INTRODUCTION

In December 2009, a Federal High Court in Asaba, Delta State discharged and acquitted James Onanefe Ibori of all 170 charges of corruption brought by the Economic and Financial Crimes Commission (EFCC). Two years later he pled guilty in a Southwark Crown Court to 10 (ten) counts of fraud, money laundering and corruption.¹ The mind boggling questions remain; how did the justice system in Nigeria get it so wrong? Why is it that the Nigerian anti-corruption prosecutors always seem to get it wrong with the investigation, arrest and the prosecution of such crimes? Corruption is the scourge of most underdeveloped, developing and to a considerable extent, the so called developed countries. The outright misappropriation, conversion, diversion and theft of public funds and resources, has left Nigeria with a damaged reputation and a negative perception of being a mismanaged and dysfunctional country. It remains a mystery that Nigeria, the world’s largest exporter of crude oil and a country with many natural resources still has over 70 percent of its population living below the poverty line, as a result of corruption and economic mismanagement.

Many Nigerians seem to have accepted corruption as a way of life; it is now entrenched and embedded in the very fibre of the nation’s being. In the midst of the hardship engendered by corruption and mismanagement of the nation’s resources, the correlation between corruption

¹ Ibidolapo Bolu, Associate with the Corporate Finance & Capital Markets department, SPA Ajibade & Co., Lagos, Nigeria.
and underdevelopment is rarely made by the citizenry and this makes the impending anti-corruption fight even more difficult to tackle because most see it as a necessary evil. Corruption is a gross violation of citizens’ human rights and needs to be treated as such. Calls have been made for a complete overhaul of the judicial system; enactment of stringent and effective laws and the reinvestment of proceeds recovered from corrupt individuals in the development of much needed infrastructure to boost the nation’s economy. It is clear that public officials need to be held to a higher level of accountability and the introduction of punitive measures that aid deterrence need to become entrenched in the system. This paper intends to examine the anti-corruption legal framework in Nigeria, its relation to development and to proffer solutions based on evaluation of current structures.

SOME HISTORICAL CONTEXT/BACKGROUND INFORMATION

To understand the effect of corruption and to study the anti-corruption legal framework in Nigeria, it is important to explore the history and possible factors that led to the current situation.

The history of corruption in Nigeria can be traced as far back as the early pre-colonial times. The autocratic and authoritarian rule of the British colonialists may have set an enabling environment for corruption. The colonialists aided and abetted by missionaries and monopoly trading firms’ usurped the Nigerian people’s sovereign powers and presided over a fraudulent and corrupt accumulation system. These involved unequal terms of trade between the colonialists and Nigerian workers; including below subsistence wages, exorbitant taxation and exclusive monopoly rights of exploitation granted to British and other European firms over Nigeria’s mineral and other natural resources.3

This set the tone for the nature of decolonization such that the structures left behind by the colonial masters encouraged and enhanced a new age of corruption. The British colonialists gradually transferred formal authority to rule to their “…Nigerian surrogate bourgeoisie…”4 During this period of decolonization, the colonialists succeeded in maintaining status quo “…in securing their acquiescence in the retaining, even consolidating and enhancing of the existing structures accumulation under which foreign monopoly capital dominated all key sectors of the economy export-import trade, extractive and manufacturing industries, banking, insurance, shipping etc.”5 The attractive part of this unequal deal to Nigerians was the fact that several politically influential and important members of the ruling class were

---

4 Dudley B.J, INSTABILITY AND POLITICAL ORDER: POLITICS AND CRISIS IN NIGERIA. Ibadan, Ibadan University Press. (1973) p.21
5 Supra
placed in “key” positions as directors, agents, distributors and representatives in the major foreign businesses.

These affiliations and partnerships were largely honorary and powerless. During this period there was also the opportunity for accumulation of private wealth that became open to the Nigerian ruling class and influential politicians. These individuals were made ministers and chairmen of parastatals with powers to award contracts for public projects, issue licences; award scholarships etc. The newly found powers were limited only by the veto of the ultimate colonial authority. All these new roles in the public domain opened the doors to new forms of corrupt and substantial capital accumulation to major members of the Nigerian ruling class unlike during the pre-decolonized era when, because of their position on the sidelines, they had very limited access to corrupt accumulation. The phenomenon of “Ten percent” or “kickbacks” dates as far back as the decolonization period. The executors of public policies insisted on a prepayment to themselves of at least 10% of the value of the favour being sought by members of the public, before performing the duty they were already being paid salaries to do.  

