

ASSESSMENT OF THE LEGAL MECHANISMS OF CONTROLLING CORRUPTION IN NIGERIA

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Abstract

The paper starts by advancing evidential proofs to show that, to all intents and purposes, Nigeria is a corrupt country. The kernel of the paper, which is the appraisal of the legal mechanisms for curbing corruption in Nigeria, with a view to showing their rough-edges and the need to smoothening same is then examined. These legal mechanisms are the Code of Conduct Bureau and Code of Conduct Tribunal, Independent and Corrupt Practices Commission (ICPC) and Economic and Financial Crimes Commission (EFCC). And based on this study, some recommendations are canvassed towards strengthening these agencies for effective performance: The paper concludes by challenging scholars to brainstorm on the contents of other mechanisms of curbing corruption in Nigeria, with a view to fine-tuning them as well.

Introduction

Corruption is the single most devastating, deeply institutionalized, full-blown virus and almost a way of life in Africa, Nigeria in particular. Glimpses of corruption in Nigeria include the indictment and the attendant imprisonment of the Inspector-general of Police, Tafa Balogun (rtd.) for having corruptly enriched himself to the tune of N17 billion from the Police allocations. Much earlier, a World Bank Report (1996), alleged General Badamosi Babangida (rtd.) of frittering away some two billion dollars of the windfall from the sale of crude oil during the Gulf war. Substantiating this argument, Okigbo Report, charged the Babangida junta for "wasteful burning" of the billions of dollars made during the Gulf war. Similarly, General Sani Abacha (rtd.) was alleged to have looted the Nigeria treasury to the tune of three billion pound sterling starched away in the bank vaults of Western European nations especially Swiss Banks (TELL, No. 47, November 23, 1998). Conversely, Abdulsalam Abubakar, in spite of its corrective posture, was not above board as eloquently shown in TELL, No. 20, May 17, 1999. Giving vent to these allegations was the study (2005) of the Economic and Financial Crimes Commission (EFCC), which claimed that Nigeria's past rulers have stolen a cumulative sum of 220 billion pound sterling between 1960-1999 (The Punch, June 27, 2005). This amount approximated 220 billion dollars of Western aid offered African states between 1960-1997; and amounted to six times the American grants availed post-war Europe under the Marshall Plan. In fact, strongly evidential of the magnitude of corruption in Nigeria are the Reports of the Transparency International Corruption Perception Index (CPI). According to the CPI of 1998, of the 88 countries pooled, Nigeria ranked 81st position; and in 2001, Nigeria slipped further to 90th position out of the 91 countries pooled, occupying a second position to the most corrupt nation in the world, which is Bangladesh. The current CPI Report (2006) rates Nigeria as the 6th most corrupt country in the world. This marginal improvement, rather than vitiating the claim that Nigeria is indeed a corrupt country, strengthens the claim, as Nigeria viciously orbitate in the continuum of the ten most corrupt countries in the global order.

In view of the prevalence and magnitude of corruption and corrupt practices in Nigeria, scholars of various ideological persuasions have brainstormed on the subject-matter from all ramifications with a view to curbing it. However, the effectiveness of legal mechanisms in checking corruption in

Nigeria has not been given a holistic treatment, which this paper sets out to grapple with. Against this backdrop, it is imperative at this juncture, to undertake an appraisal of the legal mechanisms put in place in Nigeria towards curbing corruption, with a view to smoothening of the rough-edges of same.

Appraisal of the Legal Mechanisms of Controlling Corruption in Nigeria

Basically, there are three legal mechanisms of controlling corruption in Nigeria, viz:

- (i) The Code of Conduct Bureau and Code of Conduct Tribunal
- (ii) Independent Corrupt Practices Commission (ICPC)
- (iii) Economic and Financial Crimes Commission (EFCC)

Code of Conduct Bureau and Code of Conduct Tribunal

Declaration of assets by public servants was an established code in Nigeria since 1966 Decree, which was repealed by Decree 1968, titled Investigation of Assets (Public Officers and Other Persons). However, this code was elevated to Constitutional Statute under the 1979 Constitution of the Federal Republic of Nigeria, and later in the 1989 and 1999 Constitutions of Nigeria. Specifically, Code of Conduct for Public Officers was enshrined in the Fifth Schedule of the 1999 Constitution of Nigeria.

