

CRIMINAL JUSTICE RESPONSE TO CORRUPTION: THE NIGERIA CASE

*Sharon Ogiri-Okpe**

I. INTRODUCTION

From the Americas to Africa, Europe to Asia and elsewhere across the globe, corruption “the use of Public Office for private gain” is an embarrassingly ingrained societal phenomenon. In spite of its universal prevalence, corruption has proven to be particularly harmful on the African Continent. As the former United Nations Secretary-General, Kofi Annan, once said, “Corruption hurts the poor disproportionately by diverting fund intended for development, undermining government’s ability to provide basic services, and discouraging foreign investment. This social ill manifests itself among government officials, politicians, business leaders, journalists and the rest of the populace alike. It destroys national economies, undermines social stability and erodes public trust. Corruption is no doubt an anathema, a killer disease, a serious ailment that is capable of destroying not just individuals but nations. Various epithets have been used in describing it. And because of its rampageous and ravenous nature, some see it as a malady that is even more vicious than HIV/AIDS. Corruption has done a lot of havoc in Nigeria. It almost brought the country to the nadir of degradation and reduced it to a pariah state in recent past. The scourge of corruption was such that it was difficult to convince anyone that there was any single Nigerian that was not afflicted by it.

Unfortunately, corruption grew and permeated every fabric of the nation so much that it became accepted as a way of life and the acceptance of public office was seen by most Nigerians as an opportunity to ‘eat their share of the national cake’. Equally lethal in its impact is private sector corruption, including money laundering and tax evasion. Robert Klitgaard adds, “Although people tend to think of corruption as sin of government, it also exists in the private sector”.

Former President of Nigeria, Chief Olusegun Obasanjo, at the inauguration of the Chairman and members of the Independent Corrupt Practices and Other Related Offences Commission (ICPC) on 29 September, 2000 described corruption as “Literally the antithesis of development and progress”.

II. GOVERNMENT POLICY AND LEGAL INTERVENTION AGAINST CORRUPTION

Nigeria was ruled by the military for a very long period of time, 1966 -1979, and then from 31 December 1983 to 1999. During these periods, corruption was entrenched and almost became institutionalized. Nigeria became a pariah state. Transparency International (TI) rated Nigeria the most corrupt country for several years and Financial Action Task Force (FATF) blacklisted Nigeria. Nigeria was also assessed by many risk rating agencies as too risky a jurisdiction for quality investment. And Foreign Direct Investment (FDI) took flight.

During the rule of the military, there were several Coups D’etat. And ironically, each successive government had wiping out corruption as one of its cardinal motives for taking over power from the previous government, military or civilian. However, the cankerworm continued to spread within the society rather than reduce. This negative result was largely because the efforts were undermined by crisis of credibility as the designers and the promoters themselves were poor specimen of the values and virtues, which they sought to propagate. A former military Head of State and his ‘circle’ looted and exported an estimated \$2.2 billion. Through mutual legal assistance, some monies were recovered.

* Chief Superintendent (Investigation), Independent Corrupt Practices and Other Related Offences Commission, Nigeria.

A. Earlier Attempts at Curbing Corruption

- The Public Office Investigation of Assets Decree No. 5 of 1966: That decree led to the forfeiture of ill-gotten assets at that time.
- The Corrupt Practices Decree of 1975.
- The Jaji Declaration of 1979.
- The "Ethical Revolution" of 1981-1983; (1981-1983 was under democratic rule.)
- The "War Against Indiscipline" of 1984.
- National Orientation Movement of 1986 and Mass Mobilization for Social Justice and Economic Recovery and Self Reliance (MAMSER) 1987.
- War Against Indiscipline and Corruption (WAIC) 1996.

None of these attempts succeeded in curbing corruption because they lacked the concerted effort and the political will to drive the programmes in addition to a credibility crisis.

B. Present Government Policy and Legal Position

For any fight against corruption to be meaningful, there must be express and apparent strong political will at the highest level. When the 4th Republic came into being in May 1999, the then President, Chief Olusegun Obasanjo declared zero tolerance for corruption. Late President Yar'adua and Dr. Goodluck Jonathan, then Vice President, followed suit and publicly declared their assets upon assumption of office in 2007. President Goodluck Jonathan has since continued to declare his zero-tolerance stance for corruption.