Corruption did not end after colonization and has continued from independence to present times. Nnamdi Azikiwe, Nigeria’s first Head of State, during his time as premier of the Eastern Region was investigated by the Foster-Sutton Tribunal for his involvement in the affairs of the defunct African Continental Bank. Under the code of conduct for ministers, a government official was required to relinquish his holdings in private businesses when he assumed public office. The Tribunal believed that Mr. Azikiwe did not cut off his ties to the bank when he became minister but he continued to use his influence to further the interests of ACB. The First Republic led by Nnamdi Azikiwe and Tafawa Balewa was marred by widespread corruption. Government officials looted public funds with impunity. Federal Representatives and Ministers flaunted their wealth with reckless abandon. These events led to the first coup d’état of 1966 which was a direct response to the corruption.

The Ironsi regime tried to go after government officials that looted and misappropriated public funds; however this zeal died with the Gowon coup that ended the Ironsi government and freed politicians that were held in detention. The newly elected leaders continued with the looting spree showing that the military leaders were not different from the ousted

---

6 Ibid at pg.20
politicians when it came to corruption. General Yakubu Gowon ruled Nigeria at a time the country was experiencing unprecedented wealth from the oil boom of the 1970s. The Gowon regime was equally entangled in deep-seated corruption. There were many reports of unaccountable wealth and misappropriation by his military governors and other public office holders.

These events led to another coup that installed General Murtala Mohammed’s regime. This coup was amongst other things, an attempt to end corruption in the public service. General Murtala Mohammed began by declaring his assets and asking all government officials to follow in his footsteps. He probed past leaders and an investigation panel found ten of the twelve military governors that served under the Gowon regime guilty of corruption. The guilty were dismissed from military service and forced to give up their ill-gotten wealth. General Murtala Mohammed was assassinated 6 months into his regime.

General Obasanjo who took over at this time did not continue the anti-corruption crusade in the same vein as his former boss. Obasanjo transferred power to civilians and President Shagari was elected president in 1979. The Shagari government brought with it, the resurgence of corruption. The corruption during this period was amplified due to an availability of excess funds. Shagari was considered to be a weak leader and could not call his governors and ministers to order. This was exemplified in the case of his transport minister, Alhaji Umaru Dikko, who was alleged to have mismanaged about ₦4 billion of public funds meant for the importation of rice. On 31st December 1983, General Muhammadu Buhari led a coup that once again “rescued” the economy from the grip of corrupt politicians under the Shagari government.

The Buhari regime’s anti-corruption crusade was brutal and barely showed respect for Human Rights or the rule of law. Buhari set about restoring discipline, integrity and dignity to public life. Corrupt officials and their cohorts were brought to book under this regime. However, another coup by General Badamosi Babangida brought a halt to the movement against corruption and impunity was business as usual; corruption reached alarming levels and became institutionalised in the system. This trend of momentous corruption and the casual approach to its eradication was continued throughout the Babangida and Abacha regimes. The Abacha regime was particularly characterized with wanton greed, impunity and total disregard for the wellbeing of Nigerians. General Abacha, his family and associates looted with reckless abandon. It was estimated that the embezzlement of public funds and

---

10 Ibid pg 8
11 Ibid pg 9
corruption proceeds of General Abacha and his family amounted to approximately USD 4 billion.12

A change in the direction of the anti-corruption fight came with the "second coming" of General Obasanjo when he took office as President in May 1999, after the return to democracy. His government in an attempt to strengthen existing anti-corruption laws established two anti-corruption institutions; the Independent Corrupt Practices Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC). The ICPC was inaugurated on 29th September 2000 by the Obasanjo administration. The Commission was established to target corruption in the public sector, especially cases of bribery, gratification, graft, and abuse or misuse of public office. The EFCC was established in 2003 and unlike the ICPC was set up to investigate people from all sectors and not just corrupt public officials.13

THE LEGAL FRAMEWORK OF ANTI-CORRUPTION IN NIGERIA

Before the Obasanjo administration, there were different variations to the anticorruption framework. There were the anti-corruption tribunals set up by past Heads of State; the War against Indiscipline by the Buhari regime and many commissions set up in a bid to tackle corruption crimes. Those efforts as mentioned earlier, did little or nothing to curb the plague of corruption.