Inter alia, the Bureau is mandated to examine the declaration of assets and liabilities submitted to it and ensure that they comply with the requirements of the Code. Nwabueze (1985), quibbled that it is not clear whether this enables the Bureau to verify the accuracy of a declaration or the authority to do so needs to be conferred by an Act of the National Assembly enacted in pursuance of its power to confer on the Bureau such an additional power as may appear to it to be necessary to enable the Bureau to discharge its functions more effectively.

Part II of the Fifth Schedule of the 1999 Constitution listed the public officers covered under the Code. Section 209 states that "a person in the public service of the Federation shall observe and conform to the Code of Conduct". For Code of Conduct Tribunal, the Constitution limits its cases arising from non-compliance or breach of the Code of Conduct as referred to it by the Code of Conduct Bureau. Nwabueze (1985) opined that the power of the Bureau vis-a-vis allegations of contravention is problematic. It fails to show that the Bureau can conduct a preliminary investigation into an allegation to satisfy itself in order to determine whether or not it is necessary to refer it to the Tribunal. Secondly, the Constitution is silent on the power of the Bureau where an allegation of contravention is admitted making it unnecessary to refer it to the Tribunal.

The definition of "public officers" in the Constitution suffers double-edged error. On one hand, the definition is so elastic that it includes messengers and menial workers. On the other hand, the definition is so myopic that it excludes part-time members of permanent commissions and councils. Nothing suggests that these appointees are above board to qualify for exemption.

Section 5 (2) of the Schedule prohibits the President, Vice President, Chief Justice of the Federation, Governors and their Deputies from employment in foreign companies after they have ceased to hold office. Ostensibly, the logic behind this proviso is to forestall this class of people from leaking national security information to foreign employers. Criticizing this proviso as an over-kill and a breach of their fundamental right to freedom of choice of employment, Akande (1983), recommended a maximum of eight-year ban, otherwise "the country does not deserve the security which it is seeking to protect."

Cases of ambiguity in the provisions of Code of Conduct have been observed. For instance, Part 6(3) of the Fifth Schedule states that "a public officer shall only accept personal gifts or benefits from relatives or personal friends to such an extent and on such occasions as are recognized by custom". Akande (1983) queried "whose custom? The givers or the receivers?" She further argued that, there cannot be firm definition of "relative" and "personal friend" in an African setting.

Another case of ambiguity is Part 1 2(a) of the Schedule which provides that a public officer shall not "receive or be paid the emolument of any office at the same time as he receives or is paid the emolument of any other public office". This seems to suggest that holding two offices are legal to the extent that emolument is collected from only one office.

The third case of ambiguity is Part 1 Section 10 of the Schedule which expressly prohibits a public officer from membership of any secret society that is incompatible with the dignity of his office. The question in issue here is how to determine the compatibility or otherwise of secret cult membership with the functions and dignity of a particular civil servant. Plausibly, each case will depend on its peculiar facts and circumstances thus, encumbering the work of the Code of Conduct Tribunal.

Another drawback of the Schedule is the provision of Part 1 Section 18(6), which provides for the right of appeal from the decisions of the Tribunal to the Federal Court of Appeal. However, the fact that a person has been before the Tribunal does not preclude him or her from any action that the offence demands under the ordinary laws of the land. Indisputably, this provision negates fundamental rule of fair hearing, that is, the rule against double jeopardy as enshrined in the Section 36 of the 1999 Constitution of the Federal Republic of Nigeria.