1. The Corrupt Practices and Other Related Offences Act, 2000

Before the enactment of specific legislation against corrupt practices, Nigeria had in its Criminal and Penal Codes provisions that dealt with corrupt conduct. However, these provisions were hardly used.

The Corrupt Practices and Other Related Offences Act 2000 (hereinafter referred to as "the ICPC Act") was enacted on the 13 June, 2000. The ICPC Act seeks to prohibit and prescribe punishment for corrupt practices and other related offences. The Act also established an Independent Corrupt Practices and Other Related Offences Commission (the ICPC) vesting it with the responsibility for enforcement of the ICPC Act. The ICPC has a Chairman and twelve Members of Board and a Secretary. All appointed by the President and screened for confirmation (in a public hearing exercise) by the Senate.

The ICPC Act is the first main law for combating Corrupt Practices in Nigeria, its salient features, particularly as relate to the UNCAC are discussed below.

2. Offences and Penalties Under the ICPC Act and Other Criminal Legislations With Particular Regard to the UNCAC

Nigeria signed the UNCAC on 9 December, 2003 and ratified same on 14 December, 2004. Most of the articles of the Convention have been domesticated. This paper will focus on a few of the provisions.

Various acts of commission and omission defined as offences under the ICPC Act can be broadly divided into the following categories:

(i) Bribery of Public Officers; Punishable by Sections 8,9,10 & 18 of the ICPC Act (Article 15 of the UNCAC)

Section 8 punishes person who corruptly

- (a) asks for, receives or obtains any property or benefit of any kind for himself/herself or for any other person; or (b) agrees or attempts to receive or obtains any property or benefit of any kind for himself/herself or for any other person, on account of (i) anything already done or omitted to be done... in the discharge of his/her official duties ...connected with the functions, affairs or business of a Government Department... in which he /she is serving as an official or (ii) anything to be afterwards done or omitted to be done or favour or disfavour to be afterwards shown ... is guilty of an offence. Section 9 punishes corrupt offers to public officers and section 10 punishes corrupt demands. Section 18 deals with bribery of public officers with regard to voting at meetings of public body.

All these offences, with the exception of section 18 which is punishable with imprisonment for five years, are punishable with imprisonment for seven years. To make it difficult for such an officer to go free, it does

not matter whether he or she made the demand or was offered. As a matter of fact, the law makes it an offence for a person to be offered and he or she fails to report such transaction (S. 23 of the ICPC Act).

(ii) Abuse of position: Punishable by S.19 of the ICPC Act (Article 19, UNCAC)

Section 19 punishes a public officer who uses his office or position to gratify or confer any corrupt advantage upon himself or herself or any relation or associate of the public officer.

This offence is punishable with imprisonment for five years without an option of fine.

(iii) Bribery from Contracts:

Section 22 of the ICPC Act deals extensively with contract offences. These include giving assistance, inflating contract prices, transferring fund allocated for a particular project to another e.t.c. These offences attract a prison term of seven years.

(iv) Witness Protection (Article 32 and 33 UNCAC)

Section 64 of the ICPC Act provides for protection of witnesses. However, the provision is not elaborate, but the Commission has in place an effective programme for protecting informants and witnesses. Section 39 of the EFCC (Establishment) Act, 2004 also provides for protection of witnesses. All of the Anti-Corruption agencies encourage anonymous reports. This method also protects the identity of informants.

(v) International Cooperation and Mutual Legal Assistance (Section 66 (3) ICPC Act)

Section 66 (3) provides that the Commission shall have the power to engage the services of Interpol or such local or international institution, body or persons possessing special knowledge or skill on tracing of properties or detection of cross border crimes.

Nigeria has used the provisions of this law and its equivalent in the EFCC Act extensively both in receiving and giving of assistance.