The prevalence of the 419 advanced fee fraud14 and money laundering crimes during this time had become a constant source of national embarrassment to the government. The situation had worsened and apart from robbing the Nigerian people of their resources, it also greatly reduced the inflow of Foreign Direct Investments into the country. The magnitude and gravity of these crimes also led to the establishment of the Economic and Financial Crimes Commission (EFCC), in addition to the earlier establishment of the ICPC.15 The EFCC became the major anti-corruption instrument and has remained so till present times. The legal instrument supporting the Commission is the EFCC Establishment Act 2002 and the Commission also has support from the Presidency, the Legislature and key security and law enforcement agencies in Nigeria. The powers of the EFCC are; to prevent, investigate, prosecute and penalise economic and financial crimes and it is charged with the

---

13 Ibid pg.1
14 Advance Fee Fraud: Fraudsters target victims to make advance or upfront payments for goods, services and/or financial gains that do not materialise. The number "419" refers to the section of the Nigerian Criminal Code dealing with fraud, the charges and penalties for offenders.
15 Supra
responsibility of enforcing the provisions of other laws and regulations relating to economic and financial crimes.\textsuperscript{16} The major laws that deal with corruption in Nigeria are:

a. EFCC Establishment Act 2004.\textsuperscript{17}

b. Independent Corrupt Practices & Other Related Offences Act 2000\textsuperscript{18}

c. Advance Fee Fraud and Other Related Offences Act 2006\textsuperscript{19}

d. Money Laundering (Prohibition) (Amendment) Act 2012\textsuperscript{20}

e. Miscellaneous Offences Act\textsuperscript{21}

f. Code of Conduct Act\textsuperscript{22}

g. Nigerian Extractive Industries Transparency Initiative Act.\textsuperscript{23}

h. Freedom of Information Act 2011\textsuperscript{24}

i. Fiscal Responsibilities Act 2010\textsuperscript{25}

j. Penal Code Laws of Federation of Nigeria 2004\textsuperscript{26}

k. Criminal Code Law of Federation of Nigeria 2004\textsuperscript{27}

l. Banks and Other Financial Institutions (Amendment) Act 1991\textsuperscript{28}

m. Failed Banks (Recovery of Debts) and Financial Malpractices in Banks (Amendment) Act 1994.\textsuperscript{29}

However, this article will focus on the EFCC as it is currently the most visible and prominent anti-corruption enforcement agency in Nigeria.


\textsuperscript{17} Economic and Financial Crimes Commission (Establishment) Act 2004. Cap E1 LFN 2004


\textsuperscript{19} Advanced Fee Fraud and Other Related Offences Decree No.13 of 1995 Act Cap A6 LFN 2004

\textsuperscript{20} Money Laundering (Prohibition) (Amendment) Act No.11 2011.

\textsuperscript{21} Miscellaneous Offences Act Cap M17 LFN 2007

\textsuperscript{22} Code of Conduct Act. Cap C.15 LFN 2004

\textsuperscript{23} Nigerian Extractive Industries Transparency Initiative Act Cap N159 LFN 2004.

\textsuperscript{24} Freedom of Information Act 2011. Cap A2. LFN 2004

\textsuperscript{25} Fiscal Responsibilities Act 2010. Cap 40 LFN 2014

\textsuperscript{26} Penal Code Laws of Federation of Nigeria 2004. Cap P3 LFN 2004

\textsuperscript{27} Criminal Code Law of Federation of Nigeria 2004 Cap C28 LFN 2004

\textsuperscript{28} Banks and Other Financial Institutions (Amendment) Act 1991 Cap B3 LFN 2004{1}

\textsuperscript{29} Failed Banks (Recovery of Debts) and Financial Malpractices in Banks (Amendment) Act 1994 Cap. 2 LFN 2004.
The most obvious problem of the ICPC and the EFCC, judged by their acts of omission and commission, is that they appear to lack complete independence. The ICPC is slow to act and cannot in the strict sense of things prosecute; while the EFCC seems more effective and can prosecute but rarely achieves convictions. Another problem seems to be the politicization of the EFCC. Due to the close proximity of both commissions to the Presidency, there is a tendency for their powers to be used as tools of victimization, persecution and prosecution of perceived enemies of whichever administration is in power. Other reasons for the underperformance of the Commission include; inefficiency of the judiciary, lack of societal cooperation, poor staff training, plea-bargaining and systemic disorder.