Lastly, the restriction of the jurisdiction of the Bureau to public service is a major setback in the drive towards curbing corruption in Nigeria. It is imperative to devise some other checks against

corruption in the private sector, which is handy as conduit of ill-gotten wealth and, almost always, counterpart in corrupt practices. This is the missing link that the Independent Corrupt Practices Commission (ICPC) and Economic and Financial Crimes Commission (EFCC) are established to make up.

The Independent and Corrupt Practices and Other Related Offences Commission (ICPC)

The ICPC was established under Section 3 of the Corrupt Practices and Other Related Offences Act 2000, and charged with the following functions under Section 6 of the Act, viz:

- (i) To receive and investigate reports of corruption and in appropriate cases prosecute the offenders,
- (ii) To examine, review and enforce the correction of corruption prone systems and procedures of public bodies with a view to eliminating corruption in public life, (iii) 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.

The Economic and Financial Crimes Commission (EFCC)

EFCC came into force with the passage of the Economic and Financial Crimes Commission Establishment Act (2004) and charged with the responsibility of investigating and enforcing all laws against economic and financial crimes in all its ramifications. Furthermore, the Commission is designated Financial Intelligence Unit (FIU) in Nigeria, which is mandated to co-ordinate the various institutions involved in the fight against money laundering and enforcement of all laws dealing with economic and financial crimes in Nigeria.

The EFCC does not have any time limitation as to when a crime was committed. The commission also has power to prosecute directly without going through the Attorney General's office.

Major Constraints Militating Against the Performance of ICPC and EFCC

One of the major problems is duplication and overlapping of functions between the ICPC and EFCC. Indeed, the ICPC has often complained that the EFCC was over-stepping its statutory bounds with some of the arrests made, and the files sometimes passed over to the ICPC.

Paucity of fund is a major constraint that the agencies have had to contend with in the discharge of their functions, viewed against the backdrop that the accused usually have at their disposal overwhelming financial muscle to counter the actions of these agencies.

The ICPC does not have power to prosecute cases. The Act establishing ICPC mainly empowers it to investigate cases and thereafter make recommendations to the Chief Justice (CJ) of the Federation to appoint independent Counsels. In an interview with Sunday Punch of February 12, 2006, Justice Mustapha Akanbi, the ex-Chairman of ICPC, noted that the CJ has not appointed any Counsel in respect of the 37 files so far dispatched to the office of the CJ, owing to the frivolous use of interlocutory injunctions. He further alleged that some of the Judges "make orders they know they ought not make"., and that some members of the bench are not above board.

The inclusion of immunity clause under Section 308 of the 1999 Nigerian Constitution has, been an albatross in the work of ICPC and EFCC. Immunity clause states that no criminal proceedings shall be brought or continued against the President, Vice-President, Governor and Deputy-Governors -of States; nor shall any civil proceedings be instituted or continued against them in their private capacity during their period of office, nor shall they be arrested or imprisoned during the period, nor shall they be required or compelled to give evidence in judicial proceedings or be required or compelled to appear before any court of law throughout the Federal Republic of Nigeria. This clause gives carte blanche to these public officers to abuse public trust to the helplessness of ICPC and EFCC.

Instances of ICPC and EFCC officials being beaten black and blue by the hired bouncers of the accused, as was the case with ICPC officials in Pius Anyim's residential property in Abuja in 2002; and EFCC officials in Government House in Plateau State in 2006, gives cause for concern.

Fears are being expressed about the possibility of the EFCC degenerating into a Gestapo, which in its wake, would trample on the fundamental rights and freedoms of the citizens with reckless abandon under the cloak of curbing corruption.

Strong suspicions abound that the ICPC and EFCC are virile instruments in the hand of the executive for punishing perceived political opponents and dissidents.

There is also the allegation that these agencies only hound "small fry" leaving untouched "the big fish"¹ to enjoy their loots.

Finally, the evidential status and admissibility of computers and other electronically generated statement of account or printout, e-mails, telegraphic transfers, tele-faxes, and so on have been issues of controversy in the courts, law institutions, workshops, bar conferences and seminars.

