, defines nature of cooperation and limit unnecessary interference by coordinate agencies. (Agbakoba undated)

Strengthening the Capacity of Private Sector Institutions Against Corruption

Anti- corruption should be institutionalised through seminars and workshops .This however should be backed with legislation calls for a review of the existing legal framework as regards to anti-graft institutions. The importance of enabling legal framework to give teeth to the anti-corruption process in both sectors is imperative as it will redefine the independence of the sectors.

Restructuring Nigeria’s Macro Economy Policy Focus

Understanding the structure and focus of Nigeria’s macro- economic policy is a plausible starting point in evaluating the sensitivity of the government in the war against corruption in Nigeria. Sadly the macro- economic policy of Nigeria has been parochial, misguided and non-responsive to corruption. This paper may not examine the various macro- economic policies of Nigeria, however in 1986 the General Babangida administration introduced the Structural Adjustment Programme (SAP) which further impoverished the polity and perpetrated corruption. The export promotion, import

substitution and liberalization have all been ineffectual due largely to corruption. Nigeria's macro-economic policy reforms have not effectively taken cognizance of addressing corruption. For instance the fiscal policies have not evolved a well-structured framework, inequitable revenue allocation prevades.

Training Corruption Risk Assessors (CRAs)

An independent corruption risk assessors should be drawn from non-state actors (CSOs, FBOs and CBOs not from MDAs) and trained to strengthen the existing anti-corruption strategy especially at the grassroots. This will facilitate the crusade against private and public sector corruption through people focused approach.

Learning from Successful Reformers

The examples of Indonesia, Bangladesh, Malaysia and other successful anti-corruption reformers are handy reference points to improving on the prevailing anti-corruption strategies in Nigeria.

Involving the Civil Society

Active civil society is important in checking corruption. American politics is constituency-driven. That is, politicians have to establish and stay in touch with their political base, generally defined by interests. Democrats historically have relied upon a coalition of: labour, minorities, primarily African-Americans and Jews, women, liberal and progressive whites. Republicans now have put together a coalition of: business, suburban whites, religious conservatives Cuban Americans, blue collar ethnic whites, the traditional elite (Marsh in Fafowora, et al eds. 1995: 239-240). Ironically, in Nigeria the law makers are not accountable to the people.

CONCLUSION

Nigeria is still far from international best practices. Despite the UNCAC provisions corruption prevades. This paper advocates for "all inclusive" approach to combat corruption and institutionalize sustainable democracy. It recognizes that corruption is pervasive both in the public and private sectors in Nigeria and advocates for reinventing the existing anticorruption strategies for a sustainable democracy. It argued on the imperative of virile macro-economic policy to tele-guide a systemic amelioration of corruption through frugal and resourceful governance.

The paper argued on economic diversification and deemphasised the heavy reliance on oil. It discovered that leadership bankruptcy is the basis of corruption in Nigeria which has been on the increase in both public and private sectors. The paper is optimistic that corruption could ameliorate only if Nigerians could willingly and collectively reject "the old ways" of doing things and turn to "new ways" hinged on a pro development lifestyle through a strategic and radical overhaul of our attitude, ethnic emancipation and value re-orientation and change in our "perception" of ourselves and Nigeria.

It calls for leadership by example which could be integrated into a wider governance mechanism. It further advocates for electoral reform, judicial reform, true representative and active participatory democracy with primacy of the electorate and human development aimed at people oriented government, accountability, open governance and prudence.

Experts have argued that the eradication of corruption should not take a singular approach. It must be multivariate and all inclusive. Critics of prevailing anti -corruption strategy in Nigeria, conceive ICPC largely as a political instrument to witch hunt a particular group rather than an anti-corruption agency in a true sense.

ICPC and EFCC ironically, are organs of the executive arm of government. This vitiates their effectiveness, ‘independence’ and commitment to fight corruption. For instance the inability of ICPC to call to books the Nigerian corrupt super rich and multinational accomplices in the Siemens, Willbros and Halliburton corruption scandal, points to its failure as aptly pointed out by TI ; .

There is no longer the sense that anything goes in Nigeria. People have woken up to the potential pitfalls of doing business in this way. Both in the national and the international arenas there has been a growing trend towards tighter enforcement of anti-corruption legislation. Within Nigeria, the most important developments include the setting up of the Economic and Financial Crimes Commission (EFCC) in 2004, followed by a series of high-profile investigations and prosecutions. On the international scene the most prominent cases include those involving the German engineering company Siemens and the US companies Willbros and Halliburton. No one is suggesting that the corruption problem has been solved, but would-be bribe-payers clearly need to take the risk of prosecution more seriously. (Transparency International, 2008)

In his “oligarchic model of national-policy making”, Thomas Dye was able to demonstrate the influence that the corporate upper class exerts over America’s government’s decision making process. In the first step of this model, corporate and personal wealth provide the monetary resources necessary for research, study, planning, and formulation of national policy. (Dye, 1978:221) Not all research is objective. Many of these individuals or corporations fund biased research in order to arrive at conclusions that will support their desired policies. In fact, many of these individuals play a direct role in the research process, ensuring that it cannot be entirely objective. After all, “corporate Presidents, Directors, and top wealth-holders also sit on the governing boards of the foundations, universities, and policy-planning groups to oversee the spending of their funds. (Dye, 1978 :221)

Democracy is weakened in the name of corporate interest, and the power that was formally reserved for the people continues to belong to a select few. This singular defect characterized the structure of Nigeria’s major policy drives including its anti -corruption strategy. Dye further argued that the corporate upper class is further aided in its domination of national policy making by formulating ‘policy-planning groups’. According to Dye, these groups “bring together people at the top of the corporate and financial institutions, the universities, the foundations, the mass media, the powerful law firms, the top intellectuals, and influential figures in the government”. (Dye,1978: 222)Their purpose is to review university or foundation supported research, and to reach a consensus about what action should be taken regarding the problems that they have studied. (Dye, 1978:222)The policy-planning groups then formulate action recommendations, “explicit policies or programmes designed to resolve or ameliorate national problems. (Dye, 1978:222)

As is evident from the duties and responsibilities of the commission, the Commission’s duty is not only to investigate arrest and prosecute people for corruption, but it is also charged with corrective, preventive and educational responsibilities. The whole essence of the Act is not just to punish offenders but to facilitate the creation of a corruption-free society.

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