The Chief Justice of Nigeria, Justice Mahmud Mohammed, has recently stated that the reasons behind the high failure of the EFCC to successfully prosecute high profile corruption cases stems in part from the numerous amount of charges tied to each individual case. The CJN stated further that for the prosecution to be successful, the commission must call more than one witness to testify on each count in the charge. An example is the James Ibori corruption case, in which the EFCC charged him with 170 counts of corruption and he was acquitted of all, while in the United Kingdom he was arraigned on 23 counts of money laundering and corruption and was convicted of 10. He also explained that the “Courts cannot carry out investigation and our security agencies must be encouraged to carry out investigation-led arrest and not arrest-led investigation.”

The lack of diligent prosecution by the EFCC has led to the loss of many high profile cases. The perpetrators of massive fraud and looting are acquitted on legal technicalities. The convictions made by the UK Courts are an indictment on the Commission for its inability to successfully prosecute the same charges and offences. If all or a majority of these cases are successfully prosecuted as in the instance of UK Courts, then restitution will come to the Nigerian people whose salaries, pension, gratuities, healthcare system, education, roads,

---

30 Sherif Folarin, Corruption, Politics and Governance in Nigeria. unpublished comment, (on file with Covenant University, Political Science and International Relations Department, 2012)
33 Ibid pg. 1
pipe borne water, electricity, general infrastructure and long term investments were stolen from them.  

There are many legal issues surrounding the successful prosecution of corrupt individuals. For instance, section 308 of the Constitution of the Federal Republic of Nigeria provides immunity from prosecution for certain elected officials. This can be counter-productive in the fight against corruption, as it mostly protects the highest looters of public funds. Most times when the corrupt officials that are covered under the immunity clause in 308 are out of public office, it is often too late to prosecute as evidence is lost, witnesses die or are otherwise unavailable, and the statute of limitations can come into play. 

Sentencing also seems to be disproportional in corruption cases, high profile individuals who are convicted of corruption, seem to get little or no time in prison while low income individuals attract heavier sentences. Too often we see headlines such as “thief gets the death sentence for stealing ₦250,000.00 and two mobile phones” while others seem to get away with more stupendous cases of corruption. A recent example was the police pension scam of 2013 that involved misappropriation and looting of funds totalling ₦32.8 billion ($165 million). The ruling of Justice Talba of a FCT High Court in Abuja handed down a six year jail term with the option of ₦750,000.00 ($3765) fine to John Yakubu Yusufu, one of the six persons standing trial.  

This sentencing caused a lot of uproar and outrage, but very little seems to have changed. If corrupt officials know that even when convicted, they have the option of paying meagre sums as fines, then it serves as little or no deterrent to others.  

THE RELATIONSHIP BETWEEN CORRUPTION AND DEVELOPMENT  

In November 2015, the Former World Bank vice-president and former Minister of Education Oby Ezekwesili at a conference stated that more than $400 billion of Nigeria’s oil revenue has been stolen or misused by corrupt leaders. According to her, more than 20% of capital expenditure ends up in “private pockets” annually.
The negative effects of corruption are starkly demonstrated by the fact that based on current track record; Nigeria has missed almost all the Millennium Development Goals (MDGs)\textsuperscript{38} set in 2000 despite an abundance of natural and human resources.

**What exactly is corruption?**

The World Bank defines corruption as:

\textit{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.}\textsuperscript{39}

**What is development?**

According to the United Nations, “human development” is measured by “…life expectancy, adult literacy, access to all three levels of education as well as people’s average income, which is a necessary condition of their freedom of choice. In a broader sense the notion of human development incorporates all aspects of individuals’ well-being, from their health status to their economic and political freedom”\textsuperscript{40}

Corruption undermines countries’ capacity to provide basic life necessities for its citizens. Corruption widens inequality, aggravates mass poverty, militates against efficient resource planning and allocation, undermines economic growth by discouraging investment; compromises economic efficiency; results in high governmental expenditures as a result of inflation of contracts and cost supplies.