Section 20 of the ICPC Act is worthy of note; It provides thus: “without prejudice to any sentence of imprisonment imposed under this Act, a public officer or any other person found guilty of soliciting, offering or receiving gratification shall forfeit the gratification and pay a fine of not less than five times the sum of the value of the gratification which is subject matter of the offence [...]”. This provision is intended to strip an offender of every benefit of corrupt conduct and also make corrupt practices unattractive

3. Other Relevant Functions of the ICPC

One of the very unique functions of the ICPC is the statutory duty to examine practices, systems and procedures of public bodies which may have the effect of facilitating corruption and in such cases, supervise and review, as well as direct, instruct and assist officers of such agencies and parastatals on ways of eliminating and or minimizing corruption by such officer, agency or parastatals. Apart from the duty of enforcement and prevention, the Commission has the added duty of educating the public on and against corruption, bribery and related offences and to enlist and foster public support in combating corruption.

4. Money Laundering Act, 2004 (Article 23, UNCAC)

This Act covers not just public officials, but also the private sector. Many public servants and others are able to hold their ill-gotten wealth in foreign countries and they subsequently transfer it to their homeland through money laundering, usually under various forms of disguises.

This Act empowers the Economic and Financial Crimes Commission (EFCC), a Commission established to tackle financial crimes, to investigate and prosecute such persons under the said Act.

5. Illegal Enrichment

There is a bureau called the Code of Conduct Bureau. This Bureau is empowered to receive declaration of assets of public officers for the purpose of ensuring transparency throughout their tenure as public officers. It also entertains complaints of non-compliance with its provisions.

The mechanism to ensure compliance is vested in the Code of Conduct Tribunal which after investigation tries complaints brought before it and makes appropriate pronouncement which may include but not

restricted to the following:

- a. Forfeiture of the assets illegally acquired;
- b. Sequestration of such assets where necessary;
- c. Such other disciplinary measures that will ensure purity in the public service.

Many politicians are caught by the provisions of this law. (A former governor of one of the states is currently standing trial allegedly for operating foreign accounts while serving as a governor. This is an offence under the said law.)

6. Freedom of Information Act, 2011

This law is just recently passed by the Legislators. The Act aims at ensuring efficiency, transparency and accountability in public life.

III. INVESTIGATION, PROSECUTION AND ADJUDICATION

A. Investigation

Corruption offences are handled under Federal laws and therefore there are Federal Agencies empowered to enforce the laws. These agencies discussed in chapter II above are: (a) The Independent Corrupt Practices and Other Related Offences Commission (ICPC), (b) The Economic and Financial Crimes Commission (EFCC) and (c) The Code of Conduct Bureau.

These are special agencies established mainly for the investigation and prosecution of corruption cases.

In addition to these agencies, the Police have statutory powers to investigate and prosecute crimes.

B. Prosecution

The different Acts/Laws discussed in chapter II above empower the anti-corruption agencies to prosecute cases investigated by them. Such powers must be with the fiat of the Attorney General of the Federation. However, the ICPC Act in Section 61 (1) provides that every prosecution shall be deemed to be with the consent of the Attorney General. Therefore in practice, the anti-corruption agencies do not have to get the Attorney General's express consent as all prosecutions are implied to be with his or her consent. Recently, (2011), the AG brought out a practice guideline that the EFCC must get express consent of his office before any prosecution.

C. Adjudication

1. Trial by Designated Judges

There are judges designated for the trial of corruption cases in Nigeria. This is to take corruption cases out of the usually overloaded work of a regular judge. By so doing, speed is given to trial of corruption cases (Section 61(3) ICPC Act). It must be noted that these designated judges still try other cases as what is required of them is just to give priority to corruption cases. Cases investigated by the Code of Conduct Bureau are prosecuted in the Code of Conduct Tribunal which has a retired judge as a Chairman of the Tribunal.

IV. MECHANISM FOR RECEIVING INFORMATION OF CORRUPTION

The ICPC Act empowers the Commission to receive report relating to the Commission of an offence under the Act and such report could be made orally or in writing to an officer of the Commission. By implication, the Commission receives report relating to the commission of corruption offences by way of petition. Majorly, until a petition is received, the Commission is unable to act. However, some of these petitions come by way of directive from the seat of government or by information through another government agency. Petitions are also received through internet, through report of system studies of organizations and very recently, from media reports. Section 27 of the ICPC Act is relevant.

V. CHALLENGES

A. Independence

The first and perhaps the greatest challenge to the fight against corruption in Africa is how to secure the independence of institutions charged with implementation of the various anti-corruption laws.

