

THE EFFECTIVE ADMINISTRATION OF CRIMINAL JUSTICE FOR THE PREVENTION OF CORRUPT ACTIVITIES BY PUBLIC OFFICIALS: THE NIGERIAN POSITION

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I. THE PHENOMENON OF CORRUPTION

In a world where man's wants are insatiable and the resources limited, it is not uncommon for individuals and interest groups to compete for the control of these resources as a means of satisfying their needs. This exercise becomes corrupt if the competitors employ foul means to achieve their objective.

In Nigeria, we are genuinely worried about corruption which, though a universal phenomenon, seems to have become so endemic in our body politic that most discourse about Nigeria, at home and in international fora, centers on the high ascendancy of corruption in our public life.

According to the Communique on the 1988 National Conference on Corruption and other Economic Crimes in Nigeria, corrupt activities are not the exclusive preserve of a particular section of the society, but rather an ill-doing that cuts across all social barriers and strata. It is not only the politicians and the executives that are corrupt in our society, but the bureaucrats, public servants, bankers, insurance brokers, officials involved with the administration of justice in the country, law enforcement agencies, the press, religious leaders and other members of the public.

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Olusegun Obasanjo aptly captured the scenario in a speech he made on the day of his inauguration as President of the Federal Republic of Nigeria on 29 May, 1999; an excerpt of which is reproduced hereunder:

"Corruption, the greatest single bane of our society today, will be tackled head-on... No society can achieve anything near its full potential if it allows corruption to become the full-blown cancer it has become in Nigeria".

II. REASONS FOR CORRUPTION

In various literature, corruption in Nigeria has been alluded to as an improper development strategy resulting in politico-economic and administrative inefficiency which, in turn, leads to inadequacy or scarcity of goods and services. Thus, the acquisition of such goods and services becomes a special privilege, rather than a normal entitlement.

Adedokun Adeyemi, in a paper entitled "Corruption in Nigeria: The Criminological Perspective", linked corruption to the upbringing and socialization process. He opined that in a society whose traditions permit polygamy, children of polygamous homes do not enjoy adequate paternal contact resulting in emotional insecurity and stability. The combined effect of scarcity of goods and services tends to produce in such children exaggerated fear for the morrow. The result is that they develop a strong propensity to acquire

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wealth to satisfy their exaggerated fears.

Further reasons adduced for the growth of this national canker-worm include mass illiteracy, general poverty and frustration, conflict of values, weakness of social and governmental enforcement mechanisms, tribal sentiments and nepotism. So also are the acquisitive propensity of a society where people are judged and accepted by what they have and not that they are, the use of political office as the primary means of acquiring wealth, lack of patriotism and general disregard for the laws of the land.

Obviously, corruption on the part of political office-holders, bureaucrats, public servants, the press and the general public has tended to stigmatize the image of government, weaken its credibility and reduce the effectiveness of the development programs and policies and also, to a great extent, weaken the economy of the nation.

III. EXISTING MEASURES AND MECHANISMS FOR CONTROL OF CORRUPTION

The existing measures for the control of official corruption in Nigeria include:

- (i) The criminal/penal codes, the police and other enforcement agencies, and the courts are the formal conventional instruments for controlling corruption.
- (ii) Another set of existing measures and mechanisms for controlling corruption may be categorized as "target-directed efforts". These include the defunct Corrupt Practices Investigation Bureau, the Public Complaints Commission, and the Code of Conduct Bureau.
- (iii) In the past also, judicial/administrative tribunals of inquiry

were set up for instances of discovered or revealed large-scale corruption, especially those involving high-ranking government officials.

- (iv) At other times educational institutions, religious bodies and traditional rulers, and human rights groups have joined the combat against corruption.