\textsuperscript{38} Ibid pg. 1. Millennium Development Goals are the world’s time-bound (deadline was 2015) and quantified targets for addressing extreme poverty in its many dimensions like income poverty, hunger, disease, lack of adequate shelter, and exclusion-while promoting gender equality, education, and environmental sustainability.


There is no doubt that corruption is poisonous to long term development and democracy.\textsuperscript{41}

Development is stunted when corruption is prevalent. Hospitals, schools and roads are not built because the funds have been siphoned into the hands of few corrupt individuals. Foreign Direct Investment is also affected as investors are wary of doing business in corrupt environments.\textsuperscript{42} Foreign Direct Investments create jobs, infrastructure and opportunities for the country’s citizens, so if investors are deterred by corruption, then these opportunities are lost. The United Kingdom for example has strict anti-bribery laws which extend even when conducting business outside of the UK. Section 6 of the Bribery Act\textsuperscript{43} specifically deals with the bribery of foreign public officials and states that whoever contravenes this law and is involved in the bribery of a foreign official will be found guilty of an offence. The United States FCPA act\textsuperscript{44} was passed to make it unlawful for certain classes of persons and entities to make payments to foreign government officials to assist in obtaining or retaining business.\textsuperscript{45}

Corruption contributes immensely to inhibition of economic performance. As mentioned earlier, it negatively affects investment and economic growth which is detrimental to national development. When corruption discourages investment, this leads to limitations on economic growth and an alteration of the pattern of government spending, it automatically hinders future economic growth and sustainable development. Corruption damages the image of the nation; and Nigeria suffers from an appalling international image created by its inability to deal with bribery and corruption.\textsuperscript{46} Nigeria is currently ranked 136\textsuperscript{th} out of 168 countries on the Transparency International Corruption Perception Index compiled in 2015.\textsuperscript{47}

\textsuperscript{43} Bribery Act, 2010 (c.23)
\textsuperscript{44} The Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1 et seq
CONCLUSION

The conclusion that can be drawn from this paper is that corruption contributes directly to underdevelopment. It could also be said that an underdeveloped country provides a festering ground for corruption. Considering Nigeria’s colonial history and the enabling systems put into place during colonial times, the country had an unfair disadvantage and little fighting chance when it came to corruption. In May 2015, President Muhammadu Buhari took over the affairs of Nigeria, albeit this time as a civilian president. The anti-corruption fight has once again switched gears and seems to have gathered some steam and faith is being cautiously restored in the anti-corruption movement. However, to avoid the mistakes of previous regimes and administrations, the legal framework needs to be strengthened. Issues such as judicial corruption, bad sentencing, lack of diligent prosecution and many others need to be dealt with decisively. The EFCC needs to thoroughly investigate before arrests are made, rather than scrambling mediocre cases together during trial. The effects of corruption need to be amplified and citizens need to understand the correlation between corruption and development. It is 2016 and cases are getting progressively worse. *Dasuki-Gate* and other tales of momentous looting have shocked citizens to their core. Oil prices have dropped significantly and the gains from the oil boom which would have cushioned the effects of economic hardship have been looted into oblivion.

The EFCC needs to be emboldened, granted autonomy, supported and possibly have its powers expanded. Public officials need to be held to a very high level of accountability. The Judiciary needs to have a stronger resolve to sentence convicted looters to maximum terms allowed under the law. Sentencing needs to be seen as a serious deterrent to would-be corrupt individuals. Prosecuting agencies should be more diligent and charge under appropriate laws. Other jurisdictions such as the United Kingdom, who have managed to successfully reduce incidences of corruption, need to be emulated here in Nigeria in terms of the quality of charges framed by prosecutors and in the apportionment of appropriate sentencing.

*For further information on this article and area of law please contact Ibidolapo Bolu at S. P. A. Ajibade & Co. by telephone (+234 1 460 5091), fax (+234 1 4605092) mobile (+234 815.086.5646) or email (dbolu@spaajibade.com). www.spaajibade.com*

*48 Dasuki-Gate: Colonel Sambo Dasuki former National Security Adviser to President Goodluck Jonathan of Nigeria was arrested and is being prosecuted for allegedly stealing $2 billion meant for the procurement of arms to fight the war against Boko Haram.*