Recommendations

Based on this study, the following recommendations are advanced:

- (i) There should be judicious and statutory funding, preferably charged on the consolidated fund like that of the judiciary, so that these agencies - Code of Conduct Bureau and Tribunal, ICPC, and EFCC - can perform their functions efficiently and effectively without having to depend on any and of government.
- (ii) The top management of these agencies should close ranks and perceive their roles, in the noble task of curbing corruption and corrupt practices, as complimentary rather than competitive.
- (iii) In the discharge of their functions, the due process of law should not only be adhered to but seen to be followed.
- (iv) Conscious efforts should be made towards insulating these agencies from partisan politics and the manipulation of the executives.
- (v) For effectiveness and popular support, these agencies should apply the rules to all and sundry with equity and fairness. No person, group or institution should be treated as a "sacred cow."
- (vi) Finally, since these agencies work closely with the Nigerian Police, which is notorious for corruption, it is imperative to overhaul and reform the Nigerian Police. Conversely, time-tested, scrupulous procedures should be adopted in -the recruitment of officials for these agencies,

Conclusion

From the foregoing discussion, this paper grapples with the menace of corruption in Nigeria and the effectiveness of the legal mechanisms such as the Code of Conducts Bureau and Code of Conduct Tribunal, ICPC and EFCC in curbing corruption and corrupt practices in Nigeria. Rough-edges in these mechanisms were brought out and suggestions for fine-tuning and smoothing of these rough-edges were clearly spelt out. However, other mechanisms of curbing corruption exist in Nigeria, which include education and enlightenment, due process in the award of contracts, treaties with other" countries and organizations, economic and political modalities. The task of this paper is fulfilled if this paper stimulates discussions by scholars on modalities for smoothing the rough-edges of these. other mechanisms of curbing corruption in Nigeria.

References

- Akande, J.O. (1982). *The Constitution of the Federal Republic of Nigeria - 1979 with Annotations*. London: Sweet and Maxwell.
- Ake, C. (1983). *A Political Economy of Africa*. Nigeria: Longman Nigeria.
- Akindele, S.T. (1995). Corruption: An Analytical Focus on the Problems of its Conceptualization. *Ife Psychologia*. 3(i): p.44
- Awa, E. (1996). Democracy in Nigeria: A Political Scientist's View, in O. Oyediran (Ed.) *Governance and Development in Nigeria*. Ibadan University Press.
- Banfield, E. (1958). *The Moral Basis of a Backward Society*. Chicago: Free Press.
- Bryce, J. (1921), *Modern Democracies*. New York: St. Martin's Press.

- Callaghy, T. (1994). Africa: Falling Off the Map. *Current History*. Vol; XII. Pp. 31-36.
- Inge, A. (2002). Corruption - Definitions and Concepts. Norwegian Agency for Development Cooperation (NORAD). Chr. Michelson Institute (CMI): Chapter 2.
- Lipset, S. and Salman, L. (2000). Corruption, Culture and Markets. In S. Huntington (ed). *Culture Matters*. New Haven: Yale University Press. Pp. 88-113.
- Merton, K. (1968). *Social Theory and Social Structure*, Glencoe; Free Press. Nwabueze,
- B.O. (1985). *Nigeria's Presidential Constitution 1879-83*. Longman Group Ltd.
- Okadigbo, C. (1987) *Power and Leadership in Nigeria*, Enugu: Fourth Dimension Publishers, pp. 134-135.
- Onoloja, O. (2002). Corruption and Economic Retardation: A Retrospective Analysis of Nigeria's Experience since Independence. In O. Bamisaye *et al* (Eds.). *Readings in the Political Economy of Nigeria since Independence*. Lagos Ventures Ltd.
- Sen, B. (1999). Introduction: Theory and Practice in Public Management. In J. S. Bouman (Ed.) *Ethical Frontiers in Public Management*. San Francisco: Jossey Base.