IV. CRIMINAL LAW PROVISIONS AGAINST CORRUPTION

A. Official Corruption

Section 98 of the Criminal Code of Nigeria provides:

"Any person who:

- (a) being employed in the public service, and being charged with the performance of any duty by virtue of such employment, not being a duty touching on the administration of justice, corruptly asks, receives, or obtains, any property or benefit of any kind for himself or for any other person on account of anything done or omitted to be done, by him in the discharge of his office; or
- (b) corruptly gives, confers, procures or promises, or offers to give or confer, or to procure or attempt to procure, to, upon or for, any person employed in the public service, or to upon, or for any other person, any property or benefit, of any kind on account of any such act or omission on the part of the person so employed is guilty of a felony, and is liable to imprisonment for seven years".

B. Extortion by Public Officers

Section 99 of the Criminal Code provides:

“Any person who, being employed in the public service, takes or accepts from any person, for the performance of his duty as such officer, any reward beyond his proper pay and emoluments, or any promise of such reward, is guilty of a felony, and is liable to imprisonment for three years.”

C. Judicial Corruption

Section 114 of the Criminal Code provides:

“Any person who:

- (a) being a judicial officer, corruptly asks, receives or obtains, or agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person on account of any thing already done or omitted to be done, by him in his judicial capacity; or
- (b) corruptly gives, confers, procures or promises, or offers to give or confer, or to procure or attempt to procure, to, upon or for any judicial officer, or to, upon or for any other person, any property or benefit of any kind on account of such judicial officer, is guilty of a felony and is liable to imprisonment for fourteen years.

The offender cannot be arrested without a warrant. The term “judicial officer” in this section includes a member of a native tribunal, an arbitrator or umpire, and any person appointed to act as commissioner under the Commissions of Inquiry Ordinance, or before whom (under the provisions of any Ordinance) proceedings are taken in which evidence may be taken on oath; but in the case of an offence committed by or with respect

to any such judicial officer, the longest term of imprisonment is seven years. A prosecution for any of the offences firstly defined in this section cannot be begun except by the direction of a law officer”.

Sections 151 - 121 of the Penal Code applicable in the northern states of Nigeria made similar provisions on corruption.

Part of rule 8 of the ten specific rules or prohibitions provided for past and present public officers and their agents by the Code of Conduct Bureau provides *inter alia*:

“No person shall offer a public officer any property, gift or benefit of any kind as an inducement or bribe for the granting of any favour or for the discharge in his favour of the public officer’s duties”.

The Constitution charges the Code of Conduct Bureau with the responsibility of referring cases of breach of the Code of Conduct to the Code of Conduct Tribunal, which is to be appointed in accordance with the recommendation of the Federal Judicial Commission.

The Public Complaints Commission is an administrative body charged with the responsibility of investigating abuse of administrative power, and it is recognized as existing in law under section 274(5) of the 1979 Constitution. Its main functions, specified in section 4(2), provides that a commissioner shall investigate either on their own initiative or following complaints lodged before him/her by any other person, any administrative action taken by federal and state ministries, local governments, statutory corporations or companies incorporated pursuant to the Companies Decree 1968, or other public institutions including the office or servants of these bodies.

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TABLE 1
Extract from Summary of Crime and Offence Figures 1987-1998

Year	Total Number of Cases Known to Police	Number of Cases of Official Corruption	Percentage of Official Corruption to Total Number of Cases (%)
1987	280,879	424	0.15
1988	320,411	329	0.1
1989	309,771	268	0.09
1990	285,859	297	0.10
1991	253,741	314	0.12
1992	271,614	136	0.05
1993	295,878	139	0.05
1994	247,038	224	0.09
1995	241,916	390	0.16
1996	240,354	579	0.24

Source: The Nigeria Police Abstracts of Crimes and Offences Statistics

V. DATA REGARDING THE DISCOVERY OF CORRUPT ACTIVITIES BY POLICE RECORDS

Available crime statistics over a ten-year period (1987-1996) show that the incidence of official corruption is insignificant in relation to the national crime level (see Table 1). This is at variance with the public opinion on the subject, as manifest in newspaper reports and the daily experience of the ordinary citizen in society. Some of the reasons adduced for the low rate of reported cases includes the lack of confidence in the administration of criminal justice, the fear of prosecution (since a victim is equal to an offender in terms of rights, as required by law) and lack of a clear understanding of what constitutes official corruption.