Section 3(14) of the ICPC Act states that the Commission shall in the discharge of its function under this Act, not be subject to the direction or control of any person or authority. In spite of this provision, there are still interferences. However, in the case of the ICPC, since its inception in September, 2000, it has been chaired by eminent Justices; first, by a retired President of the Court of Appeal and then a retired Justice of the Supreme Court. These personalities have been able to limit interferences.

B. Funding

Funding of anti-corruption agencies is a huge challenge in Nigeria. To be able to make any meaningful impact, funds must be deployed for anti-corruption programmes. Without adequate funding, professional training of officers is limited which in turn affect the performance of the agencies. The Law requires the agency to have offices in all the states of the federation; this requires huge sums of money. Therefore allocation of funds can be an indicator of the seriousness or otherwise of government in the fight against corruption.

C. Section 52 of the ICPC Act and Section 308 of the Nigerian Constitution

Section 308 of the Nigerian Constitution provides immunity to certain political office holders.

Section 52 of the ICPC Act, in difference to the persons mentioned in Section 308 of the Nigerian Constitution provides for an independent Counsel to investigate certain office holders, the appointment of the said Independent Counsel shall be made only by the Chief Justice of the Federation, if he or she is satisfied that sufficient cause has been shown upon an application on notice supported by an affidavit setting out the facts on which the allegation is based. This procedure is very cumbersome.

D. Inherent Delay in the Criminal Justice System

The wheels of justice turn slowly. Frivolous motions and applications for adjournment are but few of ways of causing unnecessary delays.

E. Hostile Witnesses

Prosecution has to depend heavily on the testimony of witnesses who are usually within the same environment as the offenders. And for fear of victimization or intimation or even some other form of influences, the witnesses often are not willing to support the prosecution case. Section 64, ICPC Act has some form of protection for witnesses. The Commission also has in place, a programme for witness protection. Currently, the National Assembly (legislature) has before it a bill on witness protection.

VI. CONCLUSION

The laws in Nigeria are adequate to fight corruption both in the public sector and the private sector there are laws relating to tracking, seizure and confiscating proceeds of such crimes, both inside and outside the country.

However, it is the author's humble opinion that some of the challenges highlighted above could be helped by the following suggestions:

A. Hostile Witnesses

A more comprehensive witness and whistleblower law would help. But in addition, all corruption cases should be tried by the Federal High Courts. This will take the trial of corruption cases from the locality of the offenders which will in turn limit his or her influence on the witnesses.

B. Delays in the Criminal Justice System

Practice direction with regard to settling all issues of preliminary objection should be dispensed with before the trial proper. The system could borrow the American practice in this regard.

C. Immunity Clause as Contained

The laws should be amended to remove immunity as far as criminal matters are concerned.

In addition to the above proposals, I am of the strong opinion that if the present programmes of the ICPC which have to do with re-orientation of attitude of Nigerians are well funded and properly executed in conjunction with enforcement, corruption will be reduced to the barest minimum if not entirely eliminated.

By its mandate under Section 6 of the Act, the ICPC is not only concerned with investigation and prosecution of offenders (enforcement), but also involved in facilitating the creation of a corruption-free society by institutionalizing integrity in the administrative machinery of government institutions through its system review mandate. This is targeted at making public service delivering more effective and result-oriented, less bureaucratic, but with greater and more capability to reduce incidences of corruption and corrupt practices. In furtherance of its mandate, the ICPC has put in place the following mechanisms:

- (a) Anti-Corruption and Transparency Monitoring Units (ACTU) in Ministries, Department and Agencies of the government to function as Anti-corruption watchdogs of the Commission;
- (b) The National Anti-corruption Volunteer Corps (NAVC) – foot soldiers to complement the Commission's work;
- (c) The National Anti-Corruption Coalition (NACC); and
- (d) National Value Curriculum – to be included in educational system of the country.

The UNCAC is very important and it is imperative for all signatory countries to put to effective use its provisions as this will go a long way to achieving better results in the fight against corruption.

My Message

The fight against corruption is definitely not an easy one. However, with commitment, determination and collaboration, near zero level corruption can be achieved in our societies.