VI. PROBLEMS MITIGATING ACTION AGAINST CORRUPTION

A. At the Investigation Level

The following factors constitute unnecessary obstacles to efficient

investigation of cases of corrupt activities in Nigeria:

- (i) The Official Secrets Act often stands between the investigator and the information necessary for the prosecution of a case of official corruption.
- (ii) The agencies charged with the investigation of corrupt activities often lack the required manpower and financial resources necessary to effectively monitor the phenomenon or perform their job.
- (iii) Sometimes members of the security agencies do not have the requisite training and equipment to perform effectively.
- (iv) Low morale among some enforcement agencies arising from poor salary structure, harsh working conditions, inadequate facilities and lack of adequate residential

accommodation.

(v) Corruption is an offence of low reportability. Factors responsible for this range from the fear of prosecution arising from the fact that both the offender and victim are criminally liable, to lack of confidence in the system of administration of criminal justice.

(vi) The law on the subject of corruption is far from clear. Because neither "corruption" nor "corruptly" is defined in the Criminal Code, their interpretation has been left to the wisdom of judicial officers. Also, the emphasis of the provision is exclusively on public or judicial officials and only for "bribery" and "extortion". Furthermore, there are no provisions making corporate bodies criminally liable.

B. Problems at the Trial Level

(i) During the recent military regimes, independence of the judiciary suffered setbacks such as arbitrary removal of judges from office, the promulgation of decrees with provisions ousting the jurisdiction of the courts on the subject.

(ii) Due to inadequacy in the number of judges/magistrates, the courts are often congested thereby causing delays in the disposal of cases.

(iii) In the past, there was lack of will on the part of government to review laws relating to corruption to make them comprehensive and effective.

(iv) There is a provision in our criminal law that empowers the Attorney-General to discontinue any case at any point before judgement is delivered, in the "public interest".

There is no doubt that the said law is subject to misuse, especially by a corrupt regime.

(v) Most courts still use manual recording systems which are strenuous and time-consuming. There is a general lack of know-how in the area of information systems management.

VII. STRATEGY TO PREVENT THE CORRUPT ACTIVITIES OF PUBLIC OFFICIALS

The following strategy is recommended for the control of official corruption:

(i) Corruption should be attacked simultaneously in both the public and private sectors of society.

(ii) It is important to delineate the ambit of the offence. As much as possible, the definition should not be amorphous.

(iii) There is the need to establish a National Corruption Control Commission as the various agencies currently handling issues regarding official corruption have too much to do, with too little resources.

Already, the President of Nigeria has presented a bill to the National Assembly which, if passed into law, will address the issues raised in the recommendations above.

VIII. INTERNATIONAL COOPERATION IN CORRUPTION CASES

There are problems associated with the provisions relating to corruption under the domestic jurisdiction when it assumes an international character, because hitherto the Constitution of Nigeria does not permit

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trial of an accused *in absentia*. In the circumstances, the investigators can only rely on rules of international criminal procedure if there is any existing legislation or treaty in that sphere.

The procedures of extradition, judicial assistance, recognition of foreign panel judgements in domestic courts, and the transfer of offenders and execution of sentences of foreign courts within domestic jurisdiction, are long and painstaking to follow, even where a treaty is in existence. Efforts of the government to secure co-operation with other foreign countries have led to the promulgation of Mutual Assistance in Criminal Matters Within the Commonwealth (Enactment and Enforcement) Decree No.13 of 1988. Under the Decree it will be possible to co-operate with Commonwealth states in areas dealing with the location of witnesses, tracing, seizure and forfeiture of the proceeds of crime.

Also in 1984, Nigeria entered into a Criminal Investigation Co-operation Agreement with the Republic of Benin, Ghana and Togo. There is also an Extradition Treaty between the Republic of Benin, Ghana and Togo with Nigeria.

The exploitation of the provisions of these co-operation agreements, and the expansion of such relations to accommodate relevant countries, will assist in the retrieval of the proceeds of corruption, thus controlling